

House Bill 3746

Sponsored by COMMITTEE ON HOUSING AND HOMELESSNESS (at the request of Representative Pam Marsh)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: For condos and homes in an HOA, this Act changes how construction defects and damages are handled. (Flesch Readability Score: 74.2).

Reduces the statute of limitations for construction defect actions for units in a planned community or condominium. Imposes notice, voting and approval requirements before homeowners or condominium association owners may bring or join a construction defect action. Requires the board of directors of a condominium association to conduct a semiannual moisture inspection.

Creates special procedural requirements for giving notice to contractors prior to filing construction defect claims if the action is brought by a homeowners association or association of unit owners. Extends the time for a sender of a secondary notice of defect to bring an action against the recipient of the secondary notice of defect.

A BILL FOR AN ACT

Relating to real property; creating new provisions; and amending ORS 12.135, 94.630, 94.662, 100.115, 100.405, 100.417, 100.490, 100.680, 701.570, 701.575 and 701.585.

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

SECTION 1. ORS 12.135 is amended to read:

12.135. (1) As used in this section:

(a) "Association of unit owners" has the meaning given that term in ORS 100.005.

(b) "Homeowners association" has the meaning given that term in ORS 94.550.

(c) "Large commercial structure," "residential structure" and "small commercial structure" have the meanings given those terms in ORS 701.005.

(d) "Public body" has the meaning given that term in ORS 174.109.

(e) "Substantial completion" means the earliest of:

(A) The date when the contractee accepts in writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose or, if there is no such written acceptance, the date of acceptance of the completed construction, alteration or repair of such improvement by the contractee;

(B) The date when a public body issues a certificate of occupancy for the improvement;
or

(C) The date when the owner occupies the improvement or uses it for its intended purpose.

***[(1)]* (2) An action against a person by a plaintiff who is not a public body, whether in contract, tort or otherwise, arising from the person having performed the construction, alteration or repair of any improvement to real property or the supervision or inspection thereof, or from the person having furnished design, planning, surveying, architectural or engineering services for the improvement, must be commenced before the earliest of:**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

(a) The applicable period of limitation otherwise established by law;

(b) Ten years after substantial completion or abandonment of the construction, alteration or repair of a small commercial structure[, *as defined in ORS 701.005, a*] **or** residential structure[, *as defined in ORS 701.005, or a large commercial structure, as defined in ORS 701.005, that is owned or maintained by a homeowners association, as defined in ORS 94.550, or that is owned or maintained by an association of unit owners, as defined in ORS 100.005*]; or

(c) Six years after substantial completion or abandonment of the construction, alteration or repair of a large commercial structure[, *as defined in ORS 701.005, other than a large commercial structure described in paragraph (b) of this subsection*].

[(2)] **(3)** An action against a person by a public body, whether in contract, tort or otherwise, arising from the person having performed the construction, alteration or repair of any improvement to real property or the supervision or inspection thereof, or from the person having furnished design, planning, surveying, architectural or engineering services for the improvement, must be commenced not more than 10 years after substantial completion or abandonment of such construction, alteration or repair of the improvement to real property.

(4) Notwithstanding subsection (2) of this section, the period of limitation for a tort action by a homeowners association or association of unit owners arising from the defective construction, alteration or repair of a structure or unit is:

(a) Six years after substantial completion or abandonment of the construction, alteration or repair of the structure; or

(b) If a construction defect described in this subsection is discovered more than five but less than six years after substantial completion or abandonment, one year after discovery of the defect.

[(3)(a)] **(5)(a)** Notwithstanding subsections [(1) and] (2) **and (3)** of this section, an action against a person registered to practice architecture under ORS 671.010 to 671.220, a person registered to practice landscape architecture under ORS 671.310 to 671.459 or a person registered to practice engineering under ORS 672.002 to 672.325 to recover damages for injury to a person, property or to any interest in property, including damages for delay or economic loss, regardless of legal theory, arising out of the construction, alteration or repair of any improvement to real property must be commenced before the earliest of:

(A) Two years after the date the injury or damage is first discovered or in the exercise of reasonable care should have been discovered;

(B) Ten years after substantial completion or abandonment of the construction, alteration or repair of a small commercial structure[, *as defined in ORS 701.005, a*] **or** residential structure[, *as defined in ORS 701.005, or a large commercial structure, as defined in ORS 701.005, that is owned or maintained by a homeowners association, as defined in ORS 94.550, or that is owned or maintained by an association of unit owners, as defined in ORS 100.005*]; or

(C) Six years after substantial completion or abandonment of the construction, alteration or repair of a large commercial structure[, *as defined in ORS 701.005, other than a large commercial structure described in subparagraph (B) of this paragraph*].

(b) This subsection applies to actions brought by any person or public body.

[(4) For purposes of this section:]

[(a) "Public body" has the meaning given that term in ORS 174.109; and]

[(b) "Substantial completion" means the earliest of:]

[(A) The date when the contractee accepts in writing the construction, alteration or repair of the

improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose or, if there is no such written acceptance, the date of acceptance of the completed construction, alteration or repair of such improvement by the contractee;]

[(B) The date when a public body issues a certificate of occupancy for the improvement; or]

[(C) The date when the owner uses or occupies the improvement for its intended purpose.]

[(5)] (6) For purposes of this section, an improvement to real property is considered abandoned on the same date that the improvement is considered abandoned under ORS 87.045.

[(6)] (7) This section:

(a) Applies to an action against a manufacturer, distributor, seller or lessor of a manufactured dwelling, as defined in ORS 446.003, or of a prefabricated structure, as defined in ORS 455.010; and

(b) Does not apply to actions against any person in actual possession and control of the improvement, as owner, tenant or otherwise, at the time such cause of action accrues.

SECTION 2. The amendments to ORS 12.135 by section 1 of this 2025 Act apply to causes of action arising on or after the effective date of this 2025 Act.

SECTION 3. ORS 94.630 is amended to read:

94.630. (1) Subject to subsection (2) of this section and ORS 94.762, 94.763, 94.776, 94.778 and 94.779, and except as otherwise provided 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) Defend against any claims, proceedings or actions brought against it;

(e) Subject to [subsection (4)] **subsections (4) and (5)** of this section, initiate or intervene in litigation or administrative proceedings in its own name and without joining the individual owners in the following:

(A) Matters relating to the collection of assessments and the enforcement of governing documents;

(B) Matters arising out of contracts to which the association is a party;

(C) Actions seeking equitable or other nonmonetary relief regarding matters that affect the common interests of the owners, including but not limited to the abatement of nuisance;

(D) Matters, including but not limited to actions for damage, destruction, impairment or loss of use, relating to or affecting:

(i) Individually owned real property, the expenses for which, including maintenance, repair or replacement, insurance or other expenses, the association is responsible; or

(ii) Common property;

(E) Matters relating to or affecting the lots or interests of the owners including but not limited to damage, destruction, impairment or loss of use of a lot or portion thereof, if:

(i) Resulting from a nuisance or a defect in or damage to common property or individually owned real property, the expenses for which, including maintenance, repair or replacement, insurance or other expenses, the association is responsible; or

(ii) Required to facilitate repair to any common property; and

(F) Any other matter to which the association has standing under law or pursuant to the dec-

1 laration or bylaws;

2 (f) Make contracts and incur liabilities;

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

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

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

8 (j) Grant easements, leases, licenses and concessions through or over the common property as
9 provided in ORS 94.665;

10 (k) Modify, close, remove, eliminate or discontinue the use of common property, including any
11 improvement or landscaping, regardless of whether the common property is mentioned in the decla-
12 ration, provided that:

13 (A) Nothing in this paragraph is intended to limit the authority of the association to seek ap-
14 proval of the modification, closure, removal, elimination or discontinuance by the owners; and

15 (B) Modification, closure, removal, elimination or discontinuance other than on a temporary
16 basis of any swimming pool, spa or recreation or community building must be approved by at least
17 a majority of owners voting on the matter at a meeting or by written ballot held in accordance with
18 the declaration, bylaws or ORS 94.647;

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

21 (m) Adopt rules regarding the termination of utility services paid for out of assessments of the
22 association and access to and use of recreational and service facilities available to owners. The
23 rules must provide for written notice and an opportunity to be heard before the association may
24 terminate the rights of any owners to receive the benefits or services until the correction of any
25 violation covered by the rule has occurred;

26 (n) Impose charges for late payment of assessments and attorney fees related to the collection
27 of assessments and, after giving written notice and an opportunity to be heard, levy reasonable fines
28 for violations of the declaration, bylaws, rules and regulations of the association, provided that the
29 charge imposed or the fine levied by the association is based:

30 (A) On a schedule contained in the declaration or bylaws, or an amendment to either that is
31 delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses
32 designated in writing by the owners; or

33 (B) On a resolution of the association or its board of directors that is delivered to each lot,
34 mailed to the mailing address of each lot or mailed to the mailing addresses designated in writing
35 by the owners;

36 (o) Impose reasonable charges for the preparation and recordation of amendments to the decla-
37 ration;

38 (p) Provide for the indemnification of its officers and the board of directors and maintain li-
39 ability insurance for directors and officers;

40 (q) Assign its right to future income, including the right to receive common expense assess-
41 ments; and

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

44 (2) A declaration may not impose any limitation on the ability of the association to deal with
45 a declarant that is more restrictive than the limitations imposed on the ability of the association to

1 deal with any other person, except during the period of declarant control under ORS 94.600.

2 (3) A permit or authorization, or an amendment, modification, termination or other instrument
3 affecting a permit or authorization, issued by the board of directors that is authorized by law, the
4 declaration or bylaws may be recorded in the deed records of the county in which the planned
5 community is located. A permit or authorization, or an amendment, modification, termination or
6 other instrument affecting a permit or authorization, recorded under this subsection shall:

7 (a) Be executed by the president and secretary of the association and acknowledged in the
8 manner provided for acknowledgment of instruments by the officers;

9 (b) Include the name of the planned community and a reference to where the declaration and
10 any applicable supplemental declarations are recorded;

11 (c) Identify, by the designations stated or referenced in the declaration or applicable supple-
12 mental declaration, all affected lots and common property; and

13 (d) Include other information and signatures if required by law, the declaration, bylaws or the
14 board of directors.

15 (4)(a) Subject to paragraph (f) of this subsection, before initiating litigation or an administrative
16 proceeding in which the association and an owner have an adversarial relationship, the party that
17 intends to initiate litigation or an administrative proceeding shall offer to use any dispute resolution
18 program available within the county in which the planned community is located that is in substan-
19 tial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must
20 be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in
21 the records of the association, for the other party.

22 (b) If the party receiving the offer does not accept the offer within 10 days after receipt by
23 written notice hand-delivered or mailed by certified mail, return receipt requested, to the address,
24 contained in the records of the association, for the other party, the initiating party may commence
25 the litigation or the administrative proceeding. The notice of acceptance of the offer to participate
26 in the program must contain the name, address and telephone number of the body administering the
27 dispute resolution program.

28 (c) If a qualified dispute resolution program exists within the county in which the planned
29 community is located and an offer to use the program is not made as required under paragraph (a)
30 of this subsection, litigation or an administrative proceeding may be stayed for 30 days upon a mo-
31 tion of the noninitiating party. If the litigation or administrative action is stayed under this para-
32 graph, both parties shall participate in the dispute resolution process.

33 (d) Unless a stay has been granted under paragraph (c) of this subsection, if the dispute resol-
34 ution process is not completed within 30 days after receipt of the initial offer, the initiating party
35 may commence litigation or an administrative proceeding without regard to whether the dispute
36 resolution is completed.

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

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

43 **(5) Notwithstanding any contrary provision in a governing document, a homeowners as-**
44 **sociation may not initiate or intervene in litigation or administrative proceedings regarding**
45 **a matter that results from a defect in, or damage arising from a defect in, common property**

1 **unless the owners representing a majority of the lots approve in writing of the initiation or**
 2 **intervention within 60 days after the mailing date of the notice required under ORS 94.662.**

3 **SECTION 4.** ORS 94.662 is amended to read:

4 94.662. (1) At least 10 days prior to instituting any litigation or administrative proceeding to
 5 recover damages under ORS 94.630 (1)(e)(E), the homeowners association shall provide written no-
 6 tice to each affected owner of the association's intent to seek damages on behalf of the owner. The
 7 notice shall, at a minimum:

8 (a) Be mailed to the mailing address of each lot or to the mailing address designated in writing
 9 to the association by the owner;

10 (b) Inform each owner of the general nature of the litigation or proceeding;

11 (c) Describe the specific nature of the damages to be sought on the owner's behalf;

12 (d) Set forth the terms under which the association is willing to seek damages on the owner's
 13 behalf, including any mechanism proposed for the determination and distribution of any damages
 14 recovered;

15 (e) Inform each owner of the owner's right not to have the damages sought on the owner's behalf
 16 and specify the procedure for exercising the right; and

17 (f) Inform the owner that exercising the owner's right not to have damages sought on the
 18 owner's behalf:

19 (A) Relieves the association of its duty to reimburse or indemnify the owner for the damages;

20 (B) Does not relieve the owner from the owner's obligation to pay dues or assessments relating
 21 to the litigation or proceeding;

22 (C) Does not impair any easement owned or possessed by the association; and

23 (D) Does not interfere with the association's right to make repairs to common areas.

24 (2) Within 10 days of **the** mailing **of** the notice described in this section, any owner may request
 25 in writing that the association not seek damages on the owner's behalf. If an owner makes such a
 26 request, the association [*shall*] **may** not make or continue any claim or action for damages with
 27 regard to the objecting owner's lot and shall be relieved of any duty to reimburse or indemnify the
 28 owner for damages under the litigation or proceeding.

29 **(3) If the action is for a claim described in ORS 94.630 (5):**

30 **(a) The notice sent under subsection (1) of this section must be sent by certified mail.**

31 **(b) In addition to the contents described in subsection (1) of this section, the notice must:**

32 **(A) State that the association believes that a defect in the common property exists;**

33 **(B) Provide a detailed description of the defect;**

34 **(C) Identify the parties the association considers responsible for the defect; and**

35 **(D) State that the association may not institute litigation or an administrative proceed-**
 36 **ing unless owners representing a majority of the lots approve in writing of the initiation or**
 37 **intervention within 60 days after the mailing date of the notice.**

38 **(c) The association shall send a copy of the notice by certified mail to each person iden-**
 39 **tified in the notice as a party the association considers responsible for the defect. The re-**
 40 **quirement for sending notice under this subsection is in addition to the notice of defect**
 41 **requirement in ORS 701.565 and does not initiate the procedure described in ORS 701.560 to**
 42 **701.595.**

43 **SECTION 5.** ORS 100.405 is amended to read:

44 100.405. (1)(a) An association of unit owners must be organized to serve as a means through
 45 which the unit owners may take action with regard to the administration, management and opera-

tion of the condominium.

(b) The association of a condominium created on or after September 27, 2007, must be organized:

(A) As a corporation for profit or a nonprofit corporation; or

(B) If the condominium consists of four or fewer units, excluding units used for parking, storage or other use ancillary to a unit, as an unincorporated association, corporation for profit or a nonprofit corporation.

(c) If the association is incorporated:

(A) The name of the association must include the complete name of the condominium.

(B) The articles of incorporation must be consistent with the declaration and bylaws.

(d) For an association described in paragraph (b)(A) of this subsection, the association must be incorporated before conveyance of the first individual unit unless all units in the condominium are conveyed or transferred to one person in one transaction.

(e) Notwithstanding a provision in the declaration or bylaws of a condominium created before September 27, 2007, that states that the association must be unincorporated or that requires approval of owners to incorporate as a nonprofit corporation under ORS chapter 65, an unincorporated association may be incorporated as a nonprofit corporation under ORS chapter 65 if the board of directors adopts a resolution that states the association will be incorporated.

(f) A separate association is not created when an unincorporated association formed under this section is incorporated, reinstated after administrative dissolution under ORS 60.654 or 65.654 or again incorporated following dissolution. The association automatically continues and, without any further action by incorporators, directors or officers that may otherwise be required under Oregon corporation laws:

(A) The incorporated association has all of the property, powers and obligations of the association that existed immediately prior to incorporation in addition to the powers and obligations under Oregon corporation laws.

(B) The bylaws in effect immediately prior to incorporation or reinstatement constitute the bylaws of the incorporated association.

(C) The members of the board of directors and the officers continue to serve as directors and officers.

(g) If an incorporated association is at any time dissolved, whether inadvertently or deliberately:

(A) The association continues as an unincorporated association under the same name.

(B) The unincorporated association has all of the property, powers and obligations of the incorporated association existing immediately prior to dissolution.

(C) The unincorporated association is governed by the bylaws, and to the extent applicable, the articles of incorporation of the incorporated association.

(D) The board of directors and the officers serving immediately prior to the dissolution continue to serve as the directors and officers of the unincorporated association.

(2) Membership in the association of unit owners is limited to unit owners.

(3) The affairs of the association are governed by a board of directors as provided for in the bylaws adopted under ORS 100.410.

(4) Subject to the provisions of the condominium's declaration and bylaws, and whether or not the association is unincorporated, the association may:

(a) Adopt and amend bylaws and rules and regulations;

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

1 (c) Hire and terminate managing agents and other employees, agents and independent contrac-
2 tors;

3 (d) Defend against any claims, proceedings or actions brought against it;

4 (e) Subject to [subsection (11)] **subsections (11) and (12)** of this section, initiate or intervene in
5 litigation or administrative proceedings in its own name, and without joining the individual unit
6 owners, in the following:

7 (A) Matters relating to the collection of assessments and the enforcement of declarations and
8 bylaws;

9 (B) Matters arising out of contracts to which the association is a party;

10 (C) Actions seeking equitable or other nonmonetary relief regarding matters that affect the
11 common interests of the unit owners, including but not limited to the abatement of nuisance;

12 (D) Matters relating to or affecting common elements, including but not limited to actions for
13 damage, destruction, impairment or loss of use of any common element;

14 (E) Matters relating to or affecting the units or interests of unit owners including but not lim-
15 ited to damage, destruction, impairment or loss of use of a unit or portion thereof, if:

16 (i) Resulting from a nuisance or a defect in or damage to a common element; or

17 (ii) Required to facilitate repair to any common element; and

18 (F) Any other matter to which the association has standing under law or pursuant to the dec-
19 laration, bylaws or any articles of incorporation;

20 (f) Make contracts and incur liabilities;

21 (g) Regulate the use, maintenance, repair, replacement and modification of common elements;

22 (h) Cause additional improvement to be made as a part of the common elements;

23 (i) Acquire by purchase, lease, devise, gift or voluntary grant real or personal property or any
24 interest therein and take, hold, possess and convey real or personal property or any interest therein;

25 (j) Impose and receive any payments, fees or charges for the use, rental or operation of the
26 common elements;

27 (k) Impose charges for late payments of assessments, attorney fees for collection of assessments
28 and, after giving written notice and an opportunity to be heard, levy reasonable fines for violations
29 of the declaration, bylaws and rules and regulations of the association, provided that the charge
30 imposed or fine levied by the association is based:

31 (A) On a schedule contained in the declaration or bylaws, or an amendment to either that is
32 delivered to each unit, mailed to the mailing address of each unit or mailed to the mailing addresses
33 designated in writing by the owners; or

34 (B) On a resolution adopted by the board of directors or the association that is delivered to each
35 unit, mailed to the mailing address of each unit or mailed to the mailing addresses designated by the
36 owners in writing;

37 (L) Adopt rules regarding the termination of utility services paid for out of assessments of the
38 association and access to and use of recreational and service facilities available to unit owners that
39 must provide for written notice and an opportunity to be heard before the association may terminate
40 the rights of any owners to receive such benefits or services until the correction of any violation
41 covered by the rule has occurred;

42 (m) Impose reasonable charges for the preparation and recordation of amendments to the dec-
43 laration or statements of assessments;

44 (n) Assign its right to future income, including the right to receive common expense assess-
45 ments;

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

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

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

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

(5) Subject to subsection (6) of this section, unless expressly limited or prohibited by the declaration, the association has the authority to grant, execute, acknowledge and deliver on behalf of the unit owners leases, easements, rights of way, licenses and other similar interests affecting the general common elements and consent to vacation of roadways within and adjacent to the condominium.

(6)(a)(A) Except as provided in subparagraph (B) of this paragraph, the granting of a lease, easement, right of way, license or other similar interest pursuant to subsection (5) of this section must first be approved by at least 75 percent of owners present at a meeting of the association or with the consent of at least 75 percent of all owners solicited by any means the board of directors determines is reasonable. If a meeting is held to conduct the vote, the meeting notice must include a statement that the approval of the grant will be an item of business on the agenda of the meeting.

(B) Unless the declaration otherwise provides:

(i) The granting of a lease, easement, right of way, license or other similar interest affecting the general common elements for a term of two years or less shall require the approval of a majority of the board of directors.

(ii) The granting of a lease, easement, right of way, license or other similar interest affecting the general common elements for a term of more than two years to a public body, as defined in ORS 174.109, to a utility, to a communications company or to any other person for installation and maintenance of power, gas, electric, water or other utility and communication lines and services requires the approval of a majority of the board of directors.

(iii) The granting of a lease, easement, license or other similar interest to an owner for the exclusive use of a part of the general common elements to which the owner's unit provides primary access requires the approval of a majority of the board of directors. If the approval by the board of directors includes the right of the owner to make improvements to the general common elements to which the owner is being granted exclusive use, ORS 100.535 applies to the general common elements to the same extent that ORS 100.535 applies to a unit, including the right of the board under ORS 100.535 to require an owner, at owner's expense, to submit an opinion of a registered architect or registered professional engineer that the proposed improvement will not impair the structural integrity or mechanical systems of the condominium.

(b) Unless the declaration otherwise provides, the consent to vacation of roadways within and adjacent to the condominium must be approved first by at least a majority of unit owners present and voting at a meeting of the association or with consent of at least a majority of all owners solicited by any means the board of directors determines is reasonable. If a meeting is held to conduct the vote, the meeting notice must include a statement that the roadway vacation will be an item of business on the agenda of the meeting.

(7) The instrument granting an interest or consent pursuant to subsection (5) of this section must be executed by the association and acknowledged and shall state that such grant or consent was approved, if appropriate, by at least the percent of owners required under subsection (6) of this section.

(8)(a) Unless expressly prohibited by the declaration, any action permitted under subsections (5)

1 and (6) of this section regarding a general common element may be taken with respect to any limited
2 common element as provided in this subsection.

3 (b) Except as provided in paragraph (c) of this subsection, the easement, lease or other action
4 under this section requires the approval or consent of the owner of the unit to which the use of the
5 limited common element is reserved and the holder of a first mortgage or first trust deed affecting
6 the unit. However, if the use of the limited common element is reserved for five or more units:

7 (A) When the action is for more than two years, the owners of 75 percent of the units to which
8 the use of the limited common element is reserved must approve or consent.

9 (B) When the action is for two years or less, the owners of a majority of the units to which the
10 use of the limited common element is reserved must approve or consent.

11 (c) The instrument granting an interest or consent under this section must:

12 (A) Be executed by the association and acknowledged.

13 (B) State that the grant or consent is given pursuant to this subsection.

14 (C) Include a certification executed by the association stating that the action was approved by
15 the owners in accordance with this subsection.

16 (9) Except as otherwise provided in the association's declaration or bylaws, the board of direc-
17 tors of the association may modify, close, remove, eliminate or discontinue the use of a general
18 common element facility or improvement or portion of the common element landscaping, regardless
19 of whether such facility, improvement or landscaping is mentioned in the declaration or shown on
20 the plat provided that:

21 (a) This subsection does not limit the authority of the board of directors, in its discretion, to
22 seek approval of such modification, closure, removal, elimination or discontinuance by the unit
23 owners; and

24 (b) Modification, closure, removal, elimination or discontinuance other than on a temporary ba-
25 sis of any swimming pool, spa or recreation or community building must be approved by at least a
26 majority of the unit owners voting on such matter at a meeting or by written ballot held in ac-
27 cordance with the declaration, bylaws or ORS 100.425.

28 (10)(a) A permit or authorization issued by the board of directors pursuant to authority granted
29 to the board under law, the declaration or the bylaws, may be recorded in the deed records of the
30 county where the condominium is located. An instrument recorded under this subsection must:

31 (A) Include the name of the condominium and a reference to where the declaration and any
32 applicable supplemental declarations are recorded;

33 (B) Identify, by the designations stated in the declaration or applicable supplemental declaration,
34 all affected units and common elements;

35 (C) Include such other information and signatures as may be required by law, under the decla-
36 ration or bylaws or as the board of directors may desire; and

37 (D) Be executed by the association and acknowledged.

38 (b) The board of directors may record an amendment, modification, termination or other instru-
39 ment relating to the permit or authorization described in this subsection. Any such instrument shall
40 include a reference to the location of the recorded instrument and be executed by the association
41 and acknowledged.

42 (11)(a) Subject to paragraph (f) of this subsection, before initiating litigation or an administrative
43 proceeding in which the association and an owner have an adversarial relationship, the party that
44 intends to initiate litigation or an administrative proceeding shall offer to use any dispute resolution
45 program available within the county in which the condominium is located that is in substantial

1 compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be
 2 hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the
 3 records of the association, for the other party.

4 (b) If the party receiving the offer does not accept the offer within 10 days after receipt by
 5 written notice hand-delivered or mailed by certified mail, return receipt requested, to the address,
 6 contained in the records of the association, for the other party, the initiating party may commence
 7 the litigation or the administrative proceeding. The notice of acceptance of the offer to participate
 8 in the program must contain the name, address and telephone number of the body administering the
 9 dispute resolution program.

10 (c) If a qualified dispute resolution program exists within the county in which the condominium
 11 is located and an offer to use the program is not made as required under paragraph (a) of this sub-
 12 section, litigation or an administrative proceeding may be stayed for 30 days upon a motion of the
 13 noninitiating party. If the litigation or administrative action is stayed under this paragraph, both
 14 parties shall participate in the dispute resolution process.

15 (d) Unless a stay has been granted under paragraph (c) of this subsection, if the dispute resol-
 16 ution process is not completed within 30 days after receipt of the initial offer, the initiating party
 17 may commence litigation or an administrative proceeding without regard to whether the dispute
 18 resolution is completed.

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

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

25 **(12) Notwithstanding any contrary provision in a governing document, an association may**
 26 **not initiate or intervene in litigation or administrative proceedings regarding a matter that**
 27 **results from a defect in, or damage arising from a defect in, common elements of the con-**
 28 **dominium unless owners representing a majority of the units approve in writing of the ini-**
 29 **tiation or intervention within 60 days after the mailing date of the notice required under ORS**
 30 **100.490. This subsection does not apply to a breach of warranty claim against a declarant**
 31 **under ORS 100.185.**

32 **SECTION 6.** ORS 100.490 is amended to read:

33 100.490. (1) At least 10 days prior to instituting any litigation or administrative proceeding to
 34 recover damages under ORS 100.405 (4)(e)(E), the association of unit owners shall provide written
 35 notice to each affected owner of the association's intent to seek damages on behalf of the owner.
 36 The notice shall, at a minimum:

37 (a) Be mailed to the mailing address of each unit or to the mailing addresses designated by the
 38 owners in writing to the association;

39 (b) Inform each owner of the general nature of the litigation or proceeding;

40 (c) Describe the specific nature of the damages to be sought on the owner's behalf;

41 (d) Set forth the terms under which the association is willing to seek damages on the owner's
 42 behalf, including any mechanism proposed for the determination and distribution of any damages
 43 recovered;

44 (e) Inform each owner of the owner's right not to have the damages sought on the owner's behalf
 45 and specify the procedure for exercising the right; and

(f) Inform the owner that exercising the owner's right not to have damages sought on the owner's behalf:

(A) Relieves the association of its duty to reimburse or indemnify the owner for the damages;

(B) Does not relieve the owner from the owner's obligation to pay dues or assessments relating to the litigation or proceeding;

(C) Does not impair any easement owned or possessed by the association; and

(D) Does not interfere with the association's right to make repairs to common elements.

(2) Within 10 days of **the** mailing **of** the notice described in this section, any owner may request in writing that the association not seek damages on the owner's behalf. If an owner makes such a request, the association *[shall]* **may** not make or continue any claim or action for damages with regard to the objecting owner's unit or interest and shall be relieved of any duty to reimburse or indemnify the owner for damages under the litigation or proceeding.

(3) If the action is for a claim described in ORS 105.405 (12):

(a) The notice sent under subsection (1) of this section must be sent by certified mail.

(b) In addition to the contents described in subsection (1) of this section, the notice must:

(A) State that the association believes that a defect in the common property exists;

(B) Provide a detailed description of the defect;

(C) Identify the parties the association considers responsible for the defect; and

(D) State that the association may not institute litigation or an administrative proceeding unless owners representing a majority of the units approve in writing of the initiation or intervention within 60 days after the mailing date of the notice.

(c) The association shall send a copy of the notice by certified mail to each person identified in the notice as a party the association considers responsible for the defect. The requirement for sending notice under this subsection is in addition to the notice of defect requirement in ORS 701.565 and does not initiate the procedure described in ORS 701.560 to 701.595.

SECTION 7. ORS 100.115 is amended to read:

100.115. (1) A plat of the land described in the declaration or a supplemental plat described in a supplemental declaration, complying with ORS 92.050, 92.060 (1) and (2), 92.080 and 92.120, shall be recorded simultaneously with the declaration or supplemental declaration. The plat or supplemental plat shall be titled in accordance with subsection (3) of this section and shall:

(a) Show the location of:

(A) All buildings and public roads. The location shall be referenced to a point on the boundary of the property; and

(B) For a condominium containing units described in ORS 100.020 (3)(b)(C) or (D), the moorage space or floating structure. The location shall be referenced to a point on the boundary of the upland property regardless of a change in the location resulting from a fluctuation in the water level or flow.

(b) Show the designation, location, dimensions and area in square feet of each unit including:

(A) For units in a building described in ORS 100.020 (3)(b)(A), the horizontal and vertical boundaries of each unit and the common elements to which each unit has access. The vertical boundaries shall be referenced to a known benchmark elevation or other reference point as approved by the city or county surveyor;

(B) For a space described in ORS 100.020 (3)(b)(B), the horizontal boundaries of each unit and the common elements to which each unit has access. If the space is located within a structure, the

vertical boundaries also shall be shown and referenced to a known benchmark elevation or other reference point as approved by the city or county surveyor;

(C) For a moorage space described in ORS 100.020 (3)(b)(C), the horizontal boundaries of each unit and the common elements to which each unit has access; and

(D) For a floating structure described in ORS 100.020 (3)(b)(D), the horizontal and vertical boundaries of each unit and the common elements to which each unit has access. The vertical boundaries shall be referenced to an assumed elevation of an identified point on the floating structure even though the assumed elevation may change with the fluctuation of the water level where the floating structure is moored.

(c) Identify and show, to the extent feasible, the location [*and dimensions*] of all limited common elements described in the declaration. The plat may not include any statement indicating to which unit the use of any noncontiguous limited common element is reserved.

(d) Include a statement, including signature and official seal, of a registered architect, registered professional land surveyor or registered professional engineer certifying that the plat fully and accurately depicts the boundaries of the units of the building and that construction of the units and buildings as depicted on the plat has been completed, except that the professional land surveyor who prepared the plat need not affix a seal to the statement.

(e) Include a surveyor's certificate, complying with ORS 92.070, that includes information in the declaration in accordance with ORS 100.105 (1)(a) and a metes and bounds description or other description approved by the city or county surveyor.

(f) Include a statement by the declarant that the property and improvements described and depicted on the plat are subject to the provisions of ORS 100.005 to 100.627.

(g) Include any other information or data not inconsistent with the declaration that the declarant desires to include.

(h) If the condominium is a flexible condominium, show the location and dimensions of all variable property identified in the declaration and label the variable property as "WITHDRAWABLE VARIABLE PROPERTY" or "NONWITHDRAWABLE VARIABLE PROPERTY," with a letter different from those designating a unit, building or other tract of variable property. If there is more than one tract, each tract shall be labeled in the same manner.

(2) The supplemental plat required under ORS 100.150 (1) shall be recorded simultaneously with the supplemental declaration. The supplemental plat shall be titled in accordance with subsection (3) of this section and shall:

(a) Comply with ORS 92.050, 92.060 (1), (2) and (4), 92.080, 92.120 and subsection (3) of this section.

(b) If any property is withdrawn:

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

(B) Show the information required under subsection (1)(h) of this section as it relates to any remaining variable property.

(c) If any property is reclassified, show the information required under subsection (1)(a) to (d) of this section.

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

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

(3) The title of each supplemental plat described in ORS 100.120 shall include the complete name

of the condominium, followed by the additional language specified in this subsection and the appropriate reference to the stage being annexed or tract of variable property being reclassified. Each supplemental plat for a condominium recorded on or after January 1, 2002, shall be numbered sequentially and shall:

(a) If property is annexed under ORS 100.125, include the words "Supplemental Plat No. _____: Annexation of Stage _____"; or

(b) If property is reclassified under ORS 100.150, include the words "Supplemental Plat No. _____: Reclassification of Variable Property, Tract _____."

(4) Upon request of the county surveyor or assessor, the person offering a plat or supplemental plat for recording shall also file an exact copy, certified by the surveyor who made the plat to be an exact copy of the plat, with the county assessor and the county surveyor. The exact copy shall be made on suitable drafting material having the characteristics of strength, stability and transparency required by the county surveyor.

(5) Before a plat or a supplemental plat may be recorded, it must be approved by the city or county surveyor as provided in ORS 92.100. Before approving the plat as required by this section, the city or county surveyor shall:

(a) Check the boundaries of the plat and units and take measurements and make computations necessary to determine that the plat complies with this section.

(b) Determine that the name complies with ORS 100.105 (5) and (6).

(c) Determine that the following are consistent:

(A) The designation and area in square feet of each unit shown on the plat and the unit designations and areas contained in the declaration in accordance with ORS 100.105 (1)(d);

(B) Limited common elements identified on the plat and the information contained in the declaration in accordance with ORS 100.105 (1)(h);

(C) The description of the property in the surveyor's certificate included on the plat and the description contained in the declaration in accordance with ORS 100.105 (1)(a); and

(D) For a flexible condominium, the variable property depicted on the plat and the identification of the property contained in the declaration in accordance with ORS 100.105 (7)(c).

(6) The person offering the plat or supplemental plat for approval shall:

(a) Submit a copy of the proposed declaration and bylaws or applicable supplemental declaration at the time the plat is submitted; and

(b) Submit the original or a copy of the executed declaration and bylaws or the applicable supplemental declaration approved by the commissioner if required by law prior to approval.

(7) For performing the services described in subsection (5)(a) to (c) of this section, the city surveyor or county surveyor shall collect from the person offering the plat for approval a fee of \$150 plus \$25 per building. The governing body of a city or county may establish a higher fee by resolution or order.

SECTION 8. ORS 100.680 is amended to read:

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

(2) Any purchaser's funds, the unit sales agreement, any notes or security documents and any loan commitments must be placed in an escrow located within this state with a person or firm au-

thorized under ORS 696.505 to 696.582. *[The escrow instructions may not allow distribution of the purchaser's funds until the declaration or any applicable supplemental declaration is recorded and the legal title or other interest bargained for has been transferred to the purchaser as provided in the unit sales agreement.]* If any funds of the purchaser are invested, the funds must be invested in federally insured accounts or other investments approved by the Real Estate Commissioner. If the developer defaults under the unit sales agreement, the purchaser's funds held in escrow and all income earned from investment of the funds held in escrow must be returned.

(3) In lieu of the requirements of subsection (2) of this section, the commissioner may approve any alternative requirement or method that the commissioner finds will ensure the same protection to the purchaser as the protection provided by the escrow.

SECTION 9. ORS 100.417 is amended to read:

100.417. (1) The board of directors of an association of unit owners may act on behalf of the association except as limited by the declaration or bylaws. In the performance of their duties, officers and members of the board of directors shall be governed by this section and the applicable provisions of ORS 65.357, 65.361, 65.367, 65.369 and 65.377 whether or not the association is incorporated under ORS chapter 65.

(2) Subject to subsection [(8)] **(9)** of this section, unless otherwise provided in the bylaws, the board of directors of an association may fill vacancies in its membership for the unexpired portion of any term.

(3) At least annually, 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) The board of directors of the association may record a statement of association information as provided in ORS 94.667.

(6) The board of directors, in the name of the association, shall maintain a current mailing address.

(7) The board of directors shall cause to be maintained and kept current the information required to enable the association to comply with ORS 100.480 (11).

(8) The board of directors shall semiannually procure inspections of the condominium for moisture intrusion.

[(8)(a)] **(9)(a)** Unless otherwise provided in the declaration or bylaws, at a meeting of the unit owners at which a quorum is present, the unit owners may remove a director from the board of directors, other than directors appointed by the declarant or individuals who are ex officio directors, with or without cause, by a majority vote of unit owners who are present and entitled to vote.

(b) Notwithstanding contrary provisions in the declaration or bylaws:

(A) Before a vote to remove a director, unit owners must give the director whose removal has been proposed an opportunity to be heard at the meeting.

(B) The unit owners must vote on the removal of each director whose removal is proposed as a separate question.

(C) Removal of a director by unit owners is effective only if the matter of removal was an item on the agenda and was stated in the notice of the meeting required under ORS 100.407.

(c) A director who is removed by the unit owners remains a director until a successor is elected by the unit owners or the vacancy is filled as provided in subsection [(9)] **(10)** of this section.

[(9)] **(10)** Unless the declaration or bylaws specifically prescribe a different procedure for filling

1 a vacancy created by the removal of a director by unit owners, the unit owners shall fill a vacancy
 2 created by the removal of a director by the unit owners at a meeting of unit owners. The notice of
 3 the meeting must state that filling a vacancy is an item on the agenda.

4 **SECTION 10.** ORS 701.570 is amended to read:

5 701.570. (1) A contractor, subcontractor or supplier that receives a notice of defect sent under
 6 ORS 701.565 shall, not later than 14 days after receiving the notice of defect, send a secondary no-
 7 tice to any other known contractor, subcontractor or supplier that may be responsible for some or
 8 all of the defects described in the notice of defect. The contractor, subcontractor or supplier must
 9 send the secondary notice by registered or certified mail, return receipt requested, to an address
 10 described in ORS 701.565 (2). The secondary notice must be accompanied by a statement describing
 11 the basis for contending that the other contractor, subcontractor or supplier may be responsible for
 12 some or all of the defects.

13 (2) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice
 14 may send the owner a written request to conduct a visual examination of the residence. **Except as**
 15 **provided in section 14 of this 2025 Act**, the written request must be sent not later than 14 days
 16 after the requesting contractor, subcontractor or supplier receives a notice of defect or secondary
 17 notice. The written request to conduct a visual examination of the residence must state the esti-
 18 mated time required for the visual examination.

19 (3) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice
 20 may send the owner a written request to inspect the residence. **Except as provided in section 14**
 21 **of this 2025 Act**, the written request must be sent not later than 14 days after the requesting con-
 22 tractor, subcontractor or supplier conducted a visual examination of the residence. The written re-
 23 quest to inspect the residence must state the nature and scope of the inspection, whether any testing
 24 is to be performed and the estimated time required for the inspection. The recipient of a secondary
 25 notice that requests to inspect the residence shall send a copy of the request to the sender of the
 26 secondary notice.

27 (4) A contractor, subcontractor or supplier that sends a secondary notice and intends to hold
 28 the recipient of the secondary notice liable for a defect described in a notice of defect shall coord-
 29 inate the scheduling of any inspection with the owner and all recipients of a secondary notice from
 30 the contractor, subcontractor or supplier. The contractor, subcontractor or supplier shall deliver a
 31 copy of any written request to inspect the residence to each recipient of the secondary notice in
 32 time to provide the recipient with an opportunity to attend the requested inspection and to partic-
 33 ipate in any remediation. The sender of a secondary notice shall give reasonable advance notice to
 34 the owner or the owner's legal representative, if any, of the identity of any contractor, subcontrac-
 35 tor or supplier who will attend the inspection. **If the sender of the notice of defect is a home-**
 36 **owners association or an association of unit owners, the notice must also conform to section**
 37 **14 of this 2025 Act.**

38 (5) **Except as provided in section 14 of this 2025 Act**, unless otherwise agreed to by the
 39 owner, a contractor, subcontractor or supplier that receives a notice of defect or secondary notice
 40 shall send a written response to the owner not later than 90 days after the contractor, subcontractor
 41 or supplier receives a notice of defect or secondary notice. A contractor, subcontractor or supplier
 42 that receives a secondary notice also shall send a copy of the written response to the sender of the
 43 secondary notice. The written response must be sent by registered or certified mail, return receipt
 44 requested. The written response must include:

45 (a) One or more of the following for each defect described in the notice of defect or secondary

notice or discovered during the course of any visual examination or inspection:

(A) An acknowledgment of the existence, nature and extent of the defect without regard to responsibility for the defect.

(B) A statement describing the existence of a defect different in nature or extent from the defect described in the notice of defect or secondary notice, without regard to responsibility for the defect.

(C) A denial of the existence of the defect.

(b) A copy of the documents described in ORS 701.575 (4).

(c) One or more of the following:

(A) An offer to perform some or all of the remediation. The offer must specify the date by which the offered remediation will be completed.

(B) An offer to pay a stated amount of monetary compensation to the owner for some or all of the acknowledged defects and any incidental damage. The offer must specify the date by which payment will be made.

(C) A denial of responsibility for some or all of the acknowledged defects or incidental damage.

SECTION 11. ORS 701.575 is amended to read:

701.575. (1) An owner sending a notice of defect under ORS 701.565 shall make the residence available for visual examination pursuant to any written request sent under ORS 701.570 **or section 14 of this 2025 Act**. The owner shall make the residence available for visual examination, during normal business hours or as otherwise agreed, not later than 20 days after receiving the written request for visual examination.

(2) An owner sending a notice of defect under ORS 701.565 shall make the residence available for an inspection pursuant to any written request sent under ORS 701.570 **or section 14 of this 2025 Act**. The owner shall make the residence available for inspection during normal business hours or at a time that is mutually agreeable to the owner and the requester.

(3) An inspection by a contractor, subcontractor or supplier may include any reasonable measures, including testing, for determining the nature, cause and extent of the defects described in the notice of defect or incidental damage and the nature and extent of the necessary remediation. Unless the contractor, subcontractor or supplier conducting the inspection and the owner agree otherwise, the contractor, subcontractor or supplier conducting the inspection shall repair any damage caused by the inspection. Any damage caused by the inspection that is not repaired may be sought as incidental damage in any subsequent arbitration or court action by an owner against the contractor, subcontractor or supplier conducting the inspection.

(4) A contractor, subcontractor or supplier that requests to inspect a residence must include as part of the written response of the contractor, subcontractor or supplier under ORS 701.570[,] **or section 14 of this 2025 Act** a written report or other document evidencing the result of the inspection and the existence or nonexistence of the defects described in the notice of defect or discovered during the inspection.

SECTION 12. ORS 701.585 is amended to read:

701.585. (1) If an owner sends a contractor, subcontractor or supplier a notice of defect within the time allowed for the owner to commence a court action against that contractor, subcontractor or supplier for a claim described in ORS 701.565, the time for the owner to commence the action shall be extended, notwithstanding any statute of limitation or statute of ultimate repose, until the later of:

(a) One hundred and twenty days after the owner receives a written response from the contractor, subcontractor or supplier that received the notice of defect if the written response does not

1 contain a written offer to perform remediation or pay monetary compensation for one or more of the
2 defects or incidental damage described in the notice of defect;

3 (b) One hundred and twenty days after the owner rejects a written offer by any contractor,
4 subcontractor or supplier to perform remediation or pay monetary compensation for one or more of
5 the defects or incidental damage described in the notice of defect; or

6 (c) Thirty days after the date specified in an accepted written offer by which the offering con-
7 tractor, subcontractor or supplier is to complete the remediation or complete payment of monetary
8 compensation for one or more of the defects and any incidental damage described in the notice of
9 defect.

10 (2) Subsection (1) of this section does not shorten or terminate the time for bringing a claim in
11 accordance with applicable statutes of ultimate repose and statutes of limitation.

12 (3) Delivery of a secondary notice sent by a contractor, subcontractor or supplier under ORS
13 701.570 **or section 14 of this 2025 Act** does not act to toll the expiration of any right of the owner
14 to commence a court action against the recipient of the secondary notice. **However, the right of**
15 **the sender of the secondary notice to commence a court action against the recipient of the**
16 **secondary notice shall be extended, notwithstanding any statute of limitation or statute of**
17 **ultimate repose, until the date that the right of the owner to commence a court action**
18 **against the sender of the secondary notice expires.**

19 (4) Any remediation performed pursuant to an accepted offer made under ORS 701.570 **or sec-**
20 **tion 14 of this 2025 Act** does not constitute a new performance and, for purposes of ORS 12.135,
21 relates back to the earliest date of substantial completion or abandonment of the construction, al-
22 teration or repair of the improvement to real property.

23 **SECTION 13. Section 14 of this 2025 Act is added to and made a part of ORS 701.560 to**
24 **701.595.**

25 **SECTION 14. If the owner sending a notice of defect under ORS 701.565 is a homeowners**
26 **association or an association of unit owners:**

27 (1) **The period in which a contractor, subcontractor or supplier may send a request to**
28 **conduct a visual examination or request to inspect the residence under ORS 701.570 (2) or**
29 **(3) is extended to 30 days after receiving a notice of defect or secondary notice.**

30 (2)(a) **The contractor, subcontractor or supplier may have a technical or construction**
31 **expert attend an inspection requested under ORS 701.570 (3), provided that:**

32 (A) **The written request identifies one or more acceptable experts; and**

33 (B) **The owner consents to the expert.**

34 (b) **If the owner disapproves of the proposed expert, the owner shall provide written no-**
35 **tice of the disapproval and of the identity of an expert acceptable to the owner.**

36 (c) **If the contractor, subcontractor or supplier disapproves of the expert identified by the**
37 **owner, the two identified and disapproved experts shall jointly select a third expert to be the**
38 **expert that attends the inspection.**

39 (d) **The contractor, subcontractor or supplier shall include the identity of a selected ex-**
40 **pert in any advance notice that the contractor, subcontractor or supplier sends under ORS**
41 **701.570 (4).**

42 (3) **The contractor, subcontractor or supplier shall send the owner a response to the**
43 **notice of defect not later than:**

44 (a) **Fourteen days after conducting an inspection of the residence under ORS 701.575 (3);**
45 **or**

1 (b) If no inspection is conducted, 90 days after the receiving a notice of defect or sec-
2 ondary notice.

3 (4) A response under subsection (3) of this section must contain:

4 (a) An offer to cure the defect;

5 (b) An offer to pay an amount equal to the cost of curing the defect;

6 (c) An offer allowing the owner a choice between cure of the defect or an amount equal
7 to the cost of curing the defect; or

8 (d) A statement that the contractor, subcontractor or supplier declines to make any offer
9 in lieu of litigation.

10 (5) If the contractor, subcontractor or supplier does not send a response that is timely
11 under subsection (3) of this section or that conforms to the requirements in subsection (4)
12 of this section, the owner is excused from further compliance with this section.

13 (6) An owner may accept an offer under subsection (4) of this section by delivering a
14 written acceptance to the offering contractor, subcontractor or supplier within 30 days after
15 receiving the offer. If an owner fails to accept an offer within 30 days after receipt, the offer
16 is deemed rejected.

17 (7) If an offer under subsection (4) of this section is to pay an amount equal to the cost
18 of curing the defect, the contractor, subcontractor or supplier has 30 days after sending the
19 response to offer a firm payment amount. The offer is not complete until the owner receives
20 the firm amount. If the owner wishes to accept an offer of payment, but disputes the
21 amount, the parties may select a mediator to attempt resolution. If the parties cannot agree
22 on a mediator after 45 days, they may request that the administrator of the Construction
23 Contractors Board inform a professional mediation association or service that the parties
24 wish to have a mediator selected by the association or service.

25 (8) If an owner accepts payment of an amount equal to the cost of curing the defect, the
26 owner shall make a good faith effort to have a construction contractor correct the defect.

27 (9) If the owner accepts an offer to perform remediation or to pay monetary compen-
28 sation, completion of the remediation or payment satisfies the claims by the owner for those
29 defects included in the offer for which remediation was performed or compensation paid, but
30 not for any other defect. Except as provided in subsection (10) of this section, if the owner
31 accepts an offer by a contractor, subcontractor or supplier that received a secondary notice,
32 completion of the remediation or payment satisfies claims for those defects included in the
33 offer for which remediation was performed or compensation paid, including claims by the
34 owner and claims for contribution or indemnity against the contractor, subcontractor or
35 supplier by the sender of the secondary notice, but not for any other defect.

36 (10) If the owner accepts an offer by a contractor, subcontractor or supplier that re-
37 ceived a secondary notice to perform remediation or to pay monetary compensation and the
38 contractor, subcontractor or supplier fails to perform in accordance with the accepted offer,
39 the sender of the secondary notice may perform the remediation or pay the monetary com-
40 pensation offered by the nonperforming contractor, subcontractor or supplier.

41 (11) A response under subsection (3) of this section is not admissible to establish a defect,
42 liability for a defect, or the damages arising out of a defect, in an arbitration or court action.

43 **SECTION 15.** Section 14 of this 2025 Act and the amendments to ORS 701.570 and 701.585
44 by sections 10 and 12 of this 2025 Act apply to notices of construction defect sent by an owner
45 on or after the effective date of this 2025 Act and to any resulting secondary notices.

