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New law will affect condos, communities

An overview of legislative changes to the Oregon Condominium and Planned Community acts


LEGAL EASE

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Editor's note: *This is the first part of a two-part series. The second part will appear in the Sept. 24 edition of the Daily Journal of Commerce.*

On June 30, Oregon Gov. Ted Kulongoski signed Senate Bill 963 into law. This bill, set to go into effect on Jan. 1, 2010, makes major changes to the Oregon Condominium Act (ORS Chapter 100) and the Oregon Planned Community Act (ORS Chapter 94).

Following is an overview of the changes ahead for people dealing with condominiums and planned communities, whether they're association officers and directors, developers, managers, or legal counsel. The focus of this first part is on sections of ORS 963 that affect governance of the condominium or planned community.

Directors qualifications

Senate Bill 963 Section 18 adds a new section to ORS 100 clarifying who may serve as directors on condominium association boards. Generally, a director must be the actual owner or co-owner of a unit, but when an owner is an entity, that general rule is unworkable.

SB 963 expressly allows individual officials or agents of an entity to serve as directors. Similarly, fiduciaries such as trustees, guardians, conservators and personal representatives are allowed to be directors. During the period when the declarant controls the association, directors who are not unit owners may be appointed by the declarant. SB 963 Section 2 adds an identical provision to ORS 94 in regard to who may serve as directors on planned communities' boards.

Voting by unit owner

SB 963 Section 32 adds to ORS 100.525, and SB 963 Section 11 adds to ORS 94.658, that an attorney-in-fact and conservator can now vote on behalf of a unit or lot owner among other fiduciaries. This is the counterpart to the amended director qualifications.

Quorum requirement

SB 963 Section 25 amended ORS 100.408, and SB 963 Section 9 amended ORS 94.655, to clarify the reduction in quorum requirements when an association meeting must be adjourned for lack of the quorum required by the bylaws. This clarification may be a misnomer because the new wording creates ambiguity that did not exist before in regard to the 20-percent quorum requirement allowed for such an adjourned meeting.

Generally, the revisions serve to ensure there are no changes or gaps in an association's ability, and that the association does not lose power to control the condominium merely because a corporate status changes.

As revised, the law now says the reduced quorum requirement is 20 percent of the votes present at the meeting, which does not make much sense. It should require that persons holding 20 percent of the total voting rights are present in the meeting. This section should be corrected in the next legislative session.

Bylaws don't need to be amended because the condominium act will overtake contrary bylaw quorum requirements, but it would be best to amend the bylaws to conform to this change.

Dissolution of an association

Normally, a condominium or planned community association is a nonprofit corporation. SB 963 Section 24 adds clarification to ORS 100.405, and SB 963 Section 3 adds clarification to ORS 94.640, as to what happens if the corporation is dissolved or if an unincorporated association is later incorporated.

Generally, the revisions serve to ensure there are no changes or gaps in an association's ability, and that the association does not lose power to control the condominium merely because a corporate status changes. These provisions will be very useful when associations are dissolved due to the temporary failure of the owners to elect officers and directors, and to keep the association active as intended.

These new provisions provide clarity and ease the process of reactivating and reinstating or reincorporating the association entity after a period when it is an unincorporated association.

Recording of bylaw amendments

SB 963 Section 5 adds a provision to ORS 94.625 that once the bylaws are recorded, all amendments to the bylaws must subsequently also be recorded. ORS 100.410(3)(b) already states that an amendment to the bylaws would not be effective unless recorded so that further amendment was not required.

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Corrections to documents

SB 963 Section 43 adds provisions to the condominium act allowing scrivener-type errors to be easily corrected in the same manner as for deeds. Such minor errors include, among others, omission of an exhibit; a mathematical mistake (unit interest, common expense percentage, or area of a unit); inconsistency between two documents; and correction of an ambiguity or inconsistency.

Duration of OREA document approvals

Previously, Oregon Real Estate Agency approval of bylaw amendments was valid so long as the amendment was recorded within two years of approval. SB 963 Section 26a amends ORS 100.410 to reduce this to one year, so associations should be careful to timely record approved bylaws to keep within the limit, or the process for approval will need to be repeated.

Section 40 amends ORS 100.110 to make the same change for declarations (whether initial, amended, or supplemental) so that approval is valid only for one year from the date of approval, instead of the prior two-year time period. Developers must note this change and not wait too long in recording their approved documents.

Reserve accounts

SB 963 Section 4 and Section 23 allow the board to change the reserve account assessment without any owner vote, but require 100-percent owner approval to stop funding the reserve account after the turnover meeting – unless the suspension of reserve assessments is temporary because of the board finding that the reserve account has excess funds justifying the suspension.

We recommend that anyone dealing with homeowner associations for condominiums or planned communities in any capacity read the bill and the final legislation. Some changes may require amendments to the declarations and bylaws.

Next time, we will focus on some of the broader changes that SB 963 brings to the Oregon Condominium Act and the Oregon Planned Community Act.

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