

## HOUSE AMENDMENTS TO HOUSE BILL 3485

By COMMITTEE ON CONSUMER PROTECTION

May 2

1 On page 1 of the printed bill, line 2, after "ORS" insert "94.504 and".

2 In line 14, after the second "or" insert "that ensure".

3 In line 23, delete "nonprofit organization" and insert "public benefit corporation or religious  
4 corporation, as those terms are defined in ORS 65.001,".

5 In line 24, delete the second "or" and begin a new paragraph and insert:

6 "(d) A consumer housing cooperative, as defined in ORS 456.615;

7 "(e) A manufactured dwelling park nonprofit cooperative corporation; or".

8 In line 25, delete "(d) and insert "(f)" and after "tribe" insert a period and delete the rest of the  
9 line.

10 In line 29, delete "100" and insert "120".

11 After line 29, insert:

12 "(6) 'Subsidy' includes, but is not limited to:

13 "(a) A grant, loan or contract made by a federal agency, a federally recognized Indian tribe or  
14 a public body, as defined in ORS 174.109;

15 "(b) A grant, loan or contract made by a nonprofit corporation or a limited liability company  
16 the sole member of which is a nonprofit corporation;

17 "(c) A subsidized loan from a lending institution that makes loans for residential housing; or

18 "(d) A subsidized private transaction.".

19 In line 30, delete "(6)" and insert "(7)".

20 On page 2, delete lines 2 through 42 and insert:

21 **"SECTION 3. (1) A person may create an affordable housing covenant as a condition of**  
22 **giving or receiving a subsidy during ownership or upon conveyance of real property, in the**  
23 **form of a covenant, servitude, easement, condition or restriction in a deed, declaration, land**  
24 **sale contract, trust deed, mortgage, security agreement, assignment, will, trust, rental**  
25 **agreement, lease or other written instrument that is:**

26 **"(a) Executed by the owner of the real property and the covenant holder; and**

27 **"(b) Recorded in the deed and mortgage records of the county in which the real property**  
28 **is located.**

29 **"(2) The affordable housing covenant creates a real property right in an eligible covenant**  
30 **holder to:**

31 **"(a) Limit the use of real property to occupancy by low or moderate income households**  
32 **in rental or owner-occupied housing;**

33 **"(b) Restrict the rental rate or sale price of real property to ensure affordability by fu-**  
34 **ture low and moderate income households; or**

35 **"(c) Limit, restrict or condition the use and enjoyment of real property to create or re-**

1 **tain rental or owner-occupied affordable housing for occupancy by low or moderate income**  
2 **households.**

3 **“(3) The affordable housing covenant may be conveyed, assigned, modified or terminated**  
4 **by a written instrument recorded in the deed and mortgage records of the county in which**  
5 **the real property is located. The affordable housing covenant may be:**

6 **“(a) Conveyed or assigned by a written instrument executed by the conveying or assign-**  
7 **ing covenant holder and the accepting covenant holder;**

8 **“(b) Modified by a written instrument executed by the covenant holder and the owner of**  
9 **the real property; or**

10 **“(c) Terminated by a written instrument executed by the covenant holder and a third**  
11 **party with the right to enforce the covenant.**

12 **“(4) An affordable housing covenant is not invalid because a holder of the covenant is**  
13 **not an eligible covenant holder. A covenant holder who is not an eligible covenant holder**  
14 **may not modify, terminate or commence an action to enforce the covenant. However, the**  
15 **covenant holder may convey or assign the covenant to an eligible covenant holder who may**  
16 **modify or terminate the covenant or commence an action to enforce the covenant.**

17 **“(5) An affordable housing covenant is unlimited in duration unless:**

18 **“(a) The instrument creating the covenant provides otherwise; or**

19 **“(b) The duration of the covenant is modified prior to the expiration of its stated term.**

20 **“(6) Upon termination of an affordable housing covenant for any reason prior to the ex-**  
21 **piration of its stated term, the covenant holder is entitled to receive the difference between**  
22 **the fair market value of the real property immediately before termination and the fair mar-**  
23 **ket value of the real property immediately after termination.**

24 **“(7) An interest in real property in existence when an affordable housing covenant is**  
25 **created is not impaired by the affordable housing covenant unless the owner of the interest**  
26 **is a party to the affordable housing covenant, subordinates the interest to the affordable**  
27 **housing covenant or otherwise agrees to be bound by the affordable housing covenant.**

28 **“(8) The instrument creating an affordable housing covenant may grant the eligible**  
29 **covenant holder, or a designee of the eligible covenant holder, a right to enter the real**  
30 **property to ensure compliance with the covenant and, if the right is granted, the instrument**  
31 **shall designate the time and manner in which the eligible covenant holder or designee may**  
32 **enter the real property.**

33 **“(9) An affordable housing covenant holder may assign a third-party right of enforce-**  
34 **ment, by a written instrument executed by the covenant holder and recorded in the deed and**  
35 **mortgage records of the county in which the real property is located, to a person that qual-**  
36 **ifies to be an eligible covenant holder but that is not the holder of that covenant.”.**

37 **On page 3, line 22, after “though” insert “the covenant is not of a character traditionally re-**  
38 **cognized at common law or is inconsistent with a common law doctrine of real property law that**  
39 **might invalidate, impair enforcement of or cause the termination of the covenant, including but not**  
40 **limited to common law doctrine that holds that”.**

41 **In line 27, after “that” delete the rest of the line and insert “does not have an interest in the**  
42 **real prop-”.**

43 **In line 31, delete “does not run to the successors or assigns of the eligible” and insert “can be**  
44 **or has been conveyed or assigned to a”.**

45 **Delete line 34 and insert:**

1       “(i) The covenant is a clog on the equity of redemption.  
2       “(j) The covenant lacks adequate consideration.  
3       “(2) An affordable housing covenant is valid and enforceable even if the covenant violates the  
4 rule against perpetuities set forth in ORS 105.950 to 105.975.”.  
5       In line 35, delete “(2)” and insert “(3)”.  
6       In line 39, delete “(3)” and insert “(4)”.  
7       After line 40, insert:  
8       “**SECTION 7.** ORS 94.504 is amended to read:  
9       “94.504. (1) A city or county may enter into a development agreement as provided in ORS 94.504  
10 to 94.528 with any person having a legal or equitable interest in real property for the development  
11 of that property.  
12       “(2) A development agreement shall specify:  
13       “(a) The duration of the agreement;  
14       “(b) The permitted uses of the property;  
15       “(c) The density or intensity of use;  
16       “(d) The maximum height and size of proposed structures;  
17       “(e) Provisions for reservation or dedication of land for public purposes;  
18       “(f) A schedule of fees and charges;  
19       “(g) A schedule and procedure for compliance review;  
20       “(h) Responsibility for providing infrastructure and services;  
21       “(i) The effect on the agreement when changes in regional policy or federal or state law or rules  
22 render compliance with the agreement impossible, unlawful or inconsistent with such laws, rules or  
23 policy;  
24       “(j) Remedies available to the parties upon a breach of the agreement;  
25       “(k) The extent to which the agreement is assignable; and  
26       “(L) The effect on the applicability or implementation of the agreement when a city annexes all  
27 or part of the property subject to a development agreement.  
28       “(3) A development agreement shall set forth all future discretionary approvals required for the  
29 development specified in the agreement and shall specify the conditions, terms, restrictions and re-  
30 quirements for those discretionary approvals.  
31       “(4) A development agreement shall also provide that construction shall be commenced within  
32 a specified period of time and that the entire project or any phase of the project be completed by  
33 a specified time.  
34       “(5) A development agreement shall contain a provision that makes all city or county obligations  
35 to expend moneys under the development agreement contingent upon future appropriations as part  
36 of the local budget process. The development agreement shall further provide that nothing in the  
37 agreement requires a city or county to appropriate any such moneys.  
38       “(6) A development agreement must state the assumptions underlying the agreement that relate  
39 to the ability of the city or county to serve the development. The development agreement must also  
40 specify the procedures to be followed when there is a change in circumstances that affects compli-  
41 ance with the agreement.  
42       “(7) A development agreement is binding upon a city or county pursuant to its terms and for the  
43 duration specified in the agreement.  
44       “(8) The maximum duration of a development agreement entered into with:  
45       “(a) A city is 15 years; and

1           “(b) A county is seven years.

2           “**(9) ORS 94.504 to 94.528 do not limit the authority of a city or county to take action**  
3 **pursuant to sections 1 to 6 of this 2007 Act.**”

4           In line 41, delete “7” and insert “8”.

5           On page 4, line 11, delete “8” and insert “9”.

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