Chapter 100

1989 EDITION

Condominiums

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GENERAL PROVISIONS

100.005 Definitions. As used in this chapter, 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) "Assessment" means any charge imposed or levied by the association of unit owners on or against a unit owner or unit pursuant to provisions of the declaration or the bylaws of the condominium or provisions of ORS 100.005 to 100.910.

(3) "Association of unit owners" means the association provided for under ORS 100.405.

(4) "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.

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

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

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

(8) "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 100.005 to 100.625 or by the declaration or the bylaws of the particular condominium.

(9) "Condominium" means:

(a) With respect to property located within this state:

(A) The land, if any, whether leasehold or in fee simple and whether contiguous or noncontiguous;

(B) Any buildings, improvements and structures on the property; and

(C) Any easements, rights and appurtenances belonging to the property, which are submitted to the provisions of ORS 100.005 to 100.625; and

(b) With respect to property located outside this state, the property that has been committed to the condominium form of ownership in accordance with the jurisdiction within which the property is located.

(10) "Conversion condominium" means a condominium in 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.

(11) "Declarant" means a person who files a declaration under ORS 100.100 or a supplemental declaration under ORS 100.110.

(12) "Declaration" means the instrument described in ORS 100.100 by which the condominium is created and as modified by any amendment recorded in accordance with ORS 100.135 or supplemental declaration recorded in accordance with ORS 100.120.

(13) "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.

(14) "Dwelling unit," "premises," "rental agreement" and "tenant" mean those terms as defined in ORS 90.100.

(15) "Flexible condominium" means a condominium containing property that may be reclassified or withdrawn from the condominium pursuant to ORS 100.150 (1).

(16) "General common elements," unless otherwise provided in a declaration, means:

(a) The land, whether leased or in fee simple, 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, main-

tenance and safety, or normally in common use.

(17) "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 creating a condominium under ORS 100.100.

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

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

(20) "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 of a unit.

(21) "Nonwithdrawable property" means property which pursuant to ORS 100.150 (1)(b):

(a) Is designated nonwithdrawable in the declaration and on the plat; and

(b) Which may not be withdrawn from the condominium without the consent of all of the unit owners.

(22) "Percentage" or "percent of unit owners" means the percent of the voting rights determined under ORS 100.525.

(23) "Purchaser" means an actual or prospective purchaser of a condominium unit pursuant to a sale.

(24) "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.

(25) "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.

(26) "Sale" includes every disposition or transfer of a condominium unit, or an interest or estate therein, by a 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. "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 interest held for security purposes or a timeshare regulated or otherwise exempt under ORS 94.803 and 94.807 to 94.945.

(27) "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 this chapter.

(28) "Staged condominium" means a condominium which provides for annexation of additional property pursuant to ORS 100.115 and 100.120.

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

(30) "Termination date" means that date described in ORS 100.105 (2)(c) or in ORS 100.105 (7)(d).

(31) "Transitional committee" means the committee provided for under ORS 100.205.

(32) "Turnover meeting" means the meeting provided for under ORS 100.210.

(33) "Unit" or "condominium unit" means a part of the property which:

(a) Is described in ORS 100.020 (3);

(b) Is intended for any type of independent ownership; and

(c) The boundaries of which are described pursuant to ORS 100.105 (1)(c).

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

(35) "Unit owner" means, except to the extent the declaration or bylaws provide otherwise, the person owning fee simple interest in a unit, the holder of a vendee's interest in a unit under a recorded instalment contract of sale and, in the case of a leasehold condominium, the holder of the leasehold estate in a unit.

(36) "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 of sale, but does not include a reservation agreement.

(37) "Variable property" means property described in ORS 100.150 (2) and designated as variable property in the declaration and on the plat.

(38) "Voting rights" means the portion of the votes allocated to a unit by the declaration in accordance with ORS 100.105 (1)(h). [Formerly 94.004]

100.010 Short title. This chapter may be cited as the Oregon Condominium Act. [Formerly 94.011]

100.015 Rules; adoption. The commissioner may adopt such rules as are necessary for the administration of this chapter. [Formerly 94.333]

Note: 94.333 [renumbered 100.015] was added to and made a part of 94.331 to 94.480 [renumbered 100.015 and 100.635 to 100.910] by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

100.020 Condominium provisions; restrictions. (1) Except as otherwise provided in subsections (2) and (3) of this section, ORS 100.100 to 100.625 apply only to property located within this state which a person elects to submit to the condominium form of ownership as provided in ORS 100.005 to 100.625.

(2) Unless the declarant elects otherwise, ORS 100.185, 100.200 (2), 100.205, 100.210, 100.300, 100.305, 100.310, 100.315 and 100.320 apply only to condominiums that include units to be used for residential purposes.

(3) No property may be submitted to the condominium form of ownership under ORS 100.005 to 100.625 unless:

(a) Each unit has legal access to a public street or highway; and

(b) Each unit consists of:

(A) A building or part of a building;

(B) A space used for the temporary parking or storage of automobiles, boats, campers or other recreational vehicles or equipment when such space is auxiliary to a condominium in which the remaining units are within or part of a building; or

(C) A space used for the moorage of a boat or floating home.

(4) Except as otherwise provided in subsection (5) of this section, ORS 100.015 and 100.635 to 100.910 apply to condominiums having units to be used for residential purposes which are not offered for sale as a security pursuant to ORS chapter 59.

(5) ORS 100.720, 100.725, 100.730, 100.740, 100.745 and 100.785 do not apply to the sale of condominium units to be used for nonresidential purposes. [Formerly 94.013]

100.025 Rule against perpetuities; inapplicable. The rule against perpetuities may not be applied to defeat any provisions of a declaration, supplemental declaration, bylaw or rule for a condominium adopted under ORS 100.005 to 100.625. [Formerly 94.016]

Note: 94.016 [renumbered 100.025] was added to and made a part of 94.004 to 94.322 [renumbered 100.005 to 100.625] by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

CREATION OF UNIT OWNERSHIP

100.100 Property submitted to unit ownership by declaration; executors of declaration. (1) In order to submit any property to the provisions of this chapter, 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 100.105 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 this chapter.

(3) If the condominium contains any variable property, the holder of any mortgage or trust deed shall also execute the declaration for the purpose of consenting to the property being submitted to the provisions of ORS 100.005 to 100.625 and the terms and conditions of the declaration and bylaws.

(4) A flexible or staged condominium may be created only as provided in ORS 100.005 to 100.625.

(5) The provisions of and rights conferred by ORS 100.005 to 100.910 shall not be varied or waived except as expressly provided in those statutes. A declarant shall not act under a power of attorney or use any other device to evade the limitations or prohibitions in the declaration, bylaws or ORS 100.005 to 100.910. [Formerly 94.023]

100.105 Contents of declaration under ORS 100.100; property name; variable property description. (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 100.515 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 100.530.

(h) The voting rights allocated to each unit in accordance with ORS 100.525 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) A statement that the designated agent to receive service of process in cases provided in ORS 100.550 (1) is named in the Condominium Information Report which has been filed with the Secretary of State in accordance with ORS 100.250 (1)(a).

(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 100.405 (5) has authority to grant leases, easements, rights of way, licenses and other similar interests affecting the general common elements of the condominium and consent to vacation of roadways within and adjacent to 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 100.415 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 condominium under ORS 100.125, 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 condominium.

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

(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 condominium, 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 100.015, 100.635 to 100.730 and 100.740 to 100.910.

(3) Except where expressly prohibited by the declaration and subject to the requirements of ORS 100.135 (1) and subsections (9) and (10) of this section:

(a) Not later than two years following the termination date specified in paragraph (c) of subsection (2) of this section, such termination date 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 and the information included in the declaration in accordance with paragraphs (c), (h) and (i) of subsection (7) 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 and paragraphs (a), (b), (d), (e), (f), (g) and (L) of subsection (7) of this section may not be changed unless all owners agree to the change and record an amendment to the declaration in accordance with this chapter.

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

(6) No condominium shall bear a name which is the same as or deceptively similar to the name of any other condominium located in the same county.

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

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

(b) A statement:

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

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

(c) A metes and bounds legal description of all variable property within the condominium. If there is more than one parcel, a metes and bounds legal description for each parcel and a statement of the method of labeling each parcel depicted on the plat in accordance with ORS 100.115 (2)(i)(B).

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

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

(f) The minimum allocation of undivided interest in the common elements of each unit upon completion of development if all units are created.

(g) The method used to establish the allocations of undivided interest in the common elements of each unit as additional units are created.

(h) A general description of all existing improvements and the nature and proposed use of any improvements that may be made on variable property if the improvements might substantially increase the proportionate amount of the common expenses payable by existing unit owners.

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

(j) A statement that if by the termination date all or a portion of the variable property not designated as nonwithdrawable variable property has not been withdrawn or reclassified, such property shall automatically be withdrawn from the condominium as of such date.

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

(L) A statement of whether or not all or any portion of the variable property may not be withdrawn from the condominium and, if so, with respect to such nonwithdrawable variable property:

(A) A statement that the plat shall show the location and dimensions of all such property which shall be labeled "NONWITHDRAWABLE VARIABLE PROPERTY."

(B) A metes and bounds legal description of each parcel. If there is more than one parcel, a metes and bounds legal description for each parcel and a statement of the method of labeling each parcel depicted on the plat in accordance with ORS 100.115 (2)(i)(B).

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

(D) A statement, that if by the termination date, all or a portion of the variable property designated as "nonwithdrawable variable property" has not been reclassified, such property shall automatically be reclassified as of such date as a general common element of the condominium and any interest in such property held for security purposes shall be automatically extinguished by such classification.

(E) A statement of the rights of the association under ORS 100.155 (3).

(m) A statement by the local governing body or appropriate department thereof that the withdrawal of any variable property not designated as "nonwithdrawable variable property" in the declaration in accordance with paragraph (L) of this subsection, will not violate any applicable planning or zoning regulation or ordinance. The statement may be attached as an exhibit to the declaration.

(8) The plan of development for any variable property included in the declaration in accordance with subsection (7) of this section shall be subject to any plan of development included in the declaration in accordance with subsection (2) of this section.

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

(10) Approval by the unit owners shall not be required to redesignate variable property as "nonwithdrawable variable property" by supplemental declaration or amendment if such redesignation is required by the local governing body or appropriate department thereof to comply with any planning or zoning regulation or ordinance. If as a result of such redesignation the information required to be included in the supplemental declara-

tion or an amendment under subparagraph (C) of paragraph (L) of subsection (7) of this section is inconsistent with the information included in the declaration or supplemental declaration in accordance with paragraph (h) of subsection (7) of this section, an amendment to the declaration approved by at least 75 percent of all voting rights shall be required. [Formerly 94.029]

100.110 Approval of declaration, supplemental declaration or amendment required; prerequisites; fee. (1) Before a declaration, supplemental declaration or an amendment thereto may be recorded, it must be approved as provided in this section by the county assessor and the commissioner. Before a declaration or supplemental declaration may be recorded, it must be approved by the tax collector of the county in which the property is located. 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, supplemental declaration or amendment thereto if:

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

(b) The plat and floor plans comply with the requirements of ORS 100.115.

(3) The tax collector of the county in which the property is located shall approve the declaration or supplemental 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 100.105 and 100.135;

(b) The bylaws adopted under ORS 100.410 comply with the requirements of ORS 100.410 and 100.415; and

(c) The plat and floor plans comply with the requirements of ORS 100.115.

(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 under ORS 100.670 [Formerly 94.036]

100.115 Recording declaration, plat, floor plans and flexible condominium information; fees. (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 in permanent black india type ink or silver halide permanent 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) Show, to the extent feasible, the location and dimensions of all limited common elements described in the declaration;

(d) Include 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;

(e) Include a surveyor's affidavit, complying with ORS 92.070;

(f) Include a statement by the declarant that the property and improvements described and depicted on the plat are subject to the provisions of ORS 100.005 to 100.625;

(g) Include such signatures of approval as may be required by local ordinance or regulation;

(h) Include any other information or data not inconsistent with the declaration that the declarant desires to include; and

(i) If the condominium is a flexible condominium, also:

(A) Show the location and dimensions of all variable property described in the declaration and label all such property as "VARIABLE PROPERTY." If there is more than one parcel, label each parcel with letters or numbers different from those designating any unit, building or other parcel of variable property.

(B) Show the location and dimensions of all nonwithdrawable variable property and label all such property as "NONWITHDRAWABLE PROPERTY." If there is more than one parcel, label each parcel with letters or numbers different from those designating any unit, building, parcel or variable property or other parcel of "nonwithdrawable variable property."

(3) The supplemental plat required under ORS 100.150 (1) shall be recorded simultaneously with the supplemental declaration. Upon request, the person offering the supplemental 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 in permanent black india type ink or silver halide permanent photocopy upon a suitable drafting material having the characteristics of strength, stability and transparency required by the county surveyor. The supplemental plat shall:

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

(b) If any property is withdrawn:

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

(B) Show the information required under paragraph (i) of subsection (2) of this section as it relates to any remaining variable property.

(c) If any property is reclassified, show the information required under paragraphs (a) to (d) of subsection (2) of this section.

(d) Include a "Declarant's Statement" that the property described on the supplemental plat is reclassified or withdrawn from the condominium and that the condominium exists as described and depicted on the plat.

(e) Include a surveyor's affidavit complying with ORS 92.070.

(4) 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. The governing body of a city or county may establish a higher fee by ordinance.

(5)(a) Whenever variable property is reclassified or withdrawn as provided in ORS 100.155 (1) or (2) or property is removed as provided in ORS 100.600 (2), the county surveyor shall, upon all previously recorded plats relating to the variable property or property being removed and upon any copy thereof certified by the county clerk, trace, shade or make other appropriate marks or notations with permanent ink in such manner as to denote the reclassification, withdrawal or removal. The recording index numbers and date of recording of the supplemental declaration and plat or amendment and amended plat shall also be referenced on each plat.

(b) For performing the activities described in this subsection, the county clerk shall collect a fee set by the county governing body. The county clerk shall also collect a fee set by the county governing body to be paid to the county surveyor for services provided under this section.

(6) Except as otherwise provided in subsection (7) 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 100.135. 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.

(7) 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 94.042]

100.120 Supplemental declaration required to annex additional property or reclassify variable property; termination date. (1) To annex additional property to the condominium or to reclassify variable property under ORS 100.125 or 100.150, a supplemental declaration and plat shall be executed, approved and recorded by declarant at the time of each annexation or reclassification. Such supplemental declarations and plats shall:

(a) Be consistent with the provisions of the original declaration prepared pursuant to ORS 100.105.

(b) Contain the information required by ORS 100.105 (1) insofar as that information relates to the property being annexed or reclassified.

(c) List the new units to be created or annexed and include the information described in ORS 100.105 (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 this chapter upon the creation or annexation of the additional property.

(e) If the stage being annexed contains any variable property, include the information required under ORS 100.105 (7) insofar as that information relates to the property being annexed. The termination date may not exceed seven years from the recording of the conveyance of the first unit in the condominium to a person other than the declarant. Recording shall be in the county in which the property is located.

(2) All such supplemental declarations and plats shall be approved, executed and recorded as provided in ORS 100.100, 100.110 and 100.115. No unit being annexed or created by a supplemental declaration shall be conveyed until after such recording.

(3) To withdraw all or a portion of variable property from a flexible condominium pursuant to ORS 100.150 (1)(b), a supplemental declaration and plat shall be recorded in accordance with subsection (2) of this section. The supplemental plat shall comply with ORS 100.115 (3) and the supplemental declaration shall:

(a) Be consistent with the provisions of the declaration or supplemental declaration drawn pursuant to ORS 100.105 (7).

(b) Include a metes and bounds legal description of the variable property being withdrawn.

(c) Include a metes and bounds legal description of the resulting boundaries of the condominium after the withdrawal.

(d) State whether or not any variable property remains which may be reclassified or withdrawn from the condominium and, if property may be withdrawn, include the statement required under ORS 100.105 (7)(m).

(e) If any variable property is being redesignated as "nonwithdrawable variable property," include the information required under ORS 100.105 (7)(L).

(4) Except as provided in subsection (5) of this section, 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 100.115 in order to provide for such additional units.

(5) As to property submitted to unit ownership before September 27, 1987, if the declaration provides that additional property may be annexed to the condominium, any subsequent stage may contain variable property. The termination date may not be later than the earlier of:

(a) The date specified in the declaration under ORS 100.105 (2)(c); or

(b) Seven years from the recording of the conveyance of the first unit in the condominium to a person other than the declarant. Recording shall be in the county in which the property is located. [Formerly 94.047]

100.125 Annexation of additional property; requirements. If the declaration complies with ORS 100.105 (2), until the termination date, additional property may be annexed to the condominium by the recording of a supplemental declaration and plat in accordance with ORS 100.115 and 100.120. [Formerly 94.048]

100.130 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 ap-

prove 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 100.135 (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 100.115. [Formerly 94.053]

100.135 Requirements for amendments to declaration; approval by commissioner and owners. (1) Except as otherwise provided in ORS 100.005 to 100.625, 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 this section, 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 100.105 and 100.110 and this section have been satisfied. The filing shall be accompanied by the fee required in ORS 100.670.

(2) Except as otherwise provided in ORS 100.005 to 100.625, 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 100.105 (2) or (7) or any other special declarant right without the consent of the declarant. However, the declarant may waive the declarant's right of consent. [Formerly 94.059]

FLEXIBLE CONDOMINIUMS

100.150 Available options until property withdrawn or reclassified. (1) With regard to a flexible condominium, before the termination date, and by recording a supplemental declaration and plat in accordance with ORS 100.115 and 100.120, the declarant may:

(a) Reclassify all or a portion of the property designated as variable in the declaration and on the plat, as one or more general common elements, limited common elements, units or a combination of the elements and units.

(b) Unless designated in the declaration or on the plat as nonwithdrawable property, withdraw all or a portion of the variable property from the condominium.

(2) Until variable property is withdrawn or reclassified as provided in subsection (1) of this section or under ORS 100.155 (1):

(a) The property shall be a distinct classification of property and shall not be a common element or unit of the condominium.

(b) The property shall be considered a parcel of real property, whether leased or in fee simple, and shall be subject to separate assessment and taxation by any taxing unit in like manner as other parcels of real property.

(c) Unless otherwise specifically provided in the declaration or supplemental declaration:

(A) The declarant shall be responsible for the payment of all assessments, taxes and other expenses of the variable property. If the declarant fails to pay any expenses of any variable property designated as nonwithdrawable variable property, the board of directors may elect to pay the expenses and assess the unit owners as a common expense. All costs incurred may be charged to the declarant.

(B) Ownership or occupancy of variable property shall not confer any right to use the common elements of the condominium.

(C) Ownership or occupancy of units shall not confer any right to use variable property.

(D) Variable property shall not be subject to assessments for expenses of the condominium. [Formerly 94.021]

100.155 Variable property; uses and restrictions. (1) If by the termination date specified in the declaration there is any remaining variable property:

(a) Any property designated nonwithdrawable shall become part of the common elements and any interest in such property held for security purposes shall be automatically extinguished by such reclassification; and

(b) Any property not designated nonwithdrawable property shall be automatically withdrawn from the condominium as of such date.

(2) Unless expressly prohibited by the declaration, any variable property automatically withdrawn from the condominium under paragraph (b) of subsection (1) of this section or voluntarily withdrawn under ORS 100.150 (1)(b) may be later annexed to the condominium by the recording of a supplemental declaration and plat in accordance with ORS 100.120 (2) if such action is first approved by at least 75 percent of all voting rights in the manner required for an amendment to the declaration. The supplemental declaration and plat shall be executed by the chairperson and secretary on behalf of the association and acknowledged in the manner provided for acknowledgment of deeds by such officers. Except for the termination date, the supplemental declaration shall comply with ORS 100.120 (1) and shall state that the annexation was approved by at least 75 percent of all voting rights.

(3) Unless expressly prohibited by the declaration and notwithstanding the termination date, the association may, with respect to any variable property automatically reclassified, exercise any rights previously held by the declarant. The exercise of any right shall first be approved by at least a majority of all voting rights. All other actions relating to such reclassified general common elements shall be regulated and governed in like manner as other general common elements of the condominium. If a supplemental declaration and plat is required for any action, the plat shall be executed by the chairperson and secretary of the association and shall comply with the requirements of this chapter as to a supplemental declaration and the recording of plats.

(4) Title to any additional units created under subsection (3) of this section shall automatically be vested in the association upon the recording of a supplemental declaration and plat. The board of directors acting on behalf of the association shall have the power to hold, convey, lease, encumber or otherwise deal with a unit or any interest therein in like manner as other property owned by the association. [Formerly 94.022]

RIGHTS AND DUTIES OF DECLARANT

100.170 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 this chapter or reserved in the declaration or bylaws. [Formerly 94.066]

100.175 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 100.210, 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 100.210, 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. [Formerly 94.072]

WARRANTIES ON NEW UNITS

100.185 Express warranties; form; exclusion of implied warranties; exemption for consumer products; claims. (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 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) A written claim reasonably specifying a breach of the warranty on the unit and the related limited common elements must be delivered to the declarant before the expiration of such warranty. A written claim reasonably specifying a breach of the warranty on the general common elements must be delivered to the declarant within two years of expiration of such warranty, but the claim must be for a defect existing prior to the expiration of such warranty under this section. An action to enforce such warranty shall not be commenced later than four years after expiration of such warranty.

(3) For the purposes of this section, "newly constructed units and common elements" means:

(a) Units and related limited common elements:

(A) That have been substantially completed for less than three years; and

(B) That have been occupied for less than 12 months.

(b) General common elements:

(A) That have been substantially completed for less than three years; and

(B) That were constructed contemporaneously with units that have been occupied for less than 12 months.

(4) 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 94.017]

DECLARANT CONTROL; TURNOVER

100.200 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 this chapter 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 or flexible 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 which may be created or annexed under ORS 100.125 or 100.150, whichever is applicable.

(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 100.105 (2) or (7), 100.125 or 100.150 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. [Formerly 94.078]

100.205 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 or flexible condominium if the number of units which the declarant may submit to the provisions of this chapter under ORS 100.125 or 100.150 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 or flexible 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 this chapter under ORS 100.125 or 100.150.

(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 100.210 (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. [Formerly 94.084]

100.210 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 100.200. 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 or flexible 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 this chapter under ORS 100.125 or 100.150.

(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 100.200.

(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 responsible 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. [Formerly 94.091]

SPECIAL DECLARANT RIGHTS

100.220 Liabilities and obligations arising from transfer of special declarant right; exemptions. (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 employee;

(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 100.185. 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 this chapter 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 this chapter or by the declaration or bylaws.

(b) A successor declarant who is not an affiliate of the transferor shall not be liable for any misrepresentations or warranties made or required to be made, including without limitation warranties required under ORS 100.185, by the declarant or previous successor declarant or for any breach of fiduciary obligation by such person. Such a successor declarant, however, shall:

(A) Comply with any provisions of the declaration and bylaws which pertain to such successor declarant's ownership of the unit or units and the exercise of any special declarant right;

(B) Comply with the provisions of ORS 100.015 and 100.635 to 100.910 in connection with the sale of any unit or units, except as provided in ORS 100.665; and

(C) Give the warranties described in ORS 100.185 only with respect to common elements or units constructed by the successor declarant. [Formerly 94.097]

100.225 Acquisition of special declarant rights by successor declarant; exceptions. (1) Except as otherwise provided in subsections (2) and (3) of this section, a developer, vendor under a land sale contract, mortgagee of a mortgage or beneficiary of a trust deed affecting the declarant's interest in the property shall acquire all special declarant rights of the transferor upon transfer by the declarant or prior successor declarant of all of such transferor's interest in the condominium, unless:

(a) The conveyance evidences an intent not to transfer any special declarant rights;

(b) An instrument executed by the transferor and the transferee evidences an intent not to transfer any special declarant rights and is recorded in the office of the recording officer of every county in which the property is located; or

(c) The transferee executes an instrument disclaiming any right to exercise any special declarant rights and such instrument is recorded in the office of the recording officer of every county in which the property is located.

(2) A transferee under subsection (1) of this section shall acquire less than all special declarant rights if:

(a) The conveyance from the transferor or an instrument executed by the transferor and the transferee evidences an intent to transfer less than all special declarant rights and states the specific right being trans-

ferred, and such instrument is recorded in the office of the recording officer of every county in which the property is located; or

(b) The transferee executes an instrument disclaiming specific special declarant rights and the instrument is recorded in the office of the recording officer of every county in which the property is located.

(3) When a transferee acquires all of the declarant's interest in a condominium in which the declarant has reserved the right to add additional stages under ORS 100.125, the transferee shall not acquire the right to annex additional stages to the condominium unless the transferee simultaneously acquires from the declarant property adjacent to the condominium which is entitled to be annexed to the condominium, or unless the conveyance evidences an intent to transfer such right to the transferee.

(4) A declarant or a successor declarant may transfer all or less than all of the transferor's special declarant rights to a transferee, whether or not any interest in real property is conveyed, by an instrument executed by the declarant or successor declarant and the transferee evidencing an intent to transfer all or specific special declarant rights, which instrument shall be recorded in the office of the recording officer of every county in which the property is located. If the transfer is not subject to subsection (1) of this section, it shall also bear the written consent of any holder of a blanket encumbrance on the condominium. [Formerly 94 103]

DOCUMENT FILING

100.250 Documents required to be filed with Secretary of State; fees. (1) The following shall be delivered to the Office of the Secretary of State for filing on behalf of the association in accordance with ORS 100.260 (5):

(a) A Condominium Information Report described in ORS 100.260 (1) by the declarant not later than 90 days after the declaration is recorded under ORS 100.100 or by the board of directors if required under ORS 100.275.

(b) The Annual Report described in ORS 100.260 (2) by the declarant until the turnover meeting and the board of directors thereafter every year not later than the report date which shall be the anniversary date of filing the Condominium Information Report.

(c) An amendment to the reports required under this subsection by the declarant until the turnover meeting and the board of directors thereafter, within 30 days after there is a change in the information contained in a report.

(2) The Secretary of State shall collect the following fees for the documents delivered for filing:

	Document	Fee
(a)	Condominium Information Report	$30
(b)	Annual Report	$15
(c)	Amendment	$ 5
(d)	Application for Termination Statement	$ 5
(e)	Statement of Resignation	$ 5

(3) Any fee paid under subsection (2) of this section or ORS 100.275 may be a common expense of the condominium. [1989 c 595 §38]

Note: 100.250 to 100 290 were added to and made a part of ORS 100 005 to 100.910 by legislative action but were not added to any smaller series therein See Preface to Oregon Revised Statutes for further explanation.

100.255 Processing of documents filed with Secretary of State; procedures. (1) If after review the Secretary of State determines that a report or amendment submitted for filing under ORS 100.250 (1) satisfies the requirements of ORS 100.260, and all fees have been paid, the Secretary of State shall file the document and designate the filing "current."

(2) The Secretary of State files a document by indicating thereon that it has been filed by the Secretary of State and the date of filing. The time of filing shall be considered to be 12:01 a.m. on that date. After filing a document, the Secretary of State shall return a copy to the association.

(3) If the Secretary of State refuses to file a document, the Secretary of State shall return it to the association within 10 business days after the document was received by the Office of the Secretary of State, together with a brief written explanation of the reason or reasons for the refusal.

(4) The Secretary of State's duty to file documents under this section and ORS 100.250 is ministerial. The Secretary of State is not required to verify or inquire into the legality or truth of any matter included in any document delivered to the Office of the Secretary of State for filing. The Secretary of State's filing or refusing to file a document does not:

(a) Affect the validity or invalidity of the document in whole or in part; or

(b) Relate to the correctness or incorrectness of information contained in the document.

(5) The Secretary of State's refusal to file a document does not create a presumption that the document is invalid or that information contained in the document is incorrect.

(6) If the Secretary of State refuses to file a document delivered to the Office of the Secretary of State for filing, the association, in addition to any other legal remedy which may be available, shall have the right to appeal from such final order pursuant to the provisions of ORS 183.484. [1989 c.595 §39]

Note: See note under 100.250.

100.260 Condominium information report; contents. (1) The Condominium Information Report required under ORS 100.250 (1)(a) shall set forth:

(a) The name of the association;

(b) The name of the condominium and the county in which the condominium is located;

(c) The mailing address, including the street and number, if any, and county of the association;

(d) The date the condominium declaration was recorded and the recording index numbers;

(e) The name and residence or business address, including the street and number, of the person designated as agent to receive service of process in cases provided in ORS 100.550 (1) and any other legal proceeding relating to the condominium or association; and

(f) The number and type of units as follows:

No._____ Living Units
No._____ Commercial/Office Units
No._____ Other (describe) _____

(2) The Annual Report required under ORS 100.250 (1)(b) shall set forth:

(a) The information required under paragraphs (a), (b), (c) and (e) of subsection (1) of this section;

(b) The names and addresses of the chairman and secretary of the association; and

(c) If the designated agent is changed, a statement that the new agent has consented to the appointment.

(3) The amendment required under ORS 100.250 (1)(c) shall set forth:

(a) The name of the association as shown on the current records of the Office of the Secretary of State;

(b) The name of the condominium and county in which the condominium is located;

(c) A statement of the information as changed; and

(d) If the current designated agent is to be changed, the name of the new designated agent and residence or business address, including the street and number, and a statement that the new agent has consented to the appointment.

(4) The filing by the Secretary of State of an amendment which changes the designated agent shall terminate the existing designated agent on the effective date of the filing and establish the newly appointed designated agent as that of the association.

(5) The reports and amendment described in this section and an application for termination described in ORS 100.280 shall be made on forms prescribed and furnished by the Secretary of State and must be accompanied by one exact or conformed copy and the correct filing fee and shall:

(a) Contain information current as of 30 days before delivery for filing;

(b) Be executed by the designated agent and until the turnover meeting by the declarant and thereafter by the chairman or secretary of the association;

(c) State beneath or opposite the signature the name of the person and the capacity in which the person signs; and

(d) Contain any additional identifying information that the Secretary of State may require by rule. [1989 c.595 §40]

Note: See note under 100.250.

100.265 Annual report; notification; filing. (1) Not less than 30 days before the report date, the Secretary of State shall mail the Annual Report form described in ORS 100.260 (2) to the association at the mailing address shown for the association in the current records of the office and shall indicate the date by which the report is due. Failure of the association to receive the Annual Report form from the Secretary of State shall not relieve the association of its duty to deliver for filing to the office as required under ORS 100.250 (1)(c).

(2) After the report date, if no Annual Report has been delivered for filing, the Secretary of State shall send to the designated agent a notice of delinquency notifying the association that the filing shall be designated "delinquent" unless a report is filed within 45 days after the mailing of such notice.

(3) When an association has been given a notice of delinquency in accordance with subsection (2) of this section and failed to correct the delinquency within 45 days:

(a) The Secretary of State shall designate the filing "delinquent."

(b) If within 30 days after written notice has been given to the association by the opposing party in any suit or action to which the association is a party, the association has not complied with the filing requirements of ORS 100.250 (1), the association may not

continue to prosecute or defend such suit or action until the filing is designated "current" as provided in ORS 100.255. A copy of such notice shall be delivered to the Office of the Secretary of State. The Secretary of State shall retain such copy with the filing for the association for a period of not less than 12 months. [1989 c 595 §41]

Note: See note under 100 250.

100.275 Application of ORS 100.250 to 100.280. (1) Subject to ORS 100.550 (3), ORS 100.250 to 100.280, including the filing of a Condominium Information Report described in ORS 100.260 (1), apply to property submitted to the provisions of this chapter before October 3, 1989, if:

(a) The board of directors of the association receives a written request to comply with such sections from at least one unit owner or holder of a first mortgage or deed of trust on a unit;

(b) The board of directors of the association adopts a resolution to comply with such sections in accordance with the bylaws; or

(c) The association is a party to a suit or action, the person designated in the declaration under ORS 100.105 (1)(j), the chairman or secretary receives written notice to comply with such sections from any other party to such suit or action. A copy of the notice shall be delivered to the Secretary of State. The Secretary of State shall provide a copy of the filed report to the requesting party and may charge the association a fee for cost of such action. If the association fails to deliver for filing such report, the provisions of ORS 100.265 (3) shall apply.

(2) The Condominium Information Report required under subsection (1) of this section shall be executed by the chairman or secretary of the association and the designated agent. [1989 c 595 §42]

Note: See note under 100.250.

100.280 Termination of filing Condominium Information Report. (1) An association may apply to the Secretary of State to terminate a filing under ORS 100.250 (1). The application shall satisfy the requirements of ORS 100.260 (5) and set forth:

(a) The name of the association as shown on the current records of the Office of the Secretary of State;

(b) The name of the condominium and county in which the condominium is located;

(c) The name and residence or business address, including the street and number, of a designated agent to whom a person initiating any proceeding may direct service for a period of two years; and

(d) A commitment to notify the Secretary of State for a period of two years from the date of termination of any change of the person or address stated in paragraph (c) of this subsection.

(2) A copy of the instrument of termination, evidencing the recording index numbers, recorded under ORS 100.600, shall be delivered with the application.

(3) Upon filing by the Office of the Secretary of State of the application to terminate the filing, the duty of the association to comply with ORS 100.250 (1) shall cease. [1989 c 595 §43]

Note: See note under 100 250

100.285 Resignation of designated agent; procedures; effective date. (1) The designated agent of the association may resign as agent by delivering a signed statement of resignation to the Office of the Secretary of State together with the filing fee prescribed in ORS 100.250. The statement shall include the name of the association and the name of the condominium and the county in which the condominium is located.

(2) Upon receipt of the statement of resignation in proper form and the correct fee, the Secretary of State shall file the resignation statement and shall as soon as practicable notify the association that the statement has been filed. The notice shall be mailed to the association at the mailing address shown for the association in the current records of the office.

(3) The agency is terminated on the 31st day after the date on which the statement of resignation was filed by the Office of the Secretary of State unless the association sooner appoints a successor designated agent as provided in ORS 100.260 (4), thereby terminating the capacity of the prior agent.

(4) If by the 31st day after the date on which the statement of resignation was filed by the Office of Secretary of State, the association has failed to submit for filing an amendment appointing a designated agent, the Secretary of State shall designate the filing "delinquent" and the provisions of ORS 100.265 (3) shall apply. [1989 c.595 §43a]

Note: See note under 100.250.

100.290 Secretary of State authority to adopt rules. The Secretary of State may adopt rules as are necessary or proper for the administration of ORS 100.250 to 100.280. [1989 c.595 §44]

Note: See note under 100.250.

CONVERSION CONDOMINIUMS

100.300 Inapplicability of ORS 100.305 to 100.320 to transient lodgings. ORS 100.305 to 100.320 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 94.109]

100.305 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 this chapter notice of the conversion at least 120 days before the conversion condominium is submitted to the provisions of this chapter. Thereafter, until the property is submitted to the provisions of this chapter, the declarant 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 100.310 (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 100.310 (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 this chapter.

(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 100.310 (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 94.116]

100.310 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 disclosure statements issued by the Real Estate Commissioner pursuant to ORS 100.700, 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 94.122]

100.315 Improvements in conversion condominium during notice period. (1) The declarant 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 100.305 (1).

(2) The declarant may begin improvements or rehabilitation or cause improvements or rehabilitation to be undertaken in the general common elements during the 120-day notice period. [Formerly 94.128]

100.320 Authority of city or county to require developer to pay tenant moving expenses. A city or county may adopt an ordinance that requires a declarant to pay the moving expense of a tenant vacating a conversion condominium unit. [Formerly 94.134]

ASSOCIATION OF UNIT OWNERS; MANAGEMENT OF PROPERTY; ENCUMBRANCES; CONVEYANCES

100.405 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 100.410.

(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 employees, 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, attorney fees for collection 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) Adopt rules regarding the termination of utility services paid for out of assessments of the association and access to and use of recreational and service facilities available to unit owners and, after giving notice and an opportunity to be heard, terminate the rights of any owners to receive such benefits or services until the correction of any violation covered by such rule has occurred;

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

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

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

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

(p) 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 leases, easements, rights of way, licenses and other similar interests affecting the general common elements and consent to vacation of roadways within and adjacent to the condominium.

(6) The granting of a lease in excess of two years or any other interest or consent pursuant to subsection (5) of this section shall be first approved by at least 75 percent of the unit owners. Unless the declaration

otherwise provides, a lease of general common elements for a term of two years or less shall not be considered the granting of an interest for which approval is required under this subsection.

(7) The instrument granting an interest or consent 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 or consent was approved by at least 75 percent of the unit owners. [Formerly 94.146]

100.410 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. 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 this section, 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) For five years after recording the initial bylaws, 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 100.415 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 the fee provided by ORS 100.670. [Formerly 94.152]

100.415 Contents of bylaws. The bylaws shall provide for:

(1) The organization of the association of unit owners in accordance with ORS 100.405, when the initial meeting shall be held and the method of calling that meeting.

(2) If required under ORS 100.205, the formation of a transitional committee in accordance with such section.

(3) The turnover meeting required under ORS 100.210, including when the meeting shall be called, the method of calling the meeting, the right of a unit owner under ORS 100.210 (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 100.420 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 100.435.

(12) The preparation and distribution of the annual financial statement in accordance with ORS 100.480.

(13) The filing of an Annual Report and any amendment with the Secretary of State in accordance with ORS 100.250.

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

(15) 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.

(16) Any restrictions on use or occupancy of units. Any such restrictions created by documents other than the bylaws may be incorporated by reference in the bylaws to the official records of the county in which the property is located.

(17) The method of amending the bylaws subject to ORS 100.410.

(18) Any other details regarding the property that the declarant considers desirable. However, if a provision required to be in the declaration under ORS 100.105 is included in the bylaws, the voting requirements for amending the declaration shall also govern the amendment of the provision in the bylaws.

(19) In the event additional units are proposed to be annexed or created pursuant to ORS 100.125 or 100.150, the method of apportioning common expenses in the event new units are added during the course of the fiscal year. [Formerly 94.158]

100.420 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 this chapter 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 94.164]

100.430 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 or flexible condominium, the applicable supplemental declaration or declaration amendment.

(2) The unit designation of the unit.

(3) Any further details the grantor and grantee may consider desirable. [Formerly 94.171]

100.435 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. [Formerly 84.177]

100.440 Liens against property; removal from lien; effect of part payment. (1) Subsequent to recording a declaration and while the property remains subject to this

chapter, 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, the agent, contractor or subcontractor of the unit owner, 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 board of directors.

(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 the unit of the owner released from the lien by payment of the amount of the lien attributable to the 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 the rights of the lienor against any unit and the undivided interest in the common elements appertaining thereto not so released by payment, satisfaction or discharge. [Formerly 94.185]

100.445 Individual defaulting required under leasehold condominium. Where a leasehold interest is submitted to the provisions of this chapter, 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 the pro rata share of the unit owner of the funds necessary to correct the default or because another unit owner has defaulted. [Formerly 94.190]

100.450 Lien of association against unit; filing of claim; foreclosure; priority of lien. (1) Whenever an association of unit owners levies any assessment 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 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 prior 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 amount due for the unpaid assessments after deducting all just credits and offsets; the name of the owner of the unit, or reputed owner, if known; the name of the condominium 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 subject to the claim thereafter fails to pay any assessment chargeable to such unit, 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 board of directors acting on behalf of the association of unit owners. An action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the claim for unpaid assessments.

(5) Unless the declaration or bylaws provides otherwise, fees, late charges, fines and interest imposed pursuant to ORS 100.405

(4)(i), (j), (k) and (L) 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.

(7) Notwithstanding the priority established for a lien for unpaid assessments and interest under subsection (1) of this section, the lien shall also be prior to the lien of any prior mortgage or trust deed of record for the unit and the undivided interest in the common elements, if:

(a) The association of unit owners for the condominium in which the unit is located has given the lender under the mortgage or trust deed 90 days prior written notice that the owner of the unit is in default in payment of an assessment. The notice shall contain:

(A) Name of borrower;

(B) Recording date of trust deed or mortgage;

(C) Recording information;

(D) Name of condominium, unit owner and unit identification; and

(E) Amount of unpaid assessment.

(b) The notice under paragraph (a) of this subsection shall set forth the following in 10-point type:

NOTICE: The lien of the association may become prior to that of the lender pursuant to ORS 100.450.

(c) The lender has not initiated judicial action to foreclose the mortgage or requested issuance of a trustee's notice of sale under the trust deed or accepted a deed in lieu of foreclosure in the circumstances described in ORS 100.465 prior to the expiration of 90 days following the notice by the unit owners' association.

(d) The unit owners' association has provided the lender, upon request, with copies of any liens filed on the unit, a statement of the assessments and interest remaining unpaid on the unit and other documents which the lender may reasonably request.

(e) The borrower is in default under the terms of the mortgage or trust deed as to principal and interest.

(f) A copy of the notice described in paragraph (a) of this subsection has been verified, filed and recorded in the manner prescribed in subsection (3) of this section. [Formerly 94.195]

100.460 Foreclosure against unit; receiver for unit; power of board of directors 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 board of directors, 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 94.202]

100.465 Circumstances in which deed in lieu of foreclosure extinguishes lien. (1) Unless the declarations or bylaws otherwise provide, a deed in lieu of foreclosure accepted by the holder of a first mortgage or the beneficiary of a first deed of trust in respect to a condominium unit shall have the effect of extinguishing a lien of the association filed to secure unpaid assessments in the following circumstances:

(a) Written notice has been given to the association, addressed to the individual authorized to accept service of process sent by first class mail, return receipt requested, notifying the association of the mortgagee or beneficiary's intent to accept a deed in lieu of foreclosure and stating that the lien of the association may be extinguished in the circumstances specified in this section; and

(b) The deed in lieu of foreclosure is recorded not later than 30 days after the date the notice is mailed to the association.

(2) Unless the declarations or bylaws provide otherwise, any assessment lien filed by an association after receipt of the notice described in subsection (1) of this section and less than 30 days before the deed in lieu of foreclosure is recorded, shall also be extinguished without further notice or action. [1989 c.595 §36]

Note: 100.465 and 100.470 were added to and made a part of ORS 100.005 to 100.910 by legislative action but were not added to any smaller series therein See Preface to Oregon Revised Statutes for further explanation.

100.470 Attorney fees. Unless otherwise provided in the declaration or bylaws, in any suit or action brought by an association of unit owners to foreclose its lien, collect delinquent assessments or to enforce compliance with the terms and provisions of the Oregon Condominium Act, the condominium declaration or bylaws, including all amendments and supplements thereto or any rules

or regulations adopted by the association, the prevailing party shall be entitled to recover reasonable attorney fees therein and in any appeal therefrom. [1989 c.595 §37]

Note: See note under 100.465.

100.475 Liability for unpaid share of common expenses. (1) A unit owner shall be personally liable for all assessments imposed on the unit owner or assessed against the unit by the association of unit owners.

(2) 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, the successors and assigns of the purchaser, shall not be liable for any of the assessments against such unit or its owner which became due prior to the acquisition of title to such unit by such purchaser. Such unpaid assessments shall be a common expense of all the unit owners including such purchaser, the successors and assigns of the purchaser.

(3) In a voluntary conveyance of a unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor of the unit 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 board of directors shall make and deliver a statement of the unpaid assessments against the prospective grantor or the unit, 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 assessments against the grantor in excess of the amount therein set forth. [Formerly 94.208]

100.480 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 100.210.

(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 this chapter 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 94.214]

100.485 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 94.221]

ATTRIBUTES AND DUTIES OF OWNERSHIP

100.505 Status and ownership of units. (1) While the property is submitted to the provisions of this chapter, 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 the unit of the owner. [Formerly 94.231]

100.510 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 94.237]

100.515 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 this chapter, 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 this chapter. 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 100.115 showing the division thereof into such two or more units. The amendment shall comply with ORS 100.115. 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 94.243]

100.520 Easement held by units and common elements. (1) Each unit and all common elements shall have an easement over all adjoining units and common ele-

ments 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 100.115.

(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. [Formerly 94.250]

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

100.530 Allocation of common profits and expenses; liability of unit owner; limitation on assessments against declarant; deferral of assessments by 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 or flexible condominium, the declarant owns more than two units or five percent of the units submitted to the provisions of this chapter, whichever is greater, or the termination date has not expired.

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

(5) Except with respect to reserves required by ORS 100.175, a declaration or bylaws may provide that the declarant may elect to defer commencement of all or part of common expense assessments as to all units in a condominium or as to all units in a stage of a condominium and if a declarant so elects to defer commencement of all or part of common expense assessments, declarant shall pay as they accrue and be responsible for all or part of the common expenses attributable to the condominium or attributable to the stage of the condominium for which assessments have been deferred, until assessments commence for all common expenses. The declarant shall give not less than 10 days' written notice to all affected unit owners prior to the commencement of common expense assessments if such a deferral occurs. [Formerly 94.260]

100.535 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 the unit of the unit owner 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 the expense of the unit owner, to submit an opinion of a regis-

tered 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 the 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 94.265]

100.540 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 94.270]

100.545 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 94.275]

100.550 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 condominium or more than one unit. Service of process in any action relating to the common elements, more than one unit or the association, may be made on:

(a) If the condominium was submitted to the provisions of this chapter before October 3, 1989, the person designated in the declaration to receive service of process;

(b) The person named as designated agent in the Condominium Information Report filed with the Secretary of State under ORS 100.250;

(c) If the association is organized as a corporation under Oregon law, the registered agent in accordance with ORS 60.111 or 61.086 (1987 Replacement Part); or

(d) The chairman or secretary of the association.

(2) Except as provided in subsection (4) of this section, if the association of unit owners of property submitted to the provisions of this chapter 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 100.105 (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 this chapter 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 100.110 and 100.135, 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 100.105 (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 this chapter before October 15, 1983, if:

(a) The board of directors of the association of unit owners receives a written re-

quest 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 94.280]

100.555 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 this chapter. [Formerly 94.285]

REMOVAL OF PROPERTY FROM UNIT OWNERSHIP

100.600 Termination or removal by unit owners; consent of lienholders; amended plat requirements. (1) Subject to ORS 100.605, the condominium may be terminated if all of the unit owners remove the property from the provisions of this chapter by executing and recording an instrument to that effect and the holders of all liens affecting 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 the termination. The instrument shall state the interest of each unit owner and lienholder as determined under ORS 100.610.

(2) A portion of the property may be removed from the provisions of this chapter by recording simultaneously with the recording officer an amendment to the declaration and an amended plat approved as required under ORS 100.115 (4) and (6) and 100.135 (1)(b). The amendment to the declaration shall:

(a) Include a metes and bounds legal description of the property being removed;

(b) Include a metes and bounds legal description of the resulting boundaries of the condominium after the removal;

(c) State the interest of each owner and lienholder in the property being removed;

(d) State the interest of each unit owner and lienholder in the condominium after the removal;

(e) Be approved and executed by all owners and lienholders and acknowledged in the manner provided for acknowledgment of deeds; and

(f) A statement by the local governing body or appropriate department thereof that the removal will not violate any applicable planning or zoning regulation or ordinance. The statement may be attached as an exhibit to the amendment.

(3) The amended plat required under subsection (2) of this section shall:

(a) Comply with ORS 92.050, 92.060 (1), (2) and (4), 92.080, 92.120, 100.115 (4) and (6) and the requirement for an exact copy upon request as specified in ORS 100.115 (1) with respect to an amended plat;

(b) Include a "Statement of Removal" that the property described on the amended plat is removed from the condominium and that the condominium exists as described and depicted on the amended plat. Such statement shall be made by the chairperson and secretary of the association and acknowledged in the manner provided for acknowledgment of deeds;

(c) Include a surveyor's affidavit complying with ORS 92.070; and

(d) Include such signatures of approval as may be required by local ordinance or regulation.

(4) 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 under subsection (1) of this section or the removal of a portion of the property under subsection (2) of this section. [Formerly 94.295]

100.605 Removal of property from ORS 100.005 to 100.910 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 this chapter.

(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 this chapter.

(3) Removal of the condominium or a portion thereof from the provisions of this chapter under subsections (1) or (2) of this section shall comply with all of the requirements of ORS 100.600 except that the percent of the owners required to take action shall conform only to subsections (1) or (2) of this section, as applicable. [Formerly 94.300]

100.610 Common ownership of property removed from unit ownership; valuation; liens. (1) If the property is removed from the provisions of this chapter, as provided by ORS 100.600 (1) and 100.605, 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 the unit of the unit owner 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.

(5) If a portion of the property is removed from the provisions of this chapter, as provided by ORS 100.600 (2), the respective interest of each unit owner and lienholder in the property removed and the remaining condominium shall be as stated in the amendment to the declaration in accordance with ORS 100.600 (2)(c) and (d). [Formerly 94.306]

100.615 Action for partition; division of sale proceeds. If the property is removed from the provisions of this chapter, as provided in ORS 100.600 and 100.605, 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 as determined under ORS 100.600 and 100.610 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 94.312]

100.620 Termination or removal no bar to resubmission. The termination of the condominium or the removal of a portion of the property from the condominium shall in no way bar its resubmission. [Formerly 94.318]

DIVIDING OR CONVERTING UNITS

100.625 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 100.135 (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 100.115.

(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. [Formerly 94.322]

REGULATION OF SALES; FILING REQUIREMENTS

100.635 Filing with commissioner; fee. Except as provided by ORS 100.660 and 100.665, prior to negotiating within this state for the sale of a condominium unit located in another state, or prior to the sale of any condominium unit located within this state, the developer shall file the following information with the commissioner:

(1) General information on the condominium, including:

(a) The name and address of the condominium and the county in which the condominium is located; and

(b) The name, address and telephone number of the developer.

(2) Two copies of the disclosure statement for the condominium prepared in accordance with ORS 100.655.

(3) The documents for and other information on the condominium as required by ORS 100.640.

(4) The filing shall be accompanied by a fee as provided in ORS 100.670. [Formerly 94.331]

100.640 Filing; required documents and information. The following documents and information shall be submitted to the commissioner as part of the filing required under ORS 100.635:

(1) A copy of the proposed or recorded declaration or supplemental declaration of condominium ownership drawn in conformance with ORS 100.105 or 100.120, or the law applicable in the state where the condominium was created;

(2) A copy of the proposed or recorded bylaws drawn in conformance with ORS 100.415 or the law applicable in the state where the condominium was created;

(3) A copy of the full size plat prepared in conformance with ORS 100.115 (2) or the law applicable in the state where the condominium was created, or a copy of the site plan;

(4) A statement from the county assessor that the name for the condominium is acceptable under ORS 100.105 (5);

(5) A copy of a preliminary title report, title insurance policy or condominium guar-

antee that has been issued within the preceding 30 days, including a map showing the location of property described in the report, policy or guarantee or other evidence of title satisfactory to the commissioner;

(6) A copy of all restrictive covenants, reservations or other documents that may create an encumbrance on or limit the use of the property other than those restrictions contained in the declaration or bylaws;

(7) The following sample forms:

(a) Unit sales agreement, including the notice to purchaser of cancellation rights in accordance with ORS 100.730 and 100.740, the statement required by ORS 93.040 (1) and any warranty required under ORS 100.185; and

(b) A receipt for documents required under ORS 100.725;

(8) If required by ORS 100.680:

(a) A copy of the escrow agreement drawn in conformance with ORS 100.680 and executed by both the declarant and the escrow agent. If individual escrow agreements or instructions are to be executed by the purchaser, other than the standard escrow instruction required by the escrow agent, submit sample form and a letter from the escrow agent, agreeing to the establishment of the escrows and the procedure set forth in the sample form; and

(b) A unit sales agreement drawn in conformance with ORS 100.680;

(9) If any of the sales will be by means of an instalment contract of sale:

(a) A copy of the escrow agreement or escrow instructions executed by the developer and the escrow agent providing for the establishment of collection escrows and the deposit of documents in accordance with ORS 100.720; and

(b) The proposed instalment contract of sale form, if available;

(10) Any other documents by which the purchasers will be bound;

(11) Any report or disclosure statement issued for the condominium, by the Federal Government and any other state; and

(12) A statement of any additional facts or information which the developer desires to submit to the commissioner. [Formerly 94.353]

Note: See note under 100.655.

100.645 Filing information to be kept current. (1) The information required by ORS 100.635 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. The report shall be accompanied by a filing fee as required by ORS 100.670.

(2) A developer shall be responsible for the accuracy of and for providing all information required by ORS 100.635 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. [Formerly 94.342]

100.650 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 information required by ORS 100.635, shall also 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 any provision of this chapter, personal service of summons or process upon the nonresident developer cannot be made in this state after the exercise of due diligence, a valid service may thereupon be made upon the nonresident developer 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 the commissioner 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, the commissioner 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 the commissioner under this section, and shall record therein the time of such

service and the action with reference thereto. [Formerly 94.348]

100.655 Disclosure statement; contents; disclosure statement from other state. (1) The disclosure statement submitted to the commissioner as part of a filing under ORS 100.635 shall contain the following information:

(a) The name and address of the condominium, and the name, address and telephone number of the developer and agent of the developer, 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 100.105 (2), and a precise statement of the nature of the interest which is being offered;

(c) If at the time of filing:

(A) The construction of the project is not completed, general disclosure of the status of construction and the actual or scheduled dates of completion of buildings, recreational facilities and other common elements, including a statement describing any recreational facilities or improvements to the common elements that the developer reserves the right to develop or promises to develop, or a statement that there are no such facilities or improvements; or

(B) The construction of the project is completed, the actual dates of completion of buildings, recreational facilities and other common elements if known by the developer;

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

(e) Copies of any warranties for structural elements and mechanical and other systems or a brief description of such warranties;

(f) A current or projected budget of the association of unit owners for the operation and maintenance and any other common expenses of the condominium, a brief statement of the method of determining liability for common expenses and the right to common profits and the following notice in at least 8-point type:

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.

(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, including provisions required by ORS 100.175, and an explanation of the basis for such reserves, or, where no provision is made for such reserves, a statement in at least 8-point type to that effect;

(h) In the case of a conversion condominium, a statement of:

(A) The present condition of all structural components and major mechanical and utility installations in the condominium, the statement shall include the approximate dates of construction installation and the estimated useful physical life of each such item; and

(B) The statutory procedure required to create a conversion condominium;

(i) A cross-reference to the portions of the declaration, any supplemental declaration and bylaws containing the general power and authority of the board of directors, the method of apportionment of voting rights among the members of the association of unit owners and a statement of the nature and extent of control of the board of directors retained by the developer by voting rights or otherwise;

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

(k) A statement of whether there are any restrictions on alienation of units or any use or occupancy restrictions, such as limitations on residential or commercial use, pets, age of occupants or number of occupants, and a cross-reference to those portions of the declaration, any supplemental declaration, bylaws or any other document containing the principal provisions relating to those restrictions; and

(L) If the condominium is a staged condominium:

(A) Whether the declarant reserves the right to annex additional property to the condominium pursuant to ORS 100.125 and, if so:

(i) The maximum number of units;

(ii) The maximum number of stages;

(iii) The date after which annexation right terminates;

(iv) The description of additional common elements declarant reserves right to annex to the property and whether such common

elements might substantially increase the proportionate amount of common expenses by current unit owners; and

(v) The effect of annexation of additional units on allocation of interest in the common elements and voting rights.

(B) If the condominium or any stage being filed under ORS 100.635 contains or may contain any variable property, a statement of the rights reserved by the declarant under ORS 100.150 (1) and the results specified in ORS 100.155 if such rights are not exercised.

(2) In lieu of the disclosure statement required under subsection (1) of this section, the commissioner may accept a disclosure report issued or approved by another state or governmental agency.

(3) No disclosure statement is required for condominiums described in ORS 100.660. [Formerly 94.351]

Note: 94.351 to 94.358 [renumbered 100.640, 100.655, 100.660, 100.670 to 100.680] were added to and made a part of ORS 94.331 to 94.480 [renumbered 100.015 and 100.635 to 100.910] by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

100.660 Nonresidential condominium or security filing; contents. A developer of a condominium located in this state, that consists exclusively of units to be used for nonresidential purposes or that consists of units to be offered for sale as a security under ORS chapter 59, shall submit to the commissioner a filing that consists of:

(1) General information on the condominium including:

(a) The name and address of the condominium and the county in which the condominium is located; and

(b) The name, address and telephone number of the developer and any agent of the developer; and

(2) The following documentation:

(a) The original executed declaration or supplemental declaration and a copy thereof, drawn in conformance with ORS 100.105 and 100.120, if applicable;

(b) The original executed bylaws, and a copy thereof, drawn in conformance with ORS 100.415;

(c) A copy of the full size plat prepared in conformance with ORS 100.115;

(d) A copy of a current preliminary title report or title insurance policy or condominium guarantee that has been issued within the preceding 30 days, including a map showing the location of property described therein, or other evidence of title satisfactory to the commissioner;

(e) A copy of all restrictive covenants, reservations or other documents containing provisions that may create an encumbrance on or limit the use of the property other than those restrictions contained in the declaration, supplemental declaration or bylaws; and

(f) A statement from the county assessor that the name for the condominium is acceptable under ORS 100.105 (5). [Formerly 94.356]

Note: See note under 100.655

100.665 Exemption to certain disclosure and notice requirements. A vendor under a land sale contract, a mortgagee of a mortgage or a beneficiary of a trust deed who becomes a developer by reason of acquiring a unit or units in a condominium through foreclosure of its lien or acceptance of a deed in lieu thereof, is not required to submit a filing to the commissioner under ORS 100.635, or to distribute a disclosure statement under ORS 100.705 or provide the notice to purchaser required under ORS 100.740 if the vendor, mortgagee or beneficiary sells, in a single sale, all of the units so acquired to a developer who agrees to comply with the provisions of ORS 100.635 and 100.705 before negotiating a sale of the unit or units to others. [1989 c. 595 §46]

Note: 100.665 was added to and made a part of ORS 100.015 and 100.635 to 100.910 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation

100.670 Fees; hourly rate; deposit. (1) A developer or other person required to file materials or information with the commissioner under ORS 100.005 to 100.910 shall pay to the commissioner a fee as required under subsections (2) and (3) of this section for the review, approval and handling of the filings by the commissioner at the time of the initial filing with the commissioner.

(2) A fee charged by the commissioner under subsection (1) of this section shall be determined by the commissioner to cover the costs of the commissioner's review, approval or revision activity. The fee shall be based upon an hourly rate 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.

(3) The commissioner shall collect a deposit of $100 from a developer at the time of submitting a filing described in subsection (1) of this section. The amount of the deposit shall be deducted from the final fee computed as provided in subsection (2) of this section. [Formerly 94.354]

Note: See note under 100.655

100.675 Inventory; review; approval; timelines. (1)(a) Upon receipt of an informational filing, submitted as required under ORS 100.005 to 100.910 and the prescribed filing fee, within five working days after re-

ceipt of the filing the commissioner shall inventory the filing and acknowledge whether the filing contains all required documents and information. If the filing contains all required documents and information, the commissioner shall issue a notice acknowledging their receipt.

(b) If the filing under paragraph (a) of this subsection does not contain the required documents and information, the commissioner shall issue a notice of receipt of a partial filing, a statement itemizing the required documents and information that must be submitted, and a statement that the filing will not be acknowledged as containing all required documents and information until the itemized documents and information have been received and inventoried by the commissioner.

(c) Within 45 days from the date that the filing has been inventoried and acknowledged as containing all the required documents and information, the commissioner shall review the filing to determine whether the documents and information submitted conform to the statutory requirements of ORS 100.005 to 100.910 and, upon determination of their conformity shall adopt and issue the disclosure statement filed under ORS 100.655.

(2) For any document filed with the commissioner that requires the commissioner's approval under ORS 100.005 to 100.910, the commissioner shall issue a notice of receipt for the filing within five days following receipt by the commissioner of the document. The document shall be considered approved by the commissioner on the expiration of 45 days following issuance by the commissioner of the notice of receipt, unless within the 45-day period:

(a) The commissioner notifies the person making the filing in writing of the portions of the document that do not comply with the applicable requirements of ORS 100.005 to 100.910; or

(b) The commissioner notifies the person making the filing in writing that the document complies with the applicable requirements of ORS 100.005 to 100.910 and is approved. [Formerly 94.357]

Note: See note under 100.655

100.680 Escrow; sales agreement; requirements. (1) Unless the developer of a condominium has complied with subsections (2) and (3) of this section, the developer and a purchaser may not enter into a unit sales agreement before the recording of the declaration or supplemental declaration and plat under ORS 100.115 or, if the condominium is located outside of this state, before the condominium has been created under the laws of the jurisdiction within which the condominium is located.

(2) Any purchaser's funds, the unit sales agreement, any notes or security documents and any loan commitments shall be placed in an escrow located within this state with a person or firm authorized under ORS 696.505 to 696.582. The escrow instructions may not allow distribution of the purchaser's funds until the declaration or any applicable supplemental declaration is recorded and the legal title or other interest bargained for has been transferred to the purchaser as provided in the unit sales agreement. If any funds of the purchaser are invested, the funds shall be invested in federally insured accounts or other investments approved by the commissioner. If the developer defaults under the unit sales agreement, the purchaser's funds held in escrow and all income earned from investment of the funds held in escrow shall be returned.

(3) A unit sales agreement shall contain:

(a) The unit designation;

(b) The full amount of the purchase price, including the amount and form of earnest money paid by the purchaser;

(c) The name and address of the escrow agent to hold the purchaser's funds and a reference to the escrow instructions controlling the escrow;

(d) If the purchaser's funds are to be invested, the name of the financial institution where the funds will be deposited and to whom any interest earnings will accrue under all possible circumstances;

(e) The date of closing with any conditions and requirements of closing;

(f) The closing procedure;

(g) Any authority of the developer to terminate the sale and, in the case of termination, any forfeiture provisions;

(h) If the developer specifies any contingency, the date other than closing when all purchaser's funds and interest earnings will be returned to the purchaser if the contingency is not met;

(i) Provision that the purchaser will recover any funds paid to the developer and any interest earnings upon default by the developer;

(j) Any rights reserved by the developer to modify the declaration, any supplemental declaration, bylaws, plat or other documents by which the purchaser is or will be bound;

(k) Notice to the purchaser of cancellation rights under ORS 100.730 and 100.740;

(L) For the sale of newly constructed units, any express warranty required under ORS 100.185; and

(m) Any other provisions deemed necessary by the developer and purchaser.

(4) In lieu of the requirements of subsection (2) of this section, the commissioner may approve any alternative requirement or method which the commissioner finds will assure the same protection to the purchaser as the protection provided by the escrow. [Formerly 94.358]

Note: See note under 100 655

INSPECTION OF CONDOMINIUM; DISCLOSURE STATEMENT

100.700 Inspection of condominium; report in disclosure statement. The commissioner may make an onsite inspection of any condominium and require a report of the commissioner's findings from such inspection to be included in the disclosure statement for use in the sale of the condominium. [Formerly 94.359]

100.705 Sale prohibited prior to issuance of disclosure statement; exception; distribution; use of disclosure statement. (1) Except as provided in ORS 100.665, no developer or agent of a developer shall enter into a unit sales agreement prior to the issuance of the disclosure statement for the condominium.

(2) A copy of the disclosure statement for a condominium shall be given to the prospective purchaser of a unit in the condominium 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 shall take a receipt from the prospective purchaser upon delivery of a copy of the disclosure statement, 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 disclosure statement shall not be used for advertising purposes unless it is used in its entirety. No portion of the disclosure statement shall be underscored, highlighted, italicized or printed in larger or heavier type than the balance of the statement unless the true copy of the statement so emphasizes such portion.

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

(5) Violations of this section shall be subject to the provisions of ORS 646.605 to 646.656, in addition to other sanctions provided by law. [Formerly 94.384]

100.710 Inspection deposit. When an onsite inspection under ORS 100.700 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 fee provided in ORS 100.670, may require the developer to advance a deposit. Such deposits shall not exceed $200 per day for making the onsite inspection. Any unexpended portion of the deposit shall be refunded to the developer. [Formerly 94.391]

REQUIREMENTS FOR SALE

100.720 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 94.400]

100.725 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 100.740.

(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 94 406]

100.730 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 from a developer 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 100.705 (2) upon the delivery of the disclosure statement, if any; or

(c) The signing by the purchaser of the receipt required under ORS 100.725 (4) upon delivery of a copy of the documents specified in ORS 100.725 (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 100.740 (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 100.735, 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:

(a) The sale of a unit in a condominium used or intended to be used solely for commercial or industrial purposes;

(b) The sale of a condominium unit conducted by public auction; or

(c) A sale described in ORS 100.665. [Formerly 94.412]

100.735 Waiver of right to cancel. (1) A purchaser may waive the right to cancellation granted under ORS 100.730 (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 100.730 (1) and no other right.

(2) No provision which obligates a purchaser to waive or limit the right of cancellation granted under ORS 100.730 (1) shall be included in the unit sales agreement or any other agreement associated with the sale. [Formerly 94.418]

100.740 Notice to purchaser of cancellation rights; form. (1) Subject to ORS 100.730 (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 DISCLOSURE STATEMENT, 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 DISCLOSURE STATEMENT, 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) Except as provided in ORS 100.665, 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 94.424]

100.745 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 an instalment contract of sale for which an escrow has been established pursuant to ORS 100.720 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 an instalment contract of sale shall not dispose of or subsequently encumber the 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 94.431]

100.750 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 the commissioner in Oregon at the request of the commissioner. [Formerly 94.437]

PROHIBITED ACTS

100.770 Fraud and deceit prohibited. No developer or agent of a developer 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 100.700, 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 100.700, 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 94 448]

100.775 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 employee of any newspaper, any job printer, broadcaster or telecaster liable for any publication referred to in this chapter unless the publisher, employee, printer, broadcaster or telecaster has actual knowledge of the falsity thereof or has an interest in the condominium advertised or the sale thereof. [Formerly 94 454]

100.780 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 this chapter against the developer shall be deemed to be contrary to public policy and void. [Formerly 94.460]

100.785 Blanket encumbrance permitted only in certain circumstances. (1) Subject to the provisions of ORS 100.720, 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 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 contract by which such purchaser's interest was acquired.

(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 94 465]

ENFORCEMENT

100.900 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 100.015, 100.635 to 100.730 and 100.740 to 100.780 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) When an order assessing a civil penalty under this section becomes final by operation of law or on appeal, and the amount of penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.

(5) All penalties recovered shall be paid into the State Treasury and credited to the General Fund. [Formerly 94.470]

100.905 Cease and desist order; injunction. (1) Whenever the commissioner finds that any developer or other person is violating any of the provisions of ORS 100.015, 100.635 to 100.730 and 100.740 to 100.780 or the rules adopted thereunder or of the alternative requirements of the commissioner prescribed pursuant to ORS 100.720 (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 100.015, 100.635 to 100.730 and 100.740 to 100.780 or the rules adopted thereunder or the alternative requirements of the commissioner prescribed pursuant to ORS 100.720 (3), the commissioner 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 94.475]

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

CRIMINAL PENALTIES

100.990 Criminal penalties. Any person who violates any of the provisions of ORS 100.015, 100.635 to 100.730 and 100.740 to 100.780 or any rules adopted thereunder or any alternative requirements of the commissioner prescribed pursuant to ORS 100.720 (3), shall be punished by a fine not exceeding $10,000, or by imprisonment in the custody of the Department of Corrections for a period not exceeding three years, or in the county jail not exceeding one year, or by both such fine and imprisonment. [Formerly 94 991]