

Enrolled
House Bill 2095

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CHAPTER

AN ACT

Relating to publicly supported housing; creating new provisions; and amending ORS 456.250, 456.258, 456.260, 456.262, 456.263, 456.264 and 456.265.

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

SECTION 1. ORS 456.250 is amended to read:

456.250. As used in this section and ORS 456.255 to 456.265:

(1) "Affordability restriction" means a limit on rents that a property owner may charge at a participating property or a limitation on the use of a participating property as set forth in a contract.

(2) "Contract" means a written agreement entered into by a property owner under which a participating property becomes publicly supported housing that is subject to an affordability restriction. "Contract" includes, but is not limited to, a deed restriction, loan agreement, operating agreement or any other written agreement that results in an affordability restriction being placed on the property.

(3) "Local government" means a city, county, public corporation or metropolitan service district.

(4) "Participating property" means property that is the subject of a contract by which the property becomes publicly supported housing that is subject to an affordability restriction **and that is not eligible for withdrawal under ORS 456.262 (4).**

(5) "Property owner" or "owner" means the owner or long-term lessee of a participating property, **including a third-party purchaser of a property not eligible for withdrawal under ORS 456.262 (4).**

(6)(a) "Publicly supported housing" means a multifamily rental housing development of five or more units that receives or benefits from government assistance under:

(A) A contract for rent assistance from the United States Department of Housing and Urban Development, the United States Department of Agriculture or the Housing and Community Services Department that contains an affordability restriction; or

(B) A contract that is for any other type of government assistance or subsidy that includes an affordability restriction and that is identified in rules adopted by the Housing and Community Services Department.

(b) "Publicly supported housing" does not include a multifamily rental housing development:

(A) For which the development or developer receives only a construction excise tax waiver, a system development charge waiver, a fee waiver or a property tax abatement;

(B) That is part of an inclusionary housing program as defined by local government and authorized under ORS 197.309;

(C) That receives tenant-based federal rent subsidy payments under the Housing Choice Voucher Program authorized by 42 U.S.C. 1437f;

(D) That receives project-based rental assistance vouchers administered by a housing authority under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f (o)(13)); or

(E) That receives tenant vouchers from the United States Department of Agriculture under section 542 of the Housing Act of 1949 (42 U.S.C. 1471).

(7) "Qualified purchaser" means a local government entitled to *[notice]* **receive notices** under ORS 456.260 [(2)], the Housing and Community Services Department or a designee appointed by the department under ORS 456.262.

(8) [*"Third-party offeror" or*] "Third party" means a party that is not a qualified purchaser and that has made an offer to purchase, or has purchased, a participating property from a property owner.

SECTION 2. ORS 456.258 is amended to read:

456.258. (1) ORS 456.255 to 456.265 do not apply to or restrict the acquisition of property by:

(a) A government that acquires the participating property by eminent domain or a negotiated purchase in lieu of eminent domain.

(b) A purchaser of the participating property in a foreclosure sale that terminates the affordability restrictions.

(c) A purchaser of the participating property by a deed in lieu of foreclosure provided that the contract restrictions are subordinate to the purchaser's interest eligible for foreclosure and a notice of the deed in lieu is provided to the Housing and Community Services Department by the purchaser or property owner at least 30 days prior to the execution of the deed in lieu.

(2) ORS 456.255 to 456.265 may not be interpreted to allow a property owner to terminate or breach a contract or to limit the rights of any tenant of a participating property or any other person who may enforce an affordability restriction against the property owner.

(3) ORS 456.255 to 456.265 do not require any local government or the department to purchase or condemn any property or to maintain the affordability restrictions of any property.

(4) Except as required by contract and ORS 456.255 to 456.265, a property owner may not take any action during the contract term that would materially interfere with a qualified purchaser's ability to continue maintaining the participating property as publicly supported housing.

(5) Publicly supported housing remains subject to affordability restrictions until the property is eligible for withdrawal from publicly supported housing under ORS 456.262 (4) and any contract requirements for the withdrawal of the property.

[(5)] (6) The department shall adopt rules to implement ORS 456.255 to 456.265.

SECTION 3. ORS 456.260 is amended to read:

456.260. (1) The owner of a participating property shall *[provide]* **deliver** notice in a format prescribed by the Housing and Community Services Department, including by electronic delivery or by registered or certified mail, to each local government *[entitled to notice]* **within which the participating property is located** and to the department no sooner than 36 months prior and at least 30 months prior to the date when:

(a) A contract term will expire, permitting the owner to withdraw the participating property from publicly supported housing or limit affordability restrictions on the property; or

(b) The owner intends to withdraw the participating property from publicly supported housing.

[(2)] *The property owner shall send a copy of the notice in subsection (1) of this section to each local government within which the participating property is located.*

(2) The property owner shall deliver a second notice to each entity entitled to notice under subsection (1) of this section, no sooner than 30 months prior and at least 24 months prior to the withdrawal of the participating property from publicly supported housing, including by an expiration of a contract term.

(3) If *[the]* a notice is not delivered timely, the property owner shall extend the affordability restriction on the participating property *[for no less than 24 months after delivering the untimely notice]* **until no earlier than the latter of the date that is 30 months after delivery of the no-**

tion under subsection (1) of this section **or 24 months after delivery of the notice under subsection (2) of this section** and provide notice of the extension to the Housing and Community Services Department and each local government that is entitled to notice under [subsection (2) of] this section.

(4) A local government may:

(a) Establish and impose any fine, penalty, tax, fee, charge or assessment upon the owner of participating property for failure to comply with local regulations adopted to implement the provisions of [subsection (1)] **subsection (1) or (2)** of this section.

(b) Require an owner to refrain from disturbing tenancies, other than for cause as defined in the contract, for a period of not more than 180 days after expiration of the contract or withdrawal of the participating property from publicly supported housing if the local government pays, or arranges for payment, to the owner on the first day of each month, the monthly subsidy that the owner was receiving under the contract.

(c) Make application to the Housing and Community Services Department requesting that a local subsidy program be included in the definition of publicly supported housing, as long as the program otherwise complies with and is not excluded from the definition of publicly supported housing.

(5) Any notices [provided under subsection (1) of this section shall] **delivered under subsection (1) or (2) of this section must** specify whether the owner:

(a) Intends to withdraw the participating property from publicly supported housing.

(b) Intends to convert the participating property to a nonparticipating use.

(c) Is involved in negotiations with the United States Department of Housing and Urban Development, the Housing and Community Services Department or any other individual or entity regarding an extension of an expiring contract.

SECTION 4. ORS 456.262 is amended to read:

456.262. [(1) *A property owner shall provide notice in a format prescribed by the Housing and Community Services Department, including by electronic delivery or registered or certified mail, to each local government entitled to notice under ORS 456.260 and to the department, no sooner than 30 months prior and at least 24 months prior to any withdrawal of the participating property from publicly supported housing, including by an expiration of a contract.*]

[(2)] (1) [The] **After the owner of a participating property has delivered the notice under ORS 456.260 (1) or 30 months prior to the date when the contract term would expire as described in ORS 456.260 (1)(a), whichever is earlier, the Housing and Community Services Department** may appoint a designee to act as purchaser of the participating property. The appointment becomes effective upon the department delivering to the property owner notice of the appointment of a designee. The department must consult with each local government where the property is located before appointing a designee under this subsection. The department shall enter into a written agreement with the appointed designee requiring that the designee and any of the designee's successors or assigns:

(a) Agree to preserve the affordability of the participating property; and

(b) Assume all rights and responsibilities attributable to the department as a prospective purchaser of the participating property.

[(3)] (2) [After the property owner has delivered the notice] **On or after the date that the department may appoint a designee** under subsection (1) of this section, a qualified purchaser may deliver by certified mail, with return receipt requested, an offer to the property owner to purchase the participating property, which includes a notice that the qualified purchaser may, after 30 days, record a notice of right of first refusal under subsection [(4)] (3) of this section. A property owner is under no obligation to accept an offer made under this subsection.

[(4)] (3) At any time after a qualified purchaser has made an offer to purchase the participating property under subsection [(3)] (2) of this section and no later than two months before the owner may withdraw the property under subsection [(5)] (4) of this section, a qualified purchaser may record in the real property records of the county, a notice of right of first refusal in a form prepared by the department that:

- (a) Includes a legal description of the participating property;
- (b) Attaches a copy of the notice delivered with the offer and proof of mailing of the notice as required by subsection [(3)] (2) of this section;
- (c) Declares that the department or local government party acknowledging the instrument holds the right of first refusal to purchase the property under ORS 456.263 and that the acknowledging party may assign the right of first refusal to a qualified purchaser and that right may be, from time to time, reassigned;
- (d) Declares that the right of first refusal shall expire 24 months after the date the property may be withdrawn from publicly supported housing under subsection [(5)] (4) of this section;
- (e) Declares that a copy of the recorded notice of right of first refusal must be promptly delivered to the property owner by the qualified purchaser offering the instrument for recording; and
- (f) Is executed and acknowledged by the local government or department in the manner provided for the acknowledgment of deeds.

[(5)] (4) The property owner may **not** withdraw the participating property from publicly supported housing and terminate the affordability restrictions [upon] **until** the latest of **the date**:

- (a) [24] **Twenty-four** months following the owner's delivery of all notices required under [subsection (1) of this section] **ORS 456.260 (2)**;
- (b) [30] **Thirty** months following the owner's delivery of all notices required under ORS 456.260 (1); or
- (c) [Expiration of] **Upon which** all affordability [restrictions period] **restriction periods** set forth in any contract **expire**.

[(6)] (5) At any time after the notice described in [subsection (1) of this section has been provided] **ORS 456.260 (1) has been delivered**, within 30 days of the request from a qualified purchaser, the property owner shall make available documents that are relevant to the participating property at the property owner's principal place of business or at a commercial photocopying facility.

[(7)(a)] (6)(a) Notwithstanding the provisions of ORS 192.311 to 192.478 relating to public records, the documents provided by the property owner to a qualified purchaser under subsection [(6)] (5) of this section are confidential and exempt from public inspection except with the written consent of the property owner or as ordered by a court.

(b) Notwithstanding paragraph (a) of this subsection, disclosure may be made to potential funding sources, regulatory agencies or agents or consultants of a qualified purchaser in connection with a transaction between the property owner and a qualified purchaser under this section, subject to appropriate confidentiality agreements.

SECTION 5. ORS 456.263 is amended to read:

456.263. (1) Before selling a participating property that is subject to a recorded notice of right of first refusal under ORS 456.262 [(4)] (3) to a third party other than a qualified purchaser, a property owner shall send notice of the owner's intent to accept a purchase offer by registered or certified mail, with return receipt requested, to each party acknowledging under ORS 456.262 [(4)(f)] (3)(f) a notice of right of first refusal under ORS 456.262. The notice delivered under this subsection must contain a copy of the third-party offer or the terms and conditions of the offer to purchase that the owner intends to accept.

(2) A qualified purchaser shall have 30 days from the date the notice is mailed to exercise a right of first refusal by delivering a matching offer to purchase the property by certified mail. The matching offer must contain a commitment from the qualified purchaser to preserve the property as affordable on terms determined by the Housing and Community Services Department. The property owner shall accept the first matching offer the property owner receives from a qualified purchaser under this section.

(3) A qualified purchaser's offer is a matching offer if it is on the same terms and conditions as the third party's offer to purchase, except that a qualified purchaser's offer is considered a matching offer notwithstanding a conflicting term that includes:

(a) An earnest money deposit that is no less than the least of the third-party offer, two percent of the sales price or \$250,000.

(b) That the earnest money deposit is refundable until the earlier of 90 days or the date of closing.

(c) That closing shall be scheduled at least 240 days after execution of the purchase agreement.

(d) Any nonmaterial term.

(e) Any other term that the property owner has agreed to waive.

(f) A commitment to maintain the affordability of the property required under subsection (2) of this section.

(4) Subsection (1) of this section does not apply if:

(a) More than 24 months have elapsed since the participating property was eligible for withdrawal from publicly supported housing under ORS 456.262 [(5)] (4);

(b) The property owner accepted a third party's offer to purchase the participating property before January 1, 2020, and has provided documentation of the purchase agreement to the Housing and Community Services Department;

(c) The third-party offeror agrees to affordability restrictions on the participating property, as determined by the department, to ensure that the participating property remains publicly supported housing; or

(d) Any additional situations as determined by the department by rule.

(5) A property owner that sells participating property to a third party shall certify that the owner has complied with all provisions of this section and ORS 456.260 and 456.262. A certification of compliance under this section shall:

(a) Be recorded in the real property records of the county in which the property is located;

(b) Contain a legal description of the property;

(c) Identify the property owner as the grantor; and

(d) Be acknowledged by the property owner in the manner required for acknowledgment of a deed.

SECTION 6. Section 7 of this 2021 Act is added to and made a part of ORS 456.255 to 456.265.

SECTION 7. (1) In addition to notices given under ORS 456.260 and 456.262, the owner of publicly supported housing as described in ORS 456.250 (6)(a)(B) in which the Housing and Community Services Department is a party to the contract must provide notice to the tenants under this section before the owner withdraws the participating property from publicly supported housing.

(2) The notice required under this section must be in plain language and must include:

(a) The expiration date of the department's affordability restrictions;

(b) That the owner intends to withdraw the property from publicly supported housing upon the date indicated under paragraph (a) of this subsection;

(c) An explanation and any expiration date of any safe harbor provisions which may allow the tenant to retain the tenancy after the affordability restriction is terminated;

(d) Information about tenant resources, as may be required by the department by rule; and

(e) Other information required by the department by rule.

(3) The notice required under this section must be delivered no more than 14 months and no fewer than 12 months before the date described in ORS 456.260 (1)(a) by:

(a) First class mail to:

(A) Any tenant residing at the participating property at the tenant's mailing address; and

(B) The Director of the Housing and Community Services Department; and

(b) Posting the notice in a common area of the property.

SECTION 8. ORS 456.264 is amended to read:

456.264. (1) Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the failure of an owner of a participating property to provide notices or oth-

erwise comply with the provisions of ORS 456.260, 456.262 or 456.263 **or section 7 of this 2021 Act** may bring an individual action in an appropriate court to recover actual damages. The court or the jury may award punitive damages, and the court may provide injunctive relief and any other equitable relief the court considers necessary and proper.

(2) The court may award reasonable attorney fees and costs at trial and on appeal to a prevailing plaintiff in an action under this section.

SECTION 9. ORS 456.265 is amended to read:

456.265. (1) Except as expressly authorized in ORS 456.260, [*or 456.262 and 456.263*] **456.262 or 456.263 or section 7 of this 2021 Act** or as may be provided by contract with the property owner, a local government may not:

(a) Impose any fine, penalty, tax, fee, charge, assessment or other restriction or sanction against a property owner for withdrawing the participating property from publicly supported housing.

(b) Except as an exercise of constitutional or statutory powers of condemnation:

(A) Prevent or restrict a property owner from selling or otherwise disposing of participating property.

(B) Require conveyance of participating property to the local government or to another party.

(C) Impose any fine, penalty, tax, fee, charge, assessment or other restriction or sanction against a property owner for refusing an offer by the Housing and Community Services Department, the department's designee, a local government or another party to purchase participating property.

(2) Subsection (1) of this section does not prohibit a local government that is certified by a federal agency to carry out an agency responsibility or to exercise agency authority from taking any action within the scope of that responsibility or authority.

SECTION 10. **Section 7 of this 2021 Act and the amendments to ORS 456.250, 456.258, 456.260, 456.262, 456.263, 456.264 and 456.265 by sections 1 to 5, 8 and 9 of this 2021 Act apply to participating properties subject to an affordability restriction or contract that will, by its terms, terminate on or after 30 months following the effective date of this 2021 Act.**

Passed by House April 9, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 12, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State