

Senate Bill 458

Sponsored by Senators FREDERICK, KNOPP (at the request of Habitat for Humanity) (Presession 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**.

Allows land division to separate dwelling units for new middle housing allowed in cities. Prohibits homeowners associations or restrictive covenants from forbidding partition. Delays applicability of limits on private middle housing restrictions.

A BILL FOR AN ACT

1
2 Relating to land division for residential development; creating new provisions; and amending ORS
3 93.277, 94.775 and 94.776.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 92.010 to 92.192.**

6 **SECTION 2. (1) Cities shall allow a division of land, by the partition or subdivision of a
7 lot or parcel, on which the development of middle housing was allowed under ORS 197.758 (2)
8 or (3), to divide the property into the same number of lots or parcels as there are dwelling
9 units, notwithstanding:**

10 (a) **Land use regulations or comprehensive plan provisions that require a minimum area
11 of a lot or parcel or that require minimum property line setbacks; or**

12 (b) **Standards or procedures established by the city under ORS 92.044 or 92.046.**

13 (2) **Divisions of land under this section apply only to middle housing that:**

14 (a) **Was permitted on or after the effective date of this 2021 Act; and**

15 (b) **At the time of the application for the division:**

16 (A) **Had not yet been constructed;**

17 (B) **Is under construction; or**

18 (C) **Has been substantially completed for less than two years and has been occupied for
19 less than 12 months.**

20 (3) **In approving a division of land under this section, a city:**

21 (a) **May not subject an application to approval criteria except as provided in this section;**

22 (b) **May not require the applicant to provide public notice of the application or require a
23 public hearing to evaluate the application, notwithstanding ORS 227.175;**

24 (c) **Shall approve or deny an application for a division no more than 60 days after sub-
25 mission; and**

26 (d) **May not charge fees to review or approve a division under this section except as
27 otherwise authorized by this chapter or as necessary to cover the actual costs of approval.**

28 (4) **A person may not appeal the approval of a division of land under this section.**

29 (5) **The maintenance and costs of the shared expenses or common walls or joint property
30 of the resulting lots or parcels created under this section are subject to apportionment as
31 if among holders of an interest in an easement under ORS 105.170 to 105.185, unless:**

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 (a) The lots or parcels are subject to a declaration as defined in ORS 94.550; or

2 (b) The apportionment would be inconsistent with a recorded agreement executed by the
3 owner of each resulting lot or parcel.

4 **SECTION 3.** ORS 93.277 is amended to read:

5 93.277. A provision in a recorded instrument affecting real property is not enforceable if:

6 (1) The provision would allow the development of a single-family dwelling on the real property
7 but would prohibit the development of, **or the partitioning or subdividing of lands under section**
8 **2 of this 2021 Act for:**

9 (a) Middle housing, as defined in ORS 197.758; or

10 (b) An accessory dwelling unit allowed under ORS 197.312 (5); and

11 (2) The instrument was executed on or after [*August 8, 2019*] **January 1, 2021.**

12 **SECTION 4.** ORS 94.776 is amended to read:

13 94.776. (1) A provision in a governing document that is adopted or amended on or after [*August*
14 *8, 2019*] **January 1, 2020**, is void and unenforceable to the extent that the provision would prohibit
15 or have the effect of unreasonably restricting the development of, **or the dividing of lands under**
16 **section 2 of this 2021 Act for**, housing that is otherwise allowable under the maximum density of
17 the zoning for the land.

18 (2) **Lots or parcels resulting from the division of land in a planned community are subject**
19 **to the governing documents of the planned community and are allocated assessments and**
20 **voting right on the same basis as existing units.**

21 **SECTION 5.** ORS 94.775 is amended to read:

22 94.775. (1) [*Unless the declaration expressly allows the division of lots in a planned community,*]
23 Judicial partition by division of a lot in a planned community is not allowed under ORS 105.205[.],
24 **unless:**

25 (a) **The declaration expressly allows the division of lots in a planned community; or**

26 (b) **The lot may be divided under ORS 94.776.**

27 (2) The lot may be partitioned by sale and division of the proceeds under ORS 105.245.

28 [(2)] (3) The restriction specified in subsection (1) of this section does not apply if the home-
29 owners association has removed the property from the provisions of the declaration.

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