Chapter 94

1993 EDITION

Real Property Development

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94.325 [Repealed by 1971 c.478 §1]

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94.333 [1987 c.459 §22; renumbered 100.015 in 1989]

94.335 [Repealed by 1971 c.478 §1]

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94.342 [Formerly 91.608; 1987 c.459 §29; renumbered 100.645 in 1989]

94.345 [Repealed by 1971 c.478 §1]

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94.350 [Repealed by 1971 c.478 §1]

94.351 [1987 c.459 §24; 1989 c.595 §30; renumbered 100.655 in 1989]

94.353 [1987 c.459 §25; renumbered 100.640 in 1989]

94.354 [1987 c.459 §23; renumbered 100.670 in 1989]

94.355 [Repealed by 1971 c 478 §1]

94.356 [1987 c.459 §26; renumbered 100.660 in 1989]

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94.358 [1987 c.459 §28; renumbered 100.680 in 1989]

94.359 [Formerly 91.614; 1987 c.459 §31; renumbered 100.700 in 1989]

94.360 [Repealed by 1971 c.478 §1]

94.365 [Repealed by 1971 c.478 §1]

94.366 [Formerly 91.617; repealed by 1987 c.459 §41]

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94.372 [Formerly 91.621; repealed by 1987 c.459 §41]

94.375 [Repealed by 1971 c.478 §1]

94.378 [Formerly 91.623; repealed by 1987 c.459 §41]

94.380 [Repealed by 1971 c.478 §1]

94.384 [Formerly 91.626; 1987 c.459 §32; 1989 c.171 §12; 1989 c.595 §31; renumbered 100.705 in 1989]

94.385 [Repealed by 1971 c.478 §1]

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94.395 [Repealed by 1971 c.478 §1]

94.400 [Formerly 91.631; renumbered 100.720 in 1989]

94.405 [Repealed by 1971 c.478 §1]

94.406 [Formerly 91.634; renumbered 100.725 in 1989]

94.410 [Repealed by 1971 c.478 §1]

94.412 [Formerly 91.637; 1989 c.595 §47; renumbered 100.730 in 1989]

94.415 [Repealed by 1971 c.478 §1]

94.418 [1981 c.647 §24; renumbered 100.735 in 1989]

94.420 [Repealed by 1971 c.478 §1]

94.424 [Formerly 91.641; 1989 c.595 §32; renumbered 100.740 in 1989]

94.425 [Repealed by 1971 c.478 §1]

94.430 [Repealed by 1971 c.478 §1]

94.431 [Formerly 91.646; 1987 c.459 §36; renumbered 100 745 in 1989]

94.435 [Repealed by 1971 c.478 §1]

94.437 [Formerly 91.649; renumbered 100.750 in 1989]

94.440 [Repealed by 1971 c.478 §1]

94.445 [Repealed by 1971 c.478 §1]

94.448 [Formerly 91.652; renumbered 100.770 in 1989]

94.454 [Formerly 91.656; renumbered 100.775 in 1989]

94.460 [Formerly 91.658; renumbered 100.780 in 1989]

94.465 [Formerly 91.661; 1989 c.595 §33; renumbered 100.785 in 1989]

94.470 [Formerly 91.664; 1983 c.696 §7b; 1989 c.706 §7; renumbered 100.900 in 1989]

94.475 [Formerly 91.667; renumbered 100.905 in 1989]

94.480 [Formerly 91.671; renumbered 100.910 in 1989]

DEVELOPMENT AGREEMENTS

94.504 Development agreements; requirements; contents. (1) A city or county may enter into a development agreement as provided in ORS 94.504 to 94.528 with any person having a legal or equitable interest in real property for the development of that property.

(2) A development agreement shall specify:

(a) The duration of the agreement, which may not exceed four years for a development of fewer than seven lots or seven years for a development of seven or more lots;

(b) The permitted uses of the property;

(c) The density or intensity of use;

(d) The maximum height and size of proposed structures;

(e) Provisions for reservation or dedication of land for public purposes;

(f) A schedule of fees and charges;

(g) A schedule and procedure for compliance review;

(h) Responsibility for providing infrastructure and services;

(i) The effect on the agreement when changes in regional policy or federal or state

law or rules render compliance with the agreement impossible, unlawful or inconsistent with such laws, rules or policy;

(j) Remedies available to the parties upon a breach of the agreement;

(k) The extent to which the agreement is assignable; and

(L) The effect on the applicability or implementation of the agreement when a city annexes all or part of the property subject to a development agreement.

(3) A development agreement shall set forth all future discretionary approvals required for the development specified in the agreement and shall specify the conditions, terms, restrictions and requirements for those discretionary approvals.

(4) A development agreement shall also provide that construction shall be commenced within a specified period of time and that the entire project or any phase of the project be completed by a specified time.

(5) A development agreement shall contain a provision that makes all city or county obligations to expend moneys under the development agreement contingent upon future appropriations as part of the local budget process. The development agreement shall further provide that nothing in the agreement requires a city or county to appropriate any such moneys.

(6) A development agreement must state the assumptions underlying the agreement that relate to the ability of the city or county to serve the development. The development agreement must also specify the procedures to be followed when there is a change in circumstances that affects compliance with the agreement. [1993 c.780 §1]

Note: 94.504 to 94.528 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 94 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

94.505 [Repealed by 1971 c.478 §1]

94.508 Approval by governing body; findings; adoption. (1) A development agreement shall not be approved by the governing body of a city or county unless the governing body finds that the agreement is consistent with local regulations then in place for the city or county.

(2) The governing body of a city or county shall approve a development agreement or amend a development agreement by adoption of an ordinance declaring approval or setting forth the amendments to the agreement. Notwithstanding ORS 197.015 (10)(b), the approval or amendment of a development agreement is a land use decision under ORS chapter 197. [1993 c.780 §2]

Note: See note under 94.504.

94.510 [Repealed by 1971 c.478 §1]

94.513 Procedures on consideration and approval. (1) A city or county may, by ordinance, establish procedures and requirements for the consideration of development agreements upon application by, or on behalf of, the owner of property on which development is sought or another person having a legal or equitable interest in that property.

(2) Approval of a development agreement requires compliance with local regulations and the approval of the city or county governing body after notice and hearing. The notice of the hearing shall, in addition to any other requirements, state the time and place of the public hearing and contain a brief statement of the major terms of the proposed development agreement, including a description of the area within the city or county that will be affected by the proposed development agreement. [1993 c.780 §3]

Note: See note under 94.504.

94.515 [Repealed by 1971 c.478 §1]

94.518 Application of local government law and policies to agreement. Unless otherwise provided by the development agreement, the comprehensive plan, zoning ordinances and other rules and policies of the jurisdiction governing permitted uses of land, density and design applicable to the development of the property subject to a development agreement shall be the comprehensive plan and those ordinances, rules and policies of the jurisdiction in effect at the time of approval of the development agreement. [1993 c.780 §4]

Note: See note under 94.504.

94.520 [Repealed by 1971 c.478 §1]

94.522 Amendment or cancellation of agreement; enforceability. (1) A development agreement may be amended or canceled by mutual consent of the parties to the agreement or their successors in interest. The governing body of a city or county shall amend or cancel a development agreement by adoption of an ordinance declaring cancellation of the agreement or setting forth the amendments to the agreement.

(2) Until a development agreement is canceled under this section, the terms of the development agreement are enforceable by any party to the agreement. [1993 c.780 §5]

Note: See note under 94.504.

94.525 [Repealed by 1971 c.478 §1]

94.528 Recording. Not later than 10 days after the execution of a development agreement under ORS 94.504 to 94.528, the governing body of the city or county shall cause the development agreement to be presented for recording in the office of the county clerk of the county in which the property subject

to the agreement is situated. In addition to other provisions required by ORS 94.504 to 94.528, the development agreement shall contain a legal description of the property subject to the agreement. [1993 c.780 §6]

Note: See note under 94.504.

94.530 [Repealed by 1971 c.478 §1]

94.540 [Repealed by 1971 c.478 §1]

PLANNED COMMUNITIES

(General Provisions)

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

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

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

(3) "Condominium" means property submitted to the provisions of ORS chapter 100.

(4) "Declarant" means:

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

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

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

(5) "Declaration" means the instrument described in ORS 94.580 which establishes a planned community, and any amendments to the instrument.

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

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

(a) A mortgagee under a mortgage;

(b) A beneficiary under a trust deed; or

(c) The vendor under a land sale contract.

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

(9) "Planned community" means any subdivision under ORS 92.010 to 92.190 which results in a pattern of ownership of real property and all the buildings, improvements and rights located on or belonging to the real property, in which:

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

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

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

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

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

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

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

(c) Converting lots into common property;

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

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

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

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

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

94.560 Legislative findings. The Legislative Assembly finds that:

(1) In the State of Oregon there are hundreds of homeowners associations to which the Oregon Condominium Law (ORS chapter 100) does not apply.

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

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

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

(5) It is a matter of statewide concern that the Legislative Assembly address problems associated with homeowners associations in order to make this kind of home ownership pattern an acceptable choice and in order to assure proper maintenance of the projects so that the investment of the owners and the appearance of Oregon communities are protected.

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

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

(Creation of Planned Community)

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

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

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

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

(b) A condominium under ORS chapter 100;

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

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

(e) A timeshare plan under ORS 94.803 and 94.807 to 94.945.

(2) A de minimis planned community is one:

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

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

(A) Shall include current costs for any services which the declarant will be providing at less than cost during the period the

declarant is marketing the lots and which the association will have to provide at cost after the declarant no longer performs these services. Current costs shall be based on competitive current rates for alternative professional services for such items as landscape and pool maintenance.

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

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

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

(4) Nothing in this section prohibits the establishment of a condominium subject to ORS chapter 100 within a planned community. [1981 c.782 §6; 1983 c.530 §52, 1985 c.76 §3]

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

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

(2) The declaration shall include:

(a) The name of the planned community;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

94.585 Authority to amend declaration and initial bylaws to comply with federal laws. A declarant may amend the declaration or initial bylaws in order to comply with requirements of the Federal Housing Administration, the United States Department of Veterans' Affairs, the Farmer's Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon or any corporation wholly-owned, directly or indirectly, by the United States or the State of Oregon which insures, guarantees or provides financing for a planned community or lots in a planned community. However, if the need to amend the declaration or the initial bylaws occurs after the turnover to the homeowners association has occurred, the amendment must be approved by the association. [1981 c.782 §19; 1991 c.67 §18]

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

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

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

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

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

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

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

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

(5) The account may be used only for replacement of common property and is to be kept separate from assessments for maintenance. However, after the individual lot owners have assumed responsibility for administration of the planned community, the board of directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet other temporary expenses. Funds borrowed to meet temporary expenses under this subsection must be repaid later from special assessments or maintenance fees.

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

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

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

(Declarant Control; Turnover of Administrative Control)

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

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

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

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

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

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

94.609 Notice of meeting to turn over administrative responsibility. (1) At the time specified in the declaration, but not later than 120 days after lots representing 75 percent of the votes have been conveyed, the

declarant shall call a meeting for the purpose of turning over administrative responsibility for the planned community to the homeowners association.

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

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

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

94.615 [Repealed by 1971 c.478 §1]

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

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

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

(a) The original or a photocopy of the recorded declaration and copies of the bylaws and the articles of incorporation, if any, of the planned community and any supplements and amendments to the articles or bylaws;

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

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

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

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

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

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

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

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

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

(k) All bank signature cards;

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

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

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

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

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

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

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

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

(o) Insurance policies;

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

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

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

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

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

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

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

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

94.620 [Repealed by 1971 c.478 §1]

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

(Homeowners Association; Management of Planned Community)

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

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

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

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

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

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

(e) Make contracts and incur liabilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The terms of office of directors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

94.645 Adoption of annual budget. Unless otherwise provided in the bylaws, the board of directors annually shall adopt a budget for the planned community as provided in this section. Within 30 days after adopting a proposed annual budget for the planned community, the board of directors shall provide a summary of the budget to all owners. If the board of directors is petitioned by owners representing 20 percent of the votes of the planned community, the board shall call a meeting of the owners to consider rejection of the budget. The date of the meeting shall be not less than 14 or more than 30 days after the summary is provided to the owners. At the meeting, whether or not a quorum is present, the budget shall be adopted unless a majority of the votes of the planned community or any larger vote specified in the bylaws rejects the budget. If the proposed annual budget is rejected, the last annual budget shall continue in effect until the owners approve a subsequent budget. [1981 c.782 §39]

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

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

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

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

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

(2) A sale, transfer or encumbrance of the common property or any portion of the common property made pursuant to a right reserved in the declaration under this section may provide that the common property be released from any restriction imposed on the common property by the declaration. However, a sale, transfer or encumbrance may not deprive any lot of its right of access or support without the consent of the owner of the lot. [1981 c.782 §47; 1987 c.447 §112]

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

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

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

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

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

(c) The current operating budget of the association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The insurance an owner must obtain;

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

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

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

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

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

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

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

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

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

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

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

(Assessments and Liens Against Lots; Easements)

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

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

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

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

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

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

94.705 [Repealed by 1971 c.478 §1]

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

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

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

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

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

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

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

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

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

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

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

94.710 [Repealed by 1971 c.478 §1]

94.715 [Repealed by 1971 c.478 §1]

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

94.720 [Repealed by 1971 c.478 §1]

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

94.725 [Repealed by 1971 c.478 §1]

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

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

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

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

94.730 [Repealed by 1971 c.478 §1]

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

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

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

(2) Except as provided in the declaration, a declarant has an easement through the common property as may be necessary for discharging the declarant's obligations or exercising any special declarant right.

(3) If an encroachment results from construction, reconstruction, repair, shifting, settlement or movement of any portion of the

planned community, an easement for the encroachment exists to the extent that any lot or common property encroaches on any other lot or common property. An easement continues for maintaining the encroachment so long as the encroachment exists. Nothing in this section relieves an owner of liability in case of the owner's willful misconduct or relieves a declarant or any other person of liability for failure to adhere to the plat of the planned community. [1981 c.782 §33]

(Regulation of Sales; Required Documents)

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

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

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

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

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

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

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

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

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

---

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

(2) The declarant (hereinafter called the "developer" for purposes of this summary) has _____ has not _____ agreed in the declaration to add either improvements or lots, or both, in the present or any future phase. OR the developer has neither agreed to make any additions nor limited the right to do so _____. See p._____ (Declaration).

(3) The developer controls the project until the lots representing _____ percent of the votes (in this phase) _____ (in all phases) _____ have been sold to owners other than the developer, or until _____ years after the sale of the first lot, or _____. See p. _____ (Declaration).

(4) In addition to retaining the right to add more lots, the developer may retain certain other rights after the association elected by the homeowners has assumed administrative responsibility. See Developer's Rights, p. _____ (Declaration).

(5) The declaration requires the developer to deed _____ the common property to the association or to lease the common property to the association with a negotiable lease _____ nonnegotiable lease _____. See p. _____ (Declaration).

(6) The following liens exist on the property and will be removed by the dates shown:

(liens)	(removal date)
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(7) As used in this statement, "phase" means a group of lots in a planned community that the developer designates as such in the declaration, by reference to lot numbers on the plat.

[1981 c.782 §78]

94.750 Statement of Planned Community Information. (1) The Statement of Planned Community Information required under ORS 94.670 consists of two parts, the "Current Status of Homeowners Association" part and the "Standard Form" part, and shall conform to the requirements of this section. The association shall amend the Standard Form when amendments to information contained in the form are made to the declaration or bylaws. The association shall keep the Current Status report current on an annual basis, except that items (1) and (2) of the report must be kept current within 60 days. The Statement of Planned Community Information shall follow the following format:

CURRENT STATUS OF HOMEOWNERS ASSOCIATION

(1) The current annual assessment on lot _____ (lot number or address) is $_____ for maintenance and operation and $_____ for replacement reserves for the common property subject to regular replacement.

(2) There are unpaid assessments on this lot of $_____.

(3) The association anticipates the following capital expenditures in the next two years that may require a special assessment:

(a) None _____.

(b) See attached explanation #_____.

(4) The association is ____ is not ____ a party to any pending lawsuits or judgments. If the association is so involved, see attached explanation #_____.

(5) The lot identified in "1" above (a) has ____ (b) has not ____ had improvements or alterations made by the prior lot owners in violation of the declaration. If (a) is checked, see attached explanation #_____.

(6) The common property has:

(a) Been deeded to the association ____.

(b) Been leased in whole or in part to the association ____. If (b) is checked, see attached explanation #____, detailing whether the leasehold is negotiable, the term of the leasehold, and whether it is renewable.

(7) Information about insurance coverage may be obtained from:

_____(Agent)

_____(Address of Agent).

(8) Information about the operation of the association is available by calling _____(Name of manager or person designated to speak for the board.) at _____.

_____

_____

STANDARD FORM

(1) _____ (Name of Planned Community) is operated by a board of directors selected by the lot owners _____ OR is operated by a board of directors selected by the declarant. (The declarant is the person or persons who created the planned community.) _____.

(2) The declarant will turn over responsibility for the planned community to the lot owners when _____.

(3) The board of directors is responsible for maintaining the common property, establishing reserves for replacement of common property, insuring the common property and otherwise managing the business affairs of the association of owners.

(4) The board annually prepares a budget and can assess the lot owners to collect fees to meet the budget. The board can impose a lien on a lot owner's property and impose fines for nonpayment of fees.

(5) You should read carefully the contents of the Statement of Planned Community Information. You should also read the declaration, bylaws and rules so that you understand your rights and obligations under this form of home ownership.

(6) Items of particular interest that are included in the declaration or bylaws are these:

(a) A _____ percent vote is required to amend the declaration.

(b) A _____ percent vote is required to amend the bylaws.

(c) In this planned community:

Pets are ____ are not ____ allowed. A ____ percent vote is required to change this rule.

Children are ____ are not ____ allowed. A ____ percent vote is required to change this rule.

Renting the dwelling on your lot is ____ is not ____allowed. A ____ percent vote is required to change this rule.

The number of people who can live in your unit is ____ is not ____ limited to ____. A ____ percent vote is required to change this rule.

(d) In this planned community the association is responsible for the following items (if checked):

(A) Exterior structure maintenance ____.

(B) Landscaping ____.

(C) Walkways ____.

(D) The following recreation facilities:

_____

_____

(List or write "None") _____

(E) The following utilities (if checked): streets ____; sewers ____; water supply ____; street lights ____; other_____.

(e) There are ____ are not ____ limitations on your right to alter the structure(s) on your lot or to build a different structure(s) if yours is damaged or destroyed.

(f) The association does ____ does not ____ have the right of first refusal in the event you wish to sell your lot.

(g) There are ____ are not ____ other restrictions on your right to sell your lot. If there are such restrictions, see attached explanation #_____.

_____

(2) The declarant shall maintain and provide the Statement of Planned Community Information until the date of the meeting to turn over control of the planned community

under ORS 94.609. After that date, the homeowners association shall maintain and provide the statement. [1981 c.782 §76; 1983 c.740 §8]

94.755 Notice to Purchaser. The "Notice to Purchaser" required under ORS 94.740 shall be in the following form:

NOTICE TO PURCHASER
(RIGHT OF CANCELLATION)

BY SIGNING THIS AGREEMENT YOU ARE INCURRING A CONTRACTUAL OBLIGATION TO PURCHASE A LOT IN A PLANNED COMMUNITY. YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT FOR ANY REASON UNTIL FIVE BUSINESS DAYS AFTER YOU HAVE RECEIVED THIS NOTICE. TO CANCEL THIS AGREEMENT, YOU MUST GIVE WRITTEN NOTICE TO THE DEVELOPER OR THE AGENT OF THE DEVELOPER AT THE FOLLOWING ADDRESS: _____

[1981 c.782 §82]

94.760 Promotional material showing possible improvements. If a declarant makes no commitment in the declaration to build an improvement or specifically states in the declaration that the declarant makes no commitment either to build or not to build the improvement, no person may display or deliver promotional material to prospective purchasers which describes or portrays the improvement unless the description or portrayal is conspicuously labeled "POSSIBLE Improvement." [1981 c.782 §79]

94.765 Cancellation of sale of lot; notice to seller; return of payments and reconveyance; removal of encumbrances; termination of right to cancel; waiver ineffective. (1) Any purchaser of a lot from the declarant may cancel for any reason any contract, agreement or any evidence of indebtedness associated with the sale of the lot not later than the fifth business day after the purchaser has received the notice required under ORS 94.755.

(2) Cancellation under subsection (1) of this section occurs when the purchaser of an interest gives written notice of cancellation to the declarant at the declarant's address.

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

(4) If a purchaser gives notice of cancellation by mail, the notice shall be given by certified mail, return receipt requested. A notice mailed under this subsection is effective on the date that the notice is deposited with the United States Postal Service, properly addressed and postage prepaid.

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

(6) A purchaser's right to cancel under this section terminates at the time of the closing of the transaction for the purchase of the lot.

(7) No act of a purchaser shall be effective to waive the right of cancellation granted by subsection (1) of this section. [1981 c.782 §81]

(Miscellaneous)

94.770 Application of rule against perpetuities; conflict between declaration and bylaws; effect on title of declaration's insubstantial noncompliance with Planned Community Act. (1) The rule against perpetuities may not be applied to defeat any provision of the declaration, or any bylaws or rules adopted under ORS 94.630.

(2) In the event of a conflict between the declaration and the bylaws of a planned community or between the declaration and the articles of incorporation, the declaration shall prevail except to the extent the declaration is inconsistent with ORS 94.550 to 94.783.

(3) Title to a unit, lot and common property shall not be rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with ORS 94.550 to 94.783. [1981 c.782 §86]

94.775 Judicial partition prohibited. No judicial partition may be allowed of any property in a planned community, nor may any person acquiring any interest in any

damaged or destroyed property in the planned community seek a judicial partition unless the declarant or the homeowners association has removed the property from the provisions of the declaration. [1981 c.782 §87]

94.780 Remedies. (1) Intentional and deliberate failure of the declarant, association, any association member or any other person subject to ORS 94.550 to 94.783 to comply with applicable sections of ORS 94.550 to 94.785 shall be cause for suit or action to remedy the violation or to recover actual damages. The prevailing party is entitled to reasonable attorney fees and court costs.

(2) Failure of an association to accept administrative responsibility under ORS 94.616 shall be a defense for the declarant against an action brought under this section.

(3) A receipt signed by the purchaser for documents required to be delivered by the seller in ORS 94.740 shall be a defense for the seller in an action against the seller for nondelivery of the documents.

(4) A suit or action arising under this section must be commenced within one year after the discovery or identification of the alleged violation. [1981 c.782 §83]

94.783 When certain administrative provisions apply. If a subdivision received preliminary plat approval before July 1, 1982, but the subdivision plat or the plat of the first phase is not filed under ORS 92.120 before January 1, 1984, the provisions of ORS 94.595, 94.604, 94.609, 94.616, 94.700, 94.745, 94.750, 94.755, 94.760 and 94.780 shall apply to the planned community. [1983 c.206 §8]

94.785 Short title. ORS 94.550 to 94.783 may be cited as the Oregon Planned Community Act. [1981 c.782 §1]

TIMESHARE ESTATES

(General Provisions)

94.803 Definitions for ORS 94.803 to 94.945. As used in this section and ORS 94.807 to 94.945:

(1) "Agency" means the Real Estate Agency.

(2) "Accommodation" means an apartment, condominium unit, cabin, house, lodge, hotel or motel room or other private or commercial structure situated on real property and designed for residential occupancy.

(3) "Assessment" means the pro rata share assessed from time to time against each owner of a timeshare by the managing entity to pay for common expenses.

(4) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance, mechanic's lien or otherwise, securing or evidencing the payment of money and affecting more than one timeshare, or an agreement affecting more than one timeshare by which the developer holds the timeshare property under an option, leasehold, contract to sell or trust agreement.

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

(6) "Common expenses" means:

(a) Expenses of administration, maintenance, repair or replacement of the accommodations and facilities of the timeshare plan;

(b) Expenses agreed upon as common by all the timeshare owners in the timeshare plan; and

(c) Expenses declared common by the timeshare instrument or bylaws of the timeshare plan.

(7) "Developer" means a person creating a timeshare plan and a seller of a timeshare plan.

(8) "Exchange program" means any opportunity for a purchaser to exchange timeshare periods among purchasers in the same or other timeshare plans.

(9) "Facility" means a structure, service, improvement or real property available for the owner's use.

(10) "Fractional interest" means any undivided fractional ownership of real property which gives each and every fractional owner full rights to unlimited use and possession of the real property subject only to such limitation as the fractional owners may agree to among themselves.

(11) "Managing entity" means the person designated in the timeshare instrument or selected by the owners' association board or by the owners to manage all or a portion of the timeshare plan.

(12) "Negotiate" means any activity preliminary to the execution of a binding agreement for the sale of a timeshare, including but not limited to advertising, solicitation and promotion of the sale of the timeshare.

(13) "Offering" means any advertisement, inducement, solicitation or attempt to encourage a person to acquire a timeshare, other than as a security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a timeshare in property located outside this state is not an offering if the advertisement states that the offering is valid only if made in compliance with the law of the jurisdiction in which the offer is disseminated.

(14) "Owner" means a person, other than the developer, to whom a timeshare has been

conveyed other than as security for an obligation.

(15) "Project" means real property subject to a timeshare instrument. A project may include accommodations that are not timeshare accommodations.

(16) "Purchaser" means any person, other than a developer, who by voluntary transfer acquires an interest in a timeshare other than as security for an obligation.

(17) "Sale" means a transaction that conveys a timeshare other than as security for an obligation, including, but not limited to a lease or assignment.

(18) "Seller" means a person who offers a timeshare for sale to the public. "Seller" does not include a person who acquired a timeshare for the person's own use and later offers it for resale.

(19) "Timeshare" means a timeshare estate or a timeshare license.

(20) "Timeshare agreement" means an agreement conferring the rights and obligations of the timeshare plan on a purchaser including but not limited to a deed, lease and vacation license.

(21) "Timeshare estate" means a right to occupy an accommodation during five or more separated timeshare periods over a period of at least five years, including renewal options, coupled with a freehold estate or an estate for years in the timeshare property.

(22) "Timeshare instrument" means a document creating or regulating timeshares.

(23) "Timeshare license" means a right to occupy an accommodation during five or more separated timeshare periods over a period of more than three years, including renewal options, not coupled with a freehold estate or an estate for years.

(24) "Timeshare period" means the period of time when an owner is entitled to possess and occupy accommodations or facilities of a timeshare plan.

(25) "Timeshare plan" means an arrangement, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement or otherwise, in which an owner receives a timeshare estate or a timeshare license and the right to use accommodations and facilities that are part of the timeshare property. A timeshare plan does not include an exchange program.

(26) "Timeshare property" means one or more accommodations subject to the same timeshare instrument and any other real estate or rights appurtenant to those accommodations. [1983 c.530 §2; 1987 c.414 §144b; 1991 c.64 §1]

94.805 [Repealed by 1971 c.478 §1]

94.806 Legislative finding. The Legislative Assembly finds and declares that there is a need to:

(1) Protect timeshare purchasers by requiring full and adequate disclosure of all pertinent facts about the timeshare plan; and

(2) Provide reasonable regulation of the timeshare industry while encouraging the growth and development of the industry in Oregon. [1983 c.530 §1]

94.807 Application. ORS 94.803, 94.806, 94.811 to 94.863 and 94.869 to 94.945 do not apply to:

(1) Any timeshare plan for which the developer has complied with the requirements of ORS 92.305 to 92.495 or 100.005 to 100.910 before July 28, 1983.

(2) Any timeshare plan for which the developer has complied with all applicable local regulations and has submitted a completed filing under ORS 92.305 to 92.495 or 100.005 to 100.910 before July 28, 1983.

(3) Any subsequent phase or stage of a timeshare plan described in subsection (1) or (2) of this section that has complied with the applicable requirements of ORS chapter 92 and this chapter in effect prior to July 28, 1983. However, the developer of the phase or stage must comply with the cancellation provisions of ORS 94.836 and 94.839.

(4) Subdivided land as defined by ORS 92.305, a planned community as defined by ORS 94.550 (9) and a condominium subject to ORS 100.005 to 100.910 that does not involve a timeshare plan.

(5) Subdivided land as defined by ORS 92.305, a planned community as defined by ORS 94.550 (9) and a condominium subject to ORS 100.005 to 100.910, that involves a timeshare plan to the extent of the nontimeshare aspects of the development. The developer of such a development must comply with the applicable requirements of ORS chapter 92 and this chapter in addition to ORS 94.803, 94.806 and 94.811 to 94.945.

(6) Any transaction normal and customary in the hotel and motel business involving the acceptance of advance reservations which are not entered into for the purpose of evading the provisions of ORS 92.325, 94.570, 94.803 to 94.945, 100.005, 100.105, 100.200, 100.450 and 696.490.

(7) The offering, sale or transfer of a fractional interest or a timeshare in a timeshare plan comprised of 12 timeshares or less unless the commissioner determines that the developer is attempting by a common scheme or course of development to evade the provisions of ORS 92.325, 94.570,

94.803 to 94.945, 100.005, 100.105, 100.200, 100.450 and 696.490.

(8) The transfer of a timeshare by reason of a foreclosure action, by deed in lieu of foreclosure, by gift or by devise, descent or distribution or transfer to an inter vivos trust that is not made to evade ORS 94.803 and 94.807 to 94.945.

(9) The offering, sale or transfer of a membership or interest in a recreational vehicle park or campground that provides no right to use or occupy a residential dwelling structure in the project overnight.

(10) The offering, sale or transfer of a membership or interest entitling the purchaser to a timeshare in personal property, including but not limited to an airplane, boat or recreational vehicle.

(11) The offering, sale or transfer of a membership or interest entitling the purchaser to use real property and facilities without overnight use for dwelling purposes, including but not limited to commercial office, retail or similar space and golf, tennis or athletic clubs. [1983 c.530 §3; 1985 c.565 §9; 1991 c.64 §2; 1993 c.744 §245]

94.808 Managing entity as taxpayer. (1) For the purposes of ad valorem taxation, the managing entity responsible for managing the timeshare plan shall be considered the taxpayer, as agent for the owners of the timeshare property.

(2) All of the timeshare property within each timeshare plan shall be listed on the assessment roll by code area and account number as a single entry stating as one value the real market value and assessed value of the land and improvements, except that recreational facilities shall be separately valued and taxed to the owner thereof, as provided in subsection (1) of this section.

(3) All rights and privileges afforded property owners by Oregon law as to appealing assessments shall apply only to the managing entity, as agent for the owners of the timeshare property.

(4) The managing entity, as agent of the timeshare owners, shall remit the taxes assessed on the timeshare property. [1987 c.424 §2; 1991 c.459 §337]

94.809 Valuation of timeshare property; exclusions from value. (1) The real market value of timeshare property shall not include any nonreal property components of timeshares, which nonreal property components include, without limitation, tangible personal property, exchange rights, club memberships, vacation convenience services such as hotel-type services and the management structure of the timeshare plan, and that portion of the legal, accounting, promotion and marketing costs in developing and selling the timeshares allocable to the nonreal property components. The real market value of timeshare property shall not be based upon the aggregate sales prices of timeshares, if such sales prices include nonreal property components.

(2) The real market value of timeshare property, other than the recreational facilities, shall be determined by taking the value of each individual living unit as if such living unit were owned by a single taxpayer, without having been timeshared, and adjusting such value by an amount necessary to reflect any increase or decrease in such value attributable to the fact that such timeshare property is marketed in increments of time. There shall be a rebuttable presumption that the value of such timeshare property is increased by 20 percent of its value under single ownership by virtue of being marketed in increments of time. If the managing entity or assessor contends that the adjustment due to such ability to market in increments of time is less than or greater than an increase of 20 percent of the single ownership value, then the burden of establishing such adjustment shall be upon the party so contending. [1987 c.424 §3, 1991 c.459 §338]

94.810 [Repealed by 1971 c.478 §1]

94.811 When condominium or planned community owners may prohibit timeshare plan. (1) The unit owners in a condominium subject to the Oregon Condominium Act and the owners in a planned community subject to the Oregon Planned Community Act may amend the declaration for the condominium or planned community to prohibit the creation of a timeshare plan involving any portion of the property of the condominium or planned community. Any amendment to a condominium declaration must comply with ORS 100.135 and any amendment to a planned community declaration must comply with ORS 94.590.

(2) The owners of land in a subdivision may amend the recorded declaration, bylaws or other governing document for the subdivision to prohibit the creation of a timeshare plan involving any portion of the property within the subdivision. The amendment must be approved by not less than 75 percent of the owners or by any larger percentage specified for the amendment in the recorded declaration, bylaws or other governing document for the subdivision. As used in this subsection, "subdivision" means a subdivision as defined by ORS 92.010, that:

(a) Was approved and for which a plat was recorded under ORS 92.120 before July 28, 1983;

(b) At the time of the subdivision's creation, would have met the definition of a planned community under ORS 94.550 (9); and

(c) Is not, because of the time of its creation, a planned community subject to the Oregon Planned Community Act.

(3) The declaration for a condominium subject to the Oregon Condominium Act and created after July 28, 1983, and the declaration for a planned community, subject to the Oregon Planned Community Act and created after July 28, 1983, may include a provision prohibiting the creation of a timeshare plan involving any portion of the property of the condominium or planned community. [1983 c.530 §4]

(Creation of Timeshare Estates)

94.813 Character of timeshare estates. (1) Except as expressly modified by ORS 92.325, 92.425, 94.570, 94.803 to 94.945, 100.005, 100.105, 100.200, 100.450 and 696.490, a timeshare estate is an estate in real property and has the character and incidents of an estate in fee simple at common law or estate for years if a leasehold. A timeshare license is an estate for years having the character and incidents of such an estate at common law.

(2) A document transferring or encumbering a timeshare may not be rejected for recordation because of the nature or duration of the interest.

(3) Neither a timeshare plan nor a timeshare, subject to regulation under ORS 94.803 and 94.807 to 94.945 is a "security," as defined in ORS 59.015. [1983 c.530 §§4a, 5; 1985 c.349 §29; 1987 c.603 §25]

94.815 [Repealed by 1971 c.478 §1]

94.816 Partition prohibited; exception. (1) Except as otherwise provided in this section, no judicial action for partition of a timeshare property may be undertaken as long as the property remains subject to a timeshare plan.

(2) If any timeshare is owned by two or more persons as tenants in common, as tenants by the entirety or as tenants with rights of survivorship, nothing in this section shall prohibit the judicial sale of the timeshare in lieu of partition as between the cotenants.

(3) A court of competent jurisdiction, on petition of the developer of a timeshare plan or the developer's successor in interest, may grant a waiver of the prohibition against partition under subsection (1) of this section, if the court is satisfied that:

(a) The developer retains at least 50 percent of the timeshares created in the timeshare plan;

(b) The timeshare plan has failed and the continuation of the use of timeshare property by timeshare owners is no longer possible in the manner prescribed by the timeshare instruments;

(c) It is in the best interest of timeshare owners to terminate the timeshare plan and that no reasonable alternative to partition of the timeshare property exists;

(d) The petition has not been brought by the developer to avoid the developer's responsibilities under the timeshare instrument without good cause; and

(e) The holder of each blanket encumbrance consents to the proceeding under this section.

(4) Except as otherwise provided in subsection (5) of this section, upon a court declaration of timeshare plan failure under subsection (3) of this section, the court shall proceed to partition the timeshare property as otherwise provided by law.

(5) In the event of a court ordered sale in connection with partition, proceeds of the sale shall be applied in the following order:

(a) Costs described in ORS 105.285 (1) and (2);

(b) Repayment to owners except the developer of down payments and payments of principal and interest paid by such owners for their timeshares less the value, as determined by the court, of the owners' use of their timeshares;

(c) Payments to satisfy and discharge the remaining timeshare purchase money obligations of all owners except the developer. If the developer or an entity closely related to the developer holds the beneficial interest in any of such purchase money obligations, funds shall first be applied to discharge the purchase money obligations held by other holders, and then to the credit of the developer and its related entity for purchase money obligations held by the developer or such entity. Funds paid to the developer or the related entity's credit shall be held by the court as proceeds available to lienholders and other claimants in such partition. If there are insufficient funds to fully discharge purchase money obligations of all owners except the developer, the balance of unsatisfied purchase money obligations of all owners except the developer shall be discharged by decree of the court; and

(d) As otherwise provided by law. [1983 c.530 §6]

94.818 Recording of timeshare instrument; payments required. (1) To submit property located within this state to the provisions of ORS 94.803 and 94.807 to 94.945, the developer shall record a timeshare in-

strument in the office of the recording officer of every county in which the timeshare property is located. To submit property located outside this state to the provisions of ORS 94.803 and 94.807 to 94.945, the developer shall satisfy the requirements of ORS 94.885 for the recording of a notice of timeshare plan. The timeshare instrument shall comply with ORS 94.821 and shall be executed in accordance with subsection (2) of this section and acknowledged in the manner provided for acknowledgment of a deed.

(2) If the developer is not the fee owner of the property, the fee owner and the vendor under any contract of sale and the lessor under any lease shall also execute the timeshare instrument for the purpose of consenting to the property being submitted to the provisions of ORS 94.803 and 94.807 to 94.945.

(3) No timeshare instrument shall be recorded unless all taxes, penalties, special assessments, fees and charges that would be required to be paid for subdivisions or partitions under ORS 92.095 have been paid in the same manner as provided in ORS 92.095. [1983 c.530 §7; 1993 c.19 §2]

94.820 [Repealed by 1971 c.478 §1]

94.821 Content of timeshare instrument. A timeshare instrument shall include:

(1) A legal description of the timeshare property;

(2) The name or other identification of the project;

(3) Identification of timeshare periods by letter, name, number or a combination of letters, names and numbers and a description of the timeshare;

(4) Identification of the accommodations;

(5) The method for determining the owner's liability for common expenses and real property taxes;

(6) The method for notice and appeal of property tax values;

(7) If additional accommodations may become part of the timeshare property or existing accommodations may be deleted from the timeshare property, the method for adding them to or deleting them from the property and the formula for allocation and reallocation of the liabilities for common expenses and of voting rights;

(8) Any restrictions on the use, occupancy or alteration of a timeshare accommodation and any specified procedure or method for amending existing rules or adopting additional rules and regulations;

(9) Any restriction on the alienation of a timeshare;

(10) The ownership interest of the owner in personal property and provisions for care and replacement of personal property;

(11) If the instrument creates timeshare licenses, the period the accommodations affected are committed to timeshare licenses and provisions for disposition of those accommodations at the end of the period, if the period is not infinite;

(12) Any requirement for or restriction on amending the timeshare instrument;

(13) The nature and duration of the owner's rights in the timeshare plan, the circumstances under which the timeshare plan could be terminated and the procedure for terminating the timeshare plan;

(14) A description of the form of conveyance or other instrument used by the developer to transfer a timeshare to a purchaser;

(15) The identity of any person that has the power to grant an easement in the timeshare property or otherwise affect the title to the timeshare property;

(16) How and by whom the timeshare plan will be managed, including but not limited to provisions for selecting a replacement or successor managing entity and provisions for continuity of management throughout the duration of the timeshare plan;

(17) A description of the voting rights of a timeshare owner and the developer and other participation rights, if any, of a timeshare owner and the method for determining and allocating the voting rights; and

(18) Provisions for notifying a timeshare owner of any authorized change in the owner's voting or participation rights. [1983 c.530 §8; 1987 c.424 §4]

94.823 Notice of intent to sell timeshares; form and content. A developer shall submit a notice to the commissioner informing the commissioner of the developer's intent to sell timeshares in Oregon. The form and content of the notice shall be established by rule by the commissioner, but shall include at least:

(1) The name and business and residence address of:

(a) The developer;

(b) The developer's agent;

(c) The designated managing entity; and

(d) Any person selling the timeshare plan within Oregon.

(2) An explanation of the timeshare form of ownership to be offered under the timeshare plan.

(3) A general description of the timeshare plan, including the number of timeshares to be offered under the timeshare plan and the

number and description of the accommodations and facilities.

(4) A complete description, including a copy of all necessary implementing documents, of the methods to be used by the developer to comply with the requirements of ORS 92.325, 92.425, 94.570, 94.803 to 94.945, 100.005, 100.105, 100.200, 100.450 and 696.490.

(5) A title report for the real property underlying the timeshare plan, acceptable to the commissioner and including a statement of any lien, defect, judgment or other encumbrance affecting title to the property.

(6) A copy of any judgment against the developer or managing entity, the status of any pending suit that is material to the timeshare plan to which the developer or managing entity is a party and the status of any other suit that is material to the timeshare plan of which the developer has actual knowledge.

(7) A description of any insurance coverage provided for the benefit of a purchaser or a statement that no insurance coverage is provided.

(8) The name and address of the accommodations and facilities and the schedule for completing any improvements not complete at the time of filing.

(9) The financial obligation of a purchaser, excluding the initial purchase price and including:

(a) Additional charges and common expenses to which the purchaser may be subject, whether or not in the form of an assessment; and

(b) An estimated operating budget and schedule of estimated common expenses.

(10) A copy of the timeshare instrument or notice of timeshare plan as required under ORS 94.818.

(11) A copy of any contract, lease or timeshare agreement to be signed by the purchaser.

(12) A copy of the rules, limitations or conditions on the use of accommodations or facilities available to purchasers.

(13) Any restriction on the transfer of any timeshare.

(14) If any portion of the timeshare property is located outside the state, proof that the developer has recorded the notice of timeshare plan as required under ORS 94.833 (1).

(15) Any other information the commissioner may determine is necessary. [1983 c.530 §19]

94.825 [Repealed by 1971 c.478 §1]

94.826 Information on exchange program; content. (1) A seller offering an exchange program to a purchaser in conjunction with a timeshare plan shall provide written information to the purchaser about the exchange program.

(2) The exchange program information to be provided to the purchaser shall be established by rule by the commissioner and shall include at least:

(a) The name and address of the exchange company;

(b) Whether or not the purchaser's participation in the exchange program is dependent upon the timeshare plan's continued affiliation with the exchange program;

(c) Whether or not the purchaser's participation in the exchange program is voluntary;

(d) A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange program, and the procedure for modifying the exchange program contract;

(e) The procedure to qualify for and effectuate an exchange;

(f) A description of any limitation, restriction or priority system employed in the operation of the exchange program;

(g) The circumstances under which a purchaser may lose the use and occupancy of the purchaser's accommodation in any properly applied for exchange through the exchange program;

(h) Any fee for participation in the exchange program; and

(i) Any other information material to the exchange program which, by omission, tends to make the information otherwise disclosed misleading.

(3) The exchange program information shall be in addition to the information found in the public report required under ORS 94.828 (1), (2) and (4) and must be provided to the purchaser before a contract may be executed between the purchaser and the company offering the exchange program.

(4) An exchange company offering an exchange program to purchasers in Oregon shall file the information required in subsection (2) of this section annually with the commissioner.

(5) Only a timeshare owner and a developer other than a seller may participate in an exchange program. [1983 c.530 §21]

94.828 Public report on plan. (1) After the commissioner receives a completed notice under ORS 94.823 the commissioner shall prepare a public report on the timeshare plan. In lieu of preparing a report,

the commissioner may accept a report prepared by the developer and issue the report with any changes the commissioner considers necessary.

(2) Whether or not the commissioner issues a public report on a timeshare plan the developer shall report to the commissioner any material change in the timeshare plan or in the marketing program for the timeshare plan within 10 days after the change occurs.

(3) The commissioner may examine a timeshare plan subject to ORS 94.803 and 94.807 to 94.945 to be offered for sale and make a public report of the findings. If a timeshare plan is located within this state and no report is made within 45 days after the commissioner receives a completed timeshare filing, the report shall be considered waived.

(4) As used in this section, "material change" includes, but is not limited to:

(a) The addition or deletion of a timeshare accommodation or facility.

(b) A change in the method of marketing or conveyancing the timeshare plan.

(c) A change in the purchase money handling procedure previously approved by the commissioner, including but not limited to:

(A) A change in the escrow depository; or

(B) A change in or creation of an encumbrance affecting more than one timeshare.

(d) A change in the developer or, if the developer is an entity, a change in the name, form of organization or status of the developer.

(e) A revision of the timeshare plan's annual budget that will require a regular annual assessment against the owners that is more than 25 percent greater than the regular annual assessment indicated in the current public report for the timeshare plan.

(f) Any legal or physical condition rendering a timeshare accommodation or facility unusable by an owner. [1983 c.530 §§20, 39]

94.829 Sale not allowed before issuance of public report; distribution and uses of report. (1) No developer or agent of the developer shall sell a timeshare in a timeshare plan before the issuance of a public report for the timeshare plan, unless the public report has been waived under ORS 94.828 (3).

(2) A copy of the public report, when issued, shall be given to the prospective purchaser of a timeshare by the developer or agent of the developer prior to the execution of a binding contract or agreement for the sale of the timeshare. The developer or the developer's agent shall take a receipt from the prospective purchaser upon delivery of a copy of the commissioner's public report. Each such receipt shall be kept on file by the developer within this state subject to inspection by the commissioner or the commissioner's authorized representative for a period of three years from the date the receipt is taken.

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

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

(5) The requirements of this section extend to timeshares sold by the developer after repossession.

(6) Remedies and sanctions available for violation of ORS 646.605 to 646.656 are available for violation of this section, in addition to any other remedies or sanctions provided by law. [1985 c.76 §2]

94.830 [Repealed by 1971 c.478 §1]

94.831 Filing fees; inspection advance payment; disposition of moneys. (1) The notice required under ORS 94.823 shall be accompanied by a filing fee as follows:

(a) For a timeshare plan developed in a single phase, $500 plus $10 for each timeshare but in no case shall the fee exceed $3,000.

(b) For a timeshare plan developed in two or more phases, $500 plus $10 for each timeshare in the first phase, and $5 for each additional timeshare developed in a subsequent phase of the same development, but in no case shall the fee exceed $3,000 for each phase.

(2) For a material change notice submitted under ORS 94.828 (1), (2) and (4), the commissioner may charge a fee not to exceed $100 for each page of the public report that must be revised, but in no case shall the fee for a material change exceed $500.

(3) When an examination is to be made of timeshare property located in the State of Oregon, or timeshare property located outside Oregon that will be offered for sale to persons within Oregon, the commissioner, in addition to the filing fee provided in subsections (1) and (2) of this section, may require the developer to advance payment of an amount estimated by the commissioner to

be the expense incurred in going to and returning from the timeshare property, and an amount estimated to be necessary to cover the additional expense of the examination not to exceed $200 a day for each day consumed in the examination of the timeshare property. The amounts estimated by the commissioner under this subsection shall be based upon any applicable limits established and regulated by the Oregon Department of Administrative Services under ORS 292.220.

(4) The moneys received under subsections (1) to (3) of this section shall be paid into the State Treasury and placed in the General Fund to the credit of the Real Estate Account established under ORS 696.490. [1983 c 530 §§22, 23, 24]

94.833 Sale of timeshare plan located out-of-state. (1) Before negotiating within this state for the sale of a timeshare in a timeshare plan composed wholly or partially of timeshare property located outside this state, the developer of the timeshare plan must:

(a) Comply with ORS 94.803 and 94.807 to 94.945; and

(b) Record, in the real property records of each county or other appropriate jurisdiction of each state in which the timeshare property is located for use of a timeshare owner, the notice of timeshare plan, as defined in ORS 94.885 for the timeshare plan. This recording requirement does not apply to timeshare property located in foreign countries.

(2) Before the sale of a timeshare in a timeshare plan composed wholly of timeshare property located within this state, the developer of the timeshare plan must comply with the applicable provisions of ORS 94.803 and 94.807 to 94.945. [1983 c.530 §18]

94.835 [Repealed by 1971 c 478 §1]

(Purchaser's Rights)

94.836 Cancellation of purchase within five days. (1) A purchaser from a developer may cancel, for any reason, any contract, agreement or other evidence of indebtedness associated with the sale of the timeshare within five calendar days from the date the purchaser signs the first written offer or contract to purchase.

(2) Cancellation, under subsection (1) of this section, occurs when the purchaser gives written notice to the developer at the developer's address. The cancellation period in subsection (1) of this section does not begin until the developer provides the purchaser with developer's address for cancellation purposes.

(3) A notice of cancellation given by a purchaser need not take a particular form and is sufficient if it indicates in writing the purchaser's intent not to be bound by the contract or evidence of indebtedness.

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

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

(6) No act of a purchaser shall be effective to waive the right of cancellation granted by subsection (1) of this section. After the expiration of the five-day cancellation period, a developer may require a purchaser to execute and deliver to the developer a signed statement disclaiming any notice of cancellation timely and properly made by the purchaser before the five-day cancellation period expired under subsection (1) of this section, that has not been received by the developer. A disclaimer statement executed by the purchaser shall rescind the notice of cancellation. [1983 c.530 §26]

94.839 Notice of cancellation right. (1) The first written agreement for the sale of a timeshare to a purchaser signed by the purchaser shall contain, either upon the first page of the agreement or on a separate sheet attached to the first page, the following notice in at least 8-point type:

NOTICE TO PURCHASER

BY SIGNING THIS AGREEMENT YOU ARE INCURRING A CONTRACTUAL OBLIGATION TO PURCHASE A TIMESHARE. HOWEVER, YOU HAVE FIVE CALENDAR

DAYS AFTER SIGNING THIS AGREEMENT TO CANCEL THE AGREEMENT BY WRITTEN NOTICE TO THE DEVELOPER OR THE DEVELOPER'S AGENT AT THE FOLLOWING ADDRESS:

_____

_____

_____

_____

_____

BEFORE EXECUTING THIS AGREEMENT, OR BEFORE THE FIVE-DAY CANCELLATION PERIOD ENDS, YOU SHOULD CAREFULLY EXAMINE THE PUBLIC REPORT ON THE TIMESHARE PLAN AND ANY ACCOMPANYING INFORMATION DELIVERED BY THE DEVELOPER.

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(2) A copy of the notice set forth in subsection (1) of this section shall be given to each purchaser under an agreement described in subsection (1) of this section at the time or immediately after the purchaser signs the agreement. [1983 c.530 §27]

94.840 [Repealed by 1971 c.478 §1]

94.841 Waiver of rights void. Any condition, stipulation or provision in a sales agreement, lease or other legal document, that binds a purchaser to waive legal rights granted to the purchaser under ORS 94.803 and 94.807 to 94.945 against the developer shall be considered to be contrary to public policy and void. [1983 c.530 §28]

94.843 Limits on developer right to transfer. (1) A developer may not transfer the developer's interest in accommodations or facilities of a timeshare plan unless the transferee, as to each owner whose interest is involved in the transfer, agrees to:

(a) Honor the right of each owner to occupy and use the accommodations and facilities;

(b) Honor the right of a purchaser to cancel a contract and receive an appropriate refund, as provided in ORS 94.836;

(c) Comply with ORS 94.803 and 94.807 to 94.945 as long as the transferee continues to sell the timeshare plan, or as long as the owner is entitled to occupy the accommodations or use the facilities; and

(d) Assume all of the developer's obligations to the owners under the timeshare instrument.

(2) Within 30 days after the transfer of the developer's interest, notice of the transfer shall be mailed to each owner.

(3) A person holding a blanket encumbrance on the property constituting timeshare property is not a transferee for purposes of this section, if the person has executed and recorded a nondisturbance agreement in accordance with ORS 94.885. [1983 c.530 §17]

94.845 [Repealed by 1971 c.478 §1]

(Association of Owners; Management)

94.846 Designation of managing entity; duties and powers of entity. (1) Before the closing of the first timeshare sale the developer shall designate a managing entity, which may be the developer, the owners' association, a trust, a management firm or an individual.

(2) The managing entity shall act as a fiduciary to each timeshare owner.

(3) The managing entity shall be responsible for:

(a) Managing and maintaining all accommodations and facilities of the timeshare plan.

(b) Collecting any assessment for common expenses.

(c) Providing each owner with an itemized annual budget including all receipts and expenditures.

(d) Maintaining all books and records concerning the timeshare plan on the timeshare property and making the books and records available for inspection by an owner.

(e) Making the books and records of the timeshare plan available for inspection by the agency.

(f) Scheduling occupancy of accommodations if each owner does not acquire a specific timeshare period so that each owner receives the use of the timeshare plan's accommodations and facilities to which the owner is entitled.

(g) Performing all other duties necessary to maintain the accommodations or facilities as provided in any management contract or other agreement.

(h) Acting as agent for the owners for purposes of real property taxation, including collection and payment of real property taxes.

(i) Hiring and supervising an employee or agent to perform a function described in paragraphs (a) to (h) of this subsection.

(4) After giving the managing entity reasonable notice, a timeshare owner may require the managing entity to provide the name and address of all other timeshare owners in the timeshare plan. The managing entity may require the payment of a reasonable fee for reproduction costs.

(5) Unless expressly prohibited by the timeshare instrument, the managing entity shall have the authority to execute, acknowledge, deliver and record on behalf of the timeshare owners, an easement, right of way, license and any other similar interest affecting the timeshare property if the interest is beneficial and not materially detrimental to the timeshare plan.

(6) The instrument granting an interest under subsection (5) of this section shall be executed by the managing entity and acknowledged in the manner provided for acknowledgment of deeds under ORS 93.410.

(7) For the purpose of transferring or otherwise disposing of all or any portion of the accommodations and facilities in the timeshare plan upon termination of the plan, the managing entity shall be the attorney-in-fact for each owner. Any transfer or disposition will be effective if the managing entity executes and acknowledges the written transfer instrument. [1983 c.530 §9; 1987 c.424 §5]

94.848 How managing entity of developer terminated. A timeshare instrument that provides for the developer or an agent selected by the developer to manage the timeshare property until an owners' association, a trust or the owners assume the role of managing entity shall include provisions for:

(1) Termination of developer management or developer selected management by the association, trust or owners;

(2) Termination of contracts for goods and services for the timeshare property entered into during the period the developer served as the managing entity;

(3) A regular accounting at least annually by the developer to the association, trust or owners as to all matters affecting the timeshare property; and

(4) Immediate termination of the developer as managing entity by the association, trust or owners and assumption of management functions by an association or trust in the case of abandonment or substantial breakdown of management services for the timeshare plan. [1983 c.530 §10]

94.850 [Repealed by 1971 c.478 §1]

94.853 Payment of common expenses. (1) Until the closing of the first timeshare sale the developer shall pay all common expenses.

(2) After the closing of the first timeshare sale, the managing entity shall charge an annual assessment for the payment of common expenses based on the projected annual budget. The assessment shall be against:

(a) Each owner in the proportion specified in the timeshare instrument and the developer for the share allocated to all timeshare periods still owned by the developer at the time the assessment is made; or

(b) As provided in paragraph (a) of this subsection, except that the developer shall also pay that portion of the total assessment not paid by any owner, if the developer guarantees payment of all common expenses of the timeshare plan under the provisions of the timeshare instrument; or

(c) The developer for the total assessment if the developer agrees to pay all common expenses of the timeshare plan under the provisions of the timeshare instrument.

(3) Unless otherwise specified in the timeshare instrument, past due assessments shall bear interest at the legal rate. [1983 c.530 §11]

94.855 [Repealed by 1971 c.478 §1]

94.856 Assessment of common expenses as lien; recording; foreclosure; fees; remedies; exception. (1) Whenever a managing entity levies an assessment for common expenses against a timeshare estate, the managing entity, upon complying with subsection (2) of this section, shall have a lien upon the timeshare estate for the reasonable value of the expenses, for any unpaid assessment and interest as provided in subsection (2)(b) of this section and for any late charges, fines and costs of collection, including but not limited to attorney fees and court costs. The lien shall be prior to any other lien or encumbrance upon the timeshare estate except:

(a) Blanket encumbrances of record;

(b) Tax and assessment liens; and

(c) A purchase money mortgage of record, a purchase money trust deed of record or a purchase agreement of record.

(2)(a) A managing entity claiming a lien under subsection (1) of this section shall record in the county in which the timeshare estate or some part thereof is located a claim containing:

(A) A true statement of the account due for common expenses after deducting all just credits and offsets;

(B) The name of the owner of the timeshare estate, or reputed owner, if known; and

(C) The designation of the timeshare estate, sufficient for identification.

(b) If a claim is filed and recorded under this section and the owner of the timeshare estate subject to the claim thereafter fails to pay any assessment chargeable to the timeshare estate, then so long as the original

or any subsequent unpaid assessment remains unpaid the claim shall automatically accumulate the subsequent unpaid assessment and interest thereon without the necessity of further filings under this section.

(3) The claim shall be verified by the oath of a person having knowledge of the facts and shall be filed with and recorded by the recording officer in the book kept for the purpose of recording liens filed under ORS 87.035. The record shall be indexed in the same manner that a deed or other conveyance is required by ORS 93.630 to be indexed.

(4) The proceeding to foreclose a lien created by this section shall conform as nearly as possible to the proceeding to foreclose a lien created by ORS 87.010, except that notwithstanding ORS 87.055, a lien may be continued in force for a period of time not to exceed six years from the date the claim is filed under subsection (3) of this section. For the purpose of determining the date the claim is filed in those cases where subsequent unpaid assessments have accumulated under the claim as provided in subsection (2)(b) of this section, the claim regarding each unpaid assessment shall be considered to have been filed at the time the unpaid assessment became due. The lien may be enforced by the managing entity. An action to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the lien securing the claim for common expenses.

(5) Unless the timeshare instrument provides otherwise, a fee, late charge, fine and interest imposed under ORS 94.858 (4)(i) is enforceable as an assessment under this section.

(6) In addition to seeking a money judgment for the unpaid assessment if the timeshare plan conveys only a timeshare license, the managing entity may bring an action for breach of contract.

(7) A construction lien under ORS 87.001 to 87.093 for labor performed or materials furnished to timeshare property, if properly incurred by the association or managing entity for the benefit of all timeshare owners with interests in the timeshare property shall, if effective, attach to each timeshare with interests in the timeshare property. The owner of a timeshare subject to the lien shall have the right to have the timeshare released from the lien by payment of the amount of the lien attributable to the timeshare. The amount of the lien attributable to the timeshare and the payment required to satisfy the lien, in the absence of agreement, shall be determined by application of the allocation of common expenses established in the timeshare instrument.

(8) Except as provided in subsection (7) of this section, a construction lien under ORS 87.001 to 87.093 for labor performed or materials furnished to a unit shall not be filed against the timeshare of any timeshare owner who did not expressly consent to or request the labor or materials. Consent shall be considered given under this subsection by the owner of a timeshare in the case of emergency repairs to the timeshare property done with the consent or at the request of the managing entity. [1983 c.530 §12]

94.858 Owners' association; powers and duties. (1) The timeshare instrument may provide that an association of timeshare owners be organized to serve as a means through which the timeshare owners may take action with regard to the administration, management and operation of the timeshare plan and the timeshare property. The association shall be organized as a corporation for profit or nonprofit corporation. The name of the association shall include the complete name of the timeshare plan.

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

(3) The affairs of the association shall be governed by a board of directors or other governing body as provided for in the bylaws adopted under the applicable incorporation requirements.

(4) Subject to the provisions of the timeshare instrument and bylaws, the association may:

(a) Assume the role of managing entity;

(b) Adopt and amend bylaws, rules and regulations;

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

(d) Hire and terminate a managing agent, other employees, agents and independent contractors;

(e) Institute, defend or intervene in litigation or an administrative proceeding in the association's own name on behalf of the association or on behalf of two or more timeshare owners on any matter affecting the timeshare property;

(f) Make contracts and incur liabilities;

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

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

(i) Impose a charge for the late payment of an assessment and, after giving notice and an opportunity to be heard, levy a reasonable fine for violation of the timeshare instrument, bylaws and rules and regulations of the association;

(j) Provide for the indemnification of the association's officers and governing board and maintain adequate liability insurance for the association's officers and governing board;

(k) Exercise any other power conferred by a timeshare instrument or bylaws; and

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

(5) If an association of timeshare owners is formed under this section, the public report issued for the timeshare plan under ORS 94.828 (1), (2) and (4) shall include a disclosure of the powers of the association and the manner in which the association will be governed. [1983 c.530 §13]

94.863 Developer's duty to managing entity. The developer shall deliver to the designated managing entity before the closing of the first timeshare sale, the following:

(1) The original or a photocopy of the recorded timeshare instrument for the timeshare plan and any supplements and amendments thereto.

(2) A copy of any other document creating the managing entity.

(3) Any rules and regulations that have been promulgated.

(4) A report of the present financial condition of the timeshare plan. The report shall consist of a balance sheet and an income and expense statement for the preceding 12-month period or the period following the recording of the timeshare instrument whichever period is less.

(5) All funds of the timeshare plan, or control thereof, including, but not limited to, any bank signature card.

(6) All tangible personal property that is the property of the timeshare plan and an inventory of such property.

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

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

(b) The original specifications indicating all material changes.

(c) The plans for any underground site service, site grading, drainage and landscaping.

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

(8) Insurance policies.

(9) A roster of timeshare owners and their addresses and telephone numbers, if known, as shown on the developer's records.

(10) Leases of the timeshare facilities and accommodations and any other leases to which the managing entity is a party.

(11) Any employment or service contract to which the managing entity is a party and any service contract under which the managing entity has an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service.

(12) Any other contract to which the managing entity is a party. [1983 c.530 §14]

94.867 Judicial declaration of failure in management. (1) A court of competent jurisdiction, upon petition by timeshare owners constituting at least 10 percent of the total number of timeshare owners in a timeshare plan, may declare a failure in the management of the timeshare plan and timeshare property and appoint a trustee to assume the duties of a managing entity for the timeshare plan, if the court finds that:

(a) The management of the timeshare plan and timeshare property has failed to carry out the duties of a managing entity under the timeshare instrument and ORS 94.846 to 94.858;

(b) The rights of the timeshare owners under the timeshare instrument will be substantially impaired if a trustee is not appointed; and

(c) No reasonable alternative exists to appointment of a trustee to perform the functions of a managing entity.

(2) The court may attach such conditions and terms to its appointment of a trustee under subsection (1) of this section as the court considers necessary to protect the rights of timeshare owners under the timeshare instrument.

(3) The trustee shall send a copy of the court's decision to the commissioner. [1983 c.530 §15; 1991 c.64 §3]

94.869 Insurance coverage. (1) If the managing entity has the sole authority to decide whether to repair or reconstruct an accommodation or facility that has suffered damage or that an accommodation or facility must be repaired or reconstructed, the managing entity shall obtain and maintain at all times and shall pay for out of the funds for payment of common expenses, insurance covering the accommodations and facilities

which may include reasonable deductible amounts reflecting self-insurance by the owners as a common expense and which shall include:

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

(b) Insurance covering the legal liability of the association, the timeshare owners individually and the managing entity including, but not limited to, the board of directors, to the public and to the timeshare owners and their invitees or tenants, incident to ownership, supervision, control or use of the property. There may be excluded from the policy required under this paragraph, coverage of a timeshare owner, other than coverage as a member of an association or board of directors, for liability arising out of acts or omissions of that owner and liability incident to the ownership or use of the part of the property as to which that owner has the exclusive use or occupancy. Liability insurance required under this paragraph shall be issued on a comprehensive liability basis.

(2) If an individual timeshare owner is required to obtain insurance for the owner's individual legal liability, the association or managing entity shall obtain insurance covering the accommodations and facilities which may include reasonable deductible amounts reflecting self-insurance by the owners as a common expense and which shall include:

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

(b) Insurance covering the legal liability of the association and the managing entity including, but not limited to, the board of directors, to the public or the timeshare owners and their invitees or tenants, incident to supervision, control or use of the property. [1983 c.530 §16]

(Escrow)

94.871 When purchase money agreement prohibited; escrow requirements. (1) Unless a lien payment trust is established under ORS 94.890, no timeshare estate shall be sold by a developer by means of a purchase money agreement as defined in ORS 94.890 unless a collection escrow is established within this state with a person or firm authorized to receive escrows under the laws of this state and all of the following are deposited in the escrow:

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

(b) The original or an executed copy of the sales document relating to the purchase of the timeshare estate clearly setting forth the legal description of the interest being purchased, the principal amount of any blanket encumbrance outstanding on the date of the sales document and the terms of the sales document.

(c) A commitment in a form satisfactory to the commissioner to give a partial release for the interest being sold from the terms and provisions of any blanket encumbrance on or before full payment of the purchase price by the purchaser.

(d) A commitment in a form satisfactory to the commissioner to give a release of any other lien or encumbrance existing against the timeshare estate being sold.

(e) A warranty or bargain and sale deed in good and sufficient form conveying to the purchaser merchantable and marketable title to the timeshare estate.

(2) The developer shall submit written authorization allowing the commissioner to inspect any escrow deposit established under subsection (1) of this section.

(3) In lieu of the procedures provided in subsection (1) of this section, the developer shall conform to an alternative requirement or method if the commissioner finds that the alternative requirement or method carries out the intent and provisions of this section. [1983 c.530 §25]

94.873 Escrow account; closing; release. (1) All funds, negotiable instruments, purchase money agreements and credit card authorizations and proceeds thereof received in this state by a developer from or on behalf of a purchaser or prospective purchaser in connection with the purchase or reservation of a timeshare must be placed in an escrow account with an escrow agent authorized under ORS 94.881 or the trustee of a lien payment trust established under ORS 94.890.

(2) The establishment of an escrow account under subsection (1) of this section shall be by written agreement between the developer and the escrow agent. The escrow agreement must provide for the handling of a purchaser's funds, negotiable instruments, purchase money agreements and credit card

authorizations and proceeds as required by ORS 94.873 to 94.905.

(3) A purchaser's funds, negotiable instruments, purchase money agreements, credit card authorizations and any proceeds may be released from escrow without a closing only as follows:

(a) If the purchaser gives a valid notice of cancellation under ORS 94.836, to the purchaser within 15 days after the notice of cancellation is received.

(b) If the purchaser or developer properly terminates a sales agreement under its terms or terminates a reservation agreement, to the purchaser or developer according to the terms of the sales agreement or reservation agreement.

(c) If the purchaser or developer defaults in performing an obligation under the sales agreement, to the purchaser or developer according to the terms of the sales agreement.

(4) After an escrow closing for the sale of a timeshare, a purchaser's funds, negotiable instruments, purchase money agreements and credit card authorizations and proceeds shall be delivered by the escrow agent:

(a) To the trustee of a lien payment trust established under ORS 94.890 to protect the purchaser from any blanket encumbrance.

(b) As provided by an alternative arrangement approved by the commissioner under ORS 94.900.

(c) To the seller if the timeshare is conveyed to the purchaser free and clear of any blanket encumbrance or as provided in ORS 94.876.

(5) Under no circumstances may the escrow agent release a purchaser's funds, negotiable instruments, purchase money agreements or credit card authorizations or proceeds from the escrow account to anyone except the purchaser until:

(a) The five-day cancellation period under ORS 94.836 expires as to the purchaser whose funds, instruments, agreements, authorizations or proceeds are being released;

(b) The escrow agent receives a written statement from the developer that no valid cancellation notice under ORS 94.836 has been received from the purchaser involved or from the purchaser that the purchaser has not given such a notice; and

(c) The escrow agent receives a written statement from the developer that no other cancellation notice was received during the five-day cancellation period from the purchaser involved.

(6) The purpose of any escrow established under this section shall be to protect a purchaser's right to a refund if the purchaser cancels the timeshare sales agreement during the five-day cancellation period under ORS 94.836, or if a prospective purchaser cancels a reservation agreement for the purchase of a timeshare.

(7) As used in this section "reservation agreement" means an agreement relating to the future sale of a timeshare that is not binding on the purchaser which grants the purchaser the right to cancel the agreement for any reason without penalty and to obtain a refund of any funds deposited at any time until the purchaser executes a timeshare sales agreement. [1983 c.530 §29]

94.876 Requirements for closing escrow. (1) Subject to the requirements of ORS 94.871 and 94.873, an escrow for the sale of a timeshare estate may close only if one of the following alternatives for protecting the purchaser is satisfied:

(a) The timeshare estate is conveyed to the purchaser free and clear of any blanket encumbrance;

(b) The timeshare property in which the timeshare estate is granted is conveyed to a trustee under a lien payment trust established under ORS 94.890 and every person holding an interest in a blanket encumbrance against the timeshare property executes and records a nondisturbance agreement;

(c) The timeshare estate is conveyed to the purchaser subject only to a blanket encumbrance in which every person holding an interest in the blanket encumbrance executes and records a nondisturbance agreement or the commissioner accepts a surety bond as an alternative arrangement under ORS 94.900 in an amount that is sufficient to satisfy the blanket encumbrance; or

(d) All requirements of an alternative arrangement approved by the commissioner under ORS 94.900 are satisfied.

(2) Subject to the requirements of ORS 94.873, an escrow for the sale of a timeshare license may close only if one of the following alternatives for protecting the purchaser is satisfied:

(a) The timeshare property is conveyed to a trustee free and clear of any blanket encumbrance;

(b) The timeshare property is conveyed to a trustee under a lien payment trust established under ORS 94.890 and every person holding an interest in a blanket encumbrance against the timeshare property executes and records a nondisturbance agreement;

(c) Every person holding an interest in a blanket encumbrance against the timeshare property executes and records a nondisturbance agreement and the commissioner ac-

cepts a recorded surety bond in an amount that is sufficient to satisfy the blanket encumbrance; or

(d) The requirements of an alternative arrangement approved by the commissioner under ORS 94.900 are satisfied. [1983 c.530 §30]

94.878 Duties of escrow agent. An escrow agent holding funds under ORS 94.873:

(1) May invest the escrowed funds in securities of the Federal Government or any agency thereof or in savings or time deposits in institutions insured by an agency of the Federal Government according to the terms of the agreement between the escrow agent and the developer.

(2) Shall maintain separate books and records for each timeshare plan in accordance with generally accepted accounting methods. [1983 c.530 §36]

94.881 Who may serve as escrow agent. (1) Funds placed into escrow under ORS 94.873 shall be placed into an escrow account established solely for that purpose with one of the following acting as an escrow agent:

(a) An attorney who is a member of the Oregon State Bar;

(b) A savings and loan company located in Oregon;

(c) A trust company located in Oregon;

(d) A bank having trust powers and located in Oregon; or

(e) An escrow agent licensed under ORS 696.505 to 696.590.

(2) In connection with sales of timeshares made outside of this state for the use of timeshare property located within this state, the escrow agent required under ORS 94.871 and 94.873 may be located in and the purchasers' funds, negotiable instruments, purchase money contracts and credit card authorizations may be held by the out-of-state escrow agent, if the law of the state in which the sales are made requires impoundment in that state and the out-of-state escrow agent is approved by the commissioner. [1983 c.530 §37]

(Lien Payment)

94.885 Rights of lienholder. (1) When a nondisturbance agreement has been executed by the lienholder and recorded, the lienholder, its successors and anyone who acquires the property through foreclosure, by deed, assignment or transfer in lieu of foreclosure, shall take the property subject to the rights of the owners under the timeshare plan.

(2) When a notice of timeshare plan is recorded, any claim by the developer's creditors and any claim upon or by a successor to the interest of the titleholder who executed the notice shall be subordinate to the interest of the timeshare owners if the sale is closed after the notice is recorded. The recording of notice shall not affect:

(a) The rights or lien of a lienholder whose lien was recorded before the notice of timeshare plan;

(b) The rights of a person holding an option in the timeshare property if the option was recorded before the notice of timeshare plan; and

(c) The rights or lien of a lienholder having a recorded purchase money mortgage, recorded purchase money trust deed or recorded purchase agreement on the timeshare.

(3) As used in ORS 94.873, 94.876 and 94.885 to 94.905:

(a) "Nondisturbance agreement" means an instrument by which the holder of a blanket encumbrance agrees that the holder's rights in the timeshare property shall be subordinate to the rights of any timeshare owner. Every nondisturbance agreement shall contain a covenant by the lienholder that the lienholder, its successors, and anyone who acquires the timeshare property through the blanket lien shall not use, or cause or permit the property to be used in a manner that prevents a timeshare owner from using the timeshare property in the manner contemplated by the timeshare plan. The lienholder's agreement not to disturb an owner may require as a continuing condition that the owner perform all obligations and make all payments due under any purchase money agreement for the owner's timeshare and, if the timeshare is held as a leasehold, under the lease for the owner's timeshare.

(b) "Notice of timeshare plan" means an instrument executed by the holder of the legal and equitable title to the fee or long-term leasehold interest in a timeshare property which provides notice of the existence of the timeshare plan and of the rights of timeshare owners. The notice of timeshare plan must identify the timeshare period for each timeshare. For a timeshare property located wholly within this state, recording of the timeshare instrument for the property under ORS 94.818 shall be considered the recording of a notice of timeshare plan for the property. If the timeshare property is located outside the state, the notice may be contained in a declaration of covenants, conditions and restrictions that provides that as a matter of covenant, the notice shall have the effects described in subsection (2) of this section. The notice must be prepared to con-

stitute a covenant running with an equitable servitude upon the timeshare property for the duration of the timeshare plan and to have the effects described in subsection (2) of this section.

(4) If the developer proposes use of a nondisturbance agreement, the public report issued for the timeshare plan under ORS 94.828 (1), (2) and (4) shall include disclosure of the nature and limitations of nondisturbance agreements, the nature and amount of outstanding blanket encumbrances and the potential impact upon timeshare purchasers of failure to pay off the outstanding blanket encumbrances. [1983 c.530 §31]

94.890 Lien payment trust; payments; delinquencies. (1) A lien payment trust may be established with a trust company as defined in ORS 706.005 that is authorized to engage in the business of acting as a fiduciary in this state, for the conveyance of timeshare property to the trustee under ORS 94.876 if the trust instrument provides for at least the following:

(a) Title to the timeshare property must be transferred to the trustee before the purchaser's funds, negotiable instruments, purchase money agreements or credit card authorizations or proceeds are disbursed by the escrow agent.

(b) The trustee shall not convey or transfer all or any portion of the timeshare property except for an accommodation in which no owner has any further right of occupancy or as permitted at termination of the trust.

(c) The trustee shall not encumber the timeshare property without the consent of the commissioner.

(d) The association, if any, and all timeshare owners are made third party beneficiaries of the trust.

(e) Notice of the trustee's intention to resign must be given to the commissioner at least 90 days before the resignation takes effect.

(f) The trust instrument may not be amended to adversely affect the interests or rights of a timeshare owner without the written approval of the association or, if no association, a majority of the timeshare owners.

(g) Require the deposit into trust of a lien payment deposit, as required by subsection (3) of this section, before the closing of the first timeshare sale.

(h) Require the deposit into trust before closing the first timeshare sale, and the intention to maintain for the duration of the trust, an installment payment reserve consisting of funds in an amount sufficient at all times:

(A) To pay the total of three successive monthly installments of debt service on each blanket encumbrance or, if installments of debt services are not payable monthly or in equal installments, such funds as the commissioner determines reasonably necessary to assure that the trustee will have sufficient cash to make any payment under the blanket encumbrances when due; and

(B) To create a sinking fund to extinguish the debt at its maturity if the blanket encumbrance against the trust property is an interest only loan, contains a balloon payment provision or is otherwise not fully amortized under the terms for repayment.

(i) Authorize the trustee to sell, transfer, hypothecate, encumber, or otherwise dispose of the purchase money agreement or any other asset composing the lien payment deposit or any portion thereof if, in the trustee's judgment, such action is necessary to enable the trustee to make all payments required under the blanket encumbrances to prevent foreclosure of the blanket encumbrance.

(j) Require the developer to replenish the funds and assets in the trust whenever the lien payment deposit or the funds in the installment payment reserve fail to meet the requirements set forth in this subsection.

(k) Provide that the trustee periodically shall disburse funds in the trust as follows: First, to pay real property taxes, governmental assessments, and lease rent, if any; second, to pay current payments due on the blanket encumbrances, in their order of priority; third, to any sinking fund established for the payment of blanket encumbrances, including any prepayment penalties and release prices; fourth, to pay any service charge and cost payable to the trustee and its collection agent, if any, under the trust instrument; and fifth, to the developer or as directed by the developer.

(L) Contain any other provisions required by the commissioner under rules adopted under ORS 94.915 (2) and (3).

(2) Every purchase money agreement delivered to the trustee of a lien payment trust must contain a notice to the holder that the trustee may make demand of the holder to deliver to the trustee all payments made by the owner after the trustee mails notice that the funds and other assets in the trust are inadequate to meet the lien payment deposit requirements. Following such demand, the holder must immediately deliver all subsequent payments of the owner to the trustee and continue to deliver the payments until the lien payment deposit is replenished.

(3)(a) The lien payment deposit shall consist of either nondelinquent purchase money agreements from timeshare owners in the timeshare plan or other assets deposited into the trust by the developer and approved by the commissioner. The purchase money agreements must have an aggregate remaining principal balance of not less than, and any other assets deposited must have a liquidated value of not less than, 110 percent of the difference between the aggregate remaining balance owing under blanket encumbrances against the timeshare property, including any prepayment penalties, release prices or similar charges, and the amount of money or its equivalent in the trust and available at any time to be applied to the reduction of the principal balance of the blanket encumbrance. The developer shall have the burden of establishing the liquidated value of assets other than purchase money agreements from timeshare owners in the timeshare plan.

(b) If the blanket encumbrance payment deposit consists of purchase money agreements, the payments required to be made by owners under the agreements shall:

(A) Be due on or before the date payments become due on the blanket encumbrances;

(B) If paid when due as provided in subsection (4) of this section, be equal to at least 110 percent of the amount required to be paid on the blanket encumbrances on such date; and

(C) Be sufficient to pay, in full, during the term of the purchase money agreements all amounts secured by the blanket encumbrances, including prepayment penalties and release prices, if any, and all service charges payable to the trustee, any collection agent, and any other servicing agent under the trust agreement.

(c) If the developer proposes to deposit into trust assets other than purchase money agreements, the assets must be sufficient to pay debt service installments on the blanket encumbrance as they become due and to create a sinking fund or other arrangement adequate to extinguish the debt secured by the blanket encumbrance at its maturity.

(4) For the purposes of this section, "purchase money agreement" means and includes a purchase money mortgage, a purchase money trust deed and a purchase contract.

(5) For the purpose of this section, a purchase money agreement is considered delinquent when an installment payment is more than 59 days past due. [1983 c.530 §32]

94.895 Trust irrevocable without alternative arrangement. (1) Except as provided in subsection (2) of this section:

(a) If a trust is established for timeshare property subject to timeshare licenses, the trust for the timeshare property shall be irrevocable during the time that any purchaser of a timeshare license has a right to the use of the timeshare property.

(b) If a trust is established for timeshare property subject to timeshare estates, the trust for the timeshare property shall be irrevocable until all blanket encumbrances are extinguished.

(2) The commissioner may approve an alternative arrangement that permits termination of the trust. [1983 c.530 §33]

94.900 Alternative to lien payment trust. (1) If it is impossible or impractical for a developer to satisfy any of the requirements of ORS 94.890 because of factors over which the developer has little or no control, the commissioner may accept arrangements other than those prescribed by ORS 94.890 which in the commissioner's judgment will give rights and remedies affording equivalent benefits and protection to timeshare owners and which are at least comparable in scope though not necessarily in nature to those afforded by ORS 94.890.

(2) If the commissioner is asked to accept alternative arrangements under this section, the commissioner may contract with an attorney and with any other private consultant the commissioner considers necessary or advisable, in connection with the review of the proposed arrangements for protecting purchasers. The attorney shall thoroughly review the timeshare plan for the purpose of examining the purchaser protections, including the documentation used in the timeshare plan and the disclosure thereof in the developer's public report. After completing the review the attorney shall provide a written analysis of the nature and extent of the protection that the proposal affords a purchaser against blanket encumbrances. The cost of retaining the attorneys and other consultants shall be paid by the developer. [1983 c.530 §34]

94.905 Surety bond. Any surety bond furnished to the commissioner under ORS 94.890 must be in an amount which is not less than 110 percent of the remaining principal balance of every indebtedness secured by a blanket encumbrance affecting the timeshare property. The surety bond must be issued by a surety authorized to do business in Oregon and having sufficient net worth to be acceptable to the commissioner. The bond shall provide for payment, up to the limit of the bond, of all amounts secured by the blanket encumbrance, including costs, ex-

penses and legal fees of the lienholder, if for any reason the blanket encumbrance is enforced. The obligee of the surety bond shall be the commissioner on behalf of the timeshare owners. The bond may be reduced periodically in proportion to the reduction of the remaining principal balance of the indebtedness secured by the blanket encumbrances. Upon being furnished with a surety bond satisfying the foregoing requirements, the developer shall prepare and the commissioner shall execute and acknowledge a document in recordable form accepting the surety bond and identifying the timeshare property to which it applies. [1983 c.530 §35]

(Enforcement)

94.915 Inspection of records; rulemaking; uniform standards. (1) Records of the sale of timeshares in a timeshare plan shall be subject to inspection by the commissioner.

(2) The agency shall adopt rules necessary to carry out ORS 94.803 and 94.807 to 94.945.

(3) The agency may cooperate with agencies performing similar functions in other jurisdictions to develop uniform filing procedures, forms, disclosure standards and administrative practices. [1983 c.530 §§38, 40]

94.920 Consent to service by out-of-state developer. (1) Every nonresident developer, at the time of filing the notice required by ORS 94.823, also shall file with the commissioner an irrevocable consent that if, in any suit or action commenced against the nonresident developer in this state arising out of a violation of ORS 94.803 and 94.807 to 94.945, personal service of summons or process cannot be made upon the developer in this state after the exercise of due diligence, a valid service may be made upon the developer by service on the commissioner.

(2) The consent required under subsection (1) of this section shall be in writing executed and verified by an officer of a corporation or association, a general partner of a partnership or by a developer and shall set forth:

(a) The name of the developer.

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

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

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

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

(5) When the commissioner is served with process under the provisions of this section, the commissioner shall immediately forward by registered mail or by certified mail with return receipt one of the copies with any accompanying papers, to the developer at the address set forth in the consent.

(6) The commissioner shall keep a record of each process, notice and demand served under this section, and shall record the time of each service and the action taken by the commissioner on each service. [1983 c.530 §43; 1991 c.249 §10]

94.925 Civil penalty. (1) In addition to any other penalty provided by law, the commissioner may impose a civil penalty for violation of the provisions of ORS 94.803 and 94.807 to 94.945. No civil penalty shall exceed $1,000 per violation.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.090. [1983 c.530 §44; 1989 c.706 §8; 1991 c.734 §5]

94.930 Commissioner order; injunctive relief. (1) If the commissioner finds that an owner, developer or other person is violating any of the provisions of ORS 94.803 and 94.807 to 94.945, the commissioner may order the person to desist and refrain from violating the provisions or requirements, or from the further sale of interests in the timeshare plan.

(2) If the commissioner finds that a developer or other person is violating, has violated or is about to violate, any of the provisions of ORS 94.803 and 94.807 to 94.945, the commissioner may bring an action in the circuit court of the county where the violation or threatened violation has occurred or is about to occur, or in the county where the person resides or carries on business, in the name of and on behalf of the people of the State of Oregon against the person participating in the violation, to enjoin the person from continuing or engaging in the violation or doing any act in furtherance of the violation, and to apply for the appointment of a receiver or conservator of the assets of the defendant if appropriate. [1983 c.530 §45]

(Prohibited Practices)

94.940 False practices prohibited. No person shall, in connection with an offering, sale or lease of an interest in a timeshare plan:

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

(2) Make any untrue statement of a material fact;

(3) Fail to state a material fact necessary to make a statement clear;

(4) Issue, circulate or publish any prospectus, circular, advertisement, printed matter, document, pamphlet, leaflet or other literature containing an untrue statement of a material fact or that fails to state a material fact necessary to make the statements made in the literature not misleading;

(5) Issue, circulate or publish any advertising matter or make any written representation, unless the name of the person issuing, circulating or publishing the matter or making the representation is clearly indicated; or

(6) Make any statement or representation, or issue, circulate or publish any advertising matter containing any statement that the timeshare plan has been in any way approved or indorsed by the commissioner except in conjunction with a public report issued by the commissioner under ORS 94.828 (1), (2) and (4). [1983 c.530 §41]

94.945 Advertising regulation. It shall be unlawful for any developer or the agent or employee of a developer with intent to sell or lease a timeshare in a timeshare plan, to authorize, use, direct or aid in the publication, distribution or circularization of any advertisement, radio broadcast or telecast concerning a timeshare plan, that contains any false or misleading statement, pictorial representation or sketch. Nothing in this section shall be construed to hold the publisher or employee of any newspaper, any job printer, broadcaster or telecaster liable for any publication referred to in ORS 94.940 unless the publisher, employee, printer, broadcaster or telecaster has actual knowledge that the material is false or has an interest in the timeshare plan advertised. [1983 c.530 §42]

MEMBERSHIP CAMPGROUNDS

94.953 Definitions for ORS 94.953 to 94.989. As used in ORS 94.953 to 94.989:

(1) "Blanket encumbrance" means any mortgage, deed of trust, option to purchase, vendor's lien or interest under a contract or agreement of sale, or other material financing lien or encumbrance which secures or evidences the obligation to pay money or to sell or convey on any campgrounds offered for sale, made available to purchasers by the membership camping operator or any portion thereof, and which authorizes, permits or requires the foreclosure or other disposition of the campground affected.

(2) "Campground" means real property owned or operated by a membership camping operator which is available for camping by purchasers of membership camping contracts.

(3) "Camping site" means a space:

(a) Designed and promoted for the purpose of locating a trailer, tent, tent trailer, recreational vehicle, pickup camper or other similar device used for camping; and

(b) With no permanent dwelling on it.

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

(5) "Facilities" means any of the following amenities provided and located on property owned or operated by a membership camping operator: Camping sites, rental trailers, swimming pools, sport courts, recreation buildings and trading posts or grocery stores.

(6) "Membership camping contract" means an agreement offered or sold within this state granting the purchaser the right or license to use for more than 30 days the campgrounds and facilities of a membership camping operator and includes a membership which provides for such use.

(7) "Membership camping contract broker" means a person who resells a membership camping contract to a new purchaser on behalf of the prior purchaser, but does not include a membership camping operator or its agents.

(8) "Membership camping operator" means any person, other than an entity that is tax exempt under section 501 (c)(3) of the Internal Revenue Code of 1954, as amended, that solicits membership camping contracts paid for by a fee or periodic payments and has as one purpose camping or outdoor recreation, including use of camping sites primarily by purchasers. "Membership camping operator" does not include:

(a) Mobile home and manufactured dwelling parks or camping or recreational vehicle parks which are open to the general public and do not solicit purchases of membership camping contracts, but rather contain only camping sites rented for per use fee; or

(b) Any person who engages in the business of arranging and selling reciprocal programs and who does not own campgrounds and facilities.

(9) "Offer" means any solicitation reasonably designed to result in the entering into of a membership camping contract.

(10) "Purchaser" means a person who enters into a membership camping contract and obtains the right to use campgrounds and outdoor facilities of a membership camping operator.

(11) "Sale" or "sell" means entering into, or other disposition of, a membership camping contract for value; however, the term "value" does not include a fee to offset the reasonable costs of transfer of a membership camping contract.

(12) "Salesperson" means any individual, other than a membership camping operator, who offers to sell or sells membership camping contracts by making a direct sales presentation to prospective purchasers, but does not include individuals engaged in the referral of persons without making any representations about the camping program or a direct sales presentation to prospective purchasers. "Salesperson" does not include a campground manager who is authorized in writing to act on behalf of a membership camping operator in the operation of a campground and in the supervision of campground employees and salespersons and who does not offer to sell or sell membership camping contracts by making a direct sales presentation to prospective purchasers. [1985 c.639 §1; 1991 c.377 §6]

94.956 Registration required to sell membership camping contract. Except as provided in ORS 94.959, and except for transactions pursuant to ORS 94.962, no person shall offer to sell or sell a membership camping contract in this state unless the membership camping contract is registered under ORS 94.953 to 94.989. [1985 c.639 §2]

94.959 Application for registration. (1) A membership camping operator wishing to offer to sell or sell a membership camping contract in this state shall register the contract with the commissioner. The application for registration shall include all of the following if it is applicable to the membership camping operator:

(a) Written disclosures, in any format the commissioner is satisfied accurately and clearly communicates the required information, which include:

(A) The name and address of the membership camping operator and any person who, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the membership camping operator;

(B) A brief description of the membership camping operator's experience in the camping club business;

(C) A brief description of the nature of the purchaser's right or license to use the campground or facilities;

(D) The location and a brief description of the significant facilities and recreation services then available for use by purchasers and those which are represented to purchasers as being planned, together with a brief description of any significant facilities or recreation services that are or will be available to nonpurchasers and the price to nonpurchasers therefor;

(E) A brief description of the membership camping operator's ownership of or other right to use the campground facilities represented to be available for use by purchasers, together with a brief description of the duration of any lease, real estate contract, license franchise or other agreement entitling the membership camping operator to use the property, and any material provisions of the agreements which restrict a purchaser's use;

(F) A brief description of any material encumbrance, including any mortgage, deed of trust, option to purchase, vendor's lien or interest under a contract or agreement of sale, or other material financing lien or encumbrance that secures or evidences the obligation to pay money or to sell or convey, or which authorizes or requires the foreclosure or other disposition of the campground affected;

(G) A brief description of any reciprocal agreement allowing purchasers to use camping sites, facilities or other properties owned or operated by any person other than the membership camping operator with whom the purchaser has entered into a membership camping contract;

(H) A summary or copy of the articles, bylaws, rules, restrictions or covenants regulating the purchaser's use of each campground, the facilities located on each property, and any recreation services provided, including a statement of whether and how the articles, bylaws, rules, restrictions or covenants may be changed;

(I) A brief description of all payments of a purchaser under a membership camping contract, including initial fees and any further fees, charges or assessments, together with any provisions for changing the payments;

(J) A description of any restraints on the transfer of membership camping contracts;

(K) A brief description of the policies relating to the availability of camping sites and whether reservations are required;

(L) A brief description of the membership camping operator's right to change or withdraw from use all or a portion of the camp-

grounds or facilities and the extent to which the membership camping operator is obliged to replace facilities or campgrounds withdrawn;

(M) A brief description of any grounds for forfeiture of a purchaser's membership camping contract; and

(N) A copy of the membership camping contract form;

(b) A statement of the total number of membership camping contracts then in effect, both within and without this state; and a statement of the total number of membership camping contracts intended to be sold, both within and without this state, together with a commitment that the total number will not be exceeded unless disclosed by amendment to the registration;

(c) If the campground or campgrounds owned or being purchased by the membership camping operator at the time of registration are campgrounds on which the membership camping operator or another membership camping operator previously registered a membership camping contract with the State of Oregon and sold memberships under the registered contract and thereafter went out of business or filed for bankruptcy, the new membership camping operator shall file with the commissioner at the time of registration a detailed plan whereunder all membership purchasers from the prior membership camping operator or operators for the campground or campgrounds will be offered memberships by the new membership camping operator despite any rejection or cancellation of the previous contracts during bankruptcy proceedings of the prior membership camping operator or operators. Procedures for written notice to the purchasers and the material terms and conditions of membership offered by the new campground operator shall be included in the detailed plan filed with the commissioner. The material terms and conditions including but not limited to price and terms of payment offered by the new campground operator or operators shall not be materially less favorable than the material terms and conditions offered to new purchasers; and

(d) Any other material information the commissioner may, by rule or order, require for the protection of the purchasers.

(2) The application shall be signed by the membership camping operator, an officer or general partner of the membership camping operator or by another person holding a power of attorney for such purpose from the membership camping operator. If the application is signed pursuant to a power of attorney, a copy of the power of attorney shall be included with the application.

(3) The application shall be submitted with the registration fee.

(4) An application for registration to offer or sell membership camping contracts shall be amended when a material change from the information previously filed occurs. Such amendment shall be filed with the commissioner within 10 days after the membership camping operator knows of such change.

(5) In place of the disclosures required with the application for registration, the commissioner may accept a public report or other disclosure from another state in which the membership camping operator has registered. [1985 c.639 §3; 1991 c.377 §7]

94.962 Exemptions from registration. The following transactions are exempt from registration:

(1) An offer, sale or transfer by any one person of not more than one membership camping contract for any membership camping operator in any 12-month period, unless the person receives a commission or similar payment for the sale or transfer.

(2) An offer or sale by a government, government agency or other subdivision of a government.

(3) Granting a security interest in a membership camping contract.

(4) An offer, sale or transfer by a membership camping operator of a membership camping contract previously registered by the operator if the offer, sale or transfer constitutes a resale to another owner. [1985 c.639 §4]

94.965 Effective date of registration. The application for registration shall automatically become effective upon the expiration of 45 calendar days following filing of a completed application with the commissioner unless:

(1) The application for registration is denied under ORS 94.968;

(2) The commissioner grants the registration effective as of an earlier date; or

(3) The applicant consents to a delay of the effective date. [1985 c.639 §5]

94.968 Denial, suspension and revocation of registration; other sanctions. (1) The commissioner may order that a registration of an offer or sale of membership camping contracts be denied, suspended or revoked if the commissioner makes findings pursuant to ORS 183.430 that any of the following is true:

(a) The membership camping operator has failed to comply with any provisions of ORS 94.953 to 94.989 which materially affect

the rights of purchasers or prospective purchasers of membership camping contracts.

(b) The membership camping operator is representing to purchasers in connection with the offer or sale of a membership camping contract that any campground or facilities are planned without reasonable grounds to believe that the campground or facilities will be completed within a reasonable time.

(c) The membership camping operator's offering of membership camping contracts works a fraud on purchasers or owners of membership camping contracts.

(2) Proceedings for suspending, revoking or denying a registration shall be governed by ORS 183.310 to 183.550.

(3) If the commissioner finds that immediate suspension of a registration is necessary to protect purchasers or owners from fraud, the commissioner may order any person subject to ORS 94.953 to 94.989 to desist from such conduct and may suspend the registration immediately. Affected persons shall be entitled to a hearing as in the case of license suspension under ORS 183.430.

(4) If the commissioner finds that a membership camping operator or other person is violating any of the provisions of ORS 94.953 to 94.989, the commissioner may order the person to desist and refrain from violating the provisions and from the further offering and sale of membership camping contracts.

(5) If the commissioner finds that a membership camping operator or other person is violating, has violated or is about to violate, any of the provisions of ORS 94.953 to 94.989, the commissioner may bring an action in the circuit court of the county where the violation or threatened violation has occurred or is about to occur, or in the county where the person resides or carries on business, in the name of and on behalf of the people of the State of Oregon against the person participating in the violation, to enjoin the person from continuing or engaging in the violation or doing any act in furtherance of the violation, and to apply for the appointment of a receiver or conservator of the assets of the defendant if appropriate. [1985 c.639 §6; 1991 c.377 §8]

94.971 Fee for registration or amendment of an offer or sale of membership camping contract. (1) The fee for registration or amendment of an offer or sale of a membership camping contract shall be an amount sufficient to recover any administrative expenses in staff review and action upon the registration or amendment. The fee is subject to the review of the Oregon Department of Administrative Services. The commissioner shall set an estimated fee to be paid with the application. The final fee shall be paid before final registration becomes effective.

(2) No fee shall be required for an amendment unless additional work is required by Real Estate Agency staff on disclosures.

(3) The fee for registration or renewal of an existing registration of a broker or salesperson is $50. [1985 c.639 §7; 1991 c.377 §9; 1993 c.18 §18]

94.974 Written disclosures required; procedures; inspection of records. (1) Except in a transaction exempt under ORS 94.962, any person who sells a membership camping contract shall provide the prospective purchaser with those written disclosures required under ORS 94.959. Disclosures shall be substantially accurate and complete and made to a prospective purchaser before the prospective purchaser signs a membership camping contract or gives any consideration for the purchase of such contract. The person shall take a receipt from the prospective purchaser upon delivery of the disclosures. Each receipt shall be kept on file by the membership camping operator within this state subject to inspection by the commissioner or the commissioner's authorized representative for a period of three years from the date the receipt is taken.

(2) Records of the sale of membership camping contracts shall be subject to inspection by the commissioner or the commissioner's authorized representative. Any list identifying campground members obtained by the commissioner or the commissioner's authorized representative shall be exempt from disclosure, as trade secrets, to any person, public body or state agency, under ORS 192.501. [1985 c.639 §8; 1991 c.377 §10]

94.975 False practices prohibited. No person shall, in connection with an offering or sale of a membership camping contract:

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

(2) Make any untrue statement of a material fact;

(3) Fail to state a material fact necessary to make a statement clear;

(4) Issue, circulate or publish any prospectus, circular, advertisement, printed matter, document, pamphlet, leaflet or other literature containing an untrue statement of a material fact or that fails to state a material fact necessary to make the statements made in the literature not misleading;

(5) Issue, circulate or publish any advertising matter or make any written representation, unless the name of the person issuing,

circulating or publishing the matter or making the representation is clearly indicated; or

(6) Make any statement or representation, or issue, circulate or publish any advertising matter containing any statement that the membership camping contract has been in any way approved or indorsed by the commissioner. [1991 c.377 §2]

Note: 94.975 and 94.976 were added to and made a part of 94.953 to 94.989 by legislative action but were not added to any smaller series therein See Preface to Oregon Revised Statutes for further explanation.

94.976 Advertising regulation. It shall be unlawful for any membership camping operator or the agent or employee of any membership camping operator with intent to sell a membership camping contract, to authorize, use, direct or aid in the publication, distribution or circularization of any advertisement, radio broadcast or telecast concerning a membership camping contract, that contains any materially false or misleading statement, pictorial representation or sketch. 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 that the material is false or has an interest in the membership camping contract being advertised. [1991 c.377 §3]

Note: See note under 94.975.

94.977 Registration as salesperson or broker. (1) Unless the transaction is exempt under ORS 94.962, it is unlawful for any person to act as a salesperson or membership camping contract broker in this state without first registering as a salesperson or membership camping contract broker as provided in ORS 94.980. Persons licensed as real estate brokers or real estate salespersons under ORS chapter 696 are exempt from registration under this section.

(2) A violation of this section is a Class A misdemeanor. [1985 c.639 §9]

94.980 Application for registration. (1) A salesperson or membership camping contract broker may apply for registration by filing with the commissioner an application which includes the following information:

(a) A statement whether or not the applicant has been convicted of any misdemeanor or felony involving theft, fraud or dishonesty or whether or not the applicant has been enjoined from, had any civil penalty assessed for, or been found to have engaged in any violation of any act designed to protect consumers; and

(b) A statement describing the applicant's employment history for the past five years and whether or not any termination of employment during the last five years was occasioned by any theft, fraud or act of dishonesty.

(2) Each applicant for initial registration shall submit to fingerprinting and provide to the commissioner as part of the application a recent photograph of the applicant. The registration must be accompanied by a written acceptance of the applicant as a salesperson signed by the membership camping operator with whom the salesperson will be associated.

(3) The commissioner may deny, suspend or revoke a salesperson's or membership camping contract broker's application for registration or the salesperson's or membership camping contract broker's registration if the commissioner finds that the order is necessary for the protection of purchasers or owners of membership camping contracts and that the applicant or registrant:

(a) Has been convicted of any misdemeanor or felony or has been enjoined from, had any civil penalty assessed for, or been found to have engaged in any violation of any act designed to protect consumers;

(b) Has violated any material provision of ORS 94.925 to 94.983; or

(c) Has engaged in fraudulent or deceitful practices in any industry involving sales to consumers.

(4) Registration shall be effective for a period of one year. Registration shall be renewed annually by the filing of a form prescribed by the commissioner for that purpose. The completed application for registration or renewal shall automatically become effective upon the expiration of 30 business days following filing with the commissioner, unless:

(a) The application has been denied under subsection (3) of this section;

(b) The commissioner grants the registration effective as of an earlier date; or

(c) The applicant or registrant consents to delay of the effective date.

(5) During the effective period of a salesperson's registration, the salesperson may transfer to a new membership camping operator by requesting the operator to return the salesperson's registration to the commissioner and filing with the commissioner a written acceptance of the salesperson's transfer signed by the membership camping operator with whom the salesperson will be associated following the transfer. Upon receipt of the salesperson's registration and payment to the commissioner of a $10 transfer fee, the commissioner may issue a registration for the salesperson to the new membership camping operator. Upon the re-

quest of a salesperson, a membership camping operator shall promptly return the registration of the salesperson to the commissioner.

(6) A salesperson's registration granted under this section shall be issued to a membership camping operator who signed the written acceptance accompanying the initial registration application or transfer request. A salesperson's registration entitles the salesperson to sell membership camping contracts only for any campground operated by the membership camping operator under the supervision of the operator. If the salesperson terminates sales activity for any reason, the membership camping operator shall return the registration of the salesperson to the commissioner without delay.

(7) If an applicant for registration has an active real estate license outstanding, the applicant must place the real estate license on inactive status before issuance of the registration by the commissioner. A salesperson or membership camping contract broker may not reactivate an inactive real estate license during any term of registration as a salesperson or membership camping contract broker. [1985 c.639 §10, 1991 c.377 §11]

94.983 Cancellation of contract by purchaser; notice of right to cancel. (1) Any membership camping contract may be canceled at the option of the purchaser, if:

(a) The purchaser sends notice of the cancellation by certified mail, return receipt requested, to the membership camping operator; and

(b) The notice is posted not later than midnight of the third business day following the day on which the membership camping contract is signed.

(2) In addition to the cancellation right established in subsection (1) of this section, any purchaser who signs a membership camping contract without inspecting a campground or facility with camping sites or proposed camping sites may, after making an inspection, cancel the membership camping contract by posting a notice by certified mail, return receipt requested, not later than midnight of the sixth business day following the day on which the membership camping contract is signed. In computing the number of business days, the day on which the membership camping contract was signed, Saturdays, Sundays and legal holidays shall not be included as a "business day." The membership camping operator shall promptly refund any money or other consideration paid by the purchaser upon receipt of timely notice of cancellation by the purchaser.

(3) Every membership camping contract shall include the following statement in at least 10-point type immediately before the space for the purchaser's signature:

Purchaser's Right To Cancel: You may cancel this membership camping contract without any cancellation fee or other penalty by sending notice of cancellation by certified mail, return receipt requested, to _____ (insert name and mailing address of membership camping operator). The notice must be postmarked by midnight of the third business day following the day on which the membership camping contract is signed. In computing the three business days, the day on which the membership camping contract is signed shall not be included as a "business day," nor shall Saturday, Sunday or legal holidays be included.

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(4) If the purchaser has not inspected a campground or facility at which camping sites are located or planned, the notice must contain the following additional language:

If you sign this membership camping contract without having first inspected the property at which camping sites are located or planned, you may also cancel this membership camping contract by giving this notice within six business days following the day on which you signed if you inspect such a property prior to sending the notice.

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(5) No act of a purchaser shall be effective to waive the right of cancellation granted by subsection (1) or (2) of this section. [1985 c.639 §11]

94.986 Requirements for sale of membership camping contract; nondisturbance agreements. With respect to any campground offered for sale in this state and acquired and put into operation by a membership camping operator after September 1, 1985, the membership camping operator shall not sell membership camping contracts in this state granting the right to use such campground until one of the following requirements has been satisfied:

(1) Each person holding an interest in a blanket encumbrance executes and delivers to the commissioner a nondisturbance agreement and records such agreement in the real estate records of the county in which the campground is located. "Nondisturbance agreement" means an instrument by which the holder of a blanket encumbrance agrees that the holder's rights in the campground

shall be subordinate to the rights of any membership camping contract purchaser. Every nondisturbance agreement must contain a covenant by the lienholder that the lienholder, its successors, and anyone who acquires the campground property through the blanket lien shall not use, or cause or permit the property to be used in a manner that prevents a membership camping contract purchaser from using, the campground property in the manner contemplated by the membership camping contract. The lienholder's agreement not to disturb a membership camping contract purchaser may require as a continuing condition that the purchaser perform all obligations and make all payments due under any membership camping contract for the purchaser's campground interest and, if the membership camping contract is held as a leasehold, under the lease for the purchaser's campground interest. The nondisturbance agreement shall also contain provisions setting forth each of the following:

(a) The nondisturbance agreement may be enforced by purchasers of membership camping contracts. If the membership camping operator is not in default under its obligations to the holder of the blanket encumbrance, the agreement may be enforced by both the membership camping operator and the purchasers.

(b) The nondisturbance agreement is effective as between each purchaser and the holder of the blanket encumbrance despite any rejection or cancellation of the purchaser's contract during bankruptcy proceedings of the membership camping operator.

(c) The agreement is binding upon the successors in interest of both the membership camping operator and the holder of the blanket encumbrance.

(d) A holder of the blanket encumbrance who obtains title or possession, or who causes a change in title or possession in a campground by foreclosure or otherwise, and who does not continue to operate the campground upon conditions no less favorable to members than existed prior to the change of title or possession shall:

(A) Offer the title or possession of the campground to an association of members to operate the campground; or

(B) Obtain a commitment from another entity that obtains title or possession to undertake the responsibility for operation of the campground.

(2) If a financial institution, acting as hypothecation lender and providing the major hypothecation loan to the membership camping operator, has a lien on, or security interest in, the membership camping operator's interest in the campground, the financial institution shall execute and deliver to the commissioner a nondisturbance agreement and record such agreement in the real estate records of the county in which the campground is located. In addition, each person holding an interest in any blanket encumbrance superior to the interest held by the financial institution shall execute, deliver and record an instrument stating that such person shall give the financial institution notice of, and at least 30 days to cure, any default under the blanket encumbrance before such person commences any foreclosure action affecting the campground. For the purposes of this provision, a major hypothecation loan to a membership camping operator is a loan or line of credit secured by substantially all of the contracts receivable arising from the membership camping operator's sale of membership camping contracts.

(3) There shall have been delivered to and accepted by the commissioner a surety bond or letter of credit with the commissioner as obligee for the benefit of purchasers. The bond or letter of credit must be in an amount which is not less than 105 percent of the remaining principal balance of every indebtedness secured by the blanket encumbrance affecting the campground. Any such bond must be issued by a surety authorized to do business in this state and having sufficient net worth to satisfy the indebtedness. Any such letter of credit must be irrevocable and must be drawn upon a bank, savings and loan association or other financial institution acceptable to the commissioner. The bond or letter of credit shall provide for payment of all amounts secured by the blanket encumbrance, including costs, expenses and legal fees of the lienholder, if for any reason the blanket encumbrance is enforced. The bond or letter of credit may be reduced periodically in proportion to the reduction of the amounts secured by the blanket encumbrance.

(4) There have been delivered to and accepted by the commissioner other financial assurances which the commissioner finds are acceptable to carry into effect the intent and provisions of this section. [1985 c.639 §11a; 1991 c.377 §5]

94.987 Judicial declaration of failure in management. (1)(a) Upon petition by the commissioner or a majority of active purchasers not then in default under their membership camping contracts, a court of competent jurisdiction may declare a failure of management of the membership camping operator and appoint a trustee to assume the membership camping operator's duties under

the membership camping contracts, if the court finds that:

(A) Irreparable injury to the rights of the purchasers is likely to occur unless a trustee is appointed; and

(B) There is no reasonable alternative to appointment of a trustee.

(b) For purposes of this subsection, "active purchaser" means a current, dues-paying member of the membership camping operator.

(2) The court may attach such conditions and terms to its appointment of a trustee under subsection (1) of this section as the court considers necessary to protect the rights of the purchasers under the membership camping contract. The trustee shall provide a copy of the court's decision in such a case to the commissioner.

(3) If the court petitioned under subsection (1) of this section finds that there is a reasonable alternative to the appointment of a trustee, the court may order the membership camping operator to carry out the reasonable alternative and may attach to its order such terms and conditions as it considers necessary to protect the rights of the purchasers under the membership camping contracts. [1991 c.377 §4]

94.989 Interpretation of membership camping contracts; application of Unlawful Trade Practices Act. (1) Membership camping contracts, campgrounds and facilities are not subdivisions or series partitions under ORS chapter 92, are not condominiums under ORS chapter 100, are not timeshare properties under ORS chapter 94, and are not securities under ORS 59.005 to 59.451, 59.660 to 59.830, 59.991 and 59.995.

(2) Membership camping contracts covered by ORS 94.925 to 94.983 are retail installment contracts under ORS 83.010 to 83.190.

(3) The Attorney General shall protect the rights of purchasers through the application of ORS 646.605 to 646.652. [1985 c.639 §12]

94.990 [Repealed by 1971 c.478 §1]

94.991 [Formerly 91.990, 1987 c.320 §15; renumbered 100.990 in 1989]