

# Senate Bill 774

Sponsored by COMMITTEE ON BUSINESS, TRANSPORTATION AND ECONOMIC DEVELOPMENT

## 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**.

Prohibits inclusion in instrument conveying or contracting to convey real property, or in declaration or bylaws of planned community or condominium governed by declaration, of provision that limits use of real property in ways otherwise permissible under applicable planning and zoning for area. Specifies judicial procedure by which owner of property may petition to remove provision from instrument.

## A BILL FOR AN ACT

1  
2 Relating to restrictive covenants in documents conveying real property; amending ORS 93.270 and  
3 93.272.

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

5 **SECTION 1.** ORS 93.270 is amended to read:

6 93.270. (1) A person conveying or contracting to convey fee title to real property may not in-  
7 clude in an instrument for that purpose a provision:

8 (a) Restricting the use of the real property by any person or group of persons by reason of race,  
9 color, religion, sex, sexual orientation, national origin or disability.

10 (b) Restricting the use of the real property by any home or facility that is licensed under ORS  
11 443.400 to 443.455 or 443.705 to 443.825 to provide residential care alone or in conjunction with  
12 treatment or training or a combination thereof.

13 **(c) Restricting the use of the real property in ways that are otherwise permissible under**  
14 **the planning and zoning requirements that apply to the real property.**

15 (2) Any provision in an instrument executed in violation of subsection (1) of this section is void  
16 and unenforceable.

17 (3) An instrument that contains a provision restricting the use of real property in a manner  
18 listed in subsection (1)(b) of this section does not give rise to any public or private right of action  
19 to enforce the restriction.

20 (4)(a) An instrument that contains a provision restricting the use of real property by requiring  
21 roofing materials with a lower fire rating than that required in the state building code established  
22 under ORS chapter 455 does not give rise to any public or private right of action to enforce the  
23 restriction in an area determined by a local jurisdiction as a wildfire hazard zone. Prohibitions on  
24 public or private right of action under this paragraph are limited solely to considerations of fire  
25 rating.

26 (b) As used in this subsection, "wildfire hazard zones" are areas that are legally declared by a  
27 governmental agency having jurisdiction over the area to have special hazards caused by a combi-  
28 nation of combustible natural fuels, topography and climatic conditions that result in a significant  
29 hazard of catastrophic fire over relatively long periods each year. Wildfire hazard zones shall be  
30 determined using criteria established by the State Forestry Department.

**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       **SECTION 2.** ORS 93.272 is amended to read:

2       93.272. (1) Any owner of record of real property that is subject to an instrument conveying or  
3       contracting to convey fee title to the property that contains a provision that is in violation of ORS  
4       93.270 may file a petition to remove that provision from the title to the property. The petition  
5       [*shall*] **must** be filed in the circuit court for the county in which the property is located. [*No fee*  
6       *shall be charged*] **The circuit court may not charge a fee** for the filing of the petition. The petition  
7       [*shall*] **must** contain:

8           (a) The name and mailing address of the person filing the petition;

9           (b) The name and mailing address of all owners of record of the property;

10          (c) The legal description of the property subject to the provision in violation of ORS 93.270; and

11          (d) A clear reference to the provision claimed to be in violation of ORS 93.270.

12       (2) **The petitioner shall serve** notice and a copy of the petition [*shall be served*] on all owners  
13       of record in any manner provided for in ORCP 7. The notice [*shall*] **must** inform the owners of re-  
14       cord that:

15           (a) The petition seeks the removal of a provision that is in violation of ORS 93.270 from the title  
16       to the property;

17           (b) The person served may request a hearing within 10 days after service of the petition; and

18           (c) The court [*is authorized to*] **may** enter a default judgment removing the provision if [*no*  
19       *hearing is requested by*] the owners of record **do not request a hearing**.

20       (3) The petitioner shall file with the court proof of service in the manner provided in ORCP 7  
21       F. If [*no*] **a** request for hearing is **not** made by any person served within 10 days after service on  
22       that person, the court shall enter a judgment removing the provision from the title to the property  
23       if the court determines that the provision is in violation of ORS 93.270.

24       (4) If a hearing is requested by any person served under subsection (2) of this section, the clerk  
25       of the court shall schedule a hearing within 20 days after the filing of the request for a hearing.  
26       The clerk of the court shall mail notification of the hearing date to the petitioner and to all owners  
27       of record listed in the petition.

28       (5) At any hearing under the provisions of this section, the sole issue [*that shall*] **to** be decided  
29       by the court is whether the provision that is the subject of the petition is in violation of ORS 93.270.  
30       The **court shall try the** matter [*shall be tried to the court sitting*] without jury. If the court finds  
31       that the provision is not in violation of ORS 93.270, the court shall dismiss the petition. If the court  
32       finds that the provision is in violation of ORS 93.270, the court shall enter a judgment removing the  
33       provision from the title to the property.

34       (6) If a court finds only part of a provision to be in violation of ORS 93.270 under this section,  
35       the court shall enter a judgment removing only that part of the provision that is in violation.

36       (7) For the purposes of this section[,]:

37           (a) **“Instrument conveying or contracting to convey fee title” includes a declaration and**  
38       **bylaws of a planned community established pursuant to ORS 94.550 to 94.783 or established**  
39       **by contract and a declaration and bylaws of a condominium established pursuant to ORS**  
40       **chapter 100.**

41           (b) **“Owner of record”** means a person having any legal or equitable interest in property, in-  
42       cluding, but not limited to, a purchaser, lienholder [*or*] **and** holder of any security interest in  
43       [*such*] **the** property whose interest is recorded in the public records provided for by Oregon statutes  
44       where the owner’s interest must be recorded to perfect a lien or security interest or provide con-  
45       structive notice of the owner’s interest.

