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August 6, 2007

Board of Directors
Association of Unit Owners
of North Shore Terrace Condominium
c/o Yaquina Bay Property Management Inc.
146 SE 1st Street
Newport, OR 97365

RE: New Legislation on Windows and Exterior Doors

Dear Board:

My letter of June 21, 2007, discussed the classification of windows and exterior doors on pages 6 and 7. I concluded that these elements are parts of the individual units, and thus their repair and replacement is the responsibility of individual unit owners. That conclusion was based on ORS 100.510, which can be thought of as a default provision that treats windows and exterior doors, and their respective frames, as parts of the unit, when the governing declaration is unclear.

Since writing that letter, I became aware that the 2007 Oregon Legislature has amended ORS 100.510 and other portions of the Oregon Condominium Act. House Bill 2666 becomes effective on September 27, 2007. Section 5 of that bill makes windows and unit access doors, except for glass and screens, part of the general common elements, unless the declaration provides otherwise. Section 14 of the bill amends ORS 100.510 to provide that only glass and screens of windows and unit access doors are part of a unit, unless the declaration provides otherwise. A copy of those sections of the new law is enclosed.

I wanted to let you know that as of September 27, the basis for my conclusion that windows and exterior doors are part of the units will no longer exist. As of that date only glass and screens will be part of the units, and the rest of the windows and exterior doors will be general common elements, to be maintained by the association.

I think it makes sense that screens be the responsibility of individual owners, but I question the wisdom of dividing ownership of the rest of a window, as the amendment will do. When entire windows are replaced, this would seem to require a sharing of cost between the association and the owner. Determining the portion of the cost attributable

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to the glass and screens would seem to be an arbitrary decision, not to mention dividing the cost of labor. All this simply creates more uncertainty than we had before.

Very truly yours,



Handwritten signature of Clifford G. Collard.

CLIFFORD G. COLLARD

CGC/kfj
Enclosure

**Enrolled
House Bill 2666**

Sponsored by COMMITTEE ON JUDICIARY (at the request of Legislative Action Committee of Community Associations Institute Oregon Chapter, Condominium-HOA Working Group, Oregon Washington Community Association Managers)

CHAPTER

AN ACT

Relating to properties governed by declarations; creating new provisions; amending ORS 94.550, 94.590, 94.625, 94.630, 94.858, 100.005, 100.020, 100.102, 100.105, 100.115, 100.275, 100.405, 100.410, 100.510, 100.535, 100.540, 100.550 and 100.640 and section 29, chapter 569, Oregon Laws 2003; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 94.550 is amended to read:

94.550. As used in ORS 94.550 to 94.783:

(1) "Assessment" means any charge imposed or levied by a homeowners association on or against an owner or lot pursuant to the provisions of the declaration or the bylaws of the planned community or provisions of ORS 94.550 to 94.783.

(2) "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 lot in a planned community, or an agreement affecting more than one lot by which the developer holds such planned community under an option, contract to sell or trust agreement.

(3) "Class I planned community" means a planned community *[as defined in ORS 94.550]* that:

(a) Contains at least 13 lots or in which the declarant has reserved the right to increase the total number of lots beyond 12; and

(b) Has an estimated annual assessment, including an amount required for reserves under ORS 94.595, exceeding \$10,000 for all lots or \$100 per lot, whichever is greater, based on:

(A) For a planned community created on or after January 1, 2002, the initial estimated annual assessment, including a constructive assessment based on a subsidy of the association through a contribution of funds, goods or services by the declarant; or

(B) For a planned community created before January 1, 2002, a reasonable estimate of the cost of fulfilling existing obligations imposed by the declaration, *[and]* bylaws **or other governing document** as of January 1, 2002.

(4) "Class II planned community" means a planned community *[as defined in ORS 94.550]* that:

(a) Is not a Class I planned community;

(b) Contains at least five lots; and

(c) Has an estimated annual assessment exceeding \$1,000 for all lots based on:

(A) For a planned community created on or after January 1, 2002, the initial estimated annual assessment, including a constructive assessment based on a subsidy of the association through a contribution of funds, goods or services by the declarant; or

(e) Once made, the decision of the court or administrative body arising from litigation or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

(f) The requirements of this subsection do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation or an administrative proceeding initiated to collect assessments, other than assessments attributable to fines.

SECTION 3. Section 4 of this 2007 Act is added to and made a part of ORS chapter 100.

SECTION 4. (1) A declarant may amend the declaration or bylaws in order to comply with requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, Rural Development or the Farm Service Agency of the United States Department of Agriculture, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage 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 that insures, guarantees or provides financing for a condominium or units in a condominium.

(2) If the need to amend the declaration or the bylaws occurs after turnover to the association of unit owners has occurred, the amendment must be approved by the association in accordance with the approval provisions of the declaration or bylaws and this chapter.

SECTION 5. ORS 100.005 is amended to read:

100.005. As used in this chapter, unless the context requires otherwise:

(1) "Assessment" means any charge imposed or levied by the association of unit owners on or against a unit owner or unit pursuant to provisions of the declaration or the bylaws of the condominium or provisions of ORS 100.005 to 100.910.

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

(3) "Association property" means any real property or interest in real property acquired, held or possessed by the association under ORS 100.405.

(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 unit in a condominium, or an agreement affecting more than one such unit by which the developer holds such condominium under an option, contract to sell or trust agreement.

(5) "Building" means a multiple-unit building or single-unit buildings, or any combination thereof, comprising a part of the property. "Building" also includes a floating structure described in ORS 100.020 (3)(b)(D).

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

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

(8) "Common expenses" means:

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

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

(c) Expenses declared common by ORS 100.005 to 100.625 or by the declaration or the bylaws of the particular condominium.

(9) "Condominium" means:

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

(A) The land, if any, whether fee simple, leasehold, easement or other interest or combination thereof, and whether contiguous or noncontiguous;

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

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

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

(10) "Conversion condominium" means a condominium in which there is a building, improvement or structure that was occupied prior to any negotiation and that is:

- (a) Residential in nature, at least in part; and
- (b) Not wholly commercial or industrial, or commercial and industrial, in nature.
- (11) "Declarant" means a person who records a declaration under ORS 100.100 or a supplemental declaration under ORS 100.110.
- (12) "Declaration" means the instrument described in ORS 100.100 by which the condominium is created and as modified by any amendment recorded in accordance with ORS 100.135 or supplemental declaration recorded in accordance with ORS 100.120.
- (13) "Developer" means a declarant or any person who purchases an interest in a condominium from declarant, successor declarant or subsequent developer for the primary purpose of resale.
- [(14) "Dwelling unit," "premises," "rental agreement" and "tenant" mean those terms as defined in ORS 90.100.]
- [(15)] (14) "Flexible condominium" means a condominium containing property that may be reclassified or withdrawn from the condominium pursuant to ORS 100.150 (1).
- [(16)] (15) "General common elements," unless otherwise provided in a declaration, means all portions of the condominium that are not part of a unit or a limited common element, including but not limited to the following:
 - (a) The land, whether fee simple, leasehold, easement, other interest or combination thereof, together with any rights and appurtenances;
 - (b) The foundations, columns, girders, beams, supports, bearing and shear walls, **windows, except glazing and screening, unit access doors, except glazing and screening**, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances and exits of a building;
 - (c) The basements, yards, gardens, parking areas and outside storage spaces;
 - (d) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal and incinerating;
 - (e) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;
 - (f) The premises for the lodging of janitors or caretakers of the property; and
 - (g) All other elements of a building and the condominium necessary or convenient to their existence, maintenance and safety, or normally in common use.
- [(17)] (16) "Leasehold" means the interest of a person, firm or corporation who is the lessee under a lease from the owner in fee and who files a declaration creating a condominium under ORS 100.100.
- [(18)] (17) "Limited common elements" means those common elements designated in the declaration, as reserved for the use of a certain unit or number of units, to the exclusion of the other units.
- [(19)] (18) "Majority" or "majority of unit owners" means more than 50 percent of the voting rights allocated to the units by the declaration.
- (19) "**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.**
- (20) "Negotiation" means any activity preliminary to the execution by either developer or purchaser of a unit sales agreement, including but not limited to advertising, solicitation and promotion of the sale of a unit.
- (21) "Nonwithdrawable property" means property which pursuant to ORS 100.150 (1)(b):
 - (a) Is designated nonwithdrawable in the declaration and on the plat; and
 - (b) Which may not be withdrawn from the condominium without the consent of all of the unit owners.
- (22) "Percent of owners" or "percentage of owners" means the percent of the voting rights determined under ORS 100.525.
- (23) "Purchaser" means an actual or prospective purchaser of a condominium unit pursuant to a sale.

(7) Before the commissioner approves amended bylaws or restated bylaws under this section, the person submitting the amended bylaws or restated bylaws shall pay to the commissioner the fee provided by ORS 100.670.

(8) Notwithstanding a provision in the bylaws, including bylaws adopted prior to July 14, 2003, that requires an amendment to be executed, or executed and acknowledged, by all owners approving the amendment, amendments to the bylaws under this section become effective after approval by the owners if executed and certified on behalf of the association by the chairperson and secretary in accordance with subsection (3)(b) of this section.

(9) An amendment to the bylaws must be conclusively presumed to have been regularly adopted in compliance with all applicable procedures relating to the amendment unless an action is brought within one year after the effective date of the amendment or the face of the amendment indicates that the amendment received the approval of fewer votes than required for the approval. Nothing in this subsection prevents the further amendment of an amended bylaw.

(10)(a) The board of directors, by resolution and without the further approval of unit owners, may cause restated bylaws to be prepared and recorded to codify individual amendments that have been adopted in accordance with this section.

(b) Bylaws restated under this subsection must:

(A) Include all previously adopted amendments that are in effect, state that the amendments were approved by the commissioner as required under this section and state that no other changes were made except, if applicable, to correct scribes' errors or to conform format and style;

(B) Include a statement that the board of directors has adopted a resolution in accordance with paragraph (a) of this subsection and is causing the bylaws to be restated and recorded under this subsection;

(C) Include a reference to the recording index numbers and date of recording of the initial bylaws and all previously recorded amendments that are in effect and are being codified;

(D) Include a certification by the chairperson and secretary of the association that the restated bylaws include all previously adopted amendments that are in effect, that amendments were approved by the commissioner if required under this section and that no other changes were made except, if applicable, to correct scribes' errors or to conform format and style;

(E) Be executed and acknowledged by the chairperson and secretary of the association and recorded in the deed records of each county in which the condominium is located; and

(F) If required under subsection (6) of this section, be approved by the commissioner.

(c) The board of directors shall cause a copy of the recorded restated bylaws, including the recording information, to be filed with the commissioner.

SECTION 14. ORS 100.510 is amended to read:

100.510. (1) Unless otherwise provided in the declaration, [if the declaration designates] **the walls, floors [or] and ceilings [as] are the boundaries of a unit[:].**

[[1)] (2) All lath, furring, wallboard, plaster-board, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof shall be a part of the unit except those portions of the walls, floors or ceilings that materially contribute to the structural or shear capacity of the condominium. All other portions of the walls, floors or ceilings shall be a part of the common elements.

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

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

(b) **The glazing and screening of windows and unit access doors; and**

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

SECTION 15. ORS 100.535 is amended to read: