

House Bill 2285

Sponsored by Representative WITT, Senator HANSELL; Representatives GOMBERG, STARK (Pre-session filed.)

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**.

Clarifies receivership proceedings and reporting and notice requirements for residential properties that city or county determines are threat to public health, safety or welfare. Allows city or county to obtain judgment against property in lieu of receivership.

A BILL FOR AN ACT

1
2 Relating to residential property; amending ORS 105.425, 105.430, 105.435, 105.440 and 105.455.

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

4 **SECTION 1.** ORS 105.425 is amended to read:

5 105.425. As used in ORS 105.420 to [105.445 and] 105.455:

6 (1) "Abatement" means the removal or correction, **including by demolition**, of any condition
7 at a property [including demolition] that violates the provisions of any duly enacted building or
8 housing code[, as well as] **or** the making of [such] other improvements or corrections [as are] needed
9 to [effect the rehabilitation of] **rehabilitate** the property or structure, but [not including] **does not**
10 **include** the closing or physical securing of the structure.

11 (2) "Building code" or "housing code" means any law, ordinance or governmental regulation
12 concerning habitability or the construction, maintenance, operation, occupancy, use or appearance
13 of any property.

14 [(3) "Governing body" means the city council, board of commissioners, county court or other man-
15 aging board of a municipality or county.]

16 [(4)] (3) "Interested party" means any person or entity that possesses any legal or equitable in-
17 terest of record in the property, including [but not limited to] the **owner, any occupants, the** holder
18 of any lien or encumbrance of record on the property **and any person who must or may be made**
19 **a defendant in a foreclosure suit under ORS 88.030.**

20 [(5)] (4) "Property" means real property and all improvements thereon including edifices, struc-
21 tures, buildings, unit or part thereof used or intended to be used for residential purposes including
22 single-family, duplex, multifamily structures and mixed-use structures which have one or more resi-
23 dential units.

24 **SECTION 2.** ORS 105.430 is amended to read:

25 105.430. (1) If residential property is [found to be] in violation of building or housing codes
26 [which] **such that** the city or county[, in the exercise of reasonable discretion] believes **it** constitutes
27 a threat to the public health, safety or welfare, the city or county, in addition to any other remedies
28 available, [to it] may apply to [a court of competent jurisdiction] **the circuit court of the county in**
29 **which the property is located** for the appointment of a receiver to perform an abatement.

30 (2) [At least] **No less than** 60 days prior to the filing of [an application] **a petition** for appoint-
31 ment of a receiver [pursuant to ORS 105.420 to 105.455], the city or county shall give written notice

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.

1 by regular mail to all interested parties of *[its intent to file the application and information relative*
 2 *to]* **the following:**

3 (a) The identity of the property;

4 (b) The violations of the building or housing codes giving rise to the *[application]* **need** for the
 5 receiver;

6 (c) The name, address and telephone number of the person or department where additional in-
 7 formation can be obtained concerning violations and their remedy; and

8 (d) **That** the city or county *[which]* may *[seek]* **petition the court for** the appointment of a re-
 9 ceiver pursuant to ORS 105.420 to 105.455 unless action is taken within 60 days by an interested
 10 party.

11 (3) A city or county may not *[apply]* **file a petition** for the appointment of a receiver *[pursuant*
 12 *to ORS 105.420 to 105.455]* if an interested party has commenced and is **timely** *[then]* prosecuting
 13 *[in a timely fashion]* an action or other judicial or nonjudicial proceeding to foreclose a security
 14 interest on the property, or to obtain specific performance *[of]* or *[forfeit]* **forfeiture of** the
 15 purchaser's interest *[in]* under a land sale contract.

16 (4) *[Notice of the application]* **The petition** for the appointment of a receiver pursuant to ORS
 17 105.420 to 105.455 *[shall]* **must** be served on all interested parties **in the manner provided by**
 18 **ORCP 7 D.**

19 (5) If, following the *[application]* **filing of a petition** for appointment of a receiver, *[one or more*
 20 *of the interested parties elects]* **an interested party intends** to correct the conditions at the property
 21 giving rise to the *[city's or county's application]* **petition** for the appointment of a receiver[,], **or in-**
 22 **itiate a proceeding described in subsection (3) of this section, the court may stay the matter**
 23 **and order** the party *[or parties shall be required]* to post security in an amount *[and character as]*
 24 the court deems appropriate to insure timely performance *[of all work necessary to make corrections,*
 25 *as well as such]* **and** other conditions *[as]* the court deems appropriate to effect the timely com-
 26 pletion of the corrections **or proceeding** *[by the interested party or parties].*

27 *[(6) In the event that no interested party elects to act pursuant to subsection (5) of this section or*
 28 *fails to timely perform work undertaken pursuant to subsection (5) of this section, the court shall make*
 29 *a determination that the property is an unsafe or insanitary condition and appoint a receiver to com-*
 30 *plete the abatement.]*

31 **(6) The court shall appoint a receiver under ORS 105.420 to 105.455 if the court finds that**
 32 **the city or county has complied with this section and that the property is a threat to public**
 33 **health, safety or welfare and:**

34 (a) **No interested party appears within 30 days after service;**

35 (b) **An interested party fails to comply with an order under subsection (5) of this section;**
 36 **or**

37 (c) **If the matter has not been stayed under subsection (5) of this section, upon a hearing**
 38 **that shall be held no later than 30 days after requested by the city or county.**

39 (7) A receiver may be any one of the following:

40 (a) A housing authority organized under the terms of ORS 456.055 to 456.235;

41 (b) An urban renewal agency organized under the terms of ORS 457.035 to 457.320;

42 (c) A private not-for-profit corporation, the primary purpose of which is the improvement of
 43 housing conditions within the city or county; or

44 (d) A city or county agency, bureau or similar subdivision designated by the city or county as
 45 being responsible for the rehabilitation of property.

1 (8) A receiver appointed by the court pursuant to ORS 105.420 to 105.455 *[shall]* **may** not be
 2 required to give security or bond of any sort prior to appointment.

3 **(9) In lieu of the appointment of a receiver under subsection (6) of this section, upon the**
 4 **motion of city or county the court shall enter a general judgment in favor of the city or**
 5 **county against the real property in the amount of the estimated costs of abatement if:**

6 (a) **The court finds the city or county has complied with the requirements of this section;**

7 (b) **The court finds the property is in an unsafe or insanitary condition;**

8 (c)(A) **No interested party appears within 30 days after service; or**

9 (B) **An interested party fails to comply with an order under subsection (5) of this section;**

10 (d) **The city or county has proven by evidence in the record that the reasonably estimated**
 11 **cost of abatement exceeds 25 percent of the property’s real market value, as shown on the**
 12 **property’s most recent tax records;**

13 (e) **The property is not currently occupied as a dwelling; and**

14 (f) **The motion for judgment has been served by the city or county on all interested par-**
 15 **ties, including interested parties in default, in the manner provided for by ORCP 9 C, no less**
 16 **than 30 days prior to the motion.**

17 **(10) A judgment given under subsection (9) of this section shall have the priority of a lien**
 18 **created under ORS 105.440 (2) as provided in ORS 105.445.**

19 **SECTION 3.** ORS 105.435 is amended to read:

20 105.435. (1) A receiver appointed by the court[,] pursuant to ORS 105.420 to 105.455[*shall have*
 21 *the authority to do any or all of the following*] **may**, unless specifically limited by the court:

22 (a) Take possession and control of the property including the right to enter, modify and termi-
 23 nate tenancies pursuant to ORS 105.105 to 105.161, *[and]* to charge and collect rents *[derived there-*
 24 *from, applying said sum]* **and to apply rents** to the costs incurred due to the abatement and
 25 receivership;

26 (b) Negotiate contracts and pay all expenses associated with the operation and conservation of
 27 the property including[*but not limited to,*] all utility, fuel, custodial, repair or insurance costs;

28 (c) Pay all accrued property taxes, penalties, assessments and other charges imposed on the
 29 property by a unit of government *[as well as]* **and** any *[accruing]* charge *[of like nature]* accruing
 30 during the pendency of the receivership;

31 (d) Dispose of any or all abandoned personal property found at the structure; *[and]*

32 (e) Enter into contracts and pay for the performance of any work necessary to complete the
 33 abatement[.]; **and**

34 [(2)] (f) *[In addition to the powers set forth in subsection (1) of this section, the receiver may,]*
 35 Under such terms and condition as a court *[shall allow]* **allows**, enter into financing agreements
 36 with public or private lenders and encumber the property *[therewith so as]* to have moneys available
 37 to correct the conditions at the property giving rise to the abatement.

38 [(3)] (2) A *[receiver]* **court may approve a charge of** an administrative fee **for a receiver** at an
 39 hourly rate approved by the court or at a rate *[of]* **not to exceed** 15 percent of the total cost of the
 40 abatement[*, whichever the court deems more appropriate*].

41 [(4)] (3) All abatement work done under ORS 105.420 to 105.455 is exempt from the public con-
 42 tracting statutes set forth in ORS 279C.005, 279C.100 to 279C.125 and 279C.300 to 279C.470 and ORS
 43 chapters 279A and 279B, except ORS 279A.125, 279A.250 to 279A.290 and 279B.235.

44 **SECTION 4.** ORS 105.440 is amended to read:

45 105.440. [(1) *All moneys expended and all costs and obligations incurred by the receiver in per-*

1 *forming the abatement shall be reviewed by the court for reasonableness and their necessity in per-*
2 *forming the abatement. To the extent that the court finds the moneys, costs or obligations, or any*
3 *combination thereof, to be reasonable and necessary, it shall issue an order reciting this fact as well*
4 *as the amount found to be reasonable and necessary.]*

5 **(1) From time to time as the court may order during the receivership, but at least once**
6 **no later than 60 days after the receivership begins and once no later than 30 days after the**
7 **receivership terminates, a receiver shall file a report as described in ORS 37.200. Upon the**
8 **court's approval of the report, the court shall order:**

9 **(a) That the property is liable for any net losses of the receiver over the course of the**
10 **reporting period, including administrative fees of the receiver, plus interest at the greater**
11 **of the legal rate of interest or the rate charged by any obligations incurred by the receiver**
12 **for the benefit of the property;**

13 **(b) That the county recorder may enter the order as a lien against the property within**
14 **60 days after the date of the order; and**

15 **(c) That the lien has priority over all other liens, mortgages and encumbrances as pro-**
16 **vided in ORS 105.445.**

17 *(2) [If the costs and obligations incurred due to the abatement have not been paid, the order of the*
18 *court shall be filed with the county recorder within 60 days of its filing with the court and shall*
19 *thereafter constitute] Unless all losses of the receiver recited in an order under subsection (1)*
20 *of this section have been paid, at any time within 60 days after the date of the order, the*
21 *receiver may file the order with the county recorder as a lien on the property.*

22 **SECTION 5.** ORS 105.455 is amended to read:

23 105.455. ORS 105.420 to [105.430 and] 105.455 may be cited as the Oregon Housing Receivership
24 Act.