

House Bill 3485

Sponsored by Representative DINGFELDER; Representatives BARNHART, BOONE, BUCKLEY, CANNON, COWAN, GELSER, KOTEK, MACPHERSON, MERKLEY, ROSENBAUM, TOMEI, WITT (at the request of Portland Community Land Trust)

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**.

Authorizes creation of affordable housing covenant restricting price, rental rate or occupancy to ensure adequate supply of rental and owner-occupied affordable housing for low or moderate income households.

A BILL FOR AN ACT

1
2 Relating to affordable housing covenants; creating new provisions; and amending ORS 197.309.

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

4 **SECTION 1. The Legislative Assembly finds and declares that:**

5 (1) **There is a serious shortage of decent, safe and sanitary housing available and af-**
6 **fordable to low and moderate income households in the State of Oregon.**

7 (2) **The inadequacy in the supply of decent, safe and sanitary affordable housing endan-**
8 **gers the public health and jeopardizes the public safety and general welfare of the state.**

9 (3) **To obtain the benefits of covenants and restrictions that seek to preserve and main-**
10 **tain affordable housing, the Legislative Assembly authorizes the creation and enforcement**
11 **of affordable housing covenants.**

12 **SECTION 2. As used in sections 1 to 6 of this 2007 Act:**

13 (1) **"Affordable housing covenant" means a nonpossessory interest in real property im-**
14 **posing limitations, restrictions or affirmative obligations that encourage development or**
15 **continued availability of affordable rental and owner-occupied housing for low or moderate**
16 **income individuals.**

17 (2) **"Area median income" means the median income for the standard metropolitan sta-**
18 **tistical area in which the affordable housing is located, as determined by the Housing and**
19 **Community Services Department, adjusted for household size.**

20 (3) **"Eligible covenant holder" means:**

21 (a) **A public body, as defined in ORS 174.109;**

22 (b) **An agency of the United States government;**

23 (c) **A nonprofit organization one purpose of which is to provide affordable housing for low**
24 **or moderate income households; or**

25 (d) **A federally recognized Indian tribe as defined in ORS 97.740.**

26 (4) **"Low income household" means a household with income less than or equal to 80**
27 **percent of the area median income.**

28 (5) **"Moderate income household" means a household with income less than or equal to**
29 **100 percent and greater than 80 percent of the area median income.**

30 (6) **"Third-party right of enforcement" means a right provided in an affordable housing**

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 covenant to a third party to enforce the terms of the covenant.

2 **SECTION 3.** (1) A person may create an affordable housing covenant during ownership
3 or upon conveyance of real property, in the form of a covenant, servitude, easement, condi-
4 tion or restriction in a land sale contract, trust deed, mortgage, security agreement, as-
5 signment, will, trust, rental agreement, lease or other written instrument executed by the
6 owner of the real property and recorded in the deed and mortgage records of the county in
7 which the real property is located.

8 (2) The affordable housing covenant creates a real property right in an eligible covenant
9 holder to:

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

12 (b) Restrict the rental rate or sale price of real property to ensure affordability by future
13 low and moderate income households; or

14 (c) Limit, restrict or condition the use and enjoyment of real property to create or retain
15 rental or owner-occupied affordable housing for occupancy by low or moderate income
16 households as a condition of providing a subsidy that may include, but not be limited to:

17 (A) A grant, loan or contract made by a public body, as defined in ORS 174.109;

18 (B) A grant, loan or contract made by a nonprofit corporation or a limited liability com-
19 pany the sole member of which is a nonprofit corporation;

20 (C) A subsidized loan from a lending institution that makes loans for residential housing;
21 or

22 (D) A subsidized private transaction.

23 (3) The affordable housing covenant:

24 (a) May be conveyed, assigned, modified or terminated by a written instrument recorded
25 in the deed and mortgage records of the county in which the real property is located.

26 (b) Is not invalid because a holder of the covenant is not an eligible covenant holder.
27 However, the covenant must be assigned to an eligible covenant holder before an action to
28 enforce the covenant is commenced.

29 (4) An affordable housing covenant is unlimited in duration unless:

30 (a) The instrument creating the covenant provides otherwise; or

31 (b) The covenant is modified or terminated by agreement of the eligible covenant holder.

32 (5) An interest in real property in existence when an affordable housing covenant is
33 created is not impaired by the affordable housing covenant unless the owner of the interest
34 is a party to the affordable housing covenant, subordinates the interest to the affordable
35 housing covenant or otherwise agrees to be bound by the affordable housing covenant.

36 (6) The instrument creating an affordable housing covenant may grant the eligible
37 covenant holder, or a designee of the eligible covenant holder, a right to enter the real
38 property to ensure compliance and, if it does, shall designate the time and manner in which
39 the eligible covenant holder, or designee, may enter the real property.

40 (7) A holder of an affordable housing covenant may assign a third-party right of
41 enforcement to a person that qualifies to be an eligible covenant holder but that is not the
42 holder of that covenant.

43 **SECTION 4.** An affordable housing covenant may:

44 (1) Include limitations, restrictions and affirmative obligations on the sale price or rental
45 rate of real property or the use of real property or the income or assets of purchasers or

1 tenants;

2 (2) Limit the amount of equity appreciation that a property owner may derive from
3 ownership of the real property;

4 (3) Grant a right of first refusal or an option to purchase to the eligible covenant holder;

5 (4) Restrict the class of persons to whom real property may be sold, leased or rented
6 according to, but not limited to, household income, assets, residency and prior
7 homeownership;

8 (5) Limit the use of the real property to residential use as the primary residence of a low
9 or moderate income household;

10 (6) Limit, condition or prohibit leasing or subletting;

11 (7) Impose obligations for maintenance and insurance of the real property;

12 (8) Limit, condition or prohibit the owner from allowing liens on the real property; and

13 (9) Make other limitations, conditions or prohibitions that affect the affordability of real
14 property for low or moderate income households.

15 **SECTION 5.** An action affecting an affordable housing covenant may be commenced or
16 intervened in by:

17 (1) The owner of an interest in the real property burdened by the covenant;

18 (2) An eligible covenant holder of the benefit of the covenant;

19 (3) A person that has a third-part right of enforcement; or

20 (4) A public body, as defined in ORS 174.109, in the jurisdiction of which the real property
21 burdened by the covenant is located.

22 **SECTION 6.** (1) An affordable housing covenant is valid and enforceable even though:

23 (a) The covenant is not appurtenant to an interest in the real property.

24 (b) The covenant imposes a negative burden.

25 (c) The covenant imposes affirmative obligations upon the owner of an interest in the
26 burdened real property or the eligible covenant holder.

27 (d) The covenant is held by an eligible covenant holder that has not retained real prop-
28 erty that is benefited by enforcement of the covenant against the burdened property.

29 (e) The benefit of the covenant does not touch or concern real property in any other way.

30 (f) There is no privity of estate or privity of contract.

31 (g) The covenant does not run to the successors or assigns of the eligible covenant
32 holder.

33 (h) The covenant is as an unreasonable restraint on alienability.

34 (i) The covenant violates the rule against perpetuities.

35 (2) If a court denies equitable enforcement of an affordable housing covenant because of
36 a change of circumstances that renders the covenant not in the public interest, the court
37 may award damages as the only remedy in an action to enforce the affordable housing
38 covenant.

39 (3) The court may not use a comparative economic test as a basis for a determination
40 that an affordable housing covenant is not in the public interest.

41 **SECTION 7.** ORS 197.309 is amended to read:

42 197.309. (1) Except as provided in subsection (2) of this section, a city, county or metropolitan
43 service district may not adopt a land use regulation or functional plan provision, or impose as a
44 condition for approving a permit under ORS 215.427 or 227.178, a requirement that has the effect
45 of establishing the sales price for a housing unit or residential building lot or parcel, or that re-

1 quires a housing unit or residential building lot or parcel to be designated for sale to any particular
2 class or group of purchasers.

3 (2) [Nothing in] This section [is intended to] **does not** limit the authority of a city, county or
4 metropolitan service district to:

5 (a) Adopt or enforce a land use regulation, functional plan provision or condition of approval
6 creating or implementing an incentive, contract commitment, density bonus or other voluntary reg-
7 ulation, provision or condition designed to increase the supply of moderate or lower cost housing
8 units; **or**

9 (b) **Enter into an affordable housing covenant as provided in sections 1 to 6 of this 2007**
10 **Act.**

11 **SECTION 8. (1) Sections 1 to 6 of this 2007 Act apply to a covenant:**

12 (a) **Created under sections 1 to 6 of this 2007 Act on or after the effective date of this**
13 **2007 Act.**

14 (b) **Created before the effective date of this 2007 Act if the covenant would have been**
15 **enforceable under sections 1 to 6 of this 2007 Act had it been created on or after the effective**
16 **date of this 2007 Act.**

17 (2) **Sections 1 to 6 of this 2007 Act do not invalidate an otherwise enforceable affordable**
18 **housing covenant, as defined in section 2 of this 2007 Act, created before, on or after the**
19 **effective date of this 2007 Act.**

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