

House Bill 2982

Sponsored by Representative HELM, Senator STEINER HAYWARD; Representative LEWIS

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 local officials to determine whether residential properties subject to ongoing foreclosure or forfeiture proceedings are abandoned. Requires interest holders to abate neglect and monitor abandoned property. Allows interest holders to evict occupants of abandoned property without notice.

A BILL FOR AN ACT

1
2 Relating to abandoned residences; creating new provisions; and amending ORS 105.115.

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

4 **SECTION 1. (1) For the purposes of sections 1 to 4 of this 2019 Act:**

5 (a) **"Interest holder" means a person, other than a governmental body, who:**

6 (A) **Holds a lien upon real property that may be foreclosed by a suit brought under ORS**
7 **88.010;**

8 (B) **Is a trustee as defined in ORS 86.705; or**

9 (C) **Is a seller, as defined in ORS 93.905, with the right to pursue a forfeiture remedy**
10 **upon default under ORS 93.905 to 93.945.**

11 (b) **"Local official" includes a police officer as defined in the Oregon Vehicle Code and a**
12 **person authorized by a city or county to perform the actions of a local official under sections**
13 **1 to 4 of this 2019 Act.**

14 (c) **"Neglect" has the meaning given that term in ORS 18.995.**

15 (d) **"Owner" means the owner of a property in default and includes a purchaser as defined**
16 **in ORS 93.905.**

17 (e) **"Property in default" means a single-family dwelling or condominium unit designed**
18 **for residential occupancy where:**

19 (A) **The interest holder has:**

20 (i) **Filed a suit seeking to foreclose the property;**

21 (ii) **Recorded an election to sell the property upon default under ORS 86.752; or**

22 (iii) **Recorded a notice of default and affidavit of service under ORS 93.915;**

23 (B) **The default has not been cured or the foreclosure suit has not been dismissed; and**

24 (C) **The property has not been conveyed by a trustee's deed or sheriff's deed, by a dec-**
25 **laration of forfeiture under ORS 93.930 or by a deed in lieu of foreclosure.**

26 (2) **An interest holder performing actions authorized or required under sections 1 to 4**
27 **of this 2019 Act in good faith:**

28 (a) **Is not liable to the owner or other parties for the negligent performance of those**
29 **actions.**

30 (b) **Does not become a mortgagee in possession by performance of those actions.**

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) Except as required under section 3 (1) of this 2019 Act, assumes no other duties to
2 the owner or other parties.

3 (3) Sections 1 to 4 of this 2019 Act are in addition to, and not in lieu of, any right or
4 remedy available to any party.

5 **SECTION 2.** (1) A local official may make a determination that a property in default is
6 abandoned if the local official finds no fewer than three of the following indications of aban-
7 donment:

8 (a) The absence of furnishings and personal items consistent with residential habitation;

9 (b) The gas, electric or water utility services have been disconnected;

10 (c) Reliable statements made by neighbors, delivery agents or government employees of
11 their belief that the property is vacant;

12 (d) Windows or doors on the property are boarded up, conspicuously open, unhinged,
13 substantially broken or missing;

14 (e) The property is stripped of copper or other materials or interior fixtures;

15 (f) Trespassing, vandalism or a public nuisance by someone other than the owner or a
16 tenant was reported at the property within the previous six months;

17 (g) A government agency attached a written determination to the property that it is
18 unsafe and unlawful to occupy due to the existence of conditions that violate state or local
19 law and materially affect health or safety;

20 (h) Construction was initiated on the property but was not completed, leaving the prop-
21 erty unsuitable for occupancy;

22 (i) Newspapers, circulars, flyers or mail has accumulated on the property or the United
23 States Postal Service has stopped delivery to the property;

24 (j) Rubbish, trash, debris, neglected vegetation or natural overgrowth has accumulated
25 on the property;

26 (k) Hazardous, noxious or unhealthy substances or materials have accumulated on the
27 property; or

28 (L) Other credible evidence exists indicating the owner's intent to vacate and abandon
29 the property.

30 (2) A determination of abandonment under subsection (1) of this section must contain:

31 (a) An affidavit or declaration made under penalty of perjury by a local official that the
32 property in default is abandoned and indicate a factual basis supporting the indicators of
33 abandonment described in subsection (1) of this section;

34 (b) At least one photograph of the property in default; and

35 (c) A copy of the foreclosure complaint, the recorded election to sell or the notice of
36 default.

37 (3) A city or county shall deliver a copy of the determination of abandonment:

38 (a) By first class mail with certificate of service, or by other method where receipt of the
39 determination is confirmed, to:

40 (A) The interest holder or its attorney;

41 (B) The owners of the property at the address on the tax records for the property and
42 any address actually known by the city or county; and

43 (C) The occupants of the property at the property address; and

44 (b) By posting a copy to the property along with a notice that includes a statement in
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WARNING

This property is subject to foreclosure or forfeiture proceedings and was determined to be abandoned. A person trespassing on the property may be removed or arrested. This determination does not prevent the owner or a bona fide tenant from taking possession until foreclosure or forfeiture. Before entering this property, please contact _____ (office address, phone number and electronic mail address).

SECTION 3. (1) Within five business days of receipt of a determination of abandonment under section 2 of this 2019 Act, an interest holder shall take reasonable steps to verify the property's abandonment and shall undertake reasonable efforts to abate any neglect and thereafter monitor and maintain the property free of neglect while the property is abandoned.

(2) After a determination of abandonment under section 2 of this 2019 Act, an interest holder may:

- (a) Use any reasonable force necessary to enter the property;**
- (b) Winterize the property including draining pipes and hoses on the property;**
- (c) After inventorying the items, dispose of any perishable or hazardous items on the property;**
- (d) Replace the locks on the property; or**
- (e) Connect, reasonably use or disconnect any utility or security services.**

(3) A local government may assess a fine against an interest holder for noncompliance with subsection (1) of this section in an amount no greater than \$1,000 per day.

SECTION 4. (1) Notwithstanding any provision of sections 1 to 4 of this 2019 Act, the owner of a property in default is entitled to possession of the property or is entitled to rent the property to a tenant consistent with ORS chapter 90 until the owner's interest is transferred by foreclosure sale or forfeiture.

(2) An interest holder shall, within one business day of actual notice that the owner of a property in default has not abandoned the property, has returned to the property or has authorized a third party to occupy the property as a bona fide tenant under a written rental agreement:

- (a) Take reasonable steps to confirm the identity of the owner or tenant.**
- (b) Return possession of the property to the owner or tenant including delivery of keys to any locks changed by the interest holder.**
- (c) Inform the local official that made the determination of abandonment under section 2 of this 2019 Act that the property is not abandoned.**

(3) After taking the steps required under subsection (2) of this section, an interest holder has no further rights or duties under sections 1 to 4 of this 2019 Act.

(4) A city or county shall notify an interest holder within one business day of a local official's discovery that a property in default that was determined abandoned under section 2 of this 2019 Act is not abandoned or is no longer abandoned by the owner or a bona fide tenant.

SECTION 5. ORS 105.115 is amended to read:

105.115. (1) Except as provided by subsections (2) and (3) of this section, the following are causes of unlawful holding by force within the meaning of ORS 105.110, 105.123 and 105.126:

(a) When the tenant or person in possession of any premises fails or refuses to pay rent within 10 days after the rent is due under the lease or agreement under which the tenant or person in possession holds, or to deliver possession of the premises after being in default on payment of rent for 10 days.

(b) When the lease by its terms has expired and has not been renewed, or when the tenant or person in possession is holding from month to month, or year to year, and remains in possession after notice to quit as provided in ORS 105.120, or is holding contrary to any condition or covenant of the lease or is holding possession without any written lease or agreement.

(c) When the owner or possessor of a recreational vehicle that was placed or driven onto property without the prior consent of the property owner, operator or tenant fails to remove the recreational vehicle. The property owner or operator is not required to serve a notice to quit the property before commencing an action under ORS 105.126 against a recreational vehicle owner or possessor holding property by force as described in this paragraph.

(d) When the person in possession of a premises remains in possession after the time when a purchaser of the premises is entitled to possession in accordance with the provisions of ORS 18.946 or 86.782.

(e) When the person in possession of a premises remains in possession after the time when a deed given in lieu of foreclosure entitles the transferee named in the deed to possession of the premises.

(f) When the person in possession of a premises remains in possession after the time when a seller is entitled to possession in accordance with the provisions of ORS 93.930 (2)(c) or pursuant to a judgment of strict foreclosure of a recorded contract for transfer or conveyance of an interest in real property.

(g) When the person in possession of a premises remains in possession after the expiration of a valid notice terminating the person's right to occupy the premises pursuant to ORS 91.120, 91.122 or 91.130.

(h) When a person remains in possession of a property in default that was posted as abandoned under section 2 of this 2019 Act without a rental agreement with the owner.

(2) In the case of a dwelling unit to which ORS chapter 90 applies:

(a) The following are causes of unlawful holding by force within the meaning of ORS 105.110 and 105.123:

(A) When the tenant or person in possession of any premises fails or refuses to pay rent within 72 hours or 144 hours, as the case may be, of the notice required by ORS 90.394.

(B) When a rental agreement by its terms has expired and has not been renewed, or when the tenant or person in possession remains in possession after a valid notice terminating the tenancy pursuant to ORS chapter 90, or is holding contrary to any valid condition or covenant of the rental agreement or ORS chapter 90.

(b) A landlord may not file an action for the return of possession of a dwelling unit based upon a cause of unlawful holding by force as described in paragraph (a) of this subsection until after the expiration of a rental agreement for a fixed term tenancy or after the expiration of the time period provided in a notice terminating the tenancy.

(3) In an action under subsection (2) of this section, ORS chapter 90 shall be applied to deter-

1 mine the rights of the parties, including:

2 (a) Whether and in what amount rent is due;

3 (b) Whether a tenancy or rental agreement has been validly terminated; and

4 (c) Whether the tenant is entitled to remedies for retaliatory conduct by the landlord as pro-
5 vided by ORS 90.385 and 90.765.

6 **(4) In an action to which subsection (1)(h) of this section applies:**

7 **(a) An interest holder, as defined in section 1 of this 2019 Act, may maintain an action**
8 **in its own name as plaintiff as an agent for the interests of the owner.**

9 **(b) A prevailing defendant is not entitled to any attorney fees under ORS 90.255 except**
10 **for those fees incurred after the defendant has delivered a copy of the rental agreement to**
11 **the plaintiff.**

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