

House Bill 3085

Sponsored by Representative KENNEMER (at the request of Oregon Association of County Engineers and Surveyors)

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**.

Modifies provisions authorizing dedication, conveyance or grant of property in subdivision or partition process.

A BILL FOR AN ACT

1
2 Relating to transfer of property noted on plat; amending ORS 92.010, 92.012, 92.014, 92.050, 92.070,
3 92.075, 92.150, 92.190, 92.192, 223.317 and 545.101.

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

5 **SECTION 1.** ORS 92.010 is amended to read:

6 92.010. As used in ORS 92.010 to 92.192, unless the context requires otherwise:

7 (1) "Declarant" means the person who files a declaration under ORS 92.075.

8 (2) "Declaration" means the instrument described in ORS 92.075 by which the subdivision or
9 partition plat was created.

10 (3)(a) "Lawfully established unit of land" means:

11 (A) A lot or parcel created pursuant to ORS 92.010 to 92.192; or

12 (B) Another unit of land created:

13 (i) In compliance with all applicable planning, zoning and subdivision or partition ordinances
14 and regulations; or

15 (ii) By deed or land sales contract, if there were no applicable planning, zoning or subdivision
16 or partition ordinances or regulations.

17 (b) "Lawfully established unit of land" does not mean a unit of land created solely to establish
18 a separate tax account.

19 (4) "Lot" means a single unit of land that is created by a subdivision of land.

20 (5) "Negotiate" means any activity preliminary to the execution of a binding agreement for the
21 sale of land in a subdivision or partition, including but not limited to advertising, solicitation and
22 promotion of the sale of such land.

23 (6) "Parcel" means a single unit of land that is created by a partition of land.

24 (7) "Partition" means either an act of partitioning land or an area [*or tract*] of land partitioned.

25 (8) "Partition plat" includes a final map and other writing containing all the descriptions, lo-
26 cations, specifications, provisions and information concerning a partition.

27 (9) "Partitioning land" means dividing land to create not more than three parcels of land within
28 a calendar year, but does not include:

29 (a) Dividing land as a result of a lien foreclosure, foreclosure of a recorded contract for the sale
30 of real property or the creation of cemetery lots;

31 (b) Adjusting a property line as property line adjustment is defined in this section;

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 (c) Dividing land as a result of the recording of a subdivision or condominium plat;

2 (d) Selling or granting by a person to a public agency or public body of property for state
 3 highway, county road, city street or other right of way purposes if the road or right of way complies
 4 with the applicable comprehensive plan and ORS 215.213 (2)(p) to (r) and 215.283 (2)(q) to (s). How-
 5 ever, any property sold or granted for state highway, county road, city street or other right of way
 6 purposes shall continue to be considered a single unit of land until the property is further subdivided
 7 or partitioned; or

8 (e) Selling or granting by a public agency or public body of excess property resulting from the
 9 acquisition of land by the state, a political subdivision or special district for highways, county roads,
 10 city streets or other right of way purposes when the sale or grant is part of a property line ad-
 11 justment incorporating the excess right of way into adjacent property. The property line adjustment
 12 shall be approved or disapproved by the applicable local government. If the property line adjustment
 13 is approved, it shall be recorded in the deed records of the county where the property is located.

14 (10) "Plat" includes a final subdivision plat, replat or partition plat.

15 (11) "Property line" means the division line between two units of land.

16 (12) "Property line adjustment" means a relocation or elimination of all or a portion of the
 17 common property line between abutting properties that does not create an additional lot or parcel.

18 (13) "Replat" means the act of platting the lots, parcels and easements in a recorded subdivision
 19 or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to in-
 20 crease or decrease the number of lots in the subdivision.

21 (14) "Road" or "street" means a public or private way that is created to provide ingress or
 22 egress for persons to one or more lots, parcels[,] or areas [*or tracts*] of land, excluding a private
 23 way that is created to provide ingress or egress to such land in conjunction with the use of such
 24 land for forestry, mining or agricultural purposes.

25 (15) "Sale" or "sell" includes every disposition or transfer of land or an interest or estate
 26 therein.

27 (16) "Subdivide land" means to divide land to create four or more lots within a calendar year.

28 (17) "Subdivision" means either an act of subdividing land or an area [*or a tract*] of land subdi-
 29 vided.

30 (18) "Subdivision plat" includes a final map and other writing containing all the descriptions,
 31 locations, specifications, dedications, provisions and information concerning a subdivision.

32 (19) "**Tract**" means a unit of land, created by subdivision, partition or submission of land
 33 to the condominium form of ownership, that:

34 (a) **May be used for purposes such as open spaces, wetlands, private roads, utility**
 35 **infrastructure, recreational facilities or other shared public or private uses; and**

36 (b) **May not be used for purposes such as residential dwellings or commercial buildings.**

37 [(19)] (20) "Utility easement" means an easement noted on a subdivision plat or partition plat
 38 for the purpose of installing or maintaining public or private utility infrastructure for the provision
 39 of water, power, heat or telecommunications to the public.

40 **SECTION 2.** ORS 92.012 is amended to read:

41 92.012. (1) [*No*] Land may **not** be subdivided or partitioned except in accordance with ORS
 42 92.010 to 92.192.

43 (2) **In addition to creating lots by subdivision and parcels by partition, a city or county**
 44 **may create one or more tracts when subdividing or partitioning land.**

45 **SECTION 3.** ORS 92.050 is amended to read:

1 92.050. (1) A person [*shall*] **may** not submit a plat of a subdivision or partition for record[,] until
 2 all the requirements of ORS 209.250 and the plat requirements of the subdivision or partition have
 3 been met.

4 (2) The survey for the plat of the subdivision or partition shall be done in a manner to achieve
 5 sufficient accuracy that measurements may be taken between monuments within one-tenth of a foot
 6 or one ten-thousandth of the distance shown on the subdivision or partition plat, whichever is
 7 greater.

8 (3) The survey and plat of the subdivision or partition shall be made by a registered professional
 9 land surveyor.

10 (4) The plat of the subdivision or partition shall be of sufficient scale and lettering size, ap-
 11 proved by the county surveyor, so that:

12 (a) The survey and mathematical information and all other details are clearly and legibly shown
 13 on the plat.

14 (b) Each lot or parcel is numbered consecutively.

15 (c) The lengths and courses of the boundaries of each lot or parcel are shown on the plat.

16 (d) Each street is named and shown on the plat.

17 (5) The locations and descriptions of all monuments found or set must be carefully recorded
 18 upon all plats and the proper courses and distances of all boundary lines, conforming to the
 19 surveyor's certificate, must be shown.

20 (6) The location, dimensions and purpose of all recorded and proposed public and private ease-
 21 ments must be shown on the subdivision or partition plat [*along with the county clerk's recording*
 22 *reference if the easement has been recorded by the county clerk. Private*]. **If the easement has been**
 23 **recorded, the recording index numbers and the date of recording must be noted on the final**
 24 **plat.** Easements become effective upon the recording of the plat.

25 (7) The area of each lot or parcel must be shown on the subdivision or partition plat.

26 (8) In addition to showing bearings in degrees, minutes and seconds and distances in feet and
 27 hundredths of a foot, the following curve information must be shown on the subdivision or partition
 28 plat either on the face of the map or in a separate table:

29 (a) Arc length;

30 (b) Chord length;

31 (c) Chord bearing;

32 (d) Radius; and

33 (e) Central angle.

34 (9) A city or county may not require that a final subdivision, condominium or partition plat show
 35 graphically or by notation on the final plat any information or requirement that is or may be subject
 36 to administrative change or variance by a city or county or any other information unless authorized
 37 by the county surveyor.

38 **SECTION 4.** ORS 92.075 is amended to read:

39 92.075. (1) In order to subdivide or partition any property, the declarant shall include on the face
 40 of the subdivision or partition plat[, *if a partition plat is required,*] a declaration, taken before a
 41 notary public or other person authorized by law to administer oaths, stating that the declarant has
 42 caused the subdivision or partition plat to be prepared and the property **to be** subdivided or parti-
 43 tioned [*in accordance with the provisions of this chapter. Any dedication of land to public purposes*
 44 *or any public or private easements created, or any other restriction made, shall be stated in the decla-*
 45 *ration.*] **as provided in this chapter.**

1 **(2) A dedication of land to a public purpose must be stated in the declaration. A declaration may:**
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3 **(a) Grant public or private easements shown on the plat under ORS 92.050.**

4 **(b) Impose restrictions.**

5 **(3) A dedication of land for a public purpose or a public easement:**

6 **(a) If conveyed or granted to the city or county with jurisdiction over the division of land, may be accomplished by notation on the plat; or**
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8 **(b) If conveyed or granted to another public body or a private party, must be accomplished by a separate deed. The deed must be recorded simultaneously with the plat and the plat must contain the recording index number of the separate deed.**
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11 [(2)] **(4) If the declarant is not the fee owner of the property, the fee owner and the vendor under any instrument of sale shall also execute the declaration for the purpose of consenting to the [property being subdivided or partitioned.] subdivision or partition of the property and to a dedication, grant or conveyance of the property in the declaration.**
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15 [(3)] **(5) If the subdivision or partition plat contains any dedication or donation of land [to public purposes,] for the purpose of a public right of way and the fee owner of the property has granted a security interest in the property, the holder of any mortgage or trust deed shall also execute the declaration for the purpose of consenting to the [property being submitted to the provisions of this chapter.] subdivision or partition of the property.**
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20 [(4)] **(6) Notwithstanding the provisions of subsections (1) to [(3)] (5) of this section, the fee owner, vendor or [the] mortgage or trust deed holder may record an affidavit consenting to the subdivision or partition of the property under the declaration [of property being subdivided or partitioned and to any dedication or donation of property to public purposes. The affidavit must indicate the recorded document by which the interest in the property was acquired and all information required by ORS 93.410 to 93.530 and must be recorded in deed records at the same time as the subdivision or partition plat.] and to a dedication, conveyance or grant of the property in the declaration. The county clerk shall note the recording information of the affidavit on the original and any exact copies of the subdivision or partition plat. The affidavit must:**
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29 **(a) Indicate the recorded documents, including the recording index numbers and the date of recording, by which the interest in the property was acquired by the fee owner, vendor or holder of the mortgage or trust deed;**
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32 **(b) Comply with ORS 93.410 to 93.530; and**

33 **(c) Be recorded in deed records at the same time as the subdivision or partition plat.**

34 **SECTION 5.** ORS 92.150 is amended to read:

35 92.150. *[Every donation or grant to the public, including streets and alleys, or to any individual, religious society, corporation or body politic, marked or noted as such on the subdivision or partition plat wherein the donation or grant was made, shall be considered a general warranty to the donee or grantee for the use of the donee or grantee for the purposes intended by the donor or grantor.]* **Every dedication, conveyance or grant for a public purpose that is marked or noted on a subdivision or partition plat and made to the city or county with jurisdiction over the division of land is deemed to provide a general warranty of the property to the city or county.**
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42 **SECTION 6.** ORS 92.014 is amended to read:

43 92.014. (1) A person may not create a street or road for the purpose of subdividing or partitioning an area [*or tract*] of land without the approval of the city or county [*having*] **with** jurisdiction over the area [*or tract*] of land to be subdivided or partitioned.
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1 (2) Notwithstanding ORS 92.175, an instrument dedicating land to public use may not be ac-
 2 cepted for recording in this state unless the instrument bears the approval of the city or county
 3 authorized by law to accept the dedication.

4 **SECTION 7.** ORS 92.070 is amended to read:

5 92.070. (1) Except as otherwise provided in this section, a subdivision or partition plat desig-
 6 nating the location of land in a county in the State of Oregon, offered for record, must include on
 7 the face of the plat a surveyor's certificate, together with the seal and signature of the surveyor
 8 having surveyed the land represented on the plat, to the effect that the surveyor has correctly sur-
 9 veyed and marked with proper monuments the lands as represented and has placed a proper monu-
 10 ment as provided in ORS 92.060 indicating the initial point of the plat and its location in accordance
 11 with ORS 92.060 (1) and accurately describing by metes or bounds, or other description as approved
 12 by the county surveyor, the [*tract of*] land upon which the lots and blocks or parcels are laid out.

13 (2) If the person subdividing any land has complied with ORS 92.065 (1), the surveyor may pre-
 14 pare the plat of the subdivision for recording with only the exterior monuments referenced on the
 15 subdivision plat as submitted for recording. The subdivision plat shall include a certification of the
 16 surveyor that the remaining corners for the subdivision will be monumented on or before a specified
 17 date in accordance with ORS 92.060, noting those monuments to be set on or before said specified
 18 date on the subdivision plat as approved by the city or county.

19 (3) After the remaining corners for a subdivision have been monumented as provided in the
 20 certificate submitted under subsection (2) of this section, the surveyor performing the work shall:

21 (a) Within five days after completion of the work, notify the person subdividing the land involved
 22 and the county surveyor by whom the subdivision was approved; and

23 (b) Upon approval of the work under ORS 92.100 by the county surveyor, submit an affidavit for
 24 recording stating that the subdivision plat has been correctly surveyed and marked with proper
 25 monuments at the remaining corners of the subdivisions as noted on the original subdivision plat.
 26 Any monument that cannot be set shall be separately noted and a reference monument shall be set.
 27 The affidavit shall be approved by the county surveyor before recording. The surveyor who prepared
 28 the affidavit shall cause the affidavit to be recorded in the office of the county recorder where the
 29 subdivision plat is recorded. The county clerk shall promptly provide a recorded copy of the affidavit
 30 to the county surveyor. The county surveyor shall note the monuments set and the recorder's in-
 31 formation on the county surveyor's copy of the subdivision plat and any exact copies filed in ac-
 32 cordance with ORS 92.120 (3). The original plat may not be corrected or changed after it is recorded
 33 with the county clerk.

34 (4) The county surveyor approving the work pursuant to subsection (3) of this section shall ref-
 35 erence the approval upon the subdivision plat and tracings previously recorded. A city surveyor
 36 approving the work under ORS 92.100 (1) shall reference that surveyor's approval on the affidavit
 37 required under this section prior to approval by the county surveyor.

38 (5) Notwithstanding ORS 209.250, the surveyor who prepared the subdivision or partition plat
 39 may reestablish plat monuments within two years of plat recordation without filing a map of the
 40 survey as required under ORS 209.250. The surveyor reestablishing any plat monuments shall pre-
 41 pare an affidavit stating that the reestablished corners of the subdivision or partition plat have been
 42 correctly surveyed and marked with proper monuments as required under ORS 92.060. The affidavit
 43 shall be approved by the county surveyor prior to recordation of the affidavit with the county clerk.
 44 The surveyor who prepared the affidavit shall file the affidavit with the county clerk for the county
 45 where the subdivision or partition plat is recorded. The county clerk shall promptly provide a cer-

1 tified copy of the recorded affidavit to the surveyor. The county surveyor shall indicate the rees-
 2 tablished monuments on the county surveyor's copy of the plat of the subdivision or partition and
 3 any copies of the plat filed under ORS 92.120 (3). The original plat may not be corrected or changed
 4 after it is recorded with the county clerk. The county shall charge a fee for recording the affidavit
 5 in the county clerk's office and the county surveyor's office. The fee shall be established by the
 6 governing body of the county and shall be paid to the county surveyor.

7 **SECTION 8.** ORS 92.190 is amended to read:

8 92.190. (1) The replat of a portion of a recorded plat shall not act to vacate any recorded
 9 covenants or restrictions.

10 (2) Nothing in ORS 92.180 to 92.190 is intended to prevent the operation of vacation actions by
 11 statutes in ORS chapter 271 or 368.

12 (3) The governing body of a city or county may use procedures other than replatting procedures
 13 in ORS 92.180 and 92.185 to *[adjust property lines as described in ORS 92.010 (12), as long as those*
 14 *procedures include]* **make a property line adjustment if the procedures require** the recording,
 15 with the county clerk, of conveyances conforming to the approved property line adjustment as sur-
 16 veyed in accordance with ORS 92.060 (7).

17 (4) A property line adjustment deed shall contain the names of the parties, the description of the
 18 adjusted line, references to original recorded documents and signatures of all parties with proper
 19 acknowledgment.

20 **SECTION 9.** ORS 92.192 is amended to read:

21 92.192. (1) Except as provided in this section, a unit of land that is reduced in size by a property
 22 line adjustment approved by a city or county must comply with applicable zoning ordinances after
 23 the adjustment.

24 (2) Subject to subsection (3) of this section, for properties located entirely outside the corporate
 25 limits of a city, a county may approve a property line adjustment in which:

26 (a) One or both of the abutting properties are smaller than the minimum lot or parcel size for
 27 the applicable zone before the property line adjustment and, after the adjustment, one is as large
 28 as or larger than the minimum lot or parcel size for the applicable zone; or

29 (b) Both abutting properties are smaller than the minimum lot or parcel size for the applicable
 30 zone before and after the property line adjustment.

31 (3) On land zoned for exclusive farm use, forest use or mixed farm and forest use, a property line
 32 adjustment under subsection (2) of this section may not be used to:

33 (a) Decrease the size of a lot or parcel that, before the relocation or elimination of the common
 34 property line, is smaller than the minimum lot or parcel size for the applicable zone and contains
 35 an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant *[tract]*
 36 **lot or parcel** would be increased to a size as large as or larger than the minimum *[tract]* **lot or**
 37 **parcel** size required to qualify the vacant *[tract]* **lot or parcel** for a dwelling;

38 (b) Decrease the size of a lot or parcel that contains an existing dwelling or is approved for
 39 construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting
 40 vacant *[tract]* **lot or parcel** would be increased to a size as large as or larger than the minimum
 41 *[tract]* **lot or parcel** size required to qualify the vacant *[tract]* **lot or parcel** for a dwelling; or

42 (c) Allow an area of land used to qualify a *[tract]* **lot or parcel** for a dwelling based on an
 43 acreage standard to be used to qualify another *[tract]* **lot or parcel** for a dwelling if the land use
 44 approval would be based on an acreage standard.

45 **SECTION 10.** ORS 223.317 is amended to read:

1 223.317. (1) Notwithstanding any other law, a local government may apportion a final assessment
 2 levied by it against a single [*tract or parcel of real property*] **lot, parcel or other lawfully estab-**
 3 **lished unit of land, as those terms are defined in ORS 92.010**, among all the **lots or** parcels
 4 formed from a subsequent [*partition or other division of that tract or parcel, if the subsequent partition*
 5 *or division is*] **division of the lot, parcel or other lawfully established unit of land made** in ac-
 6 cordance with ORS 92.010 to 92.192 and [*is*] consistent with all applicable comprehensive plans as
 7 acknowledged by the Land Conservation and Development Commission under ORS 197.251. The
 8 proportionate distribution of a final assessment authorized under this subsection may be made
 9 whenever the final assessment remains wholly or partially unpaid, and full payment or an install-
 10 ment payment is not due.

11 (2) A local government shall apportion a final assessment under this section when requested to
 12 do so by any owner, mortgagee or lienholder of a [*parcel of real property*] **lot or parcel** that was
 13 formed from the [*partition or other*] division of the larger [*tract of real property*] **lot, parcel or other**
 14 **lawfully established unit of land** against which the final assessment was originally levied. When
 15 the deed, mortgage or other instrument evidencing the applicant's ownership or other interest in the
 16 **lot or** parcel has not been recorded by the county clerk of the county in which the **lot or** parcel
 17 is situated, the local government shall not apportion the final assessment unless the applicant files
 18 a true copy of that deed, mortgage or instrument with the local government.

19 (3) Apportionment of a final assessment under this section shall be done in accordance with an
 20 order or resolution of the governing body of the local government. The order or resolution shall
 21 describe each [*parcel of real property*] **lot or parcel** affected by the apportionment, the amount of
 22 the final assessment levied against each **lot or** parcel, the owner of each **lot or** parcel and such
 23 additional information as is required to keep a permanent and complete record of the final assess-
 24 ments and the payments thereon. A copy of the order or resolution shall be filed with the recorder
 25 required to maintain the lien docket for the local government, who shall make any necessary
 26 changes or entries in the lien docket for the local government.

27 **SECTION 11.** ORS 545.101 is amended to read:

28 545.101. (1) When a subdivision is platted after September 13, 1975, under ORS 92.010 to 92.192,
 29 if the subdivision has three or more [*tracts*] **lots** on each acre of land within the subdivision, the
 30 subdivision shall be excluded and taken from the district pursuant to ORS 545.097 to 545.126 at the
 31 time that the plat is approved by the appropriate governing body.

32 (2) The exclusion provided in subsection (1) of this section shall not apply to a district which:

33 (a) Also supplies domestic water approved by the Oregon Health Authority to the subdivision;

34 or

35 (b) Agrees to supply water to the subdivision. A district may require as a condition of any
 36 agreement that:

37 (A) The subdivider install underground pipe from the district's designated point of delivery to
 38 each lot [*or parcel*] in the subdivision as shown on the plat approved by the appropriate governing
 39 body;

40 (B) The subdivider install a meter or other adequate measuring device at the delivery point to
 41 the subdivision and for each lot [*or parcel*];

42 (C) The subdivider provide adequate easements for the delivery system and make provision for
 43 the maintenance and repair of the delivery system; and

44 (D) The subdivider provide any other measures that the district considers necessary for the
 45 proper and efficient delivery of water to the subdivision and for the efficient administration of such

1 delivery.

2 (3) Nothing in subsection (2)(b) of this section requires a district to agree to deliver water to a
3 subdivision.

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