Chapter 94

1983 REPLACEMENT PART

Condominiums; Planned Communities; Timeshare Estates

CONDOMINIUMS

(General Provisions)

94.004 Definitions for ORS 94.004 to 94.480
94.011 Short title

(Warranties on New Units)

94.017 Express warranties; form; exclusion of implied warranties; exemption for consumer products

(Creation of Unit Ownership)

94.023 Property submitted to unit ownership by declaration
94.029 Contents of declaration under ORS 94.023; property name
94.036 Approval of declaration required; prerequisites; fee
94.042 Recording declaration, plat and floor plans
94.047 Supplemental information required for additional development and annexation of property
94.053 Relocation of unit boundaries and common elements by amendment to declaration
94.059 Requirements for amendments to declaration; approval by commissioner and owners

(Rights and Duties of Declarant)

94.066 Easement held by declarant
94.072 Reserve account for replacing common elements

(Declarant Control; Turnover)

94.078 Declarant control of association
94.084 Transitional committee; notice of meeting for formation
94.091 Turnover meeting; notice; transfer of control

(Special Declarant Rights)

94.097 Liabilities and obligations arising from transfer of special declarant right
94.103 Acquisition of special declarant rights by successor declarant

(Conversion Condominiums)

94.109 Inapplicability of ORS 94.116 to 94.134 to transient lodgings
94.116 Conversion condominium; notice to tenants
94.122 Rights of tenants in conversion
94.128 Improvements in conversion condominium during notice period
94.134 Authority of city or county to require developer to pay tenant moving expenses

(Association of Unit Owners; Management of Property; Encumbrances; Conveyances)

94.146 Association of unit owners; powers
94.152 Adoption of bylaws; recording; amendment; approval by commissioner; fee
94.158 Contents of bylaws
94.164 Board meetings of unit owners' association
94.171 Unit deeds; contents
94.177 Insurance for units and common elements
94.185 Liens against property; removal from lien; effect of part payment
94.190 Individual defaulting required under leasehold condominium
94.195 Lien of association against unit; filing of claim; foreclosure
94.202 Foreclosure against unit; receiver for unit; power of property manager to bid at foreclosure sale
94.208 Liability for unpaid share of common expenses
94.214 Maintenance of documents and records; annual financial statement; availability of documents and records for examination
94.221 Duration and termination of initial management agreements and service and employment contracts; applicability of federal condominium law

(Attributes and Duties of Ownership)

94.231 Status and ownership of units
94.237 Units and common elements distinguished
94.243 Interest of units in common elements
94.250 Easement held by units and common elements
94.255 Allocation of votes in association
94.260 Allocation of common profits and expenses; liability of unit owner; limitation on assessments against declarant
94.265 Maintenance and improvement of units
94.270 Use and maintenance of common elements; access for maintenance
94.275 Compliance with bylaws and other restrictions
94.280 Actions by and against unit owners; service of process
94.285 Taxation of units; exemptions; uniform appraisal and assessment

(Removal of Property from Unit Ownership)

94.295 Removal by unit owners; consent of lienholders
94.300 Removal of property from ORS 94.004 to 94.480 by agreement that property is obsolete or by agreement not to repair damage or destruction to property
94.306 Common ownership of property removed from unit ownership; valuation; liens
94.312 Action for partition; division of sale proceeds
94.318 Removal no bar to resubmission

(Dividing or Converting Units)

94.322 Procedure for dividing or converting units

(Regulation of Sales; Filing Requirements)

94.324 "Condominium" defined for ORS 94.331 to 94.480
94.331 Disclosure requirements by developer; notice of intention to sell or lease units; content; fee
94.336 Additional requirements by commissioner for notice of intention
94.342 Filing information to be kept current; fee for material change in notice
94.348 Service of process on nonresident developer; consent for service on commissioner; contents of consent; records of service on commissioner

(Examination of Condominium; Public Report)

94.359 Examination of condominium; public report; waiver of examination in other state
94.366 Notice to prospective buyers of estimation of common expenses
94.372 Information includable in public report
94.378 Waiver of public report by commissioner
94.384 Sale prohibited where public report not issued or waived; distribution and use of public report
94.391 Deposit with commissioner for examination expenses; refund

(Requirements for Sale)

94.400 Conditions prerequisite to sale
94.406 Documents prerequisite to execution of sale agreement and conveyance of unit
94.412 Cancellation of sale of unit; notice to seller; return of payments and reconveyance; extinguishment of encumbrances; waiver prohibited; disclaimer of notice; applicability
94.418 Waiver of right to cancel
94.424 Notice to purchaser of cancellation rights; form
94.431 Escrow documents required of successor to vendor's interest
94.437 Inspection of records

(Prohibited Acts)

94.448 Fraud and deceit prohibited
94.454 False or misleading advertising prohibited; liability
94.460 Waiver of legal rights void
94.465 Blanket encumbrance permitted only in certain circumstances

(Enforcement)

94.470 Civil penalty; hearings
94.475 Cease and desist order; injunction
94.480 Use of fees

PLANNED COMMUNITIES

(General Provisions)

94.550 Definitions for ORS 94.550 to 94.783
94.560 Legislative findings

(Creation of Planned Community)

94.565 Planned community to be created under ORS 94.550 to 94.783; exception; sale of lot or unit prohibited until declaration filed
94.570 Applicability of ORS 94.550 to 94.783
94.575 Applicability of subdivision law
94.580 Declaration; recordation; contents
94.585 Authority to amend declaration and initial bylaws to comply with federal laws
94.590 Amendment by association of declaration and plat
94.595 Reserve account for replacing common property

(Declarant Control; Turnover of Administrative Control)

94.600 Declarant control of association
94.604 Transitional advisory committee
94.609 Notice of meeting to turnover administrative responsibility
94.616 Turnover meeting; transfer of administration
94.621 Rights of declarant following turnover meeting

(Homeowners Association; Management of Planned Community)

94.625 Formation of homeowners association; adoption of initial bylaws
94.630 Powers of association
94.635 Association bylaws
94.640 Association board of directors; powers and duties; removal of member; meetings
94.645 Adoption of annual budget
94.650 Annual meeting of lot owners; notice
94.655 Quorum for association meetings
94.660 Voting; proxy voting
94.665 Authority of association to sell or transfer common property
94.670 Association duty to keep documents and records; examination by owner
94.673 When compliance with ORS 94.640 and 94.670 required
94.675 Insurance for common property
94.677 Election to have ORS 94.645, 94.655 and 94.675 apply
94.680 Blanket all-risk insurance
94.685 Specification of insurance for individual lots
94.690 Terms of insurance under ORS 94.680
94.695 Authority to delegate association powers to master association
94.700 Duration and termination of initial management agreements and service and employment contracts

(Assessments and Liens Against Lots; Easements)

94.704 Assessment and payment of common expenses
94.709 Liens against lots; priority; duration; statement of unpaid assessments; action in lieu of lien foreclosure
94.716 Lien against two or more lots; release
94.723 Common expenses; liability of first mortgagee
94.728 Taxation of lots and common property
94.733 Easements held by owner of lot and by declarant

(Regulation of Sales; Required Documents)

94.740 Documents to be delivered to purchaser by seller
94.745 Statement of Declarant's Interest
94.750 Statement of Planned Community Information
94.755 Notice to purchaser
94.760 Promotional material showing possible improvements
94.765 Cancellation of sale of lot; notice to seller; return of payments and reconveyance; removal of encumbrances; termination of right to cancel; waiver ineffective

(Miscellaneous)

94.770 Application of rule against perpetuities; conflict between declaration and bylaws; effect on title of declaration's insubstantial noncompliance with Planned Community Act
94.775 Judicial partition prohibited
94.780 Remedies
94.783 When certain administrative provisions apply
94.785 Short title

TIMESHARE ESTATES

(General Provisions)

94.803 Definitions for ORS 94.803 to 94.945
94.806 Legislative finding
94.807 Application
94.811 When condominium or planned community owners may prohibit timeshare plan

(Creation of Timeshare Estates)

94.813 Character of timeshare estates
94.816 Partition prohibited; exception
94.818 Recording of timeshare instrument
94.821 Content of timeshare instrument
94.823 Notice of intent to sell timeshares; form and content
94.826 Information on exchange program; content
94.828 Public report on plan
94.831 Filing fees; inspection advance payment; disposition of moneys
94.833 Sale of timeshare plan located out-of-state

(Purchaser's Rights)

94.836 Cancellation of purchase within five days
94.839 Notice of cancellation right
94.841 Waiver of rights void
94.843 Limits on developer right to transfer

(Association of owners; management)

94.846 Designation of managing entity; duties and powers of entity
94.848 How managing entity of developer terminated
94.853 Payment of common expenses
94.856 Assessment of common expenses as lien; recording; foreclosure; fees; remedies; exception
94.858 Owners' association; powers and duties
94.863 Developer's duty to managing entity
94.867 Judicial declaration of failure in management
94.869 Insurance coverage

(Escrow)

94.871 When purchase money agreement prohibited; escrow requirements
94.873 Escrow account; closing; release
94.876 Requirements for closing escrow
94.878 Duties of escrow agent
94.881 Who may serve as escrow agent

(Lien payment)

94.885 Rights of lienholder
94.890 Lien payment trust; payments; delinquencies
94.895 Trust irrevocable without alternative arrangement
94.900 Alternative to lien payment trust
94.905 Surety bond

(Enforcement)

94.915 Inspection of records; rulemaking; uniform standards
94.920 Consent to service by out-of-state developer
94.925 Civil penalty
94.930 Commissioner order; injunctive relief

(Prohibited Practices)

94.940 False practices prohibited
94.945 Advertising regulation

PENALTIES

94.991 Penalties

CROSS REFERENCES

Conveyancing and recording, Ch. 93
Discrimination in selling, leasing or renting real property prohibited, 659.033
Taxation of condominium management association, 317.067

94.004 to 94.480

Tax exemption termination upon change to unit ownership, 307.675

94.023

Loans by cities, units ineligible, 280.432

94.029

Doing business under assumed name, Ch. 648

94.042

Certain plans to carry stamp of architect, 671.025

94.195

Security interests, Ch. 79

94.312

Action for partition, 105.205 to 105.405

94.803 to 94.945

Real Estate Account, 696.490

CONDOMINIUMS
(General Provisions)

94.004 Definitions for ORS 94.004 to 94.480. As used in ORS 94.004 to 94.480 and 94.991, unless the context requires otherwise:

(1) "Agent" means any person who represents or acts for or on behalf of a developer in selling or offering to sell any unit in a condominium, but such term does not include an attorney-at-law whose representation of another person consists solely of rendering legal services.

(2) "Association of unit owners" means the association provided for under ORS 94.146.

(3) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance, mechanics' lien or otherwise, securing or evidencing the payment of money and affecting more than one unit in a condominium, or an agreement affecting more than one such unit by which the developer holds such condominium under an option, contract to sell or trust agreement.

(4) "Building" means a multiple-unit building or single-unit buildings, or any combination thereof, comprising a part of the property.

(5) "Commissioner" means the Real Estate Commissioner.

(6) "Common elements" means the general common elements and the limited common elements.

(7) "Common expenses" means:

(a) Expenses of administration, maintenance, repair or replacement of the common elements;

(b) Expenses agreed upon as common by all the unit owners; and

(c) Expenses declared common by ORS 94.177, 94.208 (1), 94.306 (2) or by the declaration or the bylaws of the particular condominium.

(8) "Conversion condominium" means property submitted to the provisions of ORS 94.004 to 94.480 and 94.991 on which there is a building, improvement or structure that was occupied prior to any negotiation and that is:

(a) Residential in nature, at least in part; and

(b) Not wholly commercial or industrial, or commercial and industrial, in nature.

(9) "Declarant" means a person who files a declaration under ORS 94.023.

(10) "Declaration" means the instrument described in ORS 94.023 by which the property is submitted to the provisions of ORS 94.004 to 94.480 and 94.991.

(11) "Developer" means a declarant or any person who purchases an interest in a condominium from declarant, successor declarant or subsequent developer for the primary purpose of resale.

(12) "Dwelling unit," "premises," "rental agreement" and "tenant" mean those terms as defined in ORS 91.705.

(13) "General common elements," unless otherwise provided in a declaration or by consent of all the unit owners, means:

(a) The land, whether leased or in fee simple, on which a building is located except any portion thereof included in a unit or made a limited common element by the declaration;

(b) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances and exits of a building;

(c) The basements, yards, gardens, parking areas and outside storage spaces;

(d) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal and incinerating;

(e) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(f) The premises for the lodging of janitors or caretakers of the property; and

(g) All other elements of a building necessary or convenient to its existence, maintenance and safety, or normally in common use.

(14) "Leasehold" means the interest of a person, firm or corporation who is the lessee under a lease from the owner in fee and who files a declaration submitting the leasehold interest to the provisions of ORS 94.004 to 94.480 and 94.991.

(15) "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners, as reserved for the use of a certain unit or number of units, to the exclusion of the other units.

(16) "Majority" or "majority of unit owners" means more than 50 percent of the voting rights allocated to the units by the declaration.

(17) "Negotiation" means any activity preliminary to the execution by either developer or purchaser of a unit sales agreement, including but not limited to advertising, solicitation and promotion of the sale or lease of a unit.

(18) "Percentage" or "percent of unit owners" means the percent of the voting rights determined under ORS 94.255.

(19) "Property" or "condominium" means the land, whether leasehold or in fee simple and whether contiguous or noncontiguous, all buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which are submitted to the provisions of ORS 94.004 to 94.480 and 94.991.

(20) "Purchaser" means an actual or prospective purchaser of a condominium unit.

(21) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or any other instruments or documents affecting the title to real property.

(22) "Reservation agreement" means an agreement relating to the future sale of a unit which is not binding on the purchaser and which grants purchaser the right to cancel the agreement without penalty and obtain a refund of any funds deposited at any time until purchaser executes a unit sales agreement.

(23) "Sale" includes every disposition or transfer of a condominium unit, or an interest or estate therein, by a developer or agent of the developer, including the offering of the property as a prize or gift when a monetary charge or consideration for whatever purpose is required by the developer or agent. "Interest or estate" includes a lessee's interest in a unit for more than three years or less than three years if the interest may be renewed under the terms of the lease for a total period of more than three years. "Interest or estate" does not include any security interest under a unit sales contract, trust deed or mortgage or a timeshare regulated or otherwise exempt under ORS 94.803 and 94.807 to 94.945.

(24) "Special declarant right" means any right, in addition to the regular rights of the declarant as a unit owner, reserved for the benefit of or created by the declarant under the declaration, bylaws or the provisions of ORS 94.004 to 94.480 and 94.991.

(25) "Successor declarant" means the transferee of any special declarant right.

(26) "Transitional committee" means the committee provided for under ORS 94.084.

(27) "Turnover meeting" means the meeting provided for under ORS 94.091.

(28) "Unit" or "condominium unit" means a part of the property consisting of a building or one or more rooms occupying one or more floors of a building or a part or parts thereof, intended for any type of independent ownership, the boundaries of which are described pursuant to ORS 94.029 (1)(c), and with a direct exit to a public street or highway or to a common area or areas leading to a public street or highway. An area used for the temporary parking or storage of automobiles, boats, campers or other similar recreational vehicles or equipment may be considered a unit even though consisting of air space only without any building or structure, when such area is auxiliary to a condominium in which the remainder of the units are in or are a part of a building or buildings.

(29) "Unit designation" means the number, letter or combination thereof designating a unit in the declaration.

(30) "Unit owner" means the person owning any interest recognized under the laws of this state in a unit except when such interest is held solely for security purposes.

(31) "Unit sales agreement" means a written offer or agreement for the sale of a condominium unit which when fully executed will be binding on all parties. "Unit sales agreement" includes but is not limited to an earnest money receipt and agreement to purchase and other such agreements which serve as an agreement of sale for a cash transaction or which are preliminary to the execution of an instalment contract, but does not include a reservation agreement.

(32) "Voting rights" means the portion of the votes allocated to a unit by the declaration in accordance with ORS 94.029 (1)(h). [Formerly 91.500; 1983 c.530 §48]

94.005 [Repealed by 1971 c 478 §1]

94.010 [Repealed by 1971 c.478 §1]

94.011 Short title. ORS 94.004 to 94.480 and 94.991 may be cited as the Oregon Condominium Act. [Formerly 91.503]

94.015 [Repealed by 1971 c.478 §1]

(Warranties on New Units)

94.017 Express warranties; form; exclusion of implied warranties; exemption for consumer products. (1) The declarant shall expressly warrant against defects in the plumbing, electrical, mechanical, structural, and all other components of the newly constructed units and common elements. Such warranty:

(a) Shall exist on a unit and the related limited common elements for not less than one year from the date of delivery of possession of that unit by the declarant to the first unit owner other than the declarant;

(b) Shall exist on the general common elements for not less than one year from the initial conveyance of title to a unit by the declarant to a unit owner other than the declarant, or, in the case of property developed in stages, for not less than one year from such initial conveyance of title or completion of the construction of the specific general common element, whichever is later;

(c) Shall be contained, in a form approved by the Real Estate Commissioner, in the contract or other agreement to purchase;

(d) Shall be separate from, and in addition to, any warranties provided by any other person; and

(e) Shall be in lieu of any implied warranties by the declarant against defects in the plumbing, electrical, mechanical, structural or other components of any newly constructed unit or common elements.

(2) The warranty required under subsection (1) of this section is not required for consumer products as defined in 15 United States Code 2301 (1). [Formerly 91.504]

94.020 [Repealed by 1971 c.478 §1]

(Creation of Unit Ownership)

94.023 Property submitted to unit ownership by declaration. (1) In order to submit any property to the provisions of ORS 94.004 to 94.480 and 94.991, the declarant shall record a declaration in the office of the recording officer of every county in which such property is located. The declaration shall comply with ORS 94.029 and shall be executed in accordance with subsection (2) of this section and acknowledged in the manner provided for acknowledgment of deeds.

(2) If the declarant is not the fee owner of the property, the fee owner and the vendor under any instrument of sale shall also execute the declaration for the purpose of consenting to the property being submitted to the provisions of ORS 94.004 to 94.480 and 94.991. [Formerly 91.506]

94.025 [Repealed by 1971 c.478 §1]

94.029 Contents of declaration under ORS 94.023; property name. (1) A declaration shall contain:

(a) A description of the land then being submitted to unit ownership, whether leased or in fee simple.

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

(c) The unit designation, location, a description of the boundaries and approximate area of each unit and any other data necessary for proper identification.

(d) A description of the general common elements.

(e) An allocation to each unit of an undivided interest in the common elements in accordance with ORS 94.243 and the method used to establish the allocation.

(f) A description of the limited common elements, if any, stating to which units their use is reserved and the allocation of use of any limited common element appertaining to more than one unit.

(g) The method of determining liability for common expenses and right to common profits in accordance with ORS 94.260.

(h) The voting rights allocated to each unit in accordance with ORS 94.255 or in the case of condominium units committed as property in a timeshare plan defined in ORS 94.803, the voting rights allocated in the timeshare instrument.

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

(j) The name of a person to receive service of process in the cases provided in ORS 94.280 (1), and the residence or place of business of such person which shall be within this state.

(k) The percentage of voting rights required to approve an amendment of the declaration if such percentage is greater than 75 percent.

(L) A statement as to whether or not the association pursuant to ORS 94.146 (5) has authority to grant easements, rights of way, licenses and other similar interests affecting the general common elements of the condominium.

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

(n) Any other details regarding the property that the person executing the declaration considers desirable. However, if a provision required to be in the bylaws under ORS 94.158 is included in the declaration, the voting requirements for amending the bylaws shall also govern the amendment of the provision in the declaration.

(2) In the event the declarant proposes to annex additional property to the property described in the declaration, the declaration shall also contain a general description of the plan of development, including:

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

(b) The maximum number of stages in the development.

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

(d) A general description of the nature and proposed use of any additional common elements which declarant proposes to annex to the property described in the declaration, if such common elements might substantially increase the proportionate amount of the common expenses payable by existing unit owners.

(e) The minimum allocation of undivided interest in the common elements of each original unit upon completion of development if declarant elected to proceed with all stages of development.

(f) The method used to establish the allocation of undivided interest in the common elements of each unit at each stage of development.

(g) Such other information as the commissioner shall require in order to carry out the purposes of ORS 94.331 to 94.412 and 94.424 to 94.480.

(3) Except where expressly prohibited by the declaration and subject to the requirements of ORS 94.059 (1):

(a) The date specified in paragraph (c) of subsection (2) of this section may be extended for a period not exceeding two years; and

(b) The staging specified in the declaration under paragraph (b) of subsection (2) of this section and the general description under paragraph (d) of subsection (2) of this section may be changed by an amendment to the declaration.

(4) The information included in the declaration in accordance with paragraphs (a), (e) and (f) of subsection (2) of this section may not be changed unless all owners agree thereto and record an amendment to the declaration in accordance with ORS 94.004 to 94.480 and 94.991.

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

(6) No property shall bear a name which is the same as or deceptively similar to the name of any other property submitted to the provisions of ORS 94.004 to 94.480 and 94.991 which is located in the same county. [Formerly 91.509; 1983 c.530 §49; 1983 c.615 §1]

94.030 [Repealed by 1971 c.478 §1]

94.035 [Repealed by 1971 c.478 §1]

94.036 Approval of declaration required; prerequisites; fee. (1) Before a declaration or an amendment thereto may be recorded, it must be approved as provided in this section by the county assessor, tax collector of the county in which the property is located and the commissioner. No declaration or amendment thereto shall be approved unless the requirements of subsections (2) to (5) of this section are met.

(2) The county assessor of the county in which the property is located shall approve a declaration or amendment thereto if:

(a) The name complies with ORS 94.029 (5) and (6); and

(b) The plat and floor plans comply with the requirements of ORS 94.042.

(3) The tax collector of the county in which the property is located shall approve the declaration if:

(a) All ad valorem taxes, special assessments, fees, or other charges required by law to be placed upon the tax roll which have become a lien upon the property during the calendar year have been paid; and

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

(c) The additional taxes, and any interest attributable thereto, required by ORS 308.479 and 308.675 have been paid.

(4) The commissioner shall approve the declaration or amendment thereto if:

(a) The declaration or the amendment thereto complies with the requirements of ORS 94.029 and 94.059;

(b) The bylaws adopted under ORS 94.152 comply with the requirements of ORS 94.152 and 94.158; and

(c) The plat and floor plans comply with the requirements of ORS 94.042.

(5) Before the commissioner approves the declaration or amendment thereto under this section, the declarant shall pay to the commissioner a fee determined by the commissioner. The fee shall not exceed the costs of reviewing

and approving the declaration or amendment thereto based upon a maximum hourly fee that is subject to the review of the Executive Department and prior approval of the appropriate legislative review agency as defined in ORS 291.030 or $100 plus $25 per unit, whichever is less. Any amount paid under this subsection shall be deducted from the filing fee otherwise required and subsequently paid under ORS 94.331 (2). [Formerly 91.512; 1983 c.615 §2; 1983 c.740 §7a]

94.040 [Repealed by 1971 c.478 §1]

94.042 Recording declaration, plat and floor plans. (1) When a declaration is made and approved as required, it shall, upon the payment of the fees provided by law, be recorded by the recording officer. The fact of recording and the date thereof shall be entered thereon. At the time of recording a declaration, the person offering it for record shall also file an exact copy, certified by the recording officer to be a true copy thereof, with the county assessor.

(2) A plat of the land described in the declaration, complying with ORS 92.050, 92.060 (1), (2) and (4), 92.080 and 92.120, shall be recorded simultaneously with the declaration. Upon request, the person offering the plat for recording shall also file an exact copy, certified by the surveyor who made the plat and by the recording officer to be a true copy of the plat, with the county assessor and the county surveyor. The exact copy shall be made with black india type ink or photocopy upon a suitable drafting material having the characteristics of strength, stability and transparency required by the county surveyor. The plat shall:

(a) Show the location of all buildings, public roads and other permanent structural improvements;

(b) Show the location and dimensions of the vertical and horizontal boundaries of each unit in a building including the unit designation and the common elements to which each unit has access. The vertical boundaries shall be referenced to a known bench mark elevation or other reference point as approved by the city or county surveyor;

(c) Have attached to it a statement of a registered architect, registered professional land surveyor or registered professional engineer certifying that the plat fully and accurately depicts the boundaries of the units of the building and that construction of the units and buildings as depicted on the plat has been completed; and

(d) Have attached to it a surveyor's affidavit, complying with ORS 92.070.

(3) Before a plat or an amendment to the plat may be recorded, it must be approved by the city or county surveyor as provided in ORS 92.100. Before approving the plat as required by this section, the city or county surveyor shall check the boundary of the plat and shall take such measurements and make such computations as are necessary to determine that the boundary complies with this section. For performing that service, the city surveyor or county surveyor shall collect from the person offering the plat for approval a fee of $150 plus $25 per building.

(4) Except as otherwise provided in subsection (5) of this section, before an amendment to an existing plat or floor plans may be recorded, it must be approved by the county assessor and must be accompanied by an amendment to the declaration authorizing the amendment to the plat or floor plans. If the amendment changes the exterior boundary of the property, the city or county surveyor must approve the amendment before it may be recorded. The amendment to the declaration shall also be approved and be recorded in accordance with ORS 94.059. The county assessor shall approve an amendment to floor plans recorded before October 15, 1983, if the amendment complies with the requirements of this section relating to floor plans in effect at the time the floor plans were initially recorded. The county assessor and, if required by this section, the city or county surveyor shall approve an amendment to a plat if the amendment complies with this section.

(5) The following may be amended by an affidavit of correction in accordance with ORS 92.170:

(a) A plat, whenever recorded.

(b) Floor plans recorded prior to October 15, 1983. [Formerly 91.515; 1983 c.309 §8]

94.045 [Repealed by 1971 c.478 §1]

94.047 Supplemental information required for additional development and annexation of property. (1) If the original declaration submitting property to ORS 94.004 to 94.480 and 94.991 proposes the annexation of additional property to the property described in the declaration, a supplemental declaration and plat shall be approved and filed by declarant at the time of each annexation. Such supplemental declarations and plats shall:

(a) Be consistent with the provisions of the original declaration drawn pursuant to ORS 94.029 (2).

(b) Contain the information required by ORS 94.029 (1) insofar as that information relates to the property being annexed.

(c) If the annexation of additional units was contemplated in the original declaration, list the new units and include the information described in ORS 94.029 (2)(e) in relation to such units.

(d) State the allocation of undivided interest in the common elements of each unit previously submitted to the provisions of ORS 94.004 to 94.480 and 94.991 upon the annexation of the additional property.

(2) Such supplemental declarations and plats shall be approved and recorded as provided in ORS 94.036 and 94.042. No unit in any additional stage of development shall be conveyed until after such recording.

(3) As to property submitted to unit ownership after October 4, 1977, additional units may not be added within land previously submitted to unit ownership unless all unit owners consent to an amendment to the declaration, plat and any floor plans recorded pursuant to ORS 94.042 in order to provide for such additional units. [Formerly 91.518; 1983 c.309 §8a]

94.050 [Repealed by 1971 c.478 §1]

94.053 Relocation of unit boundaries and common elements by amendment to declaration. (1) Subject to any limitations contained in the declaration, the boundaries between adjoining units, including any intervening common elements, may be relocated or eliminated by an amendment to the declaration. The owners of the affected units shall submit to the board of directors of the association a proposed amendment which shall identify the units involved, state any reallocations of common element interest, voting rights, common expense liability and right to common profits and contain words of conveyance. The board of directors shall approve the amendment unless it determines within 45 days that the reallocations are unreasonable or the relocation or elimination will impair the structural integrity or mechanical systems of the condominium or lessen the support of any portion of the condominium.

(2) The board of directors of the association may require the owners of the affected units to submit an opinion of a registered architect or registered professional engineer that the proposed relocation or elimination will not impair the structural integrity or mechanical systems of the condominium or lessen the support of any portion of the condominium.

(3) The board of directors of the association or any agent appointed by the board of directors may supervise the work necessary to effect the boundary relocation or elimination.

(4) Any expenses incurred under subsections (2) and (3) of this section shall be charged to the owners of the units requesting the boundary relocation or elimination.

(5) The amendment shall be executed by the owners and mortgagees or trust deed beneficiaries of the affected units, certified by the chairman and secretary of the association and approved and recorded in accordance with ORS 94.059 (1)(b).

(6) An amendment to the plat and any floor plans necessary to show the altered boundaries between the adjoining units shall be recorded in accordance with ORS 94.042. [Formerly 91.519; 1983 c.309 §8b]

94.055 [Repealed by 1971 c.478 §1]

94.059 Requirements for amendments to declaration; approval by commissioner and owners. (1) Except as otherwise provided in ORS 94.004 to 94.480 and 94.991, an amendment of the declaration shall not be effective unless:

(a) Such amendment is approved by 75 percent of the unit owners, or, if the declaration requires a greater percentage, then by that percentage of unit owners required by the declaration; and

(b) A copy of the declaration as amended or the amendment thereto, certified by the chairperson and secretary of the association of unit owners as being adopted in accordance with the declaration and the provisions of ORS 94.004 to 94.480 and 94.991, is recorded. Before any amended declaration or amendment to a declaration may be recorded, it must be approved by the commissioner. The commissioner shall approve the amendment if the requirements of ORS 94.029 and 94.036 and this section have been satisfied.

(2) Except as otherwise provided in ORS 94.004 to 94.480 and 94.991, no amendment may change the allocation of undivided interest in the common elements, method of determining liability for common expenses, right to common profits or voting rights of any unit unless such amendment has been approved by the owners of the affected units.

(3) The declaration may not be amended to limit or diminish any right of a declarant reserved under ORS 94.029 (2) or any other special declarant right without the consent of the declarant. However, the declarant may waive the declarant's right of consent. [Formerly 91.521; 1983 c.615 §3]

94.060 [Repealed by 1971 c.478 §1]

94.065 [Repealed by 1971 c.478 §1]

(Rights and Duties of Declarant)

94.066 Easement held by declarant. Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging any obligation of the declarant or exercising any special declarant right, whether arising under the provisions of ORS 94.004 to 94.480 and 94.991 or reserved in the declaration or bylaws. [1981 c.647 §30]

94.070 [Repealed by 1971 c.478 §1]

94.072 Reserve account for replacing common elements. (1) The declarant shall establish a reserve account for replacement of those common elements all or part of which will normally require replacement in more than three and less than 30 years. The items may be identified as those which are insurable by a common carrier of all purpose risk insurance.

(2) The reserve account must be funded by assessments against the individual unit assessed for maintenance of items for which the reserve account is being established. The assessment under this subsection will accrue from the time of the conveyance of the first individual unit assessed and may be shown as a separate item in the reservation agreement or unit sales agreement. The declarant may elect to defer payment of the accrued assessment for a unit under this subsection until the time of conveyance of the unit.

(3) The amount assessed shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of those items.

(4) The reserve account shall be established in the name of the association of unit owners that will be responsible for administering the account and for making periodic payments into it. The amount of the payments shall be adjusted at regular intervals to recognize changes in current replacement costs over time.

(5) The reserve account is to be used only for replacement of common elements and is to be kept separate from assessments for maintenance. However, after the individual unit owners have assumed administrative responsibility for the association under ORS 94.091, the board of directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from special assessments or maintenance fees.

(6) Restrictions on the use of the reserve account do not prohibit its prudent investment subject to any constraints on investment of association funds imposed by the declaration, bylaws or rules of the association of unit owners.

(7) Following the second year after the unit owners have assumed administrative responsibility for the association under ORS 94.091, future assessments for the reserve account may be reduced, eliminated or increased by an affirmative vote of not less than 75 percent of all voting rights.

(8) Assessments paid into the reserve account are the property of the association of unit owners and are not refundable to sellers of units. Sellers of units may treat their outstanding share of the reserve account as a separate item in a unit sales agreement. [1981 c.647 §33]

94.075 [Repealed by 1971 c.478 §1]

(Declarant Control; Turnover)

94.078 Declarant control of association. (1) Subject to subsection (2) of this section, the declaration or bylaws may specifically provide for a period of declarant control of the association of unit owners, during which period a declarant or person designated by the declarant may appoint and remove officers and members of the board of directors and exercise powers and responsibilities otherwise assigned by the declaration, bylaws or the provisions of ORS 94.004 to 94.480 and 94.991 to the association, the officers or the board of directors. No formal or written proxy or power of attorney need be required of the unit owners to vest the declarant with such authority. Declarant control may be achieved by allocating in the declaration greater voting rights to a unit owned by the declarant.

(2) The declaration or bylaws may not provide for a period of administrative control of the association of unit owners by the declarant for a period exceeding:

(a) In a single stage condominium the earlier of:

(A) Three years from the date the first unit is conveyed; or

(B) The date of conveyance to persons other than the declarant of 75 percent of the units.

(b) In a staged condominium the earlier of:

(A) Seven years from the date the first unit is conveyed; or

(B) The date of conveyance to persons other than the declarant of 75 percent of the units in the last stage which declarant may submit to the provisions of ORS 94.004 to 94.480 and 94.991 under ORS 94.029 (2).

(3) A declarant may voluntarily relinquish any rights reserved in the declaration or bylaws under subsection (1) of this section.

(4) Upon the expiration of any period of declarant control reserved in the declaration or bylaws under subsection (1) of this section, such right shall automatically pass to the unit owners, including the declarant if the declarant then owns one or more units in the condominium.

(5) A declaration or bylaws may not be amended to increase the scope of any rights reserved in the declaration or bylaws under subsection (1) of this section without the consent of all unit owners.

(6) The limitations specified in subsection (2) of this section shall not limit any right reserved by the declarant under ORS 94.029 (2) or any other special declarant right which does not relate to administrative control of the association by the declarant including, but not limited to, the right to require that the declaration or bylaws may not be amended without the declarant's consent until a stated date, the expiration of a stated number of years or the occurrence of a stipulated event.

(7) The limitations of subsection (2) of this section do not apply to a condominium or condominium units committed to a timeshare plan as defined in ORS 94.803. [1981 c.647 §25; 1983 c.206 §1; 1983 c.530 §50]

94.080 [Repealed by 1971 c.478 §1]

94.084 Transitional committee; notice of meeting for formation. A transitional committee shall be established as provided in this section in a single stage condominium consisting of at least 20 units and in a staged condominium if the number of units which the declarant may submit to the provisions of ORS 94.004 to 94.480 and 94.991 under ORS 94.029 (2) totals at least 20.

(1) Unless the turnover meeting has been held, the declarant shall call a meeting of the unit owners for the purpose of forming a transitional committee in accordance with the bylaws of the condominium. The declarant shall call such meeting:

(a) In a single stage condominium, within 60 days of conveyance to persons other than the declarant of 50 percent of the units.

(b) In a staged condominium, within 60 days of conveyance to persons other than the declarant of 50 percent of the total number of units which the declarant may submit to the provisions of ORS 94.004 to 94.480 and 94.991 under ORS 94.029 (2).

(2) The transitional committee shall be advisory only and shall consist of two or more members selected by unit owners other than the declarant and may include not more than one representative of the declarant. The members shall serve until the turnover meeting. The function of the committee shall be that of enabling ease of transition from control of the administration of the association of unit owners by the declarant to control by the unit owners. The committee shall have access to the information, documents and records which the declarant must turn over to the unit owners under ORS 94.091 (5).

(3) The declarant shall give notice of the meeting required under subsection (1) of this section in accordance with the bylaws of the condominium to each unit owner at least seven but not more than 50 days prior to the meeting. The notice shall state the purpose of the meeting and the time and place where it is to be held.

(4) If the meeting required under subsection (1) of this section is not called by the declarant within the time specified, the meeting may be called and notice given by a unit owner.

(5) If the owners other than the declarant do not select members for the committee under subsection (2) of this section, the declarant shall have no further responsibility to form the committee. [1981 c.647 §26]

94.085 [Repealed by 1971 c.478 §1]

94.090 [Repealed by 1971 c.478 §1]

94.091 Turnover meeting; notice; transfer of control. (1) A turnover meeting shall be called by the declarant within 90 days of the expiration of any period of declarant control reserved in the declaration or bylaws under ORS 94.078. If no control has been reserved, the declarant shall call the turnover meeting within 90 days of the earlier of:

(a) In a single stage condominium, three years from the date of conveyance of the first unit to a person other than the declarant or conveyance of 50 percent of the units.

(b) In a staged condominium, seven years from the date of conveyance of the first unit to a person other than the declarant or conveyance to persons other than the declarant of 50 percent of the total number of units which the declarant

may submit to the provisions of ORS 94.004 to 94.480 and 94.991 under ORS 94.029 (2).

(2) The declarant shall give notice of the turnover meeting in accordance with the bylaws of the condominium to each unit owner at least seven but not more than 50 days prior to the meeting. The notice shall state the purpose of the meeting and the time and place where it is to be held.

(3) If the meeting required under subsection (1) of this section is not called by the declarant within the time specified, the meeting may be called and notice given by a unit owner or any first mortgagee of a unit.

(4) At the turnover meeting:

(a) The declarant shall relinquish control of the administration of the association of unit owners and the unit owners shall assume the control;

(b) The unit owners shall elect a board of directors in accordance with the bylaws of the condominium; and

(c) The declarant shall deliver to the association the items specified in subsection (5) of this section.

(5) At the turnover meeting the declarant shall deliver to the association all property of the unit owners and the association of unit owners held or controlled by the declarant including, but not limited to, the following items, if applicable:

(a) The original or a photocopy of the recorded declaration and bylaws of the condominium and any supplements and amendments thereto.

(b) A copy of the articles of incorporation.

(c) The minute books, including all minutes, and other books and records of the association.

(d) Any rules and regulations which have been promulgated.

(e) Resignations of officers and members of the board of directors who are required to resign because of the expiration of any period of declarant control reserved under ORS 94.078.

(f) A report of the present financial condition of the association of unit owners. The report shall consist of a balance sheet and an income and expense statement for the preceding 12-month period or the period following the recording of the declaration, whichever period is less.

(g) Association funds or control thereof, including, but not limited to, any bank signature cards.

(h) All tangible personal property that is property of the association and an inventory of such property.

(i) A copy of the following, if available:

(A) The as-built architectural, structural, engineering, mechanical, electrical and plumbing plans.

(B) The original specifications indicating thereon all material changes.

(C) The plans for underground site service, site grading, drainage and landscaping together with cable television drawings.

(D) Any other plans and information relevant to future repair or maintenance of the property.

(j) Insurance policies.

(k) Copies of any occupancy permits which have been issued for the condominium.

(L) Any other permits issued by governmental bodies applicable to the condominium in force or issued within one year prior to the date the unit owners assume control of the administration of the association of unit owners.

(m) A list of the general contractor and the subcontractors responsible for construction or installation of the major plumbing, electrical, mechanical and structural components of the common elements.

(n) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the records of the declarant.

(o) Leases of the common elements and any other leases to which the association is a party.

(p) Employment or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service.

(q) Any other contracts to which the association of unit owners is a party.

(6) In order to facilitate an orderly transition, during the three-month period following the turnover meeting, the declarant or an informed representative shall be available to meet with the board of directors on at least three mutually acceptable dates to review the documents delivered under subsection (5) of this section.

(7) If the declarant has complied with this section, unless the declarant otherwise has sufficient voting rights as a unit owner to control the association, the declarant shall not be responsi-

ble for the failure of the unit owners to comply with subsection (4) of this section and the declarant shall be relieved of any further responsibility for the administration of the association except as a unit owner of any unsold unit. [1981 c.647 §27; 1983 c.206 §2]

94.095 [Repealed by 1971 c.478 §1]

(Special Declarant Rights)

94.097 Liabilities and obligations arising from transfer of special declarant right. (1) As used in this section, "affiliate" means any person who controls a transferor or successor declarant, is controlled by a transferor or successor declarant or is under common control with a transferor or successor declarant. A person "controls" or "is controlled by" a transferor or successor declarant if the person:

(a) Is a general partner, officer, director or employe;

(b) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interests of the transferor or successor declarant;

(c) Controls in any manner the election of a majority of the directors; or

(d) Has contributed more than 20 percent of the capital of the transferor or successor declarant.

(2) Upon the transfer of any special declarant right, the liabilities and obligations of a transferor are as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed under ORS 94.017. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

(b) If a transferor retains any special declarant right, or if a successor declarant is an affiliate of the transferor, the transferor is subject to liability for all obligations and liabilities imposed on a declarant by the provisions of ORS 94.004 to 94.480 and 94.991 or by the declaration or bylaws arising after the transfer and is jointly and severally liable with the successor declarant for the liabilities and obligations of the successor declarant which relate to the condominium.

(c) A transferor who retains no special declarant right has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(3) Upon transfer of any special declarant right, the liabilities and obligations of a successor declarant are as follows:

(a) A successor declarant who is an affiliate of the transferor is subject to all obligations and liabilities imposed on a declarant by the provisions of ORS 94.004 to 94.480 and 94.991 or by the declaration or bylaws.

(b) A successor declarant who is not an affiliate of the transferor is subject to all obligations and liabilities imposed upon a declarant by the provisions of ORS 94.004 to 94.480 and 94.991 or the declaration or bylaws except for liability for misrepresentations or warranties made by the declarant or previous successor declarant or for a breach of fiduciary obligation by such person. [1981 c.647 §29]

94.100 [Repealed by 1971 c.478 §1]

94.103 Acquisition of special declarant rights by successor declarant. A successor declarant shall acquire all special declarant rights upon the exercise of any special declarant right unless an instrument executed by the transferor and successor declarant which evidences an intent to transfer less than all special declarant rights and which states the specific right being transferred is recorded in the office of the recording officer of every county in which the property is located. [1981 c.647 §28]

94.105 [Repealed by 1971 c.478 §1]

(Conversion Condominiums)

94.109 Inapplicability of ORS 94.116 to 94.134 to transient lodgings. ORS 94.116 to 94.134 do not apply to units rented as transient lodgings at a hotel, motel or inn and do not apply to negotiations, arrangements or agreements for such transient occupancy of the units. [Formerly 91.523]

94.110 [Repealed by 1971 c.478 §1]

94.115 [Repealed by 1971 c.478 §1]

94.116 Conversion condominium; notice to tenants. (1) A declarant of a conversion condominium shall give each of the existing tenants of any building which the declarant intends to submit to the provisions of ORS 94.004 to 94.480 and 94.991 notice of the conversion at least 120 days before the conversion condominium is submitted to the provisions of ORS 94.004 to 94.480 and 94.991. Thereafter, until the property is submitted to the provisions of ORS 94.004 to 94.480 and 94.991, the declar-

ant shall provide a copy of such notice to any new tenant before the commencement of the tenancy. The notice of conversion shall:

(a) State that the declarant intends to create a conversion condominium and include general information relating to the nature of condominium ownership;

(b) State that the notice does not constitute a notice to terminate the tenancy;

(c) State whether there will be a substantial alteration of the physical layout of the unit;

(d) State whether the declarant intends to offer the unit for sale and, if so:

(A) Set forth the rights of the tenant under ORS 94.122 (1) to (3);

(B) Set forth a good faith estimate of the approximate price range for which the unit will be offered for sale to the tenant under ORS 94.122 (1) and (2); and

(C) Set forth a good faith estimate of the monthly operational, maintenance and any other common expenses or assessments appertaining to the unit; and

(e) Be hand delivered to the dwelling unit of the tenant or sent to the tenant at the address of the dwelling unit by certified mail, return receipt requested.

(2) A notice of conversion given under subsection (1) of this section shall:

(a) Be for the sole purpose of providing the tenant with general information regarding the anticipated cost of acquisition of the unit and estimated monthly expenses.

(b) Not obligate the declarant to submit the property to the provisions of ORS 94.004 to 94.480 and 94.991.

(c) Not constitute an offer to sell the unit to the tenant or an offer to sell at a particular price.

(d) Not be a limitation on monthly common expenses or assessments.

(3) The notice of conversion given under subsection (1) of this section must be delivered to the tenant at least 30 days prior to the presentation of an offer to sell under ORS 94.122 (1) and (2).

(4) The declaration may be recorded prior to the end of the 120-day period required under subsection (1) of this section with the written consent of all tenants who received the notice of conversion less than 120 days before the date of such consent.

(5) The requirement under subsection (1) of this section to provide a copy of the notice of conversion to new tenants shall not extend the 120-day period nor shall such tenant's consent be required to record the declaration prior to the end of the 120-day period as provided for under subsection (4) of this section.

(6) A notice of conversion shall not constitute a notice to terminate the tenancy. [Formerly 91.524]

94.120 [Repealed by 1971 c.478 §1]

94.122 Rights of tenants in conversion. (1) Prior to the sale of any dwelling unit which is to be retained as a unit in the conversion condominium without substantial alteration in its physical layout, the declarant shall first offer to sell the respective unit to the tenant who occupies the unit. The offer shall:

(a) Terminate 60 days after its receipt or upon written rejection of the offer by the tenant, whichever occurs earlier.

(b) Be accompanied by a copy of all applicable public reports issued by the Real Estate Commissioner pursuant to ORS 94.359, or where a public report has been waived, a statement to that effect.

(c) Not constitute a notice to terminate the tenancy.

(2) The tenant's dwelling unit may not be shown to any prospective purchasers of a conversion condominium unit without the tenant's permission before the termination of the tenancy.

(3) The declarant shall not sell the unit to a person other than the tenant during the 60 days following the termination of an offer to the tenant under subsections (1) and (2) of this section at a price or on terms more favorable to the purchaser than the price or terms offered to the tenant.

(4) After the property has been submitted to the provisions of the Oregon Condominium Act, the declarant, until a unit is offered for sale in accordance with subsections (1) and (2) of this section, shall notify in writing any prospective tenant, prior to the commencement of the tenancy, that the property has been submitted to the provisions of the Oregon Condominium Act and the rights of a tenant under subsections (1) to (3) of this section. [Formerly 91.526]

94.125 [Repealed by 1971 c.478 §1]

94.128 Improvements in conversion condominium during notice period. (1) The developer shall not begin improvements or rehabilitation or cause improvements or rehabilitation to be undertaken in a conversion condominium unit without the tenant's permission during

the 120-day notice period prescribed by ORS 94.116 (1).

(2) The developer may begin improvements or rehabilitation or cause improvements or rehabilitation to be undertaken in the general common elements during the 120-day notice period. [1981 c.886 §5]

94.130 [Repealed by 1971 c.478 §1]

94.134 Authority of city or county to require developer to pay tenant moving expenses. A city or county may adopt an ordinance that requires a developer to pay the moving expense of a tenant vacating a conversion condominium unit. [1981 c.886 §6]

94.135 [Repealed by 1971 c.478 §1]

94.140 [Repealed by 1971 c.478 §1]

94.145 [Repealed by 1971 c.478 §1]

(Association of Unit Owners; Management of Property; Encumbrances; Conveyances)

94.146 Association of unit owners; powers. (1) An association of unit owners shall be organized to serve as a means through which the unit owners may take action with regard to the administration, management and operation of the condominium. The association shall be organized as a corporation for profit or nonprofit corporation or as an unincorporated association. If the association is incorporated, the name of the association shall include the complete name of the condominium.

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

(3) The affairs of the association shall be governed by a board of directors as provided for in the bylaws adopted under ORS 94.152.

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

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

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

(c) Hire and terminate managing agents and other employes, agents and independent contractors;

(d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or on behalf of two or more unit owners on matters affecting the condominium;

(e) Make contracts and incur liabilities;

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

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

(h) Acquire by purchase, lease, devise, gift or voluntary grant real property or any interest therein and take, hold, possess and dispose of real property or any interest therein;

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

(j) Impose charges for late payments of assessments and, after giving notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws and rules and regulations of the association;

(k) Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of unpaid assessments;

(L) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

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

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

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

(5) Subject to subsection (6) of this section, unless expressly prohibited by the declaration, the association has the authority to execute, acknowledge, deliver and record on behalf of the unit owners easements, rights of way, licenses and other similar interests affecting the general common elements.

(6) The granting of any interest pursuant to subsection (5) of this section shall be first approved by at least 75 percent of the unit owners.

(7) The instrument granting an interest pursuant to subsection (5) of this section shall be executed by the chairman and secretary of the association and acknowledged in the manner provided for acknowledgment of such instruments by such officers and shall state that such grant was approved by at least 75 percent of the unit owners. [Formerly 91.527]

94.150 [Repealed by 1971 c.478 §1]

94.152 Adoption of bylaws; recording; amendment; approval by commissioner; fee. (1) The declarant shall adopt on behalf of the association the initial bylaws which shall govern the administration of the condominium. A copy of the bylaws shall be recorded simultaneously with the declaration of the property to which the bylaws relate.

(2) Subject to subsections (3) and (4) of this section, an amendment of the bylaws shall not be effective unless approved by at least a majority of the unit owners and until a copy of the bylaws as amended or the amendment thereto, certified by the chairman and secretary of the association of unit owners as being adopted in accordance with the bylaws and the provisions of ORS 94.004 to 94.480 and 94.991, is recorded.

(3) In condominiums which are exclusively residential, the bylaws may not provide that greater than a majority is required to amend the bylaws except for amendments relating to age restrictions, pet restrictions, limitations on the number of persons who may occupy units and limitations on the rental or leasing of units.

(4) The bylaws may not be amended to limit or diminish any special declarant right without the consent of the declarant. However, the declarant may waive the declarant's right of consent.

(5) Before any amended bylaws or amendment to a bylaw may be recorded, it must be approved by the commissioner. The commissioner shall approve such amendment if the requirements of ORS 94.158 and this section have been satisfied.

(6) Before the commissioner approves amended bylaws or an amendment to a bylaw under this section, the person submitting the amended bylaws or amendment to a bylaw shall pay to the commissioner a fee determined by the commissioner. The fee shall not exceed the costs of reviewing and approving the amended bylaws or the amendment to a bylaw based upon a maximum hourly fee that is subject to the review of the Executive Department and prior approval of the appropriate legislative review agency as defined in ORS 291.030 or $100 plus $25 per unit, whichever is less. Any amount paid under this subsection shall be deducted from the filing fee otherwise required and subsequently paid under ORS 94.331 (2). [Formerly 91.531; 1983 c.615 §4]

94.155 [Repealed by 1971 c.478 §1]

94.158 Contents of bylaws. The bylaws shall provide for:

(1) The organization of the association of unit owners in accordance with ORS 94.146, when the initial meeting shall be held and the method of calling that meeting.

(2) If required under ORS 94.084, the formation of a transitional committee in accordance with such section.

(3) The turnover meeting required under ORS 94.091, including when the meeting shall be called, the method of calling the meeting, the right of a unit owner under ORS 94.091 (3) to call the meeting and a statement of the purpose of the meeting.

(4) The method of calling all other meetings of the unit owners and the percentage that shall constitute a quorum.

(5) The election from among the unit owners of a board of directors and the number of persons constituting the board; the powers and duties of the board; the compensation, if any, of the directors; and the method of removal from office of directors.

(6) The method of calling meetings of the board of directors in accordance with ORS 94.164 and a statement that all meetings of the board of directors of the association of unit owners shall be open to unit owners.

(7) The election of a chairman, a secretary and a treasurer.

(8) The maintenance, upkeep and repair of the common elements and payment for the expense thereof including the method of approving payment vouchers.

(9) The employment of personnel necessary for the maintenance, upkeep and repair of the common elements.

(10) The manner of collecting from the unit owners their share of the common expenses.

(11) Insurance coverage in accordance with ORS 94.177.

(12) The preparation and distribution of the annual financial statement in accordance with ORS 94.214.

(13) The method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common elements.

(14) Such restrictions on and requirements respecting the enjoyment and maintenance of the units and the common elements as are designed to prevent unreasonable interference with the use of their respective units and of the common elements by the several unit owners.

(15) Any restrictions on use or occupancy of units. Any such restrictions created by documents other than the bylaws may be incorporat-

ed by reference in the bylaws to the official records of the county in which the property is located.

(16) The method of amending the bylaws subject to ORS 94.152.

(17) Any other details regarding the property that the declarant considers desirable. However, if a provision required to be in the declaration under ORS 94.029 is included in the bylaws, the voting requirements for amending the declaration shall also govern the amendment of the provision in the bylaws.

(18) In the event additional units are proposed to be annexed pursuant to ORS 94.029 (2), the method of apportioning common expenses in the event new units are added during the course of the fiscal year. [Formerly 91.533]

94.160 [Repealed by 1971 c.478 §1]

94.164 Board meetings of unit owners' association. (1) All meetings of the board of directors of the association of unit owners shall be open to unit owners.

(2) Except as provided in subsection (3) of this section, board of directors' meetings may be conducted by telephonic communication.

(3) In condominiums where the majority of the units are the principal residences of the occupants:

(a) For other than emergency meetings, notice of board of directors' meetings shall be posted at a place or places on the property at least three days prior to the meeting or notice shall be provided by a method otherwise reasonably calculated to inform unit owners of such meetings.

(b) Only emergency meetings of the board of directors may be conducted by telephonic communication.

(4) Paragraph (a) of subsection (3) of this section first applies to property submitted to the provisions of ORS 94.004 to 94.480 and 94.991 prior to October 3, 1979, upon receipt by the board of directors of the association of unit owners of a written request from at least one unit owner that notice of board of directors meetings be given in accordance with paragraph (a) of subsection (3) of this section. [Formerly 91.534]

94.165 [Repealed by 1971 c.478 §1]

94.170 [Repealed by 1971 c.478 §1]

94.171 Unit deeds; contents. The deed of a unit shall contain:

(1) The name of the property, and the recording index numbers and date of recording of the declaration and in the case of a staged condominium, the applicable supplemental declaration.

(2) The unit designation of the unit.

(3) Any further details the grantor and grantee may consider desirable. [Formerly 91.536]

94.175 [Repealed by 1971 c.478 §1]

94.177 Insurance for units and common elements. (1) If the bylaws provide that the association of unit owners has the sole authority to decide whether to repair or reconstruct a unit that has suffered damage or that a unit must be repaired or reconstructed, the board of directors shall obtain and maintain at all times and shall pay for out of the common expense funds, the following insurance covering both the common elements and individual units:

(a) Property insurance including, but not limited to, fire, extended coverage, vandalism and malicious mischief; and

(b) Insurance covering the legal liability of the association of unit owners, the unit owners individually and the manager including, but not limited to, the board of directors, the public and the unit owners and their invitees or tenants, incident to ownership, supervision, control or use of the property. There may be excluded from the policy required under this paragraph, coverage of a unit owner, other than coverage as a member of the association of unit owners or board of directors, for liability arising out of acts or omissions of that unit owner and liability incident to the ownership or use of the part of the property as to which that unit owner has the exclusive use or occupancy. Liability insurance required under this paragraph shall be issued on a comprehensive liability basis and shall provide a cross liability indorsement providing that the rights of a named insured under the policy shall not prejudice any action against another named insured.

(2) If the bylaws require the individual unit owners to obtain insurance for their units, the bylaws also shall contain a provision requiring the board of directors to obtain the following insurance covering the common elements:

(a) Property insurance including, but not limited to, fire, extended coverage, vandalism and malicious mischief; and

(b) Insurance covering the legal liability of the association of unit owners and the manager including, but not limited to, the board of directors, to the public or the unit owners and their invitees or tenants, incident to supervision, control or use of the property. [1981 c.647 §32]

94.180 [Repealed by 1971 c.478 §1]

94.185 Liens against property; removal from lien; effect of part payment. (1) Subsequent to recording a declaration and while the property remains subject to ORS 94.004 to 94.480 and 94.991, no lien shall arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against each unit and the undivided interest in the common elements appertaining thereto, in the same manner and under the same conditions as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

(2) No labor performed or materials furnished with the consent or at the request of a unit owner, his agent, contractor or subcontractor, shall be the basis for the filing of a mechanic's or materialman's lien against the unit of any other unit owner not consenting to or requesting the labor to be performed or the materials to be furnished, except that consent shall be considered given by the owner of any unit in the case of emergency repairs thereto performed or furnished with the consent or at the request of the manager.

(3) If a lien becomes effective against two or more units, the owner of each unit subject to such a lien shall have the right to have his unit released from the lien by payment of the amount of the lien attributable to his unit. The amount of the lien attributable to a unit and the payment required to satisfy such a lien, in the absence of agreement, shall be determined by application of the allocation established in the declaration. Such partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and the undivided interest in the common elements appertaining thereto not so released by payment, satisfaction or discharge. [Formerly 91.539]

94.190 Individual defaulting required under leasehold condominium. Where a leasehold interest is submitted to the provisions of ORS 94.004 to 94.480 and 94.991, the master lease shall contain independent default clauses, the effect of which shall be that a unit owner cannot be evicted because the board of directors of the association of unit owners has defaulted so long as the unit owner has paid his pro rata share of the funds necessary to correct the default or because another unit owner has defaulted. [Formerly 91.542]

94.195 Lien of association against unit; filing of claim; foreclosure. (1) Whenever an association of unit owners levies any assessment for common expenses against a unit, the association of unit owners, upon complying with subsection (2) of this section, shall have a lien upon the individual unit and the undivided interest in the common elements appertaining to such unit for the reasonable value of such common expenses, and for any unpaid assessments and interest as provided in paragraph (b) of subsection (2) of this section. The lien shall be prior to all other liens or encumbrances upon the unit except:

(a) Tax and assessment liens; and

(b) A first mortgage or trust deed of record.

(2)(a) An association of unit owners claiming the benefits of subsection (1) of this section shall record in the county in which the unit or some part thereof is located a claim containing a true statement of the account due for such common expenses after deducting all just credits and offsets; the name of the owner of the unit, or reputed owner, if known; a description of the property where the common expenses were furnished and the designation of the unit, sufficient for identification.

(b) Where a claim has been filed and recorded pursuant to this section and the owner of the unit or undivided interest subject to the claim thereafter fails to pay any assessment chargeable to such unit or undivided interest, then so long as the original or any subsequent unpaid assessment remains unpaid such claim shall automatically accumulate the subsequent unpaid assessments and interest thereon without the necessity of further filings under this section.

(3) The claim shall be verified by the oath of some person having knowledge of the facts and shall be filed with and recorded by the recording officer in the book kept for the purpose of recording liens filed under ORS 87.035. The record shall be indexed as deeds and other conveyances are required by law to be indexed.

(4) The proceedings to foreclose liens created by this section shall conform as nearly as possible to the proceedings to foreclose liens created by ORS 87.010, except that notwithstanding ORS 87.055, a lien may be continued in force for a period of time not to exceed six years from the date the claim is filed under subsection (3) of this section. For the purpose of determining the date the claim is filed in those cases where subsequent unpaid assessments have accumulated under the claim as provided in paragraph (b) of subsection (2) of this section, the claim regarding each unpaid assessment shall

be deemed to have been filed at the time such unpaid assessment became due. The lien may be enforced by the manager acting on behalf of the association of unit owners. An action to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the lien securing the claim for common expenses.

(5) Unless the declaration or bylaws provides otherwise, fees, late charges, fines and interest imposed pursuant to ORS 94.146 (4)(i), (j) and (k) are enforceable as assessments under this section.

(6) With respect to condominium units also constituting timeshare property as defined by ORS 94.803, liens created by this section shall be assessed to the timeshare owners in the timeshare property according to the method for determining each owner's liability for common expenses under the timeshare instrument and shall be enforced individually against each timeshare owner in the condominium unit. [Formerly 91.546; 1983 c.530 §51]

94.202 Foreclosure against unit; receiver for unit; power of property manager to bid at foreclosure sale. In any foreclosure suit against a unit, the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the rent. The manager, acting on behalf of the unit owners, shall have power, unless prohibited by the declaration, to bid in the unit at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. [Formerly 91.548]

94.205 [Repealed by 1971 c.478 §1]

94.208 Liability for unpaid share of common expenses. (1) Where the purchaser of a unit obtains title to the unit as a result of foreclosure of the first mortgage or trust deed, such purchaser, his successors and assigns, shall not be liable for any of the common expenses chargeable to such unit which became due prior to the acquisition of title to such unit by such purchaser. Such unpaid share of common expenses shall be a common expense of all the unit owners including such purchaser, his successors and assigns.

(2) In a voluntary conveyance of a unit, the grantee shall be jointly and severally liable with the grantor for all unpaid charges against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of a prospective purchaser the manager shall make and deliver a statement of the unpaid charges against the prospective grantor, and the grantee in that case shall not be liable for, nor shall the unit when conveyed be subject to, a lien filed thereafter for any unpaid charges against the grantor in excess of the amount therein set forth. [Formerly 91.551]

94.210 [Repealed by 1971 c.478 §1]

94.214 Maintenance of documents and records; annual financial statement; availability of documents and records for examination. (1) The association of unit owners shall retain the documents, information and records delivered to the association under ORS 94.091.

(2) The association of unit owners shall keep financial records sufficient for proper accounting purposes.

(3) Within 90 days after the end of the fiscal year, the board of directors shall distribute to each unit owner a copy of the annual financial statement consisting of a balance sheet and income and expense statement for the preceding fiscal year.

(4) The documents, information and records described in subsections (1) to (3) of this section and all other records of the association of unit owners shall be reasonably available for examination by a unit owner and any mortgagee of a unit. Upon the written request of an owner or mortgagee of a unit, the association shall make the documents, information and records described in subsections (1) to (3) of this section and other records available for duplication during reasonable hours. The association of unit owners shall maintain a copy, suitable for the purpose of duplication, of the following:

(a) The declaration, bylaws, association rules and regulations and any amendments or supplements thereto;

(b) The most recent annual financial statement prepared in accordance with subsection (3) of this section; and

(c) The current operating budget of the association.

(5) Upon the written request of a prospective purchaser, the association of unit owners shall make available for examination and duplication during reasonable hours the documents and information specified in subsection (4) of this section.

(6) The association of unit owners may charge a reasonable fee for furnishing copies of

any documents, information or records described in this section.

(7) Subsection (3) of this section first applies to property submitted to the provisions of ORS 94.004 to 94.480 and 94.991 before January 1, 1982, when the board of directors of the association of unit owners receives a written request from at least one unit owner that a copy of the annual financial statement be distributed in accordance with subsection (3) of this section. [Formerly 91.554]

94.215 [Repealed by 1971 c.478 §1]

94.220 [Repealed by 1971 c.478 §1]

94.221 Duration and termination of initial management agreements and service and employment contracts; applicability of federal condominium law. (1) If entered into prior to the turnover meeting of the condominium, no management agreement, service contract or employment contract which is directly made by or on behalf of the association, the board of directors or the unit owners as a group shall be in excess of three years.

(2) Any contract or agreement which is subject to subsection (1) of this section entered into after January 1, 1982, may be terminated without penalty by the association or the board of directors upon not less than 30 days' written notice to the other party given not later than 60 days after the turnover meeting.

(3) The provisions of the "Condominium and Cooperative Abuse Relief Act of 1980" (15 U.S.C. 3601), except for 15 U.S.C. 3609 and 3610, shall not apply in the State of Oregon. [Formerly 91.557]

94.225 [Repealed by 1971 c.478 §1]

94.230 [Repealed by 1971 c.478 §1]

(Attributes and Duties of Ownership)

94.231 Status and ownership of units. While the property is submitted to the provisions of ORS 94.004 to 94.480 and 94.991, a unit may be individually conveyed and encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other units of which they form a part, and the corresponding individual titles and interests shall be recordable.

(2) Each unit owner shall be entitled to the exclusive ownership and possession of his unit. [Formerly 91.561]

94.235 [Repealed by 1971 c.478 §1]

94.237 Units and common elements distinguished. Unless otherwise provided in the declaration, if the declaration designates walls, floors or ceilings as boundaries of a unit:

(1) All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof shall be a part of the unit and all other portions of the walls, floors or ceilings shall be a part of the common elements.

(2) The following shall be a part of the unit:

(a) All spaces, nonbearing interior partitions, windows, window frames, exterior doors, door frames and all other fixtures and improvements within the boundaries of the unit; and

(b) All outlets of utility service lines, including but not limited to power, light, gas, hot and cold water, heating, refrigeration, air conditioning and waste disposal within the boundaries of the unit. [Formerly 91.562]

94.240 [Repealed by 1971 c.478 §1]

94.243 Interest of units in common elements. (1) Each unit shall be entitled to an undivided interest in the common elements in the allocation expressed in the declaration. Such allocation shall be expressed as a fraction or percentage of undivided interest in the common elements. Except as otherwise provided in ORS 94.004 to 94.480 and 94.991, the allocation of undivided interest of each unit in the common elements as expressed in a declaration shall not be altered unless all unit owners having an interest in the particular common element agree thereto and record an amendment to the declaration setting forth the altered allocation of each unit having an interest.

(2) The sums of the undivided interest in the common elements shall equal one if stated as fractions or 100 percent if stated as percentages.

(3) The undivided interest in the common elements shall not be separated from the unit to which it appertains and shall be conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(4) The common elements shall remain undivided and no unit owner shall bring any action for partition or division of any part thereof, except as provided in ORS 94.004 to 94.480 and 94.991. Any covenant to the contrary is void.

(5) Notwithstanding subsections (1) and (3) of this section, except where expressly prohibited by the declaration or bylaws, the right of use

of any unit in a limited common element may be transferred to any other unit. Such transfer shall occur only if the existing unit owner and all mortgagees of the unit for which the right of use of the limited common element is presently reserved and the unit owner to whom the right of use is being transferred agree to and record an amendment to the declaration setting forth the transfer.

(6) Notwithstanding subsections (1) and (3) of this section, in the case where a single unit is originally designed and constructed to be two or more separate hotel, motel or other similar living accommodations with separate bathrooms and separate entrances from a hallway, balcony, staircase or other common element, the owner, or owners, with the consent of the holder, or holders, of any recorded mortgage or lien on the unit, may separate such unit into two or more units each having such separate bathrooms and entrances from such common elements. Such persons may divide between such separate units the allocation of the common elements assigned to the original unit on substantially the basis that the square footage of such separated units bears to the total square footage of the original unit by recording an amendment to the declaration signed by such owner, or owners, of original unit together with an amendment to any plat and floor plan of such original unit recorded pursuant to ORS 94.042 showing the division thereof into such two or more units. The amendment shall comply with ORS 94.042. Such separated parts of the original unit shall not be used for any purpose other than the purpose for which such separable parts were originally designed and constructed and thereafter have generally been used. [Formerly 91.563; 1983 c.309 §8c; 1983 c.615 §5]

94.245 [Repealed by 1971 c.478 §1]

94.250 Easement held by units and common elements. (1) Each unit and all common elements shall have an easement over all adjoining units and common elements for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting, or movement of any portion of the property, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of the encroaching units and common elements so long as the encroachments shall exist, and except as otherwise provided in subsection (2) of this section, the rights and obligations of owners shall not be altered in any way by the encroachment.

(2) The easement described under subsection (1) of this section does not relieve a unit owner of liability in case of wilful misconduct of a unit owner or relieve a declarant or any contractor, subcontractor or materialman of liability for failure to adhere to the plat and any floor plans recorded pursuant to ORS 94.042.

(3) The encroachments described in subsection (1) of this section shall not be construed to be encumbrances affecting the marketability of title to any unit. [1981 c.647 §31; 1983 c.309 §8d]

94.255 Allocation of votes in association. Unless otherwise provided in the declaration, each unit shall be entitled to one vote. [Formerly 91.564]

94.260 Allocation of common profits and expenses; liability of unit owner; limitation on assessments against declarant. (1) Unless otherwise provided in the declaration, the common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners according to the allocation of undivided interest of each unit in the common elements.

(2) No unit owner by the owner's own action may claim exemption from liability for contribution towards the common expenses by waiver by the owner of the use or enjoyment of any of the common elements or by abandonment by the owner of the owner's unit.

(3) Subject to subsection (4) of this section, from the date that the declaration is recorded, the declarant shall:

(a) Pay assessments due for operating expenses on all unsold units; and

(b) Pay assessments due for reserves on all unsold units, or, at the declarant's option, pay or require the unit owner to pay all accrued reserve assessments against the unit at the time of the initial sale to the unit owner.

(4)(a) The association shall not assess units owned by the declarant for additional capital improvements without the written consent of the declarant as long as:

(A) In a single stage condominium, the declarant owns more than two units or five percent of the units, whichever is greater.

(B) In a staged condominium, the declarant owns more than two units or five percent of the units submitted to the provisions of ORS 94.004 to 94.480 and 94.991, whichever is greater, or the time period specified in the declaration in accordance with ORS 94.029 (2)(c) has not expired.

(b) The declarant may waive the declarant's right of consent provided in paragraph (a) of this subsection. [Formerly 91.566]

94.265 Maintenance and improvement of units. (1) Subject to subsections (2) and (3) of this section and any additional limitations contained in the declaration or bylaws, a unit owner:

(a) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems of the condominium or lessen the support of any portion of the condominium.

(b) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may submit a written request to the board of directors for permission to remove or alter any intervening partition or to create apertures therein, even if the partition in whole or in part is a common element. The board of directors shall approve the change unless it determines within 45 days that the proposed change will impair the structural integrity or mechanical systems of the condominium or lessen the support of any portion of the condominium. The board of directors may require the unit owner, at his own expense, to submit an opinion of a registered architect or registered professional engineer that the proposed change will not impair the structural integrity or mechanical systems of the condominium or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

(2) A unit owner shall make no repair or alteration or perform any other work on his unit which would jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement or hereditament or increase the common expenses of the association unless the consent of all the other unit owners affected is first obtained.

(3) Unless otherwise provided in the declaration or bylaws, a unit owner may not change the appearance of the common elements or the exterior appearance of a unit without permission of the board of directors of the association. [Formerly 91.569]

94.270 Use and maintenance of common elements; access for maintenance. (1) Each unit owner may use the common elements in accordance with the purposes for which they are intended, but may not hinder or encroach upon the lawful rights of the other unit owners.

(2) The necessary work of maintenance, repair and replacement of the common elements and additions or improvements to the common elements shall be carried out only as provided in the bylaws.

(3) The association of unit owners shall have the right to have access to each unit as may be necessary for the maintenance, repair or replacement of the common elements, or to make emergency repairs therein necessary for the public safety or to prevent damage to the common elements or to another unit. [Formerly 91.572]

94.275 Compliance with bylaws and other restrictions. Each unit owner and the declarant shall comply with the bylaws and with the administrative rules and regulations adopted pursuant thereto, and with the covenants, conditions and restrictions in the declaration or in the deed to the unit. Failure to comply therewith shall be grounds for an action maintainable by the association of unit owners or by an aggrieved unit owner. [Formerly 91.576]

94.280 Actions by and against unit owners; service of process. (1) Actions may be brought on behalf of two or more of the unit owners, as their respective interests may appear, by the association with respect to any cause of action relating to the common elements or more than one unit. Service of process on two or more unit owners, in any action relating to the common elements or more than one unit, may be made on the person designated in the declaration to receive service of process or in duplicate on the recording officer of the county in which the declaration is filed. The recording officer shall promptly send a copy of the document served by certified or registered mail to the person designated in the declaration to receive service of process. At the time of service on the recording officer, the serving party shall pay to the recording officer a fee of $10, which shall be a taxable disbursement.

(2) Except as provided in subsection (4) of this section, if the association of unit owners of property submitted to the provisions of ORS 94.004 to 94.480 and 94.991 before October 15, 1983, wishes to designate a person other than the one named in the declaration to receive service of process in the cases provided in subsection (1) of this section, it shall record an amendment to the declaration. The amendment shall be certified by the chairperson and the secretary of the association of unit owners, and shall state the name of the successor with the successor's residence or place of business as required by ORS 94.029 (1)(j), and that the person named in the amendment was designated by resolution duly adopted by the association of unit owners.

(3) Unless prohibited by the declaration or bylaws, the board of directors of the association of unit owners of property submitted to the provisions of ORS 94.004 to 94.480 and 94.991 after October 15, 1983, may elect to designate a person other than the one named in the declaration to receive service of the process in the cases provided in subsection (1) of this section. After the adoption of a resolution by the board of directors in accordance with the bylaws, the board of directors, without the need for further action by the association or approval under ORS 94.036 and 94.059, shall record an amendment to the declaration. The amendment shall be certified by the chairperson and the secretary of the association of unit owners, and shall state the name of the successor with the successor's residence or place of business as required by ORS 94.029 (1)(j), that the person named in the amendment has consented to the designation and that the resolution was duly adopted by the association of unit owners.

(4) Subsection (3) of this section applies to property submitted to the provisions of ORS 94.004 to 94.480 and 94.991 before October 15, 1983, if:

(a) The board of directors of the association of unit owners receives a written request from at least one unit owner that subsection (3) of this section applies; or

(b) The board of directors of the association of unit owners adopts a resolution in accordance with the bylaws of the association that subsection (3) of this section applies. [Formerly 91.578; 1983 c.615 §6]

94.285 Taxation of units; exemptions; uniform appraisal and assessment. (1) Each unit with its allocation of undivided interest in the common elements shall be considered a parcel of real property, whether leased or in fee simple, subject to separate assessment and taxation by any taxing unit in like manner as other parcels of real property. A unit based upon a declaration filed by the owner of a leasehold estate shall be assessed in the name of the unit owner and not in the name of the owner of the fee or of the leasehold estate upon which the declaration is based. Neither the building, the property nor any of the common elements shall be considered a separate parcel for purposes of taxation.

(2) In determining the true cash value of a unit with its undivided interest in the common elements, the county assessor may use the allocation of undivided interest in the common elements appertaining to a unit as expressed in the declaration. Determination of true cash value of a unit based upon a leasehold estate shall be the same as a unit in fee simple. There shall be no diminution of value by reason of the term of said lease.

(3) Exemptions from executions and real property taxes apply to the owner of each unit or to the individual units, as the case may be.

(4) The Department of Revenue shall have the authority to make rules and regulations prescribing methods best calculated to secure uniformity according to law in the appraisal and assessment of units constituting part of a property submitted to the provisions of ORS 94.004 to 94.480 and 94.991. [Formerly 91.581]

(Removal of Property from Unit Ownership)

94.295 Removal by unit owners; consent of lienholders. (1) All of the unit owners may remove a property from the provisions of ORS 94.004 to 94.480 and 94.991 by executing and recording an instrument to that effect if the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the undivided interest of the unit owner in the property after removal from the provisions of ORS 94.004 to 94.480 and 94.991.

(2) The tax collector for any taxing unit having a lien for taxes or assessments shall have authority to consent to such a transfer of any tax or assessment lien. [Formerly 91.584]

94.300 Removal of property from ORS 94.004 to 94.480 by agreement that property is obsolete or by agreement not to repair damage or destruction to property. (1) If 90 percent of the unit owners agree that the property is obsolete and shall be sold, the property shall be considered removed from the provisions of ORS 94.004 to 94.480 and 94.991.

(2) Except where the declaration or bylaws provide to the contrary, if all or part of the property is damaged or destroyed, then the association of unit owners shall repair, reconstruct or rebuild the property, unless 60 percent of the unit owners agree that the property shall not be repaired, reconstructed or rebuilt. If 60 percent of the unit owners agree that the property shall not be repaired, reconstructed or rebuilt, the property shall be considered removed from the provisions of ORS 94.004 to 94.480 and 94.991. [Formerly 91.587]

94.305 [Repealed by 1971 c.478 §1]

94.306 Common ownership of property removed from unit ownership; valuation; liens. (1) If the property is removed from the provisions of ORS 94.004 to 94.480 and 94.991, as provided by ORS 94.295 and 94.300, the property shall be considered owned in common by all the unit owners. The respective interest of a unit owner shall be the total of the fair market value of his unit and common element interest appertaining to such unit immediately before termination of the condominium. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all units and common element interests. The fair market value of each unit and common element interest appertaining to such unit shall be determined by:

(a) Agreement of all of the unit owners; or

(b) An independent appraiser selected by the board of directors of the association. The decision of the appraiser shall be distributed to the unit owners and shall become final unless within 15 days after the distribution, the board of directors receives written objection from at least 25 percent of the unit owners. In such event, a new appraiser shall be selected by the presiding judge of the circuit court for the county in which the property is located. Such appraiser's decision shall be final.

(2) All costs and expenses incurred under subsection (1) of this section shall be common expenses.

(3) In the event any part of the property has been damaged or destroyed, the appraiser may use any available data and information pertaining to the condominium including, but not limited to, building plans, prior appraisals and information on file with governmental authorities.

(4) Liens affecting any unit shall be liens, in accordance with the then existing priorities, against the undivided interest of the unit owner in the property owned in common. [Formerly 91.591]

94.310 [Repealed by 1971 c.478 §1]

94.312 Action for partition; division of sale proceeds. If the property is removed from the provisions of ORS 94.004 to 94.480 and 94.991, as provided in ORS 94.295 and 94.300, it shall be subject to an action for partition at the suit of any unit owner. The net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among the unit owners in proportion to their respective undivided interests after first paying out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each unit owner. [Formerly 91.593]

94.315 [Repealed by 1971 c.478 §1]

94.318 Removal no bar to resubmission. The removal of the property from the provisions of ORS 94.004 to 94.480 and 94.991 shall in no way bar its resubmission. [Formerly 91.596]

94.320 [Repealed by 1971 c.478 §1]

(Dividing or Converting Units)

94.322 Procedure for dividing or converting units. (1) Subject to the provisions of the declaration and any applicable law, and upon compliance with this section:

(a) A unit designated in the declaration to be used for commercial, industrial or other nonresidential purpose may be divided by an owner, including the declarant, into two or more units.

(b) A unit owned by the declarant and located in a condominium that consists exclusively of units designated in the declaration to be used for nonresidential purposes, may be divided or converted into two or more units, common elements or a combination of units and common elements.

(2) The owner of a unit to be divided or converted shall submit to the board of directors of the association of unit owners a proposed amendment which shall:

(a) State the purposes of the amendment;

(b) Assign an identifying number to each unit created;

(c) Reallocate the interest in the common elements and the use of any limited common elements, voting rights, common expense liability and the right to common profits in the manner prescribed in the declaration;

(d) Indicate the means of access for each unit to common elements; and

(e) Include any additional provisions necessary to conform any other provisions of the declaration or bylaws.

(3) The board of directors shall approve the proposed amendment unless the board determines within 45 days that the amendment is inconsistent with the declaration or bylaws, or the division or conversion will impair the structural integrity or mechanical systems of the

condominium or lessen the support of any portion of the condominium.

(4) The board of directors may require the owner of the unit to be divided or converted to submit an opinion of a registered professional engineer as to whether or not the proposed division or conversion will impair the structural integrity or mechanical systems of the condominium or weaken the support of any portion of the condominium. The board of directors or any agent appointed by the board of directors may supervise the work necessary to effect the division or conversion. Any expenses incurred under this section shall be charged to the owner of the unit requesting the division or conversion.

(5) The amendment shall be executed by the owner and mortgagees or trust deed beneficiaries of the affected unit, certified by the chairperson and secretary of the association and approved and recorded in accordance with ORS 94.059 (1)(b).

(6) A plat showing each unit created or the conversion of a unit to common elements or combination thereof shall be recorded in accordance with ORS 94.042.

(7) This section applies only if the declaration expressly permits and contains:

(a) A statement of the maximum number of units into which a unit may be divided under subsection (1) of this section;

(b) A general description of the nature and proposed use of any unit or portion of any unit which the declarant may convert to common elements; and

(c) A statement of the method to be used to reallocate interest in the common elements, the use of any limited common elements, voting rights, common expense liability and right to common profits. [1983 c.615 §8]

(Regulation of Sales; Filing Requirements)

94.324 "Condominium" defined for ORS 94.331 to 94.480. (1) As used in ORS 94.078 (2), 94.084, 94.091, 94.221, 94.331 to 94.412, 94.424 to 94.480 and 94.991:

(a) "Condominium" includes property, any part of which is residential in nature, submitted to the provisions of ORS 94.004 to 94.480.

(b) "Condominium" does not include any property, which is wholly commercial, industrial or commercial and industrial in nature, submitted to the provisions of ORS 94.004 to 94.480 and 94.991.

(2) As used in ORS 94.331 to 94.412, 94.424 to 94.480 and 94.991, "condominium" also includes property located outside this state, any part of which is residential in nature, which has been committed to the condominium form of ownership in accordance with the laws of the jurisdiction within which the property is located. [Formerly 91.599]

94.325 [Repealed by 1971 c.478 §1]

94.330 [Amended by 1969 c.591 §278; repealed by 1971 c.478 §1]

94.331 Disclosure requirements by developer; notice of intention to sell or lease units; content; fee. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Real Estate Commissioner shall adopt rules to insure that each developer of a condominium discloses fully and accurately to prospective purchasers of condominium units all material circumstances or features affecting such condominium of which he is aware, or in the exercise of reasonable care, should be aware by requiring that prior to negotiating within this state for the sale or lease of a condominium unit located in another state, or prior to the sale or lease of any condominium unit located within this state, the developer or his agent shall notify the commissioner of his intention to sell by way of a "Notice of Intention," which shall contain the following information:

(a) The name and address of the condominium, and the name, address and telephone number of the developer and his agent, if any;

(b) A general narrative description of the condominium stating the total number of units, a description of the types of units, the total number of units that may be included in the condominium pursuant to ORS 94.029 (2), and a precise statement of the nature of the interest which is being offered;

(c) A general disclosure of the status of construction and the actual or scheduled dates of completion of buildings, recreation facilities, and other common elements;

(d) The significant terms of any financing offered by the developer to purchasers of the condominium units;

(e) A brief description of any warranties for structural elements and mechanical and other systems;

(f) A projection of the budget of the association of unit owners for the operation and maintenance and any other common expenses of the condominium;

(g) A description of any provisions made in the budget of the condominium for reserves for capital expenditures for repair or replacement of common elements and an explanation of the basis for such reserves, or, where no provision is made for such reserves, a statement to that effect;

(h) In the case of a conversion condominium, a statement as to the present condition of all structural components and major mechanical and utility installations in the condominium, which statement shall include the approximate dates of construction, installation and the estimated useful physical life of each such item;

(i) A statement of significant provisions for management of the condominium including:

(A) The apportionment of voting rights among the members of the association of unit owners and a statement of the nature and extent of voting control retained by the developer;

(B) Any provision concerning meetings and required notice thereof; and

(C) A description of the documents by which purchasers may be bound, including the declaration, bylaws, ground leases, management agreement, easements, covenants, restrictions and conditions; and

(j) A statement of the right of any purchaser to void the contract other than as provided by statute, any conditions for the return of deposit and a statement about any present litigation concerning the condominium.

(2) The notice of intention shall be accompanied by a filing fee as follows:

(a) For condominiums developed in a single phase, $100 plus $25 for each unit therein, but in no case shall the fee be more than $1,500.

(b) For condominiums developed in two or more phases, $100 plus $25 for each unit in the first phase, and $25 for each additional unit in a subsequent phase of the same development, but in no case shall the fee be more than $1,500 for each phase.

(3) The commissioner may reduce or waive all or part of a fee required under subsection (2) of this section. [Formerly 91.602]

94.335 [Repealed by 1971 c.478 §1]

94.336 Additional requirements by commissioner for notice of intention. The commissioner may require the developer to furnish such additional information with the notice of intention as the commissioner determines to be necessary in the administration and enforcement of ORS 94.004 to 94.480 and 94.991 and for protection of the public, including but not limited to:

(1) A statement of the terms and conditions on which it is intended to transfer or dispose of the land or interest therein, together with copies of any contract, conveyance, lease, assignment or other instrument intended to be used;

(2) Copies of all sales pamphlets and literature to be used in connection with the condominium; and

(3) Any other information that the developer may desire to present. [Formerly 91.606]

94.340 [Repealed by 1971 c.478 §1]

94.342 Filing information to be kept current; fee for material change in notice. (1) The information required by the rules adopted pursuant to ORS 94.331 and the information required by the commissioner pursuant to ORS 94.336 shall be kept current by the developer. Any material change in the information furnished to the commissioner shall be reported by the developer within 10 days after the change occurs.

(2) A developer shall be responsible for the accuracy of and for providing all information required by the rules adopted pursuant to ORS 94.331, all information required by the commissioner pursuant to ORS 94.336, and any information required under this section for as long as the developer retains any unsold interest in the condominium to which the information pertains.

(3) The commissioner shall require a fee after receipt of a material change notice if, because of the changes, a public report must be issued or revised by the commissioner. The fee required by this subsection shall not exceed $100 plus $25 for each unsold unit.

(4) The commissioner may, when he considers it necessary for the protection of the public from fraud, deceit, or misrepresentation, after review of any property for which a public report or a waiver of the requirement thereof has been issued by the commissioner prior to October 4, 1977, require, after notice, the person to whom the public report or waiver is issued or the successor in interest of all unsold units in such property, to submit a notice of intention in accordance with ORS 94.331, together with a refiling fee in the amount of $100 plus $25 per unit for each unsold unit. [Formerly 91.608]

94.345 [Repealed by 1971 c.478 §1]

94.348 Service of process on nonresident developer; consent for service on commissioner; contents of consent; records of service on commissioner. (1)

Every nonresident developer, at the time of filing the notice of intention and information required by the rules adopted pursuant to ORS 94.331, shall also file with the commissioner an irrevocable consent that if, in any suit or action commenced against him in this state arising out of a violation of ORS 94.004 to 94.480 and 94.991, personal service of summons or process upon him cannot be made in this state after the exercise of due diligence, a valid service may thereupon be made upon him by service on the commissioner.

(2) The consent shall be in writing executed and verified by an officer of a corporation or association, a general partner of a partnership or by an individual developer and shall set forth:

(a) The name of the developer.

(b) The address to which documents served upon the commissioner are to be forwarded.

(c) If the developer is a corporation or unincorporated association, that the consent signed by such officer was authorized by resolution duly adopted by the board of directors.

(3) The address for forwarding documents served under this section may be changed by filing a new consent in the form prescribed in subsection (2) of this section.

(4) Service on the commissioner of any such process shall be made by delivery to him or a clerk on duty in any office of the commissioner, duplicate copies of such process, with duplicate copies of any papers required by law to be delivered in connection with such service.

(5) When the commissioner is served with any such process, he shall immediately cause one of the copies thereof, with any accompanying papers, to be forwarded by registered mail to the developer at the address set forth in the consent.

(6) The commissioner shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto. [Formerly 91.611]

94.350 [Repealed by 1971 c.478 §1]

94.355 [Repealed by 1971 c.478 §1]

(Examination of Condominium; Public Report)

94.359 Examination of condominium; public report; waiver of examination in other state. (1) Unless the making of a public report has been waived, the commissioner shall make an examination of and issue a public report of his findings regarding any condominium prior to negotiating within this state for the sale or lease of a condominium unit located in another state, or prior to the sale or lease of any condominium unit located within this state. The public report shall contain all information required by the rules adopted under ORS 94.331 and any information required by the commissioner pursuant to ORS 94.336. If a condominium is located within this state and if no report is made within 45 days after examination of the condominium, the report shall be deemed waived.

(2) The commissioner may waive an examination of a condominium located in another state only when that state has an existing law which provides for the examination of and a public report on the condominium and only where that state will waive examination of a condominium located within this state and will accept in lieu thereof a report prepared by the commissioner under subsection (1) of this section. [Formerly 91.614]

94.360 [Repealed by 1971 c.478 §1]

94.365 [Repealed by 1971 c.478 §1]

94.366 Notice to prospective buyers of estimation of common expenses. (1) With regard to the information required by the rules adopted under ORS 94.331 (1)(f), the public report shall contain the following notice in at least 8-point type below such information.

NOTICE TO PROSPECTIVE PURCHASERS

THE PROJECTION OF THE BUDGET OF THE ASSOCIATION OF UNIT OWNERS FOR THE OPERATION AND MAINTENANCE AND OTHER COMMON EXPENSES OF THE CONDOMINIUM IS ONLY AN ESTIMATE, PREPARED WITH DUE CARE.

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(2) Where the information required by the rules adopted under ORS 94.331 (1)(g) indicates that no provision is made in the budget of the condominium for reserves for capital expenditures for repair or replacement of common elements, the public report shall contain a statement to that effect in at least 8-point type. [Formerly 91.617]

94.370 [Repealed by 1971 c.478 §1]

94.372 Information includable in public report. If it is found to be in the public interest, the commissioner may include in the public report any information relating to the

nature of condominium interests in general or the condominium for which the public report is being issued. [Formerly 91.621]

94.375 [Repealed by 1971 c.478 §1]

94.378 Waiver of public report by commissioner. With respect to any condominium in this state, if, after examination of the notice of intention required pursuant to ORS 94.331 or the reply to the commissioner's request for information pursuant to ORS 94.336, the commissioner concludes that a public report is not necessary to protect the public, he shall waive the provisions of ORS 92.305, 92.325, 94.004 to 94.480 and 94.991 which he considers unnecessary for the protection of the public. The commissioner shall notify the developer within 15 days of receipt of the notice of intention of his approval or disapproval of any waiver. However, the commissioner may for good and sufficient cause, revoke any waiver at any time upon 20 days' notice and a hearing held for such purpose. [Formerly 91.623]

94.380 [Repealed by 1971 c.478 §1]

94.384 Sale prohibited where public report not issued or waived; distribution and use of public report. (1) Unless the making of a public report has been waived, no developer or an agent of the developer shall sell or lease a condominium unit prior to the issuance of the public report.

(2) A copy of the public report, when issued, shall be given to the prospective purchaser by the developer or an agent of the developer, not later than the date the unit sales agreement is fully executed by all parties. The developer or the agent of the developer, shall take a receipt from such prospective purchaser upon delivery of a copy of the commissioner's public report, and such receipts shall be kept on file within this state in the possession of the developer or the agent of the developer subject to inspection by the commissioner for a period of three years from the date the receipt is taken.

(3) The commissioner's public report shall not be used for advertising purposes unless the report is used in its entirety. No portion of the report shall be underscored, italicized or printed in larger or heavier type than the balance of the report unless the true copy of the report so emphasizes such portion.

(4) The commissioner may furnish at cost copies of the public report for the use of developers.

(5) Violations of this section shall be subject to the provisions of ORS 646.605 to 646.860 and 646.880 to 646.992, in addition to other sanctions provided by law. [Formerly 91.626]

94.385 [Repealed by 1971 c.478 §1]

94.390 [Repealed by 1971 c.478 §1]

94.391 Deposit with commissioner for examination expenses; refund. When an examination is to be made of a condominium situated in the State of Oregon, or situated outside the state which will be offered for sale within this state, the commissioner, in addition to the filing fee provided in ORS 94.331, may require the developer to advance a deposit. Such deposits shall not exceed $200 for ordinary and necessary travel, and other expenses incurred in making an examination within the state, and shall not exceed $200 per day for making an examination in another state. Any unexpended portion of the deposit shall be refunded to the developer. [Formerly 91.629]

94.395 [Repealed by 1971 c.478 §1]

(Requirements for Sale)

94.400 Conditions prerequisite to sale. (1) No condominium unit shall be sold by a developer by means of a land sale contract unless a collection escrow is established within this state with a person or firm authorized to receive escrows under the laws of this state and all of the following are deposited in the escrow:

(a) A copy of the title report or abstract, as it relates to the property being sold.

(b) The original sales document or a true copy thereof relating to the purchase of the condominium unit.

(c) A commitment to give a partial release for the condominium unit being sold from the terms and provisions of any blanket encumbrance. The commitment shall be in a form satisfactory to the commissioner.

(d) A document in good and sufficient form transferring the interest purchased.

(2) The developer shall submit written authorization allowing the commissioner to inspect all escrow deposits established pursuant to subsection (1) of this section.

(3) In lieu of the procedures provided in subsection (1) of this section, the developer shall conform to such alternative requirement or method which the commissioner may deem acceptable to carry into effect the intent and provisions of this section. [Formerly 91.631]

94.405 [Repealed by 1971 c.478 §1]

94.406 Documents prerequisite to execution of sale agreement and conveyance of unit. (1) Before the unit sales agreement is fully executed by all parties, the developer shall deliver to the purchaser a copy of the declaration and bylaws of the condominium and any supplements and amendments thereto affecting the unit.

(2) When the unit sales agreement is fully executed by all parties, the developer shall deliver to the purchaser a copy of the fully executed agreement which contains the "Notice to Purchaser" required by ORS 94.424.

(3) The developer shall deliver to the purchaser prior to the conveyance of the unit by deed, lease or contract any ground leases, leases with the association for recreation or parking facilities and escrow instructions applying to the transaction.

(4) The developer shall take a receipt from the purchaser upon the delivery of the documents referred to in subsection (1) of this section, and such receipts shall be kept on file within this state by the developer or the agent of the developer subject to inspection by the commissioner for a period of three years from the date the receipt is taken. [Formerly 91.634]

94.410 [Repealed by 1971 c.478 §1]

94.412 Cancellation of sale of unit; notice to seller; return of payments and reconveyance; extinguishment of encumbrances; waiver prohibited; disclaimer of notice; applicability. (1) A purchaser of a condominium unit may cancel for any reason the sale of a condominium unit or any contract, agreement or evidence of indebtedness associated with the sale of the condominium unit, within five business days (excluding Saturdays and holidays) after the date on which the latest of the following events occurs:

(a) The signing by the purchaser of the unit sales agreement;

(b) The signing by the purchaser of the receipt required under ORS 94.384 (2) upon the delivery of the public report, if any; or

(c) The signing by the purchaser of the receipt required under ORS 94.406 (4) upon delivery of a copy of the documents specified in ORS 94.406 (1).

(2) Cancellation, under subsection (1) of this section, occurs when the purchaser of an interest gives written notice to the developer at the developer's address stated in the notice to purchaser required under ORS 94.424 (1).

(3) A notice of cancellation given by a purchaser of a condominium unit need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the purchaser not to be bound by the contract or evidence of indebtedness.

(4) Notice of cancellation, if given by mail, shall be given by certified mail, return receipt requested, and is effective on the date that such notice is deposited with the United States Postal Service, properly addressed and postage prepaid.

(5) Upon receipt of a timely notice of cancellation, the developer shall immediately return to the purchaser all payments received from the purchaser. In case of payments made by check, the developer shall not be required to return the payment to a purchaser until the check is finally paid as provided in ORS 74.2130. Upon return of all such payments the purchaser shall immediately transfer rights in the interest to the developer, not subject to any encumbrance created or suffered by the purchaser. In the case of cancellation by a purchaser of any evidence of indebtedness, the purchaser shall return the purchaser's copy of the executed evidence of indebtedness to the developer, and the developer shall cancel the evidence of indebtedness. Any encumbrances against the purchaser's interest in the unit arising by operation of law from an obligation of the purchaser existing prior to transfer of the interest to the purchaser shall be extinguished by the reconveyance.

(6) Except as otherwise provided in ORS 94.418, no act of a purchaser shall be effective to waive the right of cancellation granted by subsection (1) of this section. A developer may require that a purchaser of a condominium unit execute and deliver to the developer, after the expiration of the cancellation period, a signed statement disclaiming any notice of cancellation that may have been made by the purchaser prior to expiration of the cancellation period granted under subsection (1) of this section and that may have been timely and properly done under this section whether or not the statement has been received by the developer. In case of execution of any such statement by the purchaser, the statement shall be sufficient to rescind the notice of cancellation.

(7) A purchaser's right to cancel under subsection (1) of this section terminates at the time of the closing of the unit purchase transaction.

(8) This section shall not apply to the sale of a unit in a condominium used or intended to be used solely for commercial or industrial purposes or to the sale of a condominium unit conducted by public auction. [Formerly 91.637]

94.415 [Repealed by 1971 c.478 §1]

94.418 Waiver of right to cancel. (1) A purchaser may waive the right to cancellation granted under ORS 94.412 (1) after the unit sales agreement is fully executed by all parties. The waiver shall be in writing and dated and shall include a notice that by signing such statement the purchaser waives only the right of cancellation granted under ORS 94.412 (1) and no other right.

(2) No provision which obligates a purchaser to waive or limit the right of cancellation granted under ORS 94.412 (1) shall be included in the unit sales agreement or any other agreement associated with the sale. [1981 c.647 §24]

94.420 [Repealed by 1971 c.478 §1]

94.424 Notice to purchaser of cancellation rights; form. (1) Subject to ORS 94.412 (8), a unit sales agreement shall contain, either upon the first page or upon a separate sheet attached to such first page, the following notice in at least 8-point type:

NOTICE TO PURCHASER

(RIGHT OF CANCELLATION)

BY SIGNING A UNIT SALES AGREEMENT YOU ARE INCURRING A CONTRACTUAL OBLIGATION TO PURCHASE AN INTEREST IN A CONDOMINIUM. HOWEVER, YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT FOR ANY REASON FOR FIVE BUSINESS DAYS (EXCLUDING SATURDAYS AND HOLIDAYS) AFTER WHICHEVER OF THE FOLLOWING IS LAST TO OCCUR:

(1) SIGNING BY THE PURCHASER OF THE UNIT SALES AGREEMENT;

(2) SIGNING BY THE PURCHASER OF THE RECEIPT FOR THE PUBLIC REPORT, IF ANY; OR

(3) SIGNING BY THE PURCHASER OF THE RECEIPT FOR A COPY OF THE CONDOMINIUM DECLARATION AND BYLAWS AND ANY AMENDMENTS OR SUPPLEMENTS THERETO AFFECTING THE UNIT.

TO CANCEL THIS AGREEMENT, YOU MUST GIVE WRITTEN NOTICE TO THE DEVELOPER OR THE AGENT OF THE DEVELOPER AT THE FOLLOWING ADDRESS:

_____

_____

_____

_____

_____

(SUGGESTED PROCEDURE)

BEFORE EXECUTING THIS AGREEMENT, OR BEFORE THE CANCELLATION PERIOD ENDS, YOU SHOULD DO THE FOLLOWING:

(1) CAREFULLY EXAMINE THE PUBLIC REPORT, IF ANY, ISSUED BY THE REAL ESTATE COMMISSIONER ON THE CONDOMINIUM AND ALL ACCOMPANYING INFORMATION DELIVERED BY THE DEVELOPER. OREGON LAW REQUIRES THE DEVELOPER TO DELIVER TO YOU A COPY OF THE DECLARATION AND BYLAWS OF THE CONDOMINIUM AND ANY SUPPLEMENTS AND AMENDMENTS THERETO AFFECTING THE UNIT PRIOR TO THE TIME THE UNIT SALES AGREEMENT IS FULLY EXECUTED BY ALL PARTIES. A COPY OF THE DECLARATION AND BYLAWS, AND ANY SUPPLEMENTS AND AMENDMENTS THERETO, ARE AVAILABLE FROM THE ASSOCIATION FOR EXAMINATION AND DUPLICATION, AT A REASONABLE FEE, UPON YOUR WRITTEN REQUEST.

(2) INQUIRE OF YOUR LENDER WHETHER YOU CAN GET ADEQUATE FINANCING ON AN ACCEPTABLE BASIS.

(3) INQUIRE OF THE DEVELOPER AND THE LENDER WHAT THE AMOUNT OF THE CLOSING COSTS WILL BE.

OREGON LAW REQUIRES THAT YOU IMMEDIATELY BE GIVEN A COPY OF THIS NOTICE AND A COPY OF THE UNIT SALES AGREEMENT WHEN IT HAS BEEN FULLY EXECUTED BY ALL PARTIES.

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(2) A copy of the notice set forth in subsection (1) of this section shall be given to each purchaser at the time of or immediately following the purchaser's signing of the unit sales agreement, for the use of the purchaser. [Formerly 91.641]

94.425 [Repealed by 1971 c.478 §1]

94.430 [Repealed by 1971 c.478 §1]

94.431 Escrow documents required of successor to vendor's interest. (1) A purchaser of a vendor's interest or a holder of an encumbrance secured by a vendor's interest in a land sale contract for which an escrow has been established pursuant to ORS 94.400 shall deposit

in the escrow any instruments necessary to assure that the contract vendee can obtain the legal title bargained for upon compliance with the terms and conditions of the contract.

(2) A developer who has sold interests in a condominium under a land sale contract shall not dispose of or subsequently encumber his vendor's interest therein unless the terms of the instrument of disposition or the encumbrance provide the means by which the purchaser or holder of the encumbrance will comply with subsection (1) of this section. [Formerly 91.646]

94.435 [Repealed by 1971 c.478 §1]

94.437 Inspection of records. Records of the sale of any condominium unit shall be subject to inspection by the commissioner and shall be made available to him in Oregon at his request. [Formerly 91.649]

94.440 [Repealed by 1971 c.478 §1]

94.445 [Repealed by 1971 c.478 §1]

(Prohibited Acts)

94.448 Fraud and deceit prohibited. No developer or his agent shall, in connection with the sale of a condominium unit, directly or indirectly:

(1) Employ any device, scheme or artifice to defraud;

(2) Make any untrue statement of a material fact or fail to state a material fact necessary to make the statement made, in the light of the circumstances under which it is made, not misleading;

(3) Engage in any act, practice or course of business which operates or would operate as a fraud or deception upon any person;

(4) Issue, circulate or publish any prospectus, circular, advertisement, printed matter, document, pamphlet, leaflet or other literature, including a public report issued pursuant to ORS 94.359, which contains an untrue statement of a material fact or fails to state a material fact necessary in order to make the statements therein made, in the light of the circumstances under which they are made, not misleading;

(5) Issue, circulate or publish any advertising matter or make any written representation, including a public report issued pursuant to ORS 94.359, unless the name of the person issuing, circulating or publishing the matter or making the representation is clearly indicated; or

(6) Make any statement or representation, or issue, circulate or publish any advertising matter containing any statement to the effect that the condominium has been in any way approved or indorsed by the commissioner. [Formerly 91.652]

94.454 False or misleading advertising prohibited; liability. It shall be unlawful for any developer or agent of a developer, who with intent, directly or indirectly, to sell a condominium unit, to authorize, use, direct or aid in the publication, distribution or circularization of any advertisement, radio broadcast or telecast concerning the condominium, which contains any statement, pictorial representation or sketch which is false or misleading. Nothing in this section shall be construed to hold the publisher or employe of any newspaper, any job printer, broadcaster or telecaster liable for any publication referred to in ORS 94.004 to 94.480 and 94.991 unless the publisher, employe, printer, broadcaster or telecaster has actual knowledge of the falsity thereof or has an interest in the condominium advertised or the sale thereof. [Formerly 91.656]

94.460 Waiver of legal rights void. Any condition, stipulation or provision in any sales contract or lease, or in any other legal document, binding any purchaser or lessee to waive any legal rights under ORS 94.004 to 94.480 and 94.991 against the developer shall be deemed to be contrary to public policy and void. [Formerly 91.658]

94.465 Blanket encumbrance permitted only in certain circumstances. (1) Subject to the provisions of ORS 94.400, a condominium unit shall not be sold by a developer subject to a blanket encumbrance unless there exists in such blanket encumbrance or other supplementary agreement a provision which by its terms shall unconditionally provide that the purchaser or lessee of the unit can obtain legal title or other interest bargained for, free and clear of such blanket encumbrance, upon compliance with the terms and conditions of the purchase or lease.

(2) In lieu of the requirement of subsection (1) of this section, the developer shall conform to such alternative requirement or method which the commissioner may deem acceptable to carry into effect the intent and provisions of this section. [Formerly 91.661]

(Enforcement)

94.470 Civil penalty; hearings. (1) In addition to any other penalties provided by law, the commissioner may impose a civil penalty for violation of the provisions of ORS 94.331 to 94.412 and 94.424 to 94.460 or any of the rules adopted thereunder. No civil penalty shall exceed $1,000 per violation.

(2) A civil penalty may be imposed by the commissioner after notice and hearing.

(3) All hearings shall be conducted pursuant to the applicable provisions of ORS 183.310 to 183.550.

(4) Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be recorded in accordance with the provisions of ORS 18.320 to 18.370. The penalty provided in the order so recorded becomes a lien upon the title to any interest in real property in the county owned by the person against whom the order is entered. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(5) All penalties recovered shall be paid into the State Treasury and credited to the General Fund. [Formerly 91.664; 1983 c.696 §7b]

94.475 Cease and desist order; injunction. (1) Whenever the commissioner finds that any developer or other person is violating any of the provisions of ORS 94.331 to 94.412 and 94.424 to 94.460 or the rules adopted thereunder or of the alternative requirements of the commissioner prescribed pursuant to ORS 94.400 (3), the commissioner may order the persons to desist and refrain from violating such provisions or requirements, or from the further sale of condominium units.

(2) Whenever the commissioner finds that any developer or other person is violating, or has violated or is about to violate, any of the provisions of ORS 94.331 to 94.412 and 94.424 to 94.460 or the rules adopted thereunder or the alternative requirements of the commissioner prescribed pursuant to ORS 94.400 (3), he may bring proceedings in the circuit court within the county in which the violation or threatened violation has occurred or is about to occur, or in the county where such person, firm or corporation resides or carries on business, in the name of and on behalf of the people of the State of Oregon against such person, firm or corporation, and any other person or persons concerned in or in any way participating or about to participate in such violation, to enjoin such person, firm or corporation or any other person from continuing such violation or engaging therein or doing any act or acts in furtherance thereof, and to apply for the appointment of a receiver or conservator of the assets of the defendant where such appointment is appropriate. [Formerly 91.667]

94.480 Use of fees. The moneys received under ORS 94.004 to 94.480 and 94.991 shall be paid into the State Treasury and placed to the credit of the General Fund in the Oregon Real Estate Department Account. [Formerly 91.671]

94.505 [Repealed by 1971 c.478 §1]

94.510 [Repealed by 1971 c.478 §1]

94.515 [Repealed by 1971 c.478 §1]

94.520 [Repealed by 1971 c.478 §1]

94.525 [Repealed by 1971 c.478 §1]

94.530 [Repealed by 1971 c.478 §1]

94.540 [Repealed by 1971 c.478 §1]

PLANNED COMMUNITIES
(General Provisions)

94.550 Definitions for ORS 94.550 to 94.783. As used in ORS 94.550 to 94.783:

(1) "Common expenses" means expenditures made by or financial liabilities incurred by the homeowners association and includes any allocations to the reserve account under ORS 94.595.

(2) "Common property" means any real property or interest in real property within a planned community which is owned or leased by the homeowners association or owned as tenants in common by the lot owners, or designated in the declaration for transfer to the association. "Common property" does not include any lot designated on the plat or in the declaration of a planned community for ownership by a person other than the homeowners association.

(3) "Condominium" means property submitted to the provisions of 94.004 to 94.480 and 94.991.

(4) "Declarant" means:

(a) Any person who creates a planned community under ORS 94.550 to 94.785;

(b) Any person who succeeds to any special declarant right and to whom all of the declarant's ownership interest is transferred; or

(c) Any person, other than a homeowners association, to whom a declarant has transferred, for the purpose of resale, all of the declarant's ownership interest in the planned community.

(5) "Declaration" means the instrument described in ORS 94.580 which establishes a

planned community, and any amendments to the instrument.

(6) "Homeowners association" or "association" means the organization of owners of lots in a planned community, created under ORS 94.625.

(7) "Mortgagee" means any person who is:

(a) A mortgagee under a mortgage;

(b) A beneficiary under a trust deed; or

(c) The vendor under a land sale contract.

(8) "Owner" means the owner of any lot in a planned community, unless otherwise specified, but does not include a person holding only a security interest in a lot.

(9) "Planned community" means any subdivision under ORS 92.010 to 92.170 which results in a pattern of ownership of real property and all the buildings, improvements and rights located on or belonging to the real property, in which:

(a) There is a homeowners association responsible for the maintenance, operation, insurance and property taxes relating to any common property of the planned community or for the exterior maintenance of any property that is individually owned; and

(b) Owners of individual lots, by virtue of their ownership, automatically are members of the homeowners association and assume liability for membership fees.

(10) "Purchaser" means any person other than a declarant who, by means of a voluntary transfer, acquires a legal or equitable interest in a lot, other than as security for an obligation.

(11) "Purchaser for resale" means any person who purchases from the declarant more than two lots for the purpose of resale whether or not the purchaser for resale makes improvements to the lots before reselling them.

(12) "Special declarant rights" means any rights, in addition to the rights of the declarant as a lot owner, reserved for the benefit of the declarant under the declaration or ORS 94.550 to 94.783, including but not limited to:

(a) Constructing or completing construction of improvements in the planned community which are described in the declaration;

(b) Expanding the planned community or withdrawing property from the planned community under ORS 94.580 (3) and (4);

(c) Converting lots into common property;

(d) Making the planned community subject to a master association under ORS 94.695; or

(e) Exercising any right of control reserved under ORS 94.600.

(13) "Turnover" means the act of turning over administrative responsibility pursuant to ORS 94.609 and 94.616.

(14) "Unit" means a building or portion of a building located upon a lot in a planned community and designated for separate occupancy or ownership, but does not include any building or portion of a building located on common property.

(15) "Votes" means the votes allocated to lots in the declaration under ORS 94.580 (2)(g). [1981 c.782 §3]

94.560 Legislative findings. The Legislative Assembly finds that:

(1) In the State of Oregon there are hundreds of homeowners associations to which the Oregon Condominium Law (ORS 94.004 to 94.480 and 94.991) does not apply.

(2) These homeowners associations have established a pattern of ownership in which ownership of a single unit makes the owner automatically a member of a homeowners association with responsibilities for management and maintenance.

(3) Many of these homeowners associations as associations and their members as individuals have experienced problems from the lack of statutory provisions. These problems which have arisen are usually the result of inexperience with this kind of ownership. This inexperience often leads to difficulties for the association when it assumes responsibility for the administration of the planned development because usually neither the developer who drafted the documents nor the local jurisdiction which may have reviewed them has realized the long term management implications of the restrictions imposed by the documents. The most serious and frequent error is imposing excessive voting requirements for any changes in the documents, a basic error that makes it and other errors unnecessarily difficult, if not impossible, to correct. Of almost equal importance is the lack of disclosure of significant differences this pattern of ownership imposes on the homeowner and the restrictions on choice that must be accepted.

(4) Oregon land conservation policies and the increasing cost of land will result in rapid growth of this kind of home ownership pattern.

(5) It is a matter of state-wide concern that the Legislative Assembly address problems associated with homeowners associations in order to make this kind of home ownership pattern an acceptable choice and in order to assure proper maintenance of the projects so

that the investment of the owners and the appearance of Oregon communities are protected.

(6) It is essential that the Legislative Assembly establish basic statutory requirements for disclosure to first and subsequent buyers, for the organization of the homeowners association, and for a process by which administrative responsibility for the planned community is transferred from the developer to the association of individual owners.

(7) ORS 94.550 to 94.783 are intended to make developers, their legal counsel and homeowners in Oregon homeowners associations the beneficiaries of experience accumulated under Oregon's condominium law and gathered from members of existing Oregon homeowners associations and associations in parts of the country where the record of experience is longer than that in Oregon. [1981 c.782 §3a]

(Creation of Planned Community)

94.565 Planned community to be created under ORS 94.550 to 94.783; exception; sale of lot or unit prohibited until declaration filed. (1) Except as provided in ORS 94.570, no person shall create a planned community in this state except as provided in ORS 94.550 to 94.783.

(2) No person shall sell any lot or unit in a planned community until the declaration for the planned community is recorded with the county recording officer of each county in which the planned community is located. [1981 c.782 §5]

94.570 Applicability of ORS 94.550 to 94.783. (1) ORS 94.550 to 94.783 do not apply to any person establishing:

(a) A planned community that contains 20 or fewer lots, if the declarant has reserved no right to increase the total number of lots in the planned community beyond 20;

(b) A condominium under 94.004 to 94.480 and 94.991;

(c) A planned community that is exclusively commercial or industrial, or commercial and industrial;

(d) A de minimus planned community described in subsection (2) of this section; or

(e) A timeshare plan under ORS 94.803 and 94.807 to 94.945 that does not involve a planned community.

(2) A de minimus planned community is one:

(a) That is defined or accepted as such by any of the agencies listed in ORS 94.585; or

(b) For which the estimated total annual assessment against all lots in the planned community for maintenance and for the reserves required under ORS 94.595 does not exceed the greater of two percent of the estimated value of all lots against which the assessment will be levied or the product of $360 multiplied by the total number of lots in the planned community. For purposes of this paragraph, the estimated value includes the sewers, water systems and streets but not any structures. The assessment estimate under this paragraph:

(A) Shall include current costs for any services which the declarant will be providing at less than cost during the period the declarant is marketing the lots and which the association will have to provide at cost after the declarant no longer performs these services. Current costs shall be based on competitive current rates for alternative professional services for such items as landscape and pool maintenance.

(B) Shall include maintenance and reserve account estimates based on figures obtained from the department of the city, county or district which would normally perform or contract for services which instead are provided by the planned community.

(C) Shall be conclusively presumed to have been made in good faith if one year after the declarant no longer provides any services at less than cost, the total assessment for maintenance and reserves does not exceed three percent of the current assessed value of these lots not including structures on the lots.

(3) Notwithstanding paragraph (a) of subsection (1) of this section, ORS 94.550 to 94.783 apply to a planned community with 20 or fewer units if the declarant so provides in the declaration of the planned community.

(4) Nothing in this section prohibits the establishment of a condominium subject to ORS 94.004 to 94.480 and 94.991 within a planned community. [1981 c.782 §6; 1983 c.530 §52]

94.575 Applicability of subdivision law. ORS 92.010 to 92.170 apply to a planned community established under ORS 94.550 to 94.783. [1981 c.782 §4]

94.580 Declaration; recordation; contents. (1) A declarant shall record the declaration for a planned community in the office of the recording officer of each county in which the planned community is located.

(2) The declaration shall include:

(a) The name of the planned community;

(b) The name of every city and county in which all or a portion of the real property in the planned community is located;

(c) The legal description of the real property included in the planned community;

(d) A statement of the number of lots and units in the planned community;

(e) The legal description of any real property included in the planned community which is or must become a common property;

(f) A description of any special declarant rights other than the rights described under subsections (3) and (4) of this section;

(g) A provision for allocating votes to each lot;

(h) A method of determining the liability of each lot for common expenses and the right of each lot to any common profits of the association;

(i) Provisions for establishing a reserve account as required by ORS 94.595;

(j) Any restrictions on the alienation of lots. Any such restriction created by any document other than the declaration may be incorporated by reference to the official records of the county where the property is located;

(k) A statement of the use, residential or otherwise, for which each lot is intended;

(L) A statement as to whether or not the association pursuant to ORS 94.665 may sell, convey or subject to a security interest any portion of the common property;

(m) A statement of any restriction on the use, maintenance or occupancy of lots or units;

(n) A statement of the percentage of votes required to approve an amendment of the declaration in accordance with ORS 94.590;

(o) A description of any contemplated improvements which the declarant agrees to build, or a statement that the declarant does not agree to build any improvement or does not choose to limit declarant's rights to add improvements not described in the declaration;

(p) A statement of the circumstances under which the individual owners will assume control of the homeowners association as provided under ORS 94.609. These circumstances may be established by a percentage of votes, a stated number of years or the occurrence of a stipulated event;

(q) A statement of the time at which the deed to the common property is to be delivered, whether by date or upon the occurrence of a stipulated event if the deed is not to be delivered at the turnover meeting under ORS 94.616; and

(r) Any provisions restricting a right of the association with respect to the common property, or an individual lot owner with respect to the lot or improvements on the lot, including but not limited to:

(A) A right to divide the lot or to combine it with other lots;

(B) A right to repair or restore improvements on the lot at the owner's discretion in the event of damage or destruction;

(C) The requirement for architectural controls, including but not limited to fencing, landscaping or choice of exterior colors and materials of structures to be placed on the common property or on a lot; and

(D) The requirement of review of any plans of any structure to be placed on the common property or a lot.

(3) If the declarant reserves the right to expand the planned community by annexing lots or common property or by creating additional lots by developing existing property in the planned community, the declaration shall contain in addition to the provisions required under subsections (1) and (2) of this section, a general description of the plan of development, including:

(a) The procedure by which the planned community will be expanded;

(b) The maximum number of lots and units to be included in the planned community or a statement that there is no limitation on the number of lots or units which the declarant may create or annex to the planned community;

(c) A general description of the nature and proposed use of any common property which the declarant agrees to annex to the planned community or a statement that there is no limitation on the right of the declarant to annex common property;

(d) The method of allocation of votes if additional lots are to be created or annexed to the planned community; and

(e) The formula to be used for reallocating the common expenses if additional lots are to be created or annexed to the planned community, and the manner of reapportioning the common expenses if lots are created or annexed during the fiscal year.

(4) If the declarant may withdraw property from the planned community, the declaration shall include in addition to the provisions required under subsections (1), (2) and (3) of this section:

(a) The procedure by which property will be withdrawn;

(b) A general description of the property which may be withdrawn from the planned community;

(c) The method of allocation of votes if lots are withdrawn from the planned community;

(d) The formula to be used for reallocating the common expenses if the property to be withdrawn has been assessed for common expenses prior to withdrawal; and

(e) The date after which the right to withdraw property from the planned community shall expire or a statement that such a right shall not expire. [1981 c.782 §12]

94.585 Authority to amend declaration and initial bylaws to comply with federal laws. A declarant may amend the declaration or initial bylaws in order to comply with requirements of the Federal Housing Administration, the Veterans' Administration, the Farmer's Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon or any corporation wholly-owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community. However, if the need to amend the declaration or the initial bylaws occurs after the turnover to the homeowners association has occurred, the amendment must be approved by the association. [1981 c.782 §19]

94.590 Amendment by association of declaration and plat. (1) Except as provided in ORS 94.580, the homeowners association may amend the declaration and the plat only by vote or agreement of the owners representing 75 percent of the total votes in the planned community or any larger percentage specified in the declaration. In no event shall an amendment under this section create, limit or diminish any special declarant rights, increase the number of lots or units or change the boundaries of any lot or any uses to which any lot or unit is restricted unless the owners of the affected lots unanimously consent to the amendment. The declaration may provide that a percentage less than 75 percent of the votes of the planned community is required to amend the declaration for amendments relating to age restrictions, pet restrictions, limitations on the number of persons who may occupy units or limitations on the rental or leasing of units.

(2) When the association adopts an amendment to the declaration, the association shall record the amendment in the same place as the declaration. An amendment of the declaration is effective only upon recordation.

(3) Amendments to a declaration under this section shall be executed, recorded and certified on behalf of the association by any officer of the homeowners association designated for that purpose or, in the absence of designation, by the president of the board of directors of the association.

(4) A person may not bring an action to challenge the validity of an amendment adopted pursuant to this section and ORS 94.580 later than one year after the date on which the amendment is recorded. However, nothing in this subsection prevents the association from further amending an amended declaration or plat. [1981 c.782 §21]

94.595 Reserve account for replacing common property. (1) The declarant shall establish a reserve account for replacement of all items of common property which will normally require replacement, in whole or in part, in more than three and less than 30 years. The items may be identified in the reserve account as those which are insurable by a common carrier of all purpose risk insurance.

(2) A reserve account established under this section shall be funded by assessments against the individual lots for maintenance of items for which the reserves are established. The assessments under this subsection begin accruing from the date the first lot assessed is conveyed. These assessments may be shown as a separate item in the sales contract. The declarant may defer payment of the accrued assessment for a lot under this subsection until the date the lot is conveyed.

(3) The amounts assessed shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of those items.

(4) The reserve account shall be established in the name of the homeowners association. The association is responsible for administering the account and for making periodic payments into it. The association shall adjust the amount of the payments at regular intervals to reflect changes in current replacement costs over time.

(5) The account may be used only for replacement of common property and is to be kept separate from assessments for maintenance.

However, after the individual lot owners have assumed responsibility for administration of the planned community, the board of directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet other temporary expenses. Funds borrowed to meet temporary expenses under this subsection must be repaid later from special assessments or maintenance fees.

(6) Nothing in this section prohibits prudent investment of reserve account funds subject to any constraints imposed by the declaration, bylaws or rules of the association.

(7) Following the second year after the association has assumed administrative responsibility for the planned community under ORS 94.616, if owners of lots representing 75 percent of the votes of the planned community agree to the action, they may vote to increase, reduce or eliminate future assessments for the account.

(8) Assessments paid into the reserve account are the property of the association and are not refundable to sellers or owners of lots. The sellers or owners of lots may treat their outstanding share of the reserve account as a separate item in the sales contract. [1981 c.782 §15]

(Declarant Control; Turnover of Administrative Control)

94.600 Declarant control of association. Subject to ORS 94.604 to 94.621, a declaration of a planned community may provide for a period of control of the association by the declarant. Such control may include, but need not be limited to, allowing the declarant to allocate a greater number of votes to lots owned by the declarant, to appoint or remove members of the board of directors of the association or to approve an amendment to the declaration or bylaws after turnover. [1981 c.782 §11]

94.604 Transitional advisory committee. (1) As provided in this section, the declarant or the owners of a planned community shall form a transitional advisory committee to provide for the transition from administrative responsibility by the declarant of the planned community under ORS 94.600 to administrative responsibility by the association. Not later than the 60th day after the declarant has conveyed the lots representing 50 percent of the votes in a planned community, the declarant shall call a meeting of owners for the purpose of selecting a transitional advisory committee. The committee shall consist of three or more members. The owners, other than the declarant, shall select two or more members. The declarant may select no more than one member. The committee shall have reasonable access to all information and documents which the declarant is required to turn over to the association under ORS 94.616.

(2) An owner may call a meeting of owners to select the transitional advisory committee if the declarant fails to do so under subsection (1) of this section.

(3) Notwithstanding subsection (1) of this section, if the owners do not select members for the committee under subsection (1) of this section, the declarant shall have no further obligation to form the committee.

(4) The requirement for a transitional advisory committee shall not apply once the turnover meeting called under ORS 94.609 has been held. [1981 c.782 §64]

94.605 [Amended by 1965 c.619 §31; repealed by 1971 c.478 §1]

94.609 Notice of meeting to turn over administrative responsibility. (1) At the time specified in the declaration, but not later than 120 days after lots representing 75 percent of the votes have been conveyed, the declarant shall call a meeting for the purpose of turning over administrative responsibility for the planned community to the homeowners association.

(2) The declarant shall give notice of the meeting to each owner as provided in the bylaws.

(3) If the declarant does not call a meeting under this section within the required time, the transitional advisory committee formed under ORS 94.604 or any owner may call a meeting and give notice as required in this section. [1981 c.782 §65]

94.610 [Amended by 1965 c.619 §32; repealed by 1971 c.478 §1]

94.615 [Repealed by 1971 c.478 §1]

94.616 Turnover meeting; transfer of administration. (1) At the meeting called under ORS 94.609, the declarant shall turn over to the homeowners association the responsibility for the administration of the planned community, and the association shall accept the administrative responsibility from the declarant.

(2) The owners shall elect a board of directors in accordance with the bylaws of the association.

(3) At the meeting, called under ORS 94.609, the declarant shall deliver to the association:

(a) The original or a photocopy of the recorded declaration and copies of the bylaws and the articles of incorporation, if any, of the

planned community and any supplements and amendments to the articles or bylaws;

(b) A deed to the common property in the planned community, unless otherwise provided in the declaration;

(c) The minute books, including all minutes, and other books and records of the association and the board of directors;

(d) All rules and regulations adopted by the declarant;

(e) Resignations of officers and members of the board of directors who are required to resign because of the expiration of any period of declarant control reserved pursuant to ORS 94.600;

(f) A report on the present financial position of the association, consisting of a balance sheet and an income and expense statement for the 12-month period or a period following the recording of the declaration, whichever period is less;

(g) All funds of the association and control of the funds;

(h) All tangible personal property that is property of the association, and an inventory of the property;

(i) Records of all property tax payments for the common property to be administered by the association;

(j) Copies of any income tax returns filed by the declarant in the name of the association, and supporting records for the returns;

(k) All bank signature cards;

(L) The reserve account established in the name of the association under ORS 94.595;

(m) An operating budget for the portion of the planned community turned over to association administration and a budget for replacement and maintenance of the common property;

(n) A copy of the following, if available:

(A) The as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;

(B) The original specifications, indicating all subsequent material changes;

(C) The plans for underground site service, site grading, drainage and landscaping together with cable television drawings;

(D) Any other plans and information relevant to future repair or maintenance of the property; and

(E) A list of the general contractor and the electrical, heating and plumbing subcontractors responsible for construction or installation of common property;

(o) Insurance policies;

(p) Copies of any occupancy permits issued for the planned community;

(q) Any other permits issued by governmental bodies applicable to the planned community in force or issued within one year before the date on which the owners assume administrative responsibility;

(r) A list of any written warranties on the common property that are in effect and the names of the contractor, subcontractor or supplier who made the installation for which the warranty is in effect;

(s) A roster of owners and their addresses and telephone numbers, if known, as shown on the records of the declarant;

(t) Leases of the common property and any other leases to which the association is a party;

(u) Employment or service contracts in which the association is one of the contracting parties or service contracts in which the association or the owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service; and

(v) Any other contracts to which the homeowners association is a party.

(4) In order to facilitate an orderly transition, during the three-month period following the turnover meeting, the declarant or an informed representative shall be available to meet with the board of directors on at least three mutually acceptable dates to review the documents delivered under subsection (3) of this section. [1981 c.782 §67; 1983 c.206 §3]

94.620 [Repealed by 1971 c.478 §1]

94.621 Rights of declarant following turnover meeting. If a declarant has not completed development of lots or common property in a planned community at the time of the meeting called under ORS 94.609, the declarant may continue to hold the special declarant rights reserved under the declaration. A declarant may not amend the declaration to increase the scope of the rights of the declarant as originally reserved in the declaration filed before the conveyance of the first lot unless all owners consent to the amendment. [1981 c.782 §68]

(Homeowners Association; Management of Planned Community)

94.625 Formation of homeowners association; adoption of initial bylaws. Not later than the date on which the first lot in the planned community is conveyed, the declarant shall form a corporation or unincorporated association and shall adopt the initial bylaws under ORS 94.635. The bylaws may be recorded in the office of the recording officer in each county in which the planned community is located. Failure to comply with this section shall not invalidate a conveyance from the declarant to an owner. [1981 c.782 §35]

94.630 Powers of association. (1) Except as provided in subsection (2) of this section and in its declaration or bylaws, a homeowners association may:

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

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

(c) Hire and terminate managing agents and other employes, agents and independent contractors;

(d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more owners on matters affecting the planned community;

(e) Make contracts and incur liabilities;

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

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

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

(i) Grant easements, leases, licenses and concessions through or over the common property;

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

(k) Impose charges for late payment of assessments and, after giving notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws and rules of the association;

(L) Impose reasonable charges for the preparation and recordation of amendments to the declaration, and for preparation of the Statement of Planned Community Information required by ORS 94.750;

(m) Provide for the indemnification of its officers and the board of directors and maintain liability insurance for directors and officers;

(n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides; and

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

(2) Notwithstanding subsection (1) of this section, a declaration may not impose any limitation on the ability of the association to deal with a declarant that is more restrictive than the limitations imposed on the ability of the association to deal with any other person, except during the period of declarant control under ORS 94.600. [1981 c.782 §36]

94.635 Association bylaws. The bylaws of an association adopted under ORS 94.625, or amended or adopted under ORS 94.630, shall provide for the following:

(1) The organization of the association of owners in accordance with ORS 94.625 and 94.630, including when the initial meeting shall be held and the method of calling that meeting.

(2) The formation of a transitional advisory committee in accordance with ORS 94.604.

(3) The turnover meeting required under ORS 94.609, including the time by which the meeting shall be called, the method of calling the meeting, the right of an owner under ORS 94.609 (3) to call the meeting and a statement of the purpose of the meeting.

(4) The method of calling all other meetings of the owners and the percentage of votes that shall constitute a quorum, if less than 20 percent.

(5) The election of a board of directors from among the unit owners, the number of persons constituting the board, the powers and duties of the board, any compensation of the directors and the method of removing directors from office in accordance with ORS 94.640 (5).

(6) The terms of office of directors.

(7) The method of calling meetings of the board of directors in accordance with ORS 94.640 (7) and a statement that all meetings of the board of directors shall be open to owners.

(8) The offices of president, secretary and treasurer and any other offices of the association, and the method of selecting and removing officers and filling vacancies in the offices.

(9) The program for maintenance, upkeep and repair of the common property and the method of payment for the expense of the program including the method of approving payment vouchers.

(10) The employment of personnel necessary for the maintenance, upkeep and repair of the common property.

(11) The manner of collecting from the owners their share of the common expenses.

(12) Insurance coverage in accordance with ORS 94.675 and 94.685.

(13) The preparation and distribution of the annual financial statement required under ORS 94.670.

(14) The method of adopting administrative rules and regulations governing the details for the operation and use of the common property.

(15) The method of amending the bylaws subject to this section. The bylaws may require no greater than an affirmative majority of votes to amend any provision of the bylaws.

(16) If additional property is proposed to be annexed pursuant to ORS 94.580 (3), the method of apportioning common expenses if new lots are added during the course of the fiscal year.

(17) Any other details regarding the planned community that the declarant or the association consider desirable. However, if a provision required to be in the declaration under ORS 94.580 is included in the bylaws, the voting requirements for amending the declaration shall govern the amendment of that provision of the bylaws. [1981 c.782 §37]

94.640 Association board of directors; powers and duties; removal of member; meetings. (1) The board of directors of an association may act on behalf of the association except as limited by the declaration, the bylaws and subsection (2) of this section. In the performance of their duties, officers and members of the board of directors shall exercise the care required of fiduciaries.

(2) The board of directors may not act on behalf of the association to amend the declaration, terminate the planned community, elect members of the board of directors or determine the qualifications, powers, duties or terms of office of members of the board of directors. However, the board of directors may fill vacancies in its membership for the unexpired portion of any term.

(3) At least once every two years, the board of directors of an association shall review the insurance coverage of the association.

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

(5) Notwithstanding any contrary provision of the declaration or bylaws the owners may remove any member of the board of directors, other than members appointed by the declarant or persons who are ex officio directors, with or without cause, by a majority vote of all owners present and entitled to vote at any meeting of the owners at which a quorum is present. No removal of a director is effective unless the matter of removal is an item on the agenda and stated in the notice for the meeting required under ORS 94.650.

(6) All meetings of the board of directors of the association shall be open to owners.

(7) In a planned community in which the majority of the lots are the principal residences of the occupants, meetings shall be called as follows:

(a) For other than emergency meetings, notice of board of directors' meetings shall be posted at a place or places on the property at least three days prior to the meeting or notice shall be provided by a method otherwise reasonably calculated to inform lot owners of such meetings;

(b) Emergency meetings may be held without notice, if the reason for the emergency is stated in the minutes of the meeting; and

(c) Only emergency meetings of the board of directors may be conducted by telephonic communication.

(8) The board of directors, in the name of the association, shall maintain a current mailing address of the association. [1981 c.782 §38; 1983 c.206 §4]

94.645 Adoption of annual budget. Unless otherwise provided in the bylaws, the board of directors annually shall adopt a budget for the planned community as provided in this section. Within 30 days after adopting a proposed annual budget for the planned community, the board of directors shall provide a summary of the budget to all owners. If the board of directors is petitioned by owners representing 20 percent of the votes of the planned community, the board shall call a meeting of the owners to consider rejection of the budget. The date of the

meeting shall be not less than 14 or more than 30 days after the summary is provided to the owners. At the meeting, whether or not a quorum is present, the budget shall be adopted unless a majority of the votes of the planned community or any larger vote specified in the bylaws rejects the budget. If the proposed annual budget is rejected, the last annual budget shall continue in effect until the owners approve a subsequent budget. [1981 c.782 §39]

94.650 Annual meeting of lot owners; notice. (1) The homeowners association shall hold at least one meeting of the owners each calendar year. Special meetings of the association may be called by the president of the board of directors, a majority of the board of directors or a percentage of owners specified in the bylaws of the association. However, the bylaws may not require a percentage greater than 50 percent or less than 10 percent of the votes of the planned community for the purpose of calling a meeting.

(2) Not less than 10 or more than 50 days before any meeting called under this section, the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or mailed to the mailing address of each lot or to the mailing address designated in writing by the owner, and to all mortgagees that have requested such notice. Mortgagees may designate a representative to attend a meeting called under this section. The notice shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes or any proposal to remove a director or officer. [1981 c.782 §40]

94.655 Quorum for association meetings. Unless the bylaws of a homeowners association provide otherwise, a quorum for any meeting of the association shall consist of the number of persons who are entitled to cast 20 percent of the votes which may be cast for election of the board of directors and who are present in person or by proxy at the beginning of the meeting. [1981 c.782 §41]

94.660 Voting; proxy voting. The vote or votes of a lot may be cast by absentee ballot or pursuant to a proxy executed by the owner. An owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one year after its date unless the proxy specifies a shorter term. [1981 c.782 §42]

94.665 Authority of association to sell or transfer common property. (1) Except as otherwise provided in the declaration, a homeowners association may sell, convey or subject to a security interest any portion of the common property if 80 percent or more of the votes in the homeowners association, including 80 percent of the votes of lots not owned by a declarant at the time of the vote, are cast in favor of that action. The association shall treat proceeds of any sale under this section as an asset of the association. This section does not apply to the granting of easements for public utilities or for other public purposes consistent with the intended use of such common property by the planned community.

(2) A sale, transfer or encumbrance of the common property or any portion of the common property made pursuant to a right reserved in the declaration under this section may provide that the common property be released from any restriction imposed on the common property by the declaration. However, a sale, transfer or encumbrance may not deprive any lot of its right of access or support without the consent of the owner of the lot. [1981 c.782 §47]

94.670 Association duty to keep documents and records; examination by owner. (1) A homeowners association shall retain the documents, information and records delivered to the association under ORS 94.616.

(2) The association shall keep financial records sufficiently detailed for proper accounting purposes. Within 90 days after the end of the fiscal year, the board of directors shall distribute to each owner and, upon written request, any mortgagee of a lot, a copy of the annual financial statement consisting of a balance sheet and income and expenses statement for the preceding fiscal year.

(3) The association shall make the documents, information and records described in subsections (1) and (2) of this section and all other records of the association reasonably available for examination by an owner and any mortgagee of a lot. Upon the written request of an owner or mortgagee of a lot, the association shall make available during reasonable hours all such records for duplication. The association shall maintain a copy, suitable for the purpose of duplication, of the following:

(a) The declaration, bylaws, association rules and regulations and any amendments or supplements to them.

(b) The most recent financial statement prepared pursuant to subsection (1) of this section.

(c) The current operating budget of the association.

(4) The association, within 14 days after receiving a written request from an owner, the declarant or a prospective purchaser, shall furnish a copy of the Statement of Planned Community Information prepared in accordance with ORS 94.750.

(5) Upon written request of a prospective purchaser, the association shall make available for examination and duplication during reasonable hours the documents and information specified in paragraphs (a), (b) and (c) of subsection (3) of this section.

(6) The association may charge a reasonable fee for furnishing copies of any documents, information or records described in this section. [1981 c.782 §48]

94.673 When compliance with ORS 94.640 and 94.670 required. (1) The homeowners association of a subdivision that received preliminary plat approval before July 1, 1982, shall comply with the provisions of ORS 94.640 (1), (3), (4), (6), (7), (8) and 94.670 if:

(a) An owner submits a written request to the homeowners association to comply with the provisions;

(b) The subdivision otherwise conforms to the description of a planned community under ORS 94.550; and

(c) The subdivision is not otherwise exempted under ORS 94.570.

(2) A homeowners association board of directors is not subject to ORS 94.780 unless the association fails to comply with subsection (1) of this section after receiving a written request from an owner. [1983 c.206 §6]

94.675 Insurance for common property. (1) The board of directors of an association shall obtain:

(a) Insurance for all insurable improvements in the common property against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief. The insurance shall cover the full replacement costs of any repair or reconstruction in the event of damage or destruction from any such hazard if the insurance is available at reasonable cost; and

(b) A public liability policy covering all common property and all damage or injury caused by the negligence of the association.

(2) Premiums for insurance obtained under this section shall be a common expense of the association. The policy may contain a reasonable deductible and the amount thereof shall be added to the face amount of the policy in determining whether the insurance equals at least the full replacement cost. [1981 c.782 §51]

94.677 Election to have ORS 94.645, 94.655 and 94.675 apply. Unless contrary to the covenants, conditions or restrictions of a recorded declaration or other similar instrument, or the bylaws of the association adopted in accordance with documents governing the association, the homeowners association board of directors of a subdivision described in ORS 94.673 (1) may elect to be governed by ORS 94.645, 94.655 and 94.675, without further action by the association. [1983 c.206 §7]

94.680 Blanket all-risk insurance. (1) If a declaration provides that the homeowners association has the sole authority to decide whether to repair or reconstruct a unit that has suffered damage or whether a unit must be repaired or reconstructed, the board of directors may obtain blanket all-risk insurance for the full replacement cost of all structures in the planned community. Cost of the coverage shall be a common expense to the association.

(2) If the declaration contains a provision described in subsection (1) of this section, the declaration also shall provide:

(a) Requirements of or limitations on repairing or reconstructing damaged or destroyed property;

(b) The time within which the repair or reconstruction must begin; and

(c) The actions the board of directors must take if:

(A) Damage or destruction is not repaired or replaced; or

(B) Insurance proceeds exceed or fall short of the costs of repair or reconstruction. [1981 c.782 §52]

94.685 Specification of insurance for individual lots. Unless provided in the declaration, the bylaws shall specify:

(1) The insurance an owner must obtain;

(2) The insurance an individual owner is precluded from obtaining; and

(3) Whether or not the insurance coverage obtained and maintained by the board of directors may be brought into contribution with insurance bought by owners or their mortgagees. [1981 c.782 §54]

94.690 Terms of insurance under ORS 94.680. The board of directors of a homeowners association shall obtain, if reasonably available, terms in insurance policies under ORS 94.680 which provide:

(1) A waiver of subrogation by the insurer as to any claims against the board of directors of the association, any owner or any guest of an owner;

(2) A waiver by the insurer of its right to repair and reconstruct instead of paying cash;

(3) That no policy may be canceled, invalidated or suspended because of any action of an owner;

(4) That no policy may be canceled, invalidated or suspended because of the conduct of any director, officer or employe of the association unless the insurer gives the association a prior written demand that the association correct the defect and allows the association a reasonable time to make the correction; and

(5) That any "other insurance" clause in any policy shall exclude from its coverage all owners' policies. [1981 c.782 §56]

94.695 Authority to delegate association powers to master association. A declaration for a planned community may delegate any of the powers of the homeowners association under ORS 94.630 to a master association or provide that the master association may exercise any such power. [1981 c.782 §62]

94.700 Duration and termination of initial management agreements and service and employment contracts. (1) If entered into prior to the meeting called under ORS 94.609, no management agreement, service contract or employment contract which is directly made by or on behalf of the association, the board of directors or the owners as a group shall be in excess of three years.

(2) Any contract or agreement subject to subsection (1) of this section and entered into after July 1, 1982, may terminate without penalty to the declarant, the association or the board of directors elected under ORS 94.616 if the board of directors gives not less than 30 days written notice of termination to the other party not later than 60 days after the meeting called under ORS 94.609. [1981 c.782 §69]

(Assessments and Liens Against Lots; Easements)

94.704 Assessment and payment of common expenses. (1) The declarant of a planned community shall pay all common expenses of the planned community until the individual lots are assessed for common expenses.

(2) Except for assessments under subsections (3), (4) and (5) of this section, the board of directors shall assess all common expenses against all the lots according to the allocations stated in the declaration. Any common expense assessment or any instalment of the assessment past due shall bear interest at the rate established by resolution of the board of directors. Nothing in this section prohibits the board from making compromises on overdue assessments if the compromise benefits the association.

(3) Any common expense or any part of a common expense benefiting fewer than all of the lots may be assessed exclusively against the units benefited.

(4) Assessments to pay a judgment against the association may be made only against the lots existing in the planned community at the time the judgment was entered and only in proportion to their common expense liabilities.

(5) If any common expense is clearly the fault of any owner, the homeowners association may assess the expense exclusively against the lot of the owner.

(6) If the homeowners association reallocates common expense liabilities, any common expense assessment and any instalment of the assessment not yet due shall be recalculated according to the reallocated common expense liabilities. [1981 c.782 §43]

94.705 [Repealed by 1971 c.478 §1]

94.709 Liens against lots; priority; duration; statement of unpaid assessments; action in lieu of lien foreclosure. (1) As provided in this section, the homeowners association of a planned community has a lien on a lot for any assessment levied against the lot or any fines imposed under the declaration or bylaws against the owner of the lot from the date on which the assessment or fine is due. The provisions regarding the attachment, notice, recordation and duration of liens established on real property under ORS 87.352 to 87.382 and provisions regarding the foreclosure of liens under ORS chapter 88 apply to a lien created under this section. Unless the declaration otherwise provides, the homeowners association may enforce as assessments under this section any fees, charges, late charges or interest charged

under ORS 94.630 (1)(j), (k) and (L). If an assessment is payable in instalments, the full amount of the assessment is a lien from the date the first instalment of the assessment becomes due.

(2) A lien created under subsection (1) of this section is prior to a homestead exemption and all other liens and encumbrances on a lot, except:

(a) A first mortgage or trust deed of record;

(b) A lien for real estate taxes and other governmental assessments or charges; and

(c) Liens and encumbrances recorded before the recordation of the declaration.

(3) Unless the declaration provides otherwise, if two or more associations have liens for assessments created at any time on the same real estate, the liens have equal priority.

(4) A lien created under subsection (1) of this section is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

(5) This section does not prohibit an association from pursuing an action to recover sums for which subsection (1) of this section creates a lien or from taking a deed in lieu of foreclosure in satisfaction of the lien.

(6) The homeowners association shall furnish to an owner upon the owner's written request, a recordable statement of the amount of unpaid assessments against the lot. The association shall furnish the statement within 10 business days after receiving the request. The statement is binding on the association, the board of directors and every owner as to the amounts of the unpaid assessments.

(7) An action to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the lien securing the claim for common expenses. However, recovery on the action operates to satisfy the lien, or the portion thereof, for which recovery is made. [1981 c.782 §44]

94.710 [Repealed by 1971 c.478 §1]

94.715 [Repealed by 1971 c.478 §1]

94.716 Lien against two or more lots; release. If a lien against two or more lots of the planned community becomes due, whether the lien is perfected before or after establishment of the planned community, the owner of an affected lot may pay the lienholder the portion of the lien attributable to the lot. Upon receipt of payment, the lienholder promptly shall deliver to the owner a release of the lien as to that lot. The amount of the payment shall be proportionate to the ratio which that owner's common expense liability bears to the common expense liabilities of all owners whose lots are subject to the lien. After payment, the association may not assess or have a lien against that owner's lot for any portion of the common expense liability representing the lien. This section applies to all liens except a mortgage. [1981 c.782 §45]

94.720 [Repealed by 1971 c.478 §1]

94.723 Common expenses; liability of first mortgagee. If a first mortgagee acquires a lot in a planned community by foreclosure or deed in lieu of foreclosure, the mortgagee and subsequent purchaser shall not be liable for any of the common expenses chargeable to the lot which became due before the mortgagee or purchaser acquired title to the lot. [1981 c.782 §46]

94.725 [Repealed by 1971 c.478 §1]

94.728 Taxation of lots and common property. (1) Each lot in a planned community constitutes for all purposes a separate parcel of real estate and shall be separately taxed and assessed.

(2) No separate tax or assessment may be levied against any common property which a declarant has reserved no right to develop into additional lots.

(3) The declarant alone is liable for payment of taxes or assessments on any portion of the common property of a planned community in which the declarant has reserved the right to develop the property into additional lots, until the right terminates or expires, or is exercised, abandoned or relinquished.

(4) If the right described under subsection (3) of this section terminates or expires or is abandoned or relinquished before July 1 of any year, no tax or assessment shall be imposed against the portion of the common property so affected for the next tax year beginning on July 1. [1981 c.782 §34]

94.730 [Repealed by 1971 c.478 §1]

94.733 Easements held by owner of lot and by declarant. (1) Subject to ORS 94.665, each owner of a lot has an easement through the common property:

(a) For access to the owner's lot; and

(b) For use of the common property consistent with the declaration and the bylaws.

(2) Except as provided in the declaration, a declarant has an easement through the common property as may be necessary for discharging the

declarant's obligations or exercising any special declarant right.

(3) If an encroachment results from construction, reconstruction, repair, shifting, settlement or movement of any portion of the planned community, an easement for the encroachment exists to the extent that any lot or common property encroaches on any other lot or common property. An easement continues for maintaining the encroachment so long as the encroachment exists. Nothing in this section relieves an owner of liability in case of the owner's wilful misconduct or relieves a declarant or any other person of liability for failure to adhere to the plat of the planned community. [1981 c.782 §33]

(Regulation of Sales; Required Documents)

94.740 Documents to be delivered to purchaser by seller. (1) A declarant selling a lot in a planned community shall deliver the following documents to the purchaser not later than the time the initial sales agreement is signed by all parties:

(a) The Statement of Declarant's Interest described in ORS 94.745;

(b) The Statement of Planned Community Information described in ORS 94.750;

(c) A copy of the declaration and any supplements or amendments to the declaration affecting the lot or the common property;

(d) A copy of the bylaws and any rules and regulations of the planned community; and

(e) A notice to the purchaser of the right of cancellation described in ORS 94.755.

(2) A purchaser for resale shall deliver all of the statements and documents in subsection (1) of this section except for the Statement of Declarant Interest.

(3) Any other person selling a unit shall assist a prospective purchaser in securing the Statement of Planned Community Information under ORS 94.750 that the association is required to provide upon written request under ORS 94.670. [1981 c.782 §74]

94.745 Statement of Declarant's Interest. The Statement of Declarant's Interest required under ORS 94.740 shall include the following information and shall be substantially in the following form:

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(1) This project _____ consists of _____ units and _____ lots.

(2) The declarant (hereinafter called the "developer" for purposes of this summary) has _____ has not _____ agreed in the declaration to add either improvements or lots, or both, in the present or any future phase. OR the developer has neither agreed to make any additions nor limited the right to do so _____. See p. _____ (Declaration).

(3) The developer controls the project until the lots representing _____ percent of the votes (in this phase) _____ (in all phases) _____ have been sold to owners other than the developer, or until _____ years after the sale of the first lot, or _____. See p. ___ (Declaration).

(4) In addition to retaining the right to add more lots, the developer may retain certain other rights after the association elected by the homeowners has assumed administrative responsibility. See Developer's Rights, p. _____ (Declaration).

(5) The declaration requires the developer to deed _____ the common property to the association or to lease the common property to the association with a negotiable lease ____ nonnegotiable lease ____. See p. ____ (Declaration).

(6) The following liens exist on the property and will be removed by the dates shown:

(liens)	(removal date)
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(7) As used in this statement, "phase" means a group of lots in a planned community that the developer designates as such in the declaration, by reference to lot numbers on the plat.

[1981 c.782 §78]

94.750 Statement of Planned Community Information. (1) The Statement of Planned Community Information required under ORS 94.670 consists of two parts, the "Current Status of Homeowners Association" part and the "Standard Form" part, and shall conform to the requirements of this section. The association shall amend the Standard Form when amendments to information contained in the form are made to the declaration or bylaws. The associa-

tion shall keep the Current Status report current on an annual basis, except that items (1) and (2) of the report must be kept current within 60 days. The Statement of Planned Community Information shall follow the following format:

CURRENT STATUS OF
HOMEOWNERS ASSOCIATION

(1) The current annual assessment on lot _____ (lot number or address) is $_____ for maintenance and operation and $_____ for replacement reserves for the common property subject to regular replacement.

(2) There are unpaid assessments on this lot of $_____.

(3) The association anticipates the following capital expenditures in the next two years that may require a special assessment:

(a) None _____.

(b) See attached explanation #_____.

(4) The association is _____ is not _____ a party to any pending lawsuits or judgments. If the association is so involved, see attached explanation #_____.

(5) The lot identified in "1" above (a) has ___ (b) has not _____ had improvements or alterations made by the prior lot owners in violation of the declaration. If (a) is checked, see attached explanation #_____.

(6) The common property has:

(a) Been deeded to the association _____.

(b) Been leased in whole or in part to the association _____. If (b) is checked, see attached explanation #_____, detailing whether the leasehold is negotiable, the term of the leasehold, and whether it is renewable.

(7) Information about insurance coverage may be obtained from:

_____(Agent)

_____(Address of Agent).

(8) Information about the operation of the association is available by calling _____(Name of manager or person designated to speak for the board.) at _____.

_____

_____

STANDARD FORM

(1) _____ (Name of Planned Community) is operated by a board of directors selected by the lot owners _____ OR is operated by a board of directors selected by the declarant. (The declarant is the person or persons who created the planned community.) _____.

(2) The declarant will turn over responsibility for the planned community to the lot owners when _____.

(3) The board of directors is responsible for maintaining the common property, establishing reserves for replacement of common property, insuring the common property and otherwise managing the business affairs of the association of owners.

(4) The board annually prepares a budget and can assess the lot owners to collect fees to meet the budget. The board can impose a lien on a lot owner's property and impose fines for nonpayment of fees.

(5) You should read carefully the contents of the Statement of Planned Community Information. You should also read the declaration, bylaws and rules so that you understand your rights and obligations under this form of home ownership.

(6) Items of particular interest that are included in the declaration or bylaws are these:

(a) A _____ percent vote is required to amend the declaration.

(b) A _____ percent vote is required to amend the bylaws.

(c) In this planned community:

Pets are _____ are not _____ allowed. A _____ percent vote is required to change this rule.

Children are _____ are not _____ allowed. A percent vote is required to change this rule.

Renting the dwelling on your lot is _____ is not _____ allowed. A _____ percent vote is required to change this rule.

The number of people who can live in your unit is _____ is not _____ limited to _____. A _____ percent vote is required to change this rule.

(d) In this planned community the association is responsible for the following items (if checked):

(A) Exterior structure maintenance _____.

(B) Landscaping _____.

(C) Walkways _____.

(D) The following recreation facilities:

_____

_____

(List or write "None") _____

(E) The following utilities (if checked): streets _____; sewers _____; water supply _____; street lights _____; other _____.

(e) There are _____ are not _____ limitations on your right to alter the structure(s) on your lot or to build a different structure(s) if yours is damaged or destroyed.

(f) The association does _____ does not _____ have the right of first refusal in the event you wish to sell your lot.

(g) There are _____ are not _____ other restrictions on your right to sell your lot. If there are such restrictions, see attached explanation #_____.

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(2) The declarant shall maintain and provide the Statement of Planned Community Information until the date of the meeting to turn over control of the planned community under ORS 94.609. After that date, the homeowners association shall maintain and provide the statement. [1981 c.782 §76; 1983 c.740 §8]

94.755 Notice to purchaser. The "Notice to Purchaser" required under ORS 94.740 shall be in the following form:

NOTICE TO PURCHASER
(RIGHT OF CANCELLATION)

BY SIGNING THIS AGREEMENT YOU ARE INCURRING A CONTRACTUAL OBLIGATION TO PURCHASE A LOT IN A PLANNED COMMUNITY. YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT FOR ANY REASON UNTIL FIVE BUSINESS DAYS AFTER YOU HAVE RECEIVED THIS NOTICE. TO CANCEL THIS AGREEMENT, YOU MUST GIVE WRITTEN NOTICE TO THE DEVELOPER OR THE AGENT OF THE DEVELOPER AT THE FOLLOWING ADDRESS: _____

[1981 c.782 §82]

94.760 Promotional material showing possible improvements. If a declarant makes no commitment in the declaration to build an improvement or specifically states in the declaration that the declarant makes no commitment either to build or not to build the improvement, no person may display or deliver promotional material to prospective purchasers which describes or portrays the improvement unless the description or portrayal is conspicuously labeled "POSSIBLE Improvement." [1981 c.782 §79]

94.765 Cancellation of sale of lot; notice to seller; return of payments and reconveyance; removal of encumbrances; termination of right to cancel; waiver ineffective. (1) Any purchaser of a lot from the declarant may cancel for any reason any contract, agreement or any evidence of indebtedness associated with the sale of the lot not later than the fifth business day after the purchaser has received the notice required under ORS 94.755.

(2) Cancellation under subsection (1) of this section occurs when the purchaser of an interest gives written notice of cancellation to the declarant at the declarant's address.

(3) A notice of cancellation given by a purchaser of a lot need not take a particular form and is sufficient if it indicates the intention of the purchaser not to be bound by the contract or evidence of indebtedness.

(4) If a purchaser gives notice of cancellation by mail, the notice shall be given by certified mail, return receipt requested. A notice mailed under this subsection is effective on the date that the notice is deposited with the United States Postal Service, properly addressed and postage prepaid.

(5) Upon receipt of a timely notice of cancellation, the declarant immediately shall return all payments received from the purchaser. If a payment is made by check, the declarant need not return the payment to a purchaser until the check is finally paid as provided in ORS 74.2130. Upon the declarant's return of all such payments the purchaser immediately shall transfer to the declarant whatever rights the purchaser holds in the lot, and shall remove any encumbrance created or suffered by the purchaser. In the case of cancellation of any evidence of indebtedness by the purchaser, the purchaser shall return the purchaser's copy of the executed evidence of indebtedness to the declarant, and the declarant shall cancel the evidence of indebtedness. Any encumbrances against the purchaser's interest in the lot arising by operation of law from an obligation of the purchaser existing prior to transfer of the interest to the purchaser shall be extinguished by the reconveyance.

(6) A purchaser's right to cancel under this section terminates at the time of the closing of the transaction for the purchase of the lot.

(7) No act of a purchaser shall be effective to waive the right of cancellation granted by subsection (1) of this section. [1981 c.782 §81]

(Miscellaneous)

94.770 Application of rule against perpetuities; conflict between declaration and bylaws; effect on title of declaration's insubstantial noncompliance with Planned Community Act. (1) The rule against perpetuities may not be applied to defeat any provision of the declaration, or any bylaws or rules adopted under ORS 94.630.

(2) In the event of a conflict between the declaration and the bylaws of a planned community or between the declaration and the articles of incorporation, the declaration shall prevail except to the extent the declaration is inconsistent with ORS 94.550 to 94.783.

(3) Title to a unit, lot and common property shall not be rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with ORS 94.550 to 94.783. [1981 c.782 §86]

94.775 Judicial partition prohibited. No judicial partition may be allowed of any property in a planned community, nor may any person acquiring any interest in any damaged or destroyed property in the planned community seek a judicial partition unless the declarant or the homeowners association has removed the property from the provisions of the declaration. [1981 c.782 §87]

94.780 Remedies. (1) Intentional and deliberate failure of the declarant, association, any association member or any other person subject to ORS 94.550 to 94.783 to comply with applicable sections of ORS 94.550 to 94.785 shall be cause for suit or action to remedy the violation or to recover actual damages. The prevailing party is entitled to reasonable attorney fees and court costs.

(2) Failure of an association to accept administrative responsibility under ORS 94.616 shall be a defense for the declarant against an action brought under this section.

(3) A receipt signed by the purchaser for documents required to be delivered by the seller in ORS 94.740 shall be a defense for the seller in an action against the seller for nondelivery of the documents.

(4) A suit or action arising under this section must be commenced within one year after the discovery or identification of the alleged violation. [1981 c.782 §83]

94.783 When certain administrative provisions apply. If a subdivision received preliminary plat approval before July 1, 1982, but the subdivision plat or the plat of the first phase is not filed under ORS 92.120 before January 1, 1984, the provisions of ORS 94.595, 94.604, 94.609, 94.616, 94.700, 94.745, 94.750, 94.755, 94.760 and 94.780 shall apply to the planned community. [1983 c.206 §8]

94.785 Short title. ORS 94.550 to 94.783 may be cited as the Oregon Planned Community Act. [1981 c.782 §1]

TIMESHARE ESTATES
(General Provisions)

94.803 Definitions for 94.803 to 94.945. As used in this section and ORS 94.807 to 94.945:

(1) "Accommodation" means an apartment, condominium unit, cabin, house, lodge, hotel or motel room or other private or commercial structure situated on real property and designed for residential occupancy.

(2) "Assessment" means the pro rata share assessed from time to time against each owner of a timeshare by the managing entity to pay for common expenses.

(3) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance, mechanic's lien or otherwise, securing or evidencing the payment of money and affecting more than one timeshare, or an agreement affecting more than one timeshare by which the developer holds the timeshare property under an option, leasehold, contract to sell or trust agreement.

(4) "Commissioner" means the Real Estate Commissioner.

(5) "Common expenses" means:

(a) Expenses of administration, maintenance, repair or replacement of the accommodations and facilities of the timeshare plan;

(b) Expenses agreed upon as common by all the timeshare owners in the timeshare plan; and

(c) Expenses declared common by the timeshare instrument or bylaws of the timeshare plan.

(6) "Developer" means a person creating a timeshare plan and a seller of a timeshare plan.

(7) "Division" means the Real Estate Division.

(8) "Exchange program" means any opportunity for a purchaser to exchange timeshare peri-

ods among purchasers in the same or other timeshare plans.

(9) "Facility" means a structure, service, improvement or real property available for the owner's use.

(10) "Managing entity" means the person designated in the timeshare instrument or selected by the owners' association board or by the owners to manage all or a portion of the timeshare plan.

(11) "Negotiate" means any activity preliminary to the execution of a binding agreement for the sale of a timeshare, including but not limited to advertising, solicitation and promotion of the sale of the timeshare.

(12) "Offering" means any advertisement, inducement, solicitation or attempt to encourage a person to acquire a timeshare, other than as a security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a timeshare in property located outside this state is not an offering if the advertisement states that the offering is valid only if made in compliance with the law of the jurisdiction in which the offer is disseminated.

(13) "Owner" means a person, other than the developer, to whom a timeshare has been conveyed other than as security for an obligation.

(14) "Project" means real property subject to a timeshare instrument. A project may include accommodations that are not timeshare accommodations.

(15) "Purchaser" means any person, other than a developer, who by voluntary transfer acquires an interest in a timeshare other than as security for an obligation.

(16) "Sale" means a transaction that conveys a timeshare other than as security for an obligation, including, but not limited to a lease or assignment.

(17) "Seller" means a person who offers a timeshare for sale to the public. "Seller" does not include a person who acquired a timeshare for the person's own use and later offers it for resale.

(18) "Timeshare" means a timeshare estate or a timeshare license.

(19) "Timeshare agreement" means an agreement conferring the rights and obligations of the timeshare plan on a purchaser including but not limited to a deed, lease and vacation license.

(20) "Timeshare estate" means a right to occupy an accommodation during five or more separated timeshare periods over a period of at least five years, including renewal options, coupled with a freehold estate or an estate for years in the timeshare property.

(21) "Timeshare instrument" means a document creating or regulating timeshares.

(22) "Timeshare license" means a right to occupy an accommodation during five or more separated timeshare periods over a period of more than three years, including renewal options, not coupled with a freehold estate or an estate for years.

(23) "Timeshare period" means the period of time when an owner is entitled to possess and occupy accommodations or facilities of a timeshare plan.

(24) "Timeshare plan" means an arrangement, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement or otherwise, in which an owner receives a timeshare estate or a timeshare license and the right to use accommodations and facilities that are part of the timeshare property. A timeshare plan does not include an exchange program.

(25) "Timeshare property" means one or more accommodations subject to the same timeshare instrument and any other real estate or rights appurtenant to those accommodations. [1983 c.530 §2]

94.805 [Repealed by 1971 c.478 §1]

94.806 Legislative finding. The Legislative Assembly finds and declares that there is a need to:

(1) Protect timeshare purchasers by requiring full and adequate disclosure of all pertinent facts about the timeshare plan; and

(2) Provide reasonable regulation of the timeshare industry while encouraging the growth and development of the industry in Oregon. [1983 c.530 §1]

94.807 Application. ORS 94.803, 94.806 and 94.811 to 94.945 do not apply to:

(1) Any timeshare plan for which the developer has complied with the requirements of ORS 92.305 to 92.495 or 94.004 to 94.480 before July 28, 1983.

(2) Any timeshare plan for which the developer has complied with all applicable local regulations and has submitted a completed filing under ORS 92.305 to 92.495 or 94.004 to 94.480 before July 28, 1983.

(3) Any subsequent phase or stage of a timeshare plan described in subsection (1) or (2) of this section that has complied with the applicable requirements of ORS chapter 92 and this

chapter in effect prior to July 28, 1983. However, the developer of the phase or stage must comply with the cancellation provisions of ORS 94.836 and 94.839.

(4) Subdivided land as defined by ORS 92.305 (9), a planned community as defined by ORS 94.550 (9) and a condominium subject to ORS 94.004 to 94.480 that does not involve a timeshare plan.

(5) Subdivided land as defined by ORS 92.305 (9), a planned community as defined by ORS 94.550 (9) and a condominium subject to ORS 94.004 to 94.480, that involves a timeshare plan to the extent of the nontimesharing plan aspects of the development. The developer of such a development must comply with the applicable requirements of ORS chapter 92 and this chapter in addition to ORS 94.803, 94.806 and 94.811 to 94.945.

(6) Any transaction normal and customary in the hotel and motel business involving the acceptance of advance reservations which are not entered into for the purpose of evading the provisions of ORS 92.325, 94.425, 94.004, 94.029, 94.078, 94.195, 94.570, 94.803 to 94.945 and 696.490.

(7) The offering, sale or transfer of a timeshare in a timeshare plan comprised of 12 timeshares or less unless the commissioner determines that the developer is attempting by a common scheme or course of development to evade the provisions of ORS 92.325, 94.425, 94.004, 94.029, 94.078, 94.195, 94.570, 94.803 to 94.945 and 696.490.

(8) The transfer of a timeshare by reason of a foreclosure action, by deed in lieu of foreclosure, by gift or by devise, descent or distribution or transfer to an inter vivos trust that is not made to evade ORS 94.803 and 94.807 to 94.945.

(9) The offering, sale or transfer of a membership or interest in a recreational vehicle park or campground that provides no right to use or occupy a residential dwelling structure in the project overnight.

(10) The offering, sale or transfer of a membership or interest entitling the purchaser to a timeshare in personal property, including but not limited to an airplane, boat or recreational vehicle.

(11) The offering, sale or transfer of a membership or interest entitling the purchaser to use real property and facilities without overnight use for dwelling purposes, including but not limited to commercial office, retail or similar space and golf, tennis or athletic clubs. [1983 c.530 §3]

94.810 [Repealed by 1971 c.478 §1]

94.811 When condominium or planned community owners may prohibit timeshare plan. (1) The unit owners in a condominium subject to the Oregon Condominium Act and the owners in a planned community subject to the Oregon Planned Community Act may amend the declaration for the condominium or planned community to prohibit the creation of a timeshare plan involving any portion of the property of the condominium or planned community. Any amendment to a condominium declaration must comply with ORS 94.059 and any amendment to a planned community declaration must comply with ORS 94.590.

(2) The owners of land in a subdivision may amend the recorded declaration, bylaws or other governing document for the subdivision to prohibit the creation of a timeshare plan involving any portion of the property within the subdivision. The amendment must be approved by not less than 75 percent of the owners or by any larger percentage specified for the amendment in the recorded declaration, bylaws or other governing document for the subdivision. As used in this subsection, "subdivision" means a subdivision as defined by ORS 92.010, that:

(a) Was approved and for which a plat was recorded under ORS 92.120 before July 28, 1983;

(b) At the time of the subdivision's creation, would have met the definition of a planned community under ORS 94.550 (9); and

(c) Is not, because of the time of its creation, a planned community subject to the Oregon Planned Community Act.

(3) The declaration for a condominium subject to the Oregon Condominium Act and created after July 28, 1983, and the declaration for a planned community, subject to the Oregon Planned Community Act and created after July 28, 1983, may include a provision prohibiting the creation of a timeshare plan involving any portion of the property of the condominium or planned community. [1983 c.530 §4]

(Creation of Timeshare Estates)

94.813 Character of timeshare estate. (1) Except as expressly modified by ORS 92.325, 92.425, 94.004, 94.029, 94.078, 94.195, 94.570, 94.803 to 94.945 and 696.490, a timeshare estate is an estate in real property and has the character and incidents of an estate in fee simple at common law or estate for years if a leasehold. A timeshare license is an estate for years having the character and incidents of such an estate at common law.

(2) A document transferring or encumbering a timeshare may not be rejected for recordation because of the nature or duration of the interest.

(3) Neither a timeshare plan nor a timeshare, subject to regulation under ORS 94.803 and 94.807 to 94.945 is a "security," as defined in ORS 59.015 (13). [1983 c.530 §§4a, 5]

94.815 [Repealed by 1971 c.478 §1]

94.816 Partition prohibited; exception. (1) Except as otherwise provided in this section, no judicial action for partition of a timeshare property may be undertaken as long as the property remains subject to a timeshare plan.

(2) If any timeshare is owned by two or more persons as tenants in common, as tenants by the entirety or as tenants with rights of survivorship, nothing in this section shall prohibit the judicial sale of the timeshare in lieu of partition as between the cotenants.

(3) A court of competent jurisdiction, on petition of the developer of a timeshare plan or the developer's successor in interest, may grant a waiver of the prohibition against partition under subsection (1) of this section, if the court is satisfied that:

(a) The developer retains at least 50 percent of the timeshares created in the timeshare plan;

(b) The timeshare plan has failed and the continuation of the use of timeshare property by timeshare owners is no longer possible in the manner prescribed by the timeshare instruments;

(c) It is in the best interest of timeshare owners to terminate the timeshare plan and that no reasonable alternative to partition of the timeshare property exists;

(d) The petition has not been brought by the developer to avoid the developer's responsibilities under the timeshare instrument without good cause; and

(e) The holder of each blanket encumbrance consents to the proceeding under this section.

(4) Except as otherwise provided in subsection (5) of this section, upon a court declaration of timeshare plan failure under subsection (3) of this section, the court shall proceed to partition the timeshare property as otherwise provided by law.

(5) In the event of a court ordered sale in connection with partition, proceeds of the sale shall be applied in the following order:

(a) Costs described in ORS 105.285 (1) and (2);

(b) Repayment to owners except the developer of down payments and payments of principal and interest paid by such owners for their timeshares less the value, as determined by the court, of the owners' use of their timeshares;

(c) Payments to satisfy and discharge the remaining timeshare purchase money obligations of all owners except the developer. If the developer or an entity closely related to the developer holds the beneficial interest in any of such purchase money obligations, funds shall first be applied to discharge the purchase money obligations held by other holders, and then to the credit of the developer and its related entity for purchase money obligations held by the developer or such entity. Funds paid to the developer or the related entity's credit shall be held by the court as proceeds available to lienholders and other claimants in such partition. If there are insufficient funds to fully discharge purchase money obligations of all owners except the developer, the balance of unsatisfied purchase money obligations of all owners except the developer shall be discharged by decree of the court; and

(d) As otherwise provided by law. [1983 c.530 §6]

94.818 Recording of timeshare instrument. (1) To submit property located within this state to the provisions of ORS 94.803 and 94.807 to 94.945, the developer shall record a timeshare instrument in the office of the recording officer of every county in which the timeshare property is located. To submit property located outside this state to the provisions of ORS 94.803 and 94.807 to 94.945, the developer shall satisfy the requirements of ORS 94.885 for the recording of a notice of timeshare plan. The timeshare instrument shall comply with ORS 94.821 and shall be executed in accordance with subsection (2) of this section and acknowledged in the manner provided for acknowledgment of a deed.

(2) If the developer is not the fee owner of the property, the fee owner and the vendor under any contract of sale and the lessor under any lease shall also execute the timeshare instrument for the purpose of consenting to the property being submitted to the provisions of ORS 94.803 and 94.807 to 94.945. [1983 c.530 §7]

94.820 [Repealed by 1971 c.478 §1]

94.821 Content of timeshare instrument. A timeshare instrument shall include:

(1) A legal description of the timeshare property;

(2) The name or other identification of the project;

(3) Identification of timeshare periods by letter, name, number or a combination of letters, names and numbers and a description of the timeshare;

(4) Identification of the accommodations;

(5) The method for determining the owner's liability for common expenses;

(6) If additional accommodations may become part of the timeshare property or existing accommodations may be deleted from the timeshare property, the method for adding them to or deleting them from the property and the formula for allocation and reallocation of the liabilities for common expenses and of voting rights;

(7) Any restrictions on the use, occupancy or alteration of a timeshare accommodation and any specified procedure or method for amending existing rules or adopting additional rules and regulations;

(8) Any restriction on the alienation of a timeshare;

(9) The ownership interest of the owner in personal property and provisions for care and replacement of personal property;

(10) If the instrument creates timeshare licenses, the period the accommodations affected are committed to timeshare licenses and provisions for disposition of those accommodations at the end of the period, if the period is not infinite;

(11) Any requirement for or restriction on amending the timeshare instrument;

(12) The nature and duration of the owner's rights in the timeshare plan, the circumstances under which the timeshare plan could be terminated and the procedure for terminating the timeshare plan;

(13) A description of the form of conveyance or other instrument used by the developer to transfer a timeshare to a purchaser;

(14) The identity of any person that has the power to grant an easement in the timeshare property or otherwise affect the title to the timeshare property;

(15) How and by whom the timeshare plan will be managed, including but not limited to provisions for selecting a replacement or successor managing entity and provisions for continuity of management throughout the duration of the timeshare plan;

(16) A description of the voting rights of a timeshare owner and the developer and other participation rights, if any, of a timeshare owner and the method for determining and allocating the voting rights; and

(17) Provisions for notifying a timeshare owner of any authorized change in the owner's voting or participation rights. [1983 c.530 §8]

94.823 Notice of intent to sell timeshares; form and content. A developer shall submit a notice to the commissioner informing the commissioner of the developer's intent to sell timeshares in Oregon. The form and content of the notice shall be established by rule by the commissioner, but shall include at least:

(1) The name and business and residence address of:

(a) The developer;

(b) The developer's agent;

(c) The designated managing entity; and

(d) Any person selling the timeshare plan within Oregon.

(2) An explanation of the timeshare form of ownership to be offered under the timeshare plan.

(3) A general description of the timeshare plan, including the number of timeshares to be offered under the timeshare plan and the number and description of the accommodations and facilities.

(4) A complete description, including a copy of all necessary implementing documents, of the methods to be used by the developer to comply with the requirements of ORS 92.325, 92.425, 94.004, 94.029, 94.078, 94.195, 94.570, 94.803 to 94.945 and 696.490.

(5) A title report for the real property underlying the timeshare plan, acceptable to the commissioner and including a statement of any lien, defect, judgment or other encumbrance affecting title to the property.

(6) A copy of any judgment against the developer or managing entity, the status of any pending suit that is material to the timeshare plan to which the developer or managing entity is a party and the status of any other suit that is material to the timeshare plan of which the developer has actual knowledge.

(7) A description of any insurance coverage provided for the benefit of a purchaser or a statement that no insurance coverage is provided.

(8) The name and address of the accommodations and facilities and the schedule for completing any improvements not complete at the time of filing.

(9) The financial obligation of a purchaser, excluding the initial purchase price and including:

(a) Additional charges and common expenses to which the purchaser may be subject, whether or not in the form of an assessment; and

(b) An estimated operating budget and schedule of estimated common expenses.

(10) A copy of the timeshare instrument or notice of timeshare plan as required under ORS 94.818.

(11) A copy of any contract, lease or timeshare agreement to be signed by the purchaser.

(12) A copy of the rules, limitations or conditions on the use of accommodations or facilities available to purchasers.

(13) Any restriction on the transfer of any timeshare.

(14) If any portion of the timeshare property is located outside the state, proof that the developer has recorded the notice of timeshare plan as required under ORS 94.833 (1).

(15) Any other information the commissioner may determine is necessary. [1983 c.530 §19]

94.825 [Repealed by 1971 c.478 §1]

94.826 Information on exchange program; content. (1) A seller offering an exchange program to a purchaser in conjunction with a timeshare plan shall provide written information to the purchaser about the exchange program.

(2) The exchange program information to be provided to the purchaser shall be established by rule by the commissioner and shall include at least:

(a) The name and address of the exchange company;

(b) Whether or not the purchaser's participation in the exchange program is dependent upon the timeshare plan's continued affiliation with the exchange program;

(c) Whether or not the purchaser's participation in the exchange program is voluntary;

(d) A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange program, and the procedure for modifying the exchange program contract;

(e) The procedure to qualify for and effectuate an exchange;

(f) A description of any limitation, restriction or priority system employed in the operation of the exchange program;

(g) The circumstances under which a purchaser may lose the use and occupancy of the purchaser's accommodation in any properly applied for exchange through the exchange program;

(h) Any fee for participation in the exchange program; and

(i) Any other information material to the exchange program which, by omission, tends to make the information otherwise disclosed misleading.

(3) The exchange program information shall be in addition to the information found in the public report required under ORS 94.828 (1), (2) and (4) and must be provided to the purchaser before a contract may be executed between the purchaser and the company offering the exchange program.

(4) An exchange company offering an exchange program to purchasers in Oregon shall file the information required in subsection (2) of this section annually with the commissioner.

(5) Only a timeshare owner and a developer other than a seller may participate in an exchange program. [1983 c.530 §21]

94.828 Public report on plan. (1) After the commissioner receives a completed notice under ORS 94.823 the commissioner shall prepare a public report on the timeshare plan. In lieu of preparing a report, the commissioner may accept a report prepared by the developer and issue the report with any changes the commissioner considers necessary.

(2) Whether or not the commissioner issues a public report on a timeshare plan the developer shall report to the commissioner any material change in the timeshare plan or in the marketing program for the timeshare plan within 10 days after the change occurs.

(3) The commissioner may examine a timeshare plan subject to ORS 94.803 and 94.807 to 94.945 to be offered for sale and make a public report of the findings. If a timeshare plan is located within this state and no report is made within 45 days after the commissioner receives a completed timeshare filing, the report shall be considered waived.

(4) As used in this section, "material change" includes, but is not limited to:

(a) The addition or deletion of a timeshare accommodation or facility.

(b) A change in the method of marketing or conveyancing the timeshare plan.

(c) A change in the purchase money handling procedure previously approved by the commissioner, including but not limited to:

(A) A change in the escrow depository; or

(B) A change in or creation of an encumbrance affecting more than one timeshare.

(d) A change in the developer or, if the developer is an entity, a change in the name, form of organization or status of the developer.

(e) A revision of the timeshare plan's annual budget that will require a regular annual assessment against the owners that is more than 25 percent greater than the regular annual assessment indicated in the current public report for the timeshare plan.

(f) Any legal or physical condition rendering a timeshare accommodation or facility unusable by an owner. [1983 c.530 §§20, 39]

94.830 [Repealed by 1971 c.478 §1]

94.831 Filing fees; inspection advance payment; disposition of moneys. (1) The notice required under ORS 94.823 shall be accompanied by a filing fee as follows:

(a) For a timeshare plan developed in a single phase, $500 plus $10 for each timeshare but in no case shall the fee exceed $3,000.

(b) For a timeshare plan developed in two or more phases, $500 plus $10 for each timeshare in the first phase, and $5 for each additional timeshare developed in a subsequent phase of the same development, but in no case shall the fee exceed $3,000 for each phase.

(2) For a material change notice submitted under ORS 94.828 (1), (2) and (4), the commissioner may charge a fee not to exceed $100 for each page of the public report that must be revised, but in no case shall the fee for a material change exceed $500.

(3) When an examination is to be made of timeshare property located in the State of Oregon, or timeshare property located outside Oregon that will be offered for sale to persons within Oregon, the commissioner, in addition to the filing fee provided in subsections (1) and (2) of this section, may require the developer to advance payment of an amount estimated by the commissioner to be the expense incurred in going to and returning from the timeshare property, and an amount estimated to be necessary to cover the additional expense of the examination not to exceed $200 a day for each day consumed in the examination of the timeshare property. The amounts estimated by the commissioner under this subsection shall be based upon any applicable limits established and regulated by the Executive Department under ORS 292.220.

(4) The moneys received under subsections (1) to (3) of this section shall be paid into the State Treasury and placed in the General Fund to the credit of the Real Estate Account established under ORS 696.490. [1983 c.530 §§22, 23, 24]

94.833 Sale of timeshare plan located out-of-state. (1) Before negotiating within this state for the sale of a timeshare in a timeshare plan composed wholly or partially of timeshare property located outside this state, the developer of the timeshare plan must:

(a) Comply with ORS 94.803 and 94.807 to 94.945; and

(b) Record, in the real property records of each county or other appropriate jurisdiction of each state in which the timeshare property is located for use of a timeshare owner, the notice of timeshare plan, as defined in ORS 94.885 for the timeshare plan. This recording requirement does not apply to timeshare property located in foreign countries.

(2) Before the sale of a timeshare in a timeshare plan composed wholly of timeshare property located within this state, the developer of the timeshare plan must comply with the applicable provisions of ORS 94.803 and 94.807 to 94.945. [1983 c.530 §18]

94.835 [Repealed by 1971 c.478 §1]

(Purchaser's Rights)

94.836 Cancellation of purchase within five days. (1) A purchaser from a developer may cancel, for any reason, any contract, agreement or other evidence of indebtedness associated with the sale of the timeshare within five calendar days from the date the purchaser signs the first written offer or contract to purchase.

(2) Cancellation, under subsection (1) of this section, occurs when the purchaser gives written notice to the developer at the developer's address. The cancellation period in subsection (1) of this section does not begin until the developer provides the purchaser with developer's address for cancellation purposes.

(3) A notice of cancellation given by a purchaser need not take a particular form and is sufficient if it indicates in writing the purchaser's intent not to be bound by the contract or evidence of indebtedness.

(4) Notice of cancellation, if given by mail, shall be given by certified mail, return receipt requested, and is effective on the date that the notice is deposited with the United States Postal Service, properly addressed and postage prepaid.

(5) Upon receipt of a timely notice of cancellation, the developer shall immediately return any payment received from the purchaser. If the payment was made by check, the developer shall not be required to return the payment to the purchaser until the check is finally paid as provided in ORS 74.2130. Upon return of all payments the purchaser shall immediately transfer any rights the purchaser may have acquired in the timeshare to the developer, not subject to any encumbrance created or suffered by the purchaser. In the case of cancellation by a purchaser of any evidence of indebtedness, the purchaser shall return the purchaser's copy of the executed evidence of indebtedness to the developer, and the developer shall cancel the evidence of indebtedness. Any encumbrance against the purchaser's interest in the timeshare arising by operation of law from an obligation of the purchaser existing before transfer of the interest to the purchaser shall be extinguished by the reconveyance.

(6) No act of a purchaser shall be effective to waive the right of cancellation granted by subsection (1) of this section. After the expiration of the five-day cancellation period, a developer may require a purchaser to execute and deliver to the developer a signed statement disclaiming any notice of cancellation timely and properly made by the purchaser before the five-day cancellation period expired under subsection (1) of this section, that has not been received by the developer. A disclaimer statement executed by the purchaser shall rescind the notice of cancellation. [1983 c.530 §26]

94.839 Notice of cancellation right. (1) The first written agreement for the sale of a timeshare to a purchaser signed by the purchaser shall contain, either upon the first page of the agreement or on a separate sheet attached to the first page, the following notice in at least 8-point type:

NOTICE TO PURCHASER

BY SIGNING THIS AGREEMENT YOU ARE INCURRING A CONTRACTUAL OBLIGATION TO PURCHASE A TIMESHARE. HOWEVER, YOU HAVE FIVE CALENDAR DAYS AFTER SIGNING THIS AGREEMENT TO CANCEL THE AGREEMENT BY WRITTEN NOTICE TO THE DEVELOPER OR THE DEVELOPER'S AGENT AT THE FOLLOWING ADDRESS:

_____

_____

_____

_____

BEFORE EXECUTING THIS AGREEMENT, OR BEFORE THE FIVE-DAY CANCELLATION PERIOD ENDS, YOU SHOULD CAREFULLY EXAMINE THE PUBLIC REPORT ON THE TIMESHARE PLAN AND ANY ACCOMPANYING INFORMATION DELIVERED BY THE DEVELOPER.

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(2) A copy of the notice set forth in subsection (1) of this section shall be given to each purchaser under an agreement described in subsection (1) of this section at the time or immediately after the purchaser signs the agreement. [1983 c.530 §27]

94.840 [Repealed by 1971 c.478 §1]

94.841 Waiver of rights void. Any condition, stipulation or provision in a sales agreement, lease or other legal document, that binds a purchaser to waive legal rights granted to the purchaser under ORS 94.803 and 94.807 to 94.945 against the developer shall be considered to be contrary to public policy and void. [1983 c.530 §28]

94.843 Limits on developer right to transfer. (1) A developer may not transfer the developer's interest in accommodations or facilities of a timeshare plan unless the transferee, as to each owner whose interest is involved in the transfer, agrees to:

(a) Honor the right of each owner to occupy and use the accommodations and facilities;

(b) Honor the right of a purchaser to cancel a contract and receive an appropriate refund, as provided in ORS 94.836;

(c) Comply with ORS 94.803 and 94.807 to 94.945 as long as the transferee continues to sell the timeshare plan, or as long as the owner is entitled to occupy the accommodations or use the facilities; and

(d) Assume all of the developer's obligations to the owners under the timeshare instrument.

(2) Within 30 days after the transfer of the developer's interest, notice of the transfer shall be mailed to each owner.

(3) A person holding a blanket encumbrance on the property constituting timeshare property is not a transferee for purposes of this section, if the person has executed and recorded a nondisturbance agreement in accordance with ORS 94.885. [1983 c.530 §17]

94.845 [Repealed by 1971 c.478 §1]

(Association of owners; management)

94.846 Designation of managing entity; duties and powers of entity. (1) Before the closing of the first timeshare sale the developer shall designate a managing entity, which may be the developer, the owners' association, a trust, a management firm or an individual.

(2) The managing entity shall act as a fiduciary to each timeshare owner.

(3) The managing entity shall be responsible for:

(a) Managing and maintaining all accommodations and facilities of the timeshare plan.

(b) Collecting any assessment for common expenses.

(c) Providing each owner with an itemized annual budget including all receipts and expenditures.

(d) Maintaining all books and records concerning the timeshare plan on the timeshare property and making the books and records available for inspection by an owner.

(e) Making the books and records of the timeshare plan available for inspection by the division.

(f) Scheduling occupancy of accommodations if each owner does not acquire a specific timeshare period so that each owner receives the use of the timeshare plan's accommodations and facilities to which the owner is entitled.

(g) Performing all other duties necessary to maintain the accommodations or facilities as provided in any management contract or other agreement.

(h) Hiring and supervising an employe or agent to perform a function described in paragraphs (a) to (g) of this subsection.

(4) After giving the managing entity reasonable notice, a timeshare owner may require the managing entity to provide the name and address of all other timeshare owners in the timeshare plan. The managing entity may require the payment of a reasonable fee for reproduction costs.

(5) Unless expressly prohibited by the timeshare instrument, the managing entity shall have the authority to execute, acknowledge, deliver and record on behalf of the timeshare owners, an easement, right of way, license and any other similar interest affecting the timeshare property if the interest is beneficial and not materially detrimental to the timeshare plan.

(6) The instrument granting an interest under subsection (5) of this section shall be executed by the managing entity and acknowledged in the manner provided for acknowledgment of deeds under ORS 93.410.

(7) For the purpose of transferring or otherwise disposing of all or any portion of the accommodations and facilities in the timeshare plan upon termination of the plan, the managing entity shall be the attorney-in-fact for each owner. Any transfer or disposition will be effective if the managing entity executes and acknowledges the written transfer instrument. [1983 c.530 §9]

94.848 How managing entity of developer terminated. A timeshare instrument that provides for the developer or an agent selected by the developer to manage the timeshare property until an owners' association, a trust or the owners assume the role of managing entity shall include provisions for:

(1) Termination of developer management or developer selected management by the association, trust or owners;

(2) Termination of contracts for goods and services for the timeshare property entered into during the period the developer served as the managing entity;

(3) A regular accounting at least annually by the developer to the association, trust or owners as to all matters affecting the timeshare property; and

(4) Immediate termination of the developer as managing entity by the association, trust or owners and assumption of management functions by an association or trust in the case of abandonment or substantial breakdown of management services for the timeshare plan. [1983 c.530 §10]

94.850 [Repealed by 1971 c.478 §1]

94.853 Payment of common expenses. (1) Until the closing of the first timeshare sale the developer shall pay all common expenses.

(2) After the closing of the first timeshare sale, the managing entity shall charge an annual assessment for the payment of common expenses based on the projected annual budget. The assessment shall be against:

(a) Each owner in the proportion specified in the timeshare instrument and the developer for the share allocated to all timeshare periods still owned by the developer at the time the assessment is made; or

(b) As provided in paragraph (a) of this subsection, except that the developer shall also pay that portion of the total assessment not paid by any owner, if the developer guarantees payment of all common expenses of the timeshare plan under the provisions of the timeshare instrument; or

(c) The developer for the total assessment if the developer agrees to pay all common expenses of the timeshare plan under the provisions of the timeshare instrument.

(3) Unless otherwise specified in the timeshare instrument, past due assessments shall bear interest at the legal rate. [1983 c.530 §11]

94.855 [Repealed by 1971 c.478 §1]

94.856 Assessment of common expenses as lien; recording; foreclosure; fees; remedies; exception. (1) Whenever a managing entity levies an assessment for common expenses against a timeshare estate, the managing entity, upon complying with subsection (2) of this section, shall have a lien upon the timeshare estate for the reasonable value of the expenses, for any unpaid assessment and interest as provided in paragraph (b) of subsection (2) of this section and for any late charges, fines and costs of collection, including but not limited to attorney fees and court costs. The lien shall be prior to any other lien or encumbrance upon the timeshare estate except:

(a) Blanket encumbrances of record;

(b) Tax and assessment liens; and

(c) A purchase money mortgage of record, a purchase money trust deed of record or a purchase agreement of record.

(2)(a) A managing entity claiming a lien under subsection (1) of this section shall record in the county in which the timeshare estate or some part thereof is located a claim containing:

(A) A true statement of the account due for common expenses after deducting all just credits and offsets;

(B) The name of the owner of the timeshare estate, or reputed owner, if known; and

(C) The designation of the timeshare estate, sufficient for identification.

(b) If a claim is filed and recorded under this section and the owner of the timeshare estate subject to the claim thereafter fails to pay any assessment chargeable to the timeshare estate, then so long as the original or any subsequent unpaid assessment remains unpaid the claim shall automatically accumulate the subsequent unpaid assessment and interest thereon without the necessity of further filings under this section.

(3) The claim shall be verified by the oath of a person having knowledge of the facts and shall be filed with and recorded by the recording officer in the book kept for the purpose of recording liens filed under ORS 87.035. The record shall be indexed in the same manner that a deed or other conveyance is required by ORS 93.630 to be indexed.

(4) The proceeding to foreclose a lien created by this section shall conform as nearly as possible to the proceeding to foreclose a lien created by ORS 87.010, except that notwithstanding ORS 87.055, a lien may be continued in force for a period of time not to exceed six years from the date the claim is filed under subsection (3) of this section. For the purpose of determining the date the claim is filed in those cases where subsequent unpaid assessments have accumulated under the claim as provided in paragraph (b) of subsection (2) of this section, the claim regarding each unpaid assessment shall be considered to have been filed at the time the unpaid assessment became due. The lien may be enforced by the managing entity. An action to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the lien securing the claim for common expenses.

(5) Unless the timeshare instrument provides otherwise, a fee, late charge, fine and interest imposed under ORS 94.858 (4)(i) is enforceable as an assessment under this section.

(6) In addition to seeking a money judgment for the unpaid assessment if the timeshare plan conveys only a timeshare license, the managing entity may bring an action for breach of contract.

(7) A construction lien under ORS 87.001 to 87.093 for labor performed or materials furnished to timeshare property, if properly incurred by the association or managing entity for the benefit of all timeshare owners with interests in the timeshare property shall, if effective, attach to each timeshare with interests in the timeshare property. The owner of a timeshare subject to the lien shall have the right to have the timeshare released from the lien by payment of the amount of the lien attributable to the timeshare. The amount of the lien attributable to the timeshare and the payment required to satisfy the lien, in the absence of agreement, shall be determined by application of the allocation of common expenses established in the timeshare instrument.

(8) Except as provided in subsection (7) of this section, a construction lien under ORS 87.001 to 87.093 for labor performed or materials

furnished to a unit shall not be filed against the timeshare of any timeshare owner who did not expressly consent to or request the labor or materials. Consent shall be considered given under this subsection by the owner of a timeshare in the case of emergency repairs to the timeshare property done with the consent or at the request of the managing entity. [1983 c.530 §12]

94.858 Owners' association; powers and duties. (1) The timeshare instrument may provide that an association of timeshare owners be organized to serve as a means through which the timeshare owners may take action with regard to the administration, management and operation of the timeshare plan and the timeshare property. The association shall be organized as a corporation for profit or nonprofit corporation. The name of the association shall include the complete name of the timeshare plan.

(2) Membership in the association shall be limited to timeshare owners.

(3) The affairs of the association shall be governed by a board of directors or other governing body as provided for in the bylaws adopted under the applicable incorporation requirements.

(4) Subject to the provisions of the timeshare instrument and bylaws, the association may:

(a) Assume the role of managing entity;

(b) Adopt and amend bylaws, rules and regulations;

(c) Adopt and amend budgets for revenues, expenditures and reserves and levy and collect assessments for common expenses from timeshare owners;

(d) Hire and terminate a managing agent, other employes, agents and independent contractors;

(e) Institute, defend or intervene in litigation or an administrative proceeding in the association's own name on behalf of the association or on behalf of two or more timeshare owners on any matter affecting the timeshare property;

(f) Make contracts and incur liabilities;

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

(h) Acquire by purchase, lease, devise, gift or voluntary grant real property or any interest therein and take, hold, possess and dispose of real property or any interest therein;

(i) Impose a charge for the late payment of an assessment and, after giving notice and an opportunity to be heard, levy a reasonable fine for violation of the timeshare instrument, bylaws and rules and regulations of the association;

(j) Provide for the indemnification of the association's officers and governing board and maintain adequate liability insurance for the association's officers and governing board;

(k) Exercise any other power conferred by a timeshare instrument or bylaws; and

(L) Exercise any other power determined by the association to be necessary and proper for the governance and operation of the association.

(5) If an association of timeshare owners is formed under this section, the public report issued for the timeshare plan under ORS 94.828 (1), (2) and (4) shall include a disclosure of the powers of the association and the manner in which the association will be governed. [1983 c.530 §13]

94.863 Developer's duty to managing entity. The developer shall deliver to the designated managing entity before the closing of the first timeshare sale, the following:

(1) The original or a photocopy of the recorded timeshare instrument for the timeshare plan and any supplements and amendments thereto.

(2) A copy of any other document creating the managing entity.

(3) Any rules and regulations that have been promulgated.

(4) A report of the present financial condition of the timeshare plan. The report shall consist of a balance sheet and an income and expense statement for the preceding 12-month period or the period following the recording of the timeshare instrument whichever period is less.

(5) All funds of the timeshare plan, or control thereof, including, but not limited to, any bank signature card.

(6) All tangible personal property that is the property of the timeshare plan and an inventory of such property.

(7) A copy of the following, if available:

(a) The as-built architectural, structural, engineering, mechanical, electrical and plumbing plans.

(b) The original specifications indicating all material changes.

(c) The plans for any underground site service, site grading, drainage and landscaping.

(d) Any other plans and information relevant to future repair or maintenance of the timeshare property.

(8) Insurance policies.

(9) A roster of timeshare owners and their addresses and telephone numbers, if known, as shown on the developer's records.

(10) Leases of the timeshare facilities and accommodations and any other leases to which the managing entity is a party.

(11) Any employment or service contract to which the managing entity is a party and any service contract under which the managing entity has an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service.

(12) Any other contract to which the managing entity is a party. [1983 c.530 §14]

94.867 Judicial declaration of failure in management. (1) A court of competent jurisdiction, upon petition by timeshare owners constituting at least 10 percent of the total number of timeshare owners in a timeshare plan, may declare a failure in the management of the timeshare plan and timeshare property and appoint a trustee to assume the duties of a managing entity for the timeshare plan, if the court finds that:

(a) The management of the timeshare plan and timeshare property has failed to carry out the duties of a managing entity under the timeshare instrument and ORS 94.846 to 94.858.

(b) The rights of the timeshare owners under the timeshare instrument will be substantially impaired if a trustee is not appointed; and

(c) No reasonable alternative exists to appointment of a trustee to perform the functions of a managing entity.

(2) The court may attach such conditions and terms to its appointment of a trustee under subsection (1) of this section as the court considers necessary to protect the rights of timeshare owners under the timeshare instrument. [1983 c.530 §15]

94.869 Insurance coverage. (1) If the managing entity has the sole authority to decide whether to repair or reconstruct an accommodation or facility that has suffered damage or that an accommodation or facility must be repaired or reconstructed, the managing entity shall obtain and maintain at all times and shall pay for out of the funds for payment of common expenses, insurance covering the accommodations and facilities which may include reasonable deductible amounts reflecting self-insurance by the owners as a common expense and which shall include:

(a) Insurance for all insurable improvements in the timeshare property against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief. The insurance shall cover the full replacement costs of any repair or reconstruction in the event of damage or destruction from any such hazard if the insurance is available at reasonable cost; and

(b) Insurance covering the legal liability of the association, the timeshare owners individually and the managing entity including, but not limited to, the board of directors, to the public and to the timeshare owners and their invitees or tenants, incident to ownership, supervision, control or use of the property. There may be excluded from the policy required under this paragraph, coverage of a timeshare owner, other than coverage as a member of an association or board of directors, for liability arising out of acts or omissions of that owner and liability incident to the ownership or use of the part of the property as to which that owner has the exclusive use or occupancy. Liability insurance required under this paragraph shall be issued on a comprehensive liability basis.

(2) If an individual timeshare owner is required to obtain insurance for the owner's individual legal liability, the association or managing entity shall obtain insurance covering the accommodations and facilities which may include reasonable deductible amounts reflecting self-insurance by the owners as a common expense and which shall include:

(a) Insurance for all insurable improvements in the timeshare property against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief. The insurance shall cover the full replacement costs of any repair or reconstruction in the event of damage or destruction from any such hazard if the insurance is available at reasonable cost; and

(b) Insurance covering the legal liability of the association and the managing entity including, but not limited to, the board of directors, to the public or the timeshare owners and their invitees or tenants, incident to supervision, control or use of the property. [1983 c.530 §16]

(Escrow)

94.871 When purchase money agreement prohibited; escrow requirements. (1) Unless a lien payment trust is established under ORS 94.890, no timeshare estate shall be sold by a developer by means of a purchase money agree-

ment as defined in ORS 94.890 unless a collection escrow is established within this state with a person or firm authorized to receive escrows under the laws of this state and all of the following are deposited in the escrow:

(a) A copy of the title report or abstract, as it relates to the timeshare estate being sold.

(b) The original or an executed copy of the sales document relating to the purchase of the timeshare estate clearly setting forth the legal description of the interest being purchased, the principal amount of any blanket encumbrance outstanding on the date of the sales document and the terms of the sales document.

(c) A commitment in a form satisfactory to the commissioner to give a partial release for the interest being sold from the terms and provisions of any blanket encumbrance on or before full payment of the purchase price by the purchaser.

(d) A commitment in a form satisfactory to the commissioner to give a release of any other lien or encumbrance existing against the timeshare estate being sold.

(e) A warranty or bargain and sale deed in good and sufficient form conveying to the purchaser merchantable and marketable title to the timeshare estate.

(2) The developer shall submit written authorization allowing the commissioner to inspect any escrow deposit established under subsection (1) of this section.

(3) In lieu of the procedures provided in subsection (1) of this section, the developer shall conform to an alternative requirement or method if the commissioner finds that the alternative requirement or method carries out the intent and provisions of this section. [1983 c.530 §25]

94.873 Escrow account; closing; release. (1) All funds, negotiable instruments, purchase money agreements and credit card authorizations and proceeds thereof received in this state by a developer from or on behalf of a purchaser or prospective purchaser in connection with the purchase or reservation of a timeshare must be placed in an escrow account with an escrow agent authorized under ORS 94.881 or the trustee of a lien payment trust established under ORS 94.890.

(2) The establishment of an escrow account under subsection (1) of this section shall be by written agreement between the developer and the escrow agent. The escrow agreement must provide for the handling of a purchaser's funds, negotiable instruments, purchase money agreements and credit card authorizations and proceeds as required by ORS 94.873 to 94.905.

(3) A purchaser's funds, negotiable instruments, purchase money agreements, credit card authorizations and any proceeds may be released from escrow without a closing only as follows:

(a) If the purchaser gives a valid notice of cancellation under ORS 94.836, to the purchaser within 15 days after the notice of cancellation is received.

(b) If the purchaser or developer properly terminates a sales agreement under its terms or terminates a reservation agreement, to the purchaser or developer according to the terms of the sales agreement or reservation agreement.

(c) If the purchaser or developer defaults in performing an obligation under the sales agreement, to the purchaser or developer according to the terms of the sales agreement.

(4) After an escrow closing for the sale of a timeshare, a purchaser's funds, negotiable instruments, purchase money agreements and credit card authorizations and proceeds shall be delivered by the escrow agent:

(a) To the trustee of a lien payment trust established under ORS 94.890 to protect the purchaser from any blanket encumbrance.

(b) As provided by an alternative arrangement approved by the commissioner under ORS 94.900.

(c) To the seller if the timeshare is conveyed to the purchaser free and clear of any blanket encumbrance or as provided in ORS 94.876.

(5) Under no circumstances may the escrow agent release a purchaser's funds, negotiable instruments, purchase money agreements or credit card authorizations or proceeds from the escrow account to anyone except the purchaser until:

(a) The five-day cancellation period under ORS 94.836 expires as to the purchaser whose funds, instruments, agreements, authorizations or proceeds are being released;

(b) The escrow agent receives a written statement from the developer that no valid cancellation notice under ORS 94.836 has been received from the purchaser involved or from the purchaser that the purchaser has not given such a notice; and

(c) The escrow agent receives a written statement from the developer that no other cancellation notice was received during the five-day cancellation period from the purchaser involved.

(6) The purpose of any escrow established under this section shall be to protect a purchaser's right to a refund if the purchaser cancels the

timeshare sales agreement during the five-day cancellation period under ORS 94.836, or if a prospective purchaser cancels a reservation agreement for the purchase of a timeshare.

(7) As used in this section "reservation agreement" means an agreement relating to the future sale of a timeshare that is not binding on the purchaser which grants the purchaser the right to cancel the agreement for any reason without penalty and to obtain a refund of any funds deposited at any time until the purchaser executes a timeshare sales agreement. [1983 c.530 §29]

94.876 Requirements for closing escrow. (1) Subject to the requirements of ORS 94.871 and 94.873, an escrow for the sale of a timeshare estate may close only if one of the following alternatives for protecting the purchaser is satisfied:

(a) The timeshare estate is conveyed to the purchaser free and clear of any blanket encumbrance;

(b) The timeshare property in which the timeshare estate is granted is conveyed to a trustee under a lien payment trust established under ORS 94.890 and every person holding an interest in a blanket encumbrance against the timeshare property executes and records a nondisturbance agreement;

(c) The timeshare estate is conveyed to the purchaser subject only to a blanket encumbrance in which every person holding an interest in the blanket encumbrance executes and records a nondisturbance agreement or the commissioner accepts a surety bond as an alternative arrangement under ORS 94.900 in an amount that is sufficient to satisfy the blanket encumbrance; or

(d) All requirements of an alternative arrangement approved by the commissioner under ORS 94.900 are satisfied.

(2) Subject to the requirements of ORS 94.873, an escrow for the sale of a timeshare license may close only if one of the following alternatives for protecting the purchaser is satisfied:

(a) The timeshare property is conveyed to a trustee free and clear of any blanket encumbrance;

(b) The timeshare property is conveyed to a trustee under a lien payment trust established under ORS 94.890 and every person holding an interest in a blanket encumbrance against the timeshare property executes and records a nondisturbance agreement;

(c) Every person holding an interest in a blanket encumbrance against the timeshare property executes and records a nondisturbance agreement and the commissioner accepts a recorded surety bond in an amount that is sufficient to satisfy the blanket encumbrance; or

(d) The requirements of an alternative arrangement approved by the commissioner under ORS 94.900 are satisfied. [1983 c.530 §30]

94.878 Duties of escrow agent. An escrow agent holding funds under ORS 94.873:

(1) May invest the escrowed funds in securities of the Federal Government or any agency thereof or in savings or time deposits in institutions insured by an agency of the Federal Government according to the terms of the agreement between the escrow agent and the developer.

(2) Shall maintain separate books and records for each timeshare plan in accordance with generally accepted accounting methods. [1983 c.530 §36]

94.881 Who may serve as escrow agent. (1) Funds placed into escrow under ORS 94.873 shall be placed into an escrow account established solely for that purpose with one of the following acting as an escrow agent:

(a) An attorney who is a member of the Oregon State Bar;

(b) A savings and loan company located in Oregon;

(c) A trust company located in Oregon;

(d) A bank having trust powers and located in Oregon; or

(e) An escrow agent licensed under ORS 696.505 to 696.585.

(2) In connection with sales of timeshares made outside of this state for the use of timeshare property located within this state, the escrow agent required under ORS 94.871 and 94.873 may be located in and the purchasers' funds, negotiable instruments, purchase money contracts and credit card authorizations may be held by the out-of-state escrow agent, if the law of the state in which the sales are made requires impoundment in that state and the out-of-state escrow agent is approved by the commissioner. [1983 c.530 §37]

(Lien payment)

94.885 Rights of lienholder. (1) When a nondisturbance agreement has been executed by the lienholder and recorded, the lienholder, its successors and anyone who acquires the property through foreclosure, by deed, assign-

ment or transfer in lieu of foreclosure, shall take the property subject to the rights of the owners under the timeshare plan.

(2) When a notice of timeshare plan is recorded, any claim by the developer's creditors and any claim upon or by a successor to the interest of the titleholder who executed the notice shall be subordinate to the interest of the timeshare owners if the sale is closed after the notice is recorded. The recording of notice shall not affect:

(a) The rights or lien of a lienholder whose lien was recorded before the notice of timeshare plan;

(b) The rights of a person holding an option in the timeshare property if the option was recorded before the notice of timeshare plan; and

(c) The rights or lien of a lienholder having a recorded purchase money mortgage, recorded purchase money trust deed or recorded purchase agreement on the timeshare.

(3) As used in ORS 94.873, 94.876 and 94.885 to 94.905:

(a) "Nondisturbance agreement" means an instrument by which the holder of a blanket encumbrance agrees that the holder's rights in the timeshare property shall be subordinate to the rights of any timeshare owner. Every nondisturbance agreement shall contain a covenant by the lienholder that the lienholder, its successors, and anyone who acquires the timeshare property through the blanket lien shall not use, or cause or permit the property to be used in a manner that prevents a timeshare owner from using the timeshare property in the manner contemplated by the timeshare plan. The lienholder's agreement not to disturb an owner may require as a continuing condition that the owner perform all obligations and make all payments due under any purchase money agreement for the owner's timeshare and, if the timeshare is held as a leasehold, under the lease for the owner's timeshare.

(b) "Notice of timeshare plan" means an instrument executed by the holder of the legal and equitable title to the fee or long-term leasehold interest in a timeshare property which provides notice of the existence of the timeshare plan and of the rights of timeshare owners. The notice of timeshare plan must identify the timeshare period for each timeshare. For a timeshare property located wholly within this state, recording of the timeshare instrument for the property under ORS 94.818 shall be considered the recording of a notice of timeshare plan for the property. If the timeshare property is located outside the state, the notice may be contained in a declaration of convenants, conditions and restrictions that provides that as a matter of covenant, the notice shall have the effects described in subsection (2) of this section. The notice must be prepared to constitute a covenant running with an equitable servitude upon the timeshare property for the duration of the timeshare plan and to have the effects described in subsection (2) of this section.

(4) If the developer proposes use of a nondisturbance agreement, the public report issued for the timeshare plan under ORS 94.828 (1), (2) and (4) shall include disclosure of the nature and limitations of nondisturbance agreements, the nature and amount of outstanding blanket encumbrances and the potential impact upon timeshare purchasers of failure to pay off the outstanding blanket encumbrances. [1983 c.530 §31]

94.890 Lien payment trust; payments; delinquencies. (1) A lien payment trust may be established with a trust company as defined in ORS 706.005 that is authorized to engage in the business of acting as a fiduciary in this state, for the conveyance of timeshare property to the trustee under ORS 94.876 if the trust instrument provides for at least the following:

(a) Title to the timeshare property must be transferred to the trustee before the purchaser's funds, negotiable instruments, purchase money agreements or credit card authorizations or proceeds are disbursed by the escrow agent.

(b) The trustee shall not convey or transfer all or any portion of the timeshare property except for an accommodation in which no owner has any further right of occupancy or as permitted at termination of the trust.

(c) The trustee shall not encumber the timeshare property without the consent of the commissioner.

(d) The association, if any, and all timeshare owners are made third party beneficiaries of the trust.

(e) Notice of the trustee's intention to resign must be given to the commissioner at least 90 days before the resignation takes effect.

(f) The trust instrument may not be amended to adversely affect the interests or rights of a timeshare owner without the written approval of the association or, if no association, a majority of the timeshare owners.

(g) Require the deposit into trust of a lien payment deposit, as required by subsection (3) of this section, before the closing of the first timeshare sale.

(h) Require the deposit into trust before closing the first timeshare sale, and the intention to maintain for the duration of the trust, an instalment payment reserve consisting of funds in an amount sufficient at all times:

(A) To pay the total of three successive monthly instalments of debt service on each blanket encumbrance or, if instalments of debt services are not payable monthly or in equal instalments, such funds as the commissioner determines reasonably necessary to assure that the trustee will have sufficient cash to make any payment under the blanket encumbrances when due; and

(B) To create a sinking fund to extinguish the debt at its maturity if the blanket encumbrance against the trust property is an interest only loan, contains a balloon payment provision or is otherwise not fully amortized under the terms for repayment.

(i) Authorize the trustee to sell, transfer, hypothecate, encumber, or otherwise dispose of the purchase money agreement or any other asset composing the lien payment deposit or any portion thereof if, in the trustee's judgment, such action is necessary to enable the trustee to make all payments required under the blanket encumbrances to prevent foreclosure of the blanket encumbrance.

(j) Require the developer to replenish the funds and assets in the trust whenever the lien payment deposit or the funds in the instalment payment reserve fail to meet the requirements set forth in this subsection.

(k) Provide that the trustee periodically shall disburse funds in the trust as follows: First, to pay real property taxes, governmental assessments, and lease rent, if any; second, to pay current payments due on the blanket encumbrances, in their order of priority; third, to any sinking fund established for the payment of blanket encumbrances, including any prepayment penalties and release prices; fourth, to pay any service charge and cost payable to the trustee and its collection agent, if any, under the trust instrument; and fifth, to the developer or as directed by the developer.

(L) Contain any other provisions required by the commissioner under rules adopted under ORS 94.915 (2) and (3).

(2) Every purchase money agreement delivered to the trustee of a lien payment trust must contain a notice to the holder that the trustee may make demand of the holder to deliver to the trustee all payments made by the owner after the trustee mails notice that the funds and other assets in the trust are inadequate to meet the lien payment deposit requirements. Following such demand, the holder must immediately deliver all subsequent payments of the owner to the trustee and continue to deliver the payments until the lien payment deposit is replenished.

(3)(a) The lien payment deposit shall consist of either nondelinquent purchase money agreements from timeshare owners in the timeshare plan or other assets deposited into the trust by the developer and approved by the commissioner. The purchase money agreements must have an aggregate remaining principal balance of not less than, and any other assets deposited must have a liquidated value of not less than, 110 percent of the difference between the aggregate remaining balance owing under blanket encumbrances against the timeshare property, including any prepayment penalties, release prices or similar charges, and the amount of money or its equivalent in the trust and available at any time to be applied to the reduction of the principal balance of the blanket encumbrance. The developer shall have the burden of establishing the liquidated value of assets other than purchase money agreements from timeshare owners in the timeshare plan.

(b) If the blanket encumbrance payment deposit consists of purchase money agreements, the payments required to be made by owners under the agreements shall:

(A) Be due on or before the date payments become due on the blanket encumbrances;

(B) If paid when due as provided in subsection (4) of this section, be equal to at least 110 percent of the amount required to be paid on the blanket encumbrances on such date; and

(C) Be sufficient to pay, in full, during the term of the purchase money agreements all amounts secured by the blanket encumbrances, including prepayment penalties and release prices, if any, and all service charges payable to the trustee, any collection agent, and any other servicing agent under the trust agreement.

(c) If the developer proposes to deposit into trust assets other than purchase money agreements, the assets must be sufficient to pay debt service instalments on the blanket encumbrance as they become due and to create a sinking fund or other arrangement adequate to extinguish the debt secured by the blanket encumbrance at its maturity.

(4) For the purposes of this section, "purchase money agreement" means and includes a purchase money mortgage, a purchase money trust deed and a purchase contract.

(5) For the purpose of this section, a purchase money agreement is considered delinquent when an instalment payment is more than 59 days past due. [1983 c.530 §32]

94.895 Trust irrevocable without alternative arrangement. (1) Except as provided in subsection (2) of this section:

(a) If a trust is established for timeshare property subject to timeshare licenses, the trust for the timeshare property shall be irrevocable during the time that any purchaser of a timeshare license has a right to the use of the timeshare property.

(b) If a trust is established for timeshare property subject to timeshare estates, the trust for the timeshare property shall be irrevocable until all blanket encumbrances are extinguished.

(2) The commissioner may approve an alternative arrangement that permits termination of the trust. [1983 c.530 §33]

94.900 Alternative to lien payment trust. (1) If it is impossible or impractical for a developer to satisfy any of the requirements of ORS 94.890 because of factors over which the developer has little or no control, the commissioner may accept arrangements other than those prescribed by ORS 94.890 which in the commissioner's judgment will give rights and remedies affording equivalent benefits and protection to timeshare owners and which are at least comparable in scope though not necessarily in nature to those afforded by ORS 94.890.

(2) If the commissioner is asked to accept alternative arrangements under this section, the commissioner may contract with an attorney and with any other private consultant the commissioner considers necessary or advisable, in connection with the review of the proposed arrangements for protecting purchasers. The attorney shall thoroughly review the timeshare plan for the purpose of examining the purchaser protections, including the documentation used in the timeshare plan and the disclosure thereof in the developer's public report. After completing the review the attorney shall provide a written analysis of the nature and extent of the protection that the proposal affords a purchaser against blanket encumbrances. The cost of retaining the attorneys and other consultants shall be paid by the developer. [1983 c.530 §34]

94.905 Surety bond. Any surety bond furnished to the commissioner under ORS 94.890 must be in an amount which is not less than 110 percent of the remaining principal balance of every indebtedness secured by a blanket encumbrance affecting the timeshare property. The surety bond must be issued by a surety authorized to do business in Oregon and having sufficient net worth to be acceptable to the commissioner. The bond shall provide for payment, up to the limit of the bond, of all amounts secured by the blanket encumbrance, including costs, expenses and legal fees of the lienholder, if for any reason the blanket encumbrance is enforced. The obligee of the surety bond shall be the commissioner on behalf of the timeshare owners. The bond may be reduced periodically in proportion to the reduction of the remaining principal balance of the indebtedness secured by the blanket encumbrances. Upon being furnished with a surety bond satisfying the foregoing requirements, the developer shall prepare and the commissioner shall execute and acknowledge a document in recordable form accepting the surety bond and identifying the timeshare property to which it applies. [1983 c.530 §35]

(Enforcement)

94.915 Inspection of records; rulemaking; uniform standards. (1) Records of the sale of timeshares in a timeshare plan shall be subject to inspection by the commissioner.

(2) The division shall adopt rules necessary to carry out ORS 94.803 and 94.807 to 94.945.

(3) The division may cooperate with agencies performing similar functions in other jurisdictions to develop uniform filing procedures, forms, disclosure standards and administrative practices. [1983 c.530 §§38, 40]

94.920 Consent to service by out-of-state developer. (1) Every nonresident developer, at the time of filing the notice required by ORS 94.823, also shall file with the commissioner an irrevocable consent that if, in any suit or action commenced against the nonresident developer in this state arising out of a violation of ORS 94.803 and 94.807 to 94.945, personal service of summons or process cannot be made upon the developer in this state after the exercise of due diligence, a valid service may be made upon the developer by service on the commissioner.

(2) The consent required under subsection (1) of this section shall be in writing executed and verified by an officer of a corporation or association, a general partner of a partnership or by a developer and shall set forth:

(a) The name of the developer.

(b) The address to which documents served upon the commissioner are to be forwarded.

(c) If the developer is a corporation or unincorporated association, that the officer exercising the consent was authorized by resolution duly adopted by the board of directors.

(3) The address for forwarding documents served under this section may be changed by filing a new consent in the form prescribed in subsection (2) of this section.

(4) Service of process on the commissioner under this section shall be made by delivering to the commissioner or a clerk on duty in any office of the commissioner, duplicate copies of the process, with duplicate copies of any papers required by law to be delivered in connection with the service.

(5) When the commissioner is served with process under the provisions of this section, the commissioner shall immediately forward by registered mail one of the copies with any accompanying papers, to the developer at the address set forth in the consent.

(6) The commissioner shall keep a record of each process, notice and demand served under this section, and shall record the time of each service and the action taken by the commissioner on each service. [1983 c.530 §43]

94.925 Civil penalty. (1) In addition to any other penalty provided by law, the commissioner may impose a civil penalty for violation of the provisions of ORS 94.803 and 94.807 to 94.945. No civil penalty shall exceed $1,000 per violation.

(2) A civil penalty may be imposed by the commissioner after notice and hearing.

(3) All hearings shall be conducted under the applicable provisions of ORS 183.310 to 183.550.

(4) Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be filed according to the provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record. [1983 c.530 §44]

94.930 Commissioner order; injunctive relief. (1) If the commissioner finds that an owner, developer or other person is violating any of the provisions of ORS 94.803 and 94.807 to 94.945, the commissioner may order the person to desist and refrain from violating the provisions or requirements, or from the further sale of interests in the timeshare plan.

(2) If the commissioner finds that a developer or other person is violating, has violated or is about to violate, any of the provisions of ORS 94.803 and 94.807 to 94.945, the commissioner may bring an action in the circuit court of the county where the violation or threatened violation has occurred or is about to occur, or in the county where the person resides or carries on business, in the name of and on behalf of the people of the State of Oregon against the person participating in the violation, to enjoin the person from continuing or engaging in the violation or doing any act in furtherance of the violation, and to apply for the appointment of a receiver or conservator of the assets of the defendant if appropriate. [1983 c.530 §45]

(Prohibited Practices)

94.940 False practices prohibited. No person shall, in connection with an offering, sale or lease of an interest in a timeshare plan:

(1) Employ any device, scheme or artifice to defraud;

(2) Make any untrue statement of a material fact;

(3) Fail to state a material fact necessary to make a statement clear;

(4) Issue, circulate or publish any prospectus, circular, advertisement, printed matter, document, pamphlet, leaflet or other literature containing an untrue statement of a material fact or that fails to state a material fact necessary to make the statements made in the literature not misleading;

(5) Issue, circulate or publish any advertising matter or make any written representation, unless the name of the person issuing, circulating or publishing the matter or making the representation is clearly indicated; or

(6) Make any statement or representation, or issue, circulate or publish any advertising matter containing any statement that the timeshare plan has been in any way approved or indorsed by the commissioner except in conjunction with a public report issued by the commissioner under ORS 94.828 (1), (2) and (4). [1983 c.530 §41]

94.945 Advertising regulation. It shall be unlawful for any developer or the agent or employe of a developer with intent to sell or lease a timeshare in a timeshare plan, to authorize, use, direct or aid in the publication, distribution or circularization of any advertisement, radio broadcast or telecast concerning a timeshare plan, that contains any false or misleading statement, pictorial representation or sketch. Nothing in this section shall be construed to hold the publisher or employe of any newspaper, any job printer, broadcaster or telecaster liable

for any publication referred to in ORS 94.940 unless the publisher, employe, printer, broadcaster or telecaster has actual knowledge that the material is false or has an interest in the timeshare plan advertised. [1983 c.530 §42]

94.990 [Repealed by 1971 c.478 §1]

PENALTIES

94.991 Penalties. Any person who violates any of the provisions of ORS 94.331 to 94.412 and 94.424 to 94.460 or any rules adopted thereunder or any alternative requirements of the commissioner prescribed pursuant to ORS 94.400 (3), shall be punished by a fine not exceeding $10,000, or by imprisonment in the penitentiary for a period not exceeding three years, or in the county jail not exceeding one year, or by both such fine and imprisonment. [Formerly 91.990]