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New rules soon for 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 second part of a two-part series. The first part appeared in the Aug. 27 edition of the DJC.*

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). Previously, we talked about how SB 963 impacts the governance of condominium associations and planned communities. Following is an outline of some of the other changes that SB 963 brings about.

Conveyances and easements

Section 12 of SB 963 amends ORS 94.665 to require that before a lease, easement, right-of-way or license can be granted, 75 percent of the owners and a majority of the directors must give approval. Further, any lease, easement, right-of-way or license that is for less than two years, or is given to a utility company for the placement of utility lines, must be approved by a majority of the board.

Creation of a new unit from common elements

SB 963 allows the condominium associations to convert surplus common element areas into new units that may be sold to the public to encourage the productive redevelopment of these areas. This is fairly common because developers are often mistaken about what the unit purchasers will require for common element space.

Many sections in ORS 100 were amended to clarify this process of converting common elements into units and address how it will work.

For instance, Section 20 amends ORS 100.200 so that the creation of two or fewer units from common elements is exempt from the normal requirements for a developer to sell units to the public such as filing an application with the real estate agency and obtaining agency approval of the unit sale agreement form, the escrow agreement and a disclosure statement.

Section 21 amends ORS 100.135 to specify that all existing unit owners must approve a new unit created from common elements and that the declaration amendment creating the units state who is the owner of the new units.

Section 40 amends ORS 100.110 to require approval of such a new unit by the county tax assessor.

Section 43 of SB 963 adds requirements for the plat and declaration amendment to convert common elements into units.

An interesting clarification added by SB 963 Section 15 and Section 33 for both condominiums and planned communities is that the board may determine that a loss or cost incurred by the association is the "fault" of one or more owners.

Long-term energy contracts allowed

Currently, the ORS does not allow the declarant to bind the association by any contract for more than three years. SB 963 Section 30 amends 100.485 – and Section 14 amends ORS 94.700 – to create several exceptions where the declarant may enter into a contract for greater than three years for performance-based energy or water efficiency contracts and contracts relating to renewable energy facilities or output (e.g. windmills, solar panels, etc). The contracts, however, cannot have an initial term of more than 20 years.

No discrimination of condominium ownership

SB 963 Section 19 prohibits local governments from including prohibitions or discriminatory restrictions against the condominium form of ownership as compared to ordinary property ownership. The concept here is that a condominium is not a different kind of land use that can be regulated by zoning codes, but is merely a different form of ownership that has nothing to do with land use. Condominiums are merely a statutory hybrid form of ownership by tenancy in common and exclusive ownership.

Fault of unit/lot owner

An interesting clarification added by SB 963 Section 15 and Section 33 for both condominiums and planned communities is that the board may determine that a loss or cost incurred by the association is the "fault" of one or more owners. The board may specially assess the responsible owner(s) instead of

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assessing all the owners. Although this is a reasonable addition, "fault" is not defined and may cause some responsibility disputes down the road.

Residential unit sales requirements don't apply

SB 963 Section 20 clarifies ORS 100.020 so that a unit consisting of multiple residential rental apartments is a unit held for nonresidential purpose, which means the residential unit sales requirements (OREA-approved disclosure statement, unit sale agreement, etc.) are inapplicable. Because the apartments are rented and not salable as separate units there is no need to impose such requirements.

Miscellaneous

SB 963 Section 8 and Section 28 clarify that boards may consult with their attorney in closed executive sessions. Section 13 and Section 29 clarify that all association funds must be maintained in FDIC insured accounts or Treasury Bills; no investment in securities is allowed. Section 16 amends ORS 94.733 and Section 34 amends ORS 100.540 to expressly require reasonable advance notice before entry by the association agents to a unit or limited common element.

This is a brief overview of the extensive SB 963 amendments. Anyone dealing with homeowner associations for condominiums or planned communities in any capacity will want to read the bill and the final legislation carefully to determine details that may not be included in this summary. Some changes may require amendments to the declarations and bylaws as well as in the operation of existing associations.

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