

D R A F T

SUMMARY

Limits terminations and rent increases for three years after tenants' housing is withdrawn from publicly supported housing.

Requires owners or landlords to provide notice to new tenants and applicants during notice period before withdrawal from publicly supported housing.

Allows Housing and Community Services Department to record extension of affordability restrictions for publicly supported housing if property owner misses certain deadlines. Allows department to record right of first refusal if no qualified purchaser makes an offer.

Makes other amendments to publicly supported housing preservation program.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to preservation of publicly supported housing; creating new pro-
3 visions; amending ORS 456.250, 456.258, 456.259, 456.260, 456.262, 456.263
4 and 456.264 and section 10, chapter 56, Oregon Laws 2021; and declaring
5 an emergency.

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

7 **SECTION 1. Sections 2 and 3 of this 2023 Act are added to and made**
8 **a part of ORS 456.255 to 456.265.**

9 **SECTION 2. (1) Beginning on the termination date and lasting for**
10 **a period of three years, the owner or landlord of formerly publicly**
11 **supported housing:**

12 **(a) May not terminate the tenancy under ORS 90.427 (3)(b), (4)(b)**
13 **or (5).**

14 **(b) May not provide a rent increase notice more than once in any**

1 **calendar year.**

2 **(c) Shall comply with ORS 90.323 and with requirements adopted by**
3 **the Housing and Community Services Department and applicable to**
4 **affordable rental housing managed by the department that govern rent**
5 **increases, including requirements related to rent increase limits, re-**
6 **quired notices or approval or review by the department.**

7 **(2) Subsection (1) of this section applies only to residential**
8 **tenancies that:**

9 **(a) Existed on the termination date; and**

10 **(b) Do not include any tenants who receive tenant-based federal**
11 **rent subsidy payments under the Housing Choice Voucher Program**
12 **authorized by 42 U.S.C. 1437f.**

13 **(3)(a) The department may assess a civil penalty against an owner**
14 **that does not comply with this section. The penalty may not exceed**
15 **\$5,000. In assessing a penalty under this section, the department shall**
16 **take into consideration the good faith efforts of an owner or landlord**
17 **to comply with this section.**

18 **(b) The department shall deposit any moneys collected under this**
19 **subsection into the Housing Finance Fund under ORS 456.720.**

20 **(c) If a civil penalty assessed under this subsection is not paid on**
21 **or before 90 days after the order assessing the civil penalty becomes**
22 **final by operation of law, the department may file the order with the**
23 **county clerk of the county where the property is located as a lien**
24 **against the property. In addition to any other available remedy, re-**
25 **coding the order in the County Clerk Lien Record has the effect pro-**
26 **vided for in ORS 205.125 and 205.126 and the order may be enforced as**
27 **provided in ORS 205.125 and 205.126.**

28 **SECTION 3. (1) If a property owner or landlord does not timely**
29 **provide notice required under ORS 456.259 (3) or (4) or 456.260 (1) or (2),**
30 **the Housing and Community Services Department may record in the**
31 **real property records of the county in which the property is located,**

1 **without the consent of the owner, a notice of extension of affordability**
2 **restrictions. All the terms of an expiring affordability restriction re-**
3 **main in effect during the term of the extension of affordability.**

4 **(2) The notice permitted under subsection (1) of this section:**

5 **(a) May only be recorded prior to the termination date and after the**
6 **department has provided the property owner at least 14 days' written**
7 **notice.**

8 **(b) May be recorded without regard to whether the owner gives**
9 **notice to the department under ORS 456.259 (5)(b) or 456.260 (3)(b).**

10 **(3) A notice recorded under subsection (1) of this section must**
11 **specify an ending date for the extension of affordability restrictions**
12 **that is no later than the termination date or, if no termination date**
13 **is ascertainable, no later than 30 months from the date of recording.**

14 **SECTION 4.** ORS 456.259 is amended to read:

15 456.259. (1) In addition to notices given under ORS 456.260 and 456.262,
16 the owner of publicly supported housing as described in ORS 456.250 (6)(a)(B)
17 in which the Housing and Community Services Department is a party to the
18 contract must provide notice to the tenants under this section before the
19 owner withdraws the participating property from publicly supported housing.

20 (2) The notice required under this section must be in plain language and
21 must include:

22 [(a) *The expiration date of the department's affordability restrictions;*]

23 [(b)] (a) That the owner intends to withdraw the property from publicly
24 supported housing upon the [*date indicated under paragraph (a) of this sub-*
25 *section*] **specified termination date;**

26 [(c)] (b) An explanation and any expiration date of any safe harbor pro-
27 visions which may allow the tenant to retain the tenancy after the
28 affordability restriction is terminated, **including the provisions of section**
29 **2 of this 2023 Act;**

30 [(d)] (c) Information about tenant resources, as may be required by the
31 department by rule; and

1 [(e)] **(d)** Other information required by the department by rule.

2 (3) The notice required under this section must be delivered no more than
3 [14 months and no fewer than 12] **36 months and at least 30** months before
4 the [date described in ORS 456.260 (1)(a)] **termination date** by:

5 (a) First class mail to:

6 (A) Any tenant residing at the participating property at the tenant's
7 mailing address; and

8 (B) The Director of the Housing and Community Services Department;
9 and

10 (b) Posting the notice in a common area of the property.

11 **(4) During the period 30 months prior to the termination date, the**
12 **owner must give a copy of the notice required under this section to**
13 **any prospective tenant of the property before the owner or landlord**
14 **may assess a screening charge under ORS 90.295 or enter into a rental**
15 **agreement.**

16 **(5) If an owner fails to give notices required under subsection (3)**
17 **or (4) of this section, the owner shall:**

18 **(a) Extend the termination date until no earlier than 30 months**
19 **after delivery of all notices required under subsection (3) or (4) of this**
20 **section; and**

21 **(b) Provide notice of the extension to the department and to each**
22 **tenant that is entitled to notice under this section.**

23 **SECTION 5.** ORS 456.250 is amended to read:

24 456.250. As used in this section and ORS 456.255 to 456.265:

25 (1)(a) "Affordability restriction" means a limit on rents that a property
26 owner may charge at a participating property or a limitation on the use of
27 a participating property as set forth in a contract.

28 **(b) "Affordability restriction" does not include the requirements**
29 **under section 2 of this 2023 Act.**

30 (2) "Contract" means a written agreement entered into by a property
31 owner under which a participating property becomes publicly supported

1 housing that is subject to an affordability restriction. “Contract” includes,
2 but is not limited to, a deed restriction, loan agreement, operating agreement
3 or any other written agreement that results in an affordability restriction
4 being placed on the property.

5 (3) “Local government” means a city, county, public corporation or met-
6 ropolitan service district.

7 (4) “Participating property” means property that is the subject of a con-
8 tract by which the property becomes publicly supported housing that is sub-
9 ject to an affordability restriction and that is not eligible for withdrawal
10 under ORS 456.262 (4).

11 (5) “Property owner” or “owner” means the owner or long-term lessee of
12 a participating property, including a third-party purchaser of a property not
13 eligible for withdrawal under ORS 456.262 (4).

14 (6)(a) “Publicly supported housing” means a multifamily rental housing
15 development of five or more units that receives or benefits from government
16 assistance under:

17 (A) A contract for rent assistance from the United States Department of
18 Housing and Urban Development, the United States Department of Agricul-
19 ture or the Housing and Community Services Department that contains an
20 affordability restriction; or

21 (B) A contract that is for any other type of government assistance or
22 subsidy that includes an affordability restriction and that is identified in
23 rules adopted by the Housing and Community Services Department.

24 (b) “Publicly supported housing” does not include a multifamily rental
25 housing development:

26 (A) For which the development or developer receives only a construction
27 excise tax waiver, a system development charge waiver, a fee waiver or a
28 property tax abatement;

29 (B) That is part of an inclusionary housing program as defined by local
30 government and authorized under ORS 197.309;

31 (C) That receives tenant-based federal rent subsidy payments under the

1 Housing Choice Voucher Program authorized by 42 U.S.C. 1437f;

2 (D) That receives project-based rental assistance vouchers administered
3 by a housing authority under section 8 of the United States Housing Act of
4 1937 (42 U.S.C. 1437f (o)(13)); or

5 (E) That receives tenant vouchers from the United States Department of
6 Agriculture under section 542 of the Housing Act of 1949 (42 U.S.C. 1471).

7 (7) “Qualified purchaser” means a local government entitled to receive
8 notices under ORS 456.260, the Housing and Community Services Department
9 or a designee appointed by the department under ORS 456.262.

10 **(8) “Termination date” means the date upon which the affordability**
11 **restrictions expire and the property is withdrawn from publicly sup-**
12 **ported housing as allowed under ORS 456.255 to 456.265 and the con-**
13 **tract or expiration of the contract.**

14 [(8)] **(9) “Third party” means a party that is not a qualified purchaser and**
15 **that has made an offer to purchase, or has purchased, a participating prop-**
16 **erty from a property owner.**

17 **SECTION 6.** ORS 456.258 is amended to read:

18 456.258. (1) ORS 456.255 to 456.265 do not apply to or restrict the acqui-
19 sition of property by:

20 (a) A government that acquires the participating property by eminent
21 domain or a negotiated purchase in lieu of eminent domain.

22 (b) A purchaser of the participating property in a foreclosure sale that
23 terminates the affordability restrictions.

24 (c) A purchaser of the participating property by a deed in lieu of fore-
25 closure provided that the contract restrictions are subordinate to the
26 purchaser’s interest eligible for foreclosure and a notice of the deed in lieu
27 is provided to the Housing and Community Services Department by the pur-
28 chaser or property owner at least 30 days prior to the execution of the deed
29 in lieu.

30 (2) ORS 456.255 to 456.265 may not be interpreted to allow a property
31 owner to terminate or breach a contract or to limit the rights of any tenant

1 of a participating property or any other person who may enforce an
2 affordability restriction against the property owner.

3 (3) ORS 456.255 to 456.265 do not require any local government or the
4 department to purchase or condemn any property or to maintain the
5 affordability restrictions of any property.

6 (4) Except as required by contract and ORS 456.255 to 456.265, a property
7 owner may not take any action [*during the contract term*] **before the ter-**
8 **mination date** that would materially interfere with a qualified purchaser's
9 ability to continue maintaining the participating property as publicly sup-
10 ported housing.

11 (5) **The termination date may not occur, and the** publicly supported
12 housing remains subject to affordability restrictions, until the property is
13 eligible for withdrawal from publicly supported housing under ORS 456.262
14 (4) and any contract requirements for the withdrawal of the property.

15 (6) The department shall adopt rules to implement ORS 456.255 to 456.265.

16 **SECTION 7.** ORS 456.260 is amended to read:

17 456.260. (1) The owner of a participating property shall deliver notice in
18 a format prescribed by the Housing and Community Services Department,
19 including by electronic delivery or by registered or certified mail, to each
20 local government within which the participating property is located and to
21 the department no sooner than 36 months prior and at least 30 months prior
22 to the **termination** date when:

23 (a) A contract term will expire, permitting the owner to withdraw the
24 participating property from publicly supported housing or limit affordability
25 restrictions on the property; or

26 (b) The owner intends to withdraw the participating property from pub-
27 licly supported housing.

28 (2) The property owner shall deliver a second notice to each entity enti-
29 tled to notice under subsection (1) of this section, no sooner than 30 months
30 prior and at least 24 months prior to the [*withdrawal of the participating*
31 *property from publicly supported housing, including by an expiration of a*

1 *contract term*] **termination date.**

2 (3) If a notice is not delivered timely, the property owner shall:

3 (a) Extend [*the affordability restriction on the participating property*] **the**
4 **termination date** until no earlier than the latter of the date that is 30
5 months after delivery of the notice under subsection (1) of this section or 24
6 months after delivery of the notice under subsection (2) of this section; and

7 (b) Provide notice of the extension to the [*Housing and Community Ser-*
8 *vices Department and*] **department**, each local government that is entitled
9 to notice under this section **and each tenant that is entitled to notice**
10 **under ORS 456.259 (3) or (4).**

11 (4) A local government may:

12 (a) Establish and impose any fine, penalty, tax, fee, charge or assessment
13 upon the owner of participating property for failure to comply with local
14 regulations adopted to implement the provisions of subsection (1) or (2) of
15 this section.

16 [(b) *Require an owner to refrain from disturbing tenancies, other than for*
17 *cause as defined in the contract, for a period of not more than 180 days after*
18 *expiration of the contract or withdrawal of the participating property from*
19 *publicly supported housing if the local government pays, or arranges for pay-*
20 *ment, to the owner on the first day of each month, the monthly subsidy that*
21 *the owner was receiving under the contract.*]

22 [(c)] (b) Make application to the [*Housing and Community Services*] de-
23 partment requesting that a local subsidy program be included in the defi-
24 nition of publicly supported housing, as long as the program otherwise
25 complies with and is not excluded from the definition of publicly supported
26 housing.

27 (5) Any notices delivered under subsection (1) or (2) of this section must
28 specify whether the owner:

29 (a) Intends to withdraw the participating property from publicly sup-
30 ported housing.

31 (b) Intends to convert the participating property to a nonparticipating

1 use.

2 (c) Is involved in negotiations with the United States Department of
3 Housing and Urban Development, the Housing and Community Services De-
4 partment or any other individual or entity regarding an extension of an ex-
5 piring contract.

6 **(6) The department may, by rule or on an individual basis, waive**
7 **the notice requirements under subsection (1) and (2) of this section for**
8 **property owners that are local governments or housing authorities.**

9 **SECTION 8.** ORS 456.262 is amended to read:

10 456.262. (1) After the owner of a participating property has delivered the
11 notice under ORS 456.260 (1) or 30 months prior to the date when the con-
12 tract term would expire as described in ORS 456.260 (1)(a), whichever is
13 earlier, the Housing and Community Services Department may appoint a
14 designee to act as purchaser of the participating property. The appointment
15 becomes effective upon the department delivering to the property owner no-
16 tice of the appointment of a designee. The department must consult with
17 each local government where the property is located before appointing a
18 designee under this subsection. The department shall enter into a written
19 agreement with the appointed designee requiring that the designee and any
20 of the designee's successors or assigns:

21 (a) Agree to preserve the affordability of the participating property; and

22 (b) Assume all rights and responsibilities attributable to the department
23 as a prospective purchaser of the participating property.

24 (2) [*On or after the date that the department may appoint a designee under*
25 *subsection (1) of this section, a]* **No later than 60 days prior to the termi-**
26 **nation date, a** qualified purchaser may deliver by certified mail, with return
27 receipt requested, an offer to the property owner to purchase the participat-
28 ing property, which includes a notice that the qualified purchaser may[, *after*
29 *30 days,*] record a notice of right of first refusal under subsection (3) of this
30 section. A property owner is under no obligation to accept an offer made
31 under this subsection.

1 (3) *[At any time after a qualified purchaser has made an offer to purchase*
2 *the participating property under subsection (2) of this section and no later than*
3 *two months before the owner may withdraw the property under subsection (4)*
4 *of this section]* **No earlier than 14 days after delivery of the offer under**
5 **subsection (2) of this section and no later than the termination date,**
6 a qualified purchaser may record in the real property records of the
7 county[,] a notice of right of first refusal in a form prepared by the depart-
8 ment that:

9 (a) Includes a legal description of the participating property;

10 (b) Attaches a copy of the notice delivered with the offer and proof of
11 mailing of the notice as required by subsection (2) of this section;

12 (c) Declares that the department or local government party acknowledg-
13 ing the instrument holds the right of first refusal to purchase the property
14 under ORS 456.263 and that the acknowledging party may assign the right
15 of first refusal to a qualified purchaser and that right may be, from time to
16 time, reassigned;

17 (d) Declares that the right of first refusal shall expire *[24 months after the*
18 *date the property may be withdrawn from publicly supported housing under*
19 *subsection (4) of this section]* **36 months after the termination date;**

20 (e) Declares that a copy of the recorded notice of right of first refusal
21 must be promptly delivered to the property owner by the qualified purchaser
22 offering the instrument for recording; and

23 (f) Is executed and acknowledged by **an authorized representative of**
24 the local government or department in the manner provided for the ac-
25 knowledgment of deeds.

26 (4) The property owner may not withdraw the participating property from
27 publicly supported housing and terminate the affordability restrictions until
28 **the termination date, which may not be sooner than** the latest of the
29 date:

30 (a) Twenty-four months following the owner's delivery of all notices re-
31 quired under ORS 456.260 (2);

1 (b) Thirty months following the owner's delivery of all notices required
2 under ORS **456.259 (3) and (4) and** 456.260 (1); or

3 (c) Upon which all affordability restriction periods set forth in any con-
4 tract expire.

5 (5) At any time after the notice described in ORS 456.260 (1) has been
6 delivered, within 30 days of the request from a qualified purchaser, the
7 property owner shall make available documents that are relevant to the
8 participating property at the property owner's principal place of business or
9 at a commercial photocopying facility.

10 (6)(a) Notwithstanding the provisions of ORS 192.311 to 192.478 relating
11 to public records, the documents provided by the property owner to a quali-
12 fied purchaser under subsection (5) of this section are confidential and ex-
13 empt from public inspection except with the written consent of the property
14 owner or as ordered by a court.

15 (b) Notwithstanding paragraph (a) of this subsection, disclosure may be
16 made to potential funding sources, regulatory agencies or agents or consult-
17 ants of a qualified purchaser in connection with a transaction between the
18 property owner and a qualified purchaser under this section, subject to ap-
19 propriate confidentiality agreements.

20 **(7) The department may record a notice of right of first refusal as**
21 **described in subsection (3) of this section without delivering an offer**
22 **if:**

23 **(a) No qualified purchaser has recorded a right of first refusal 60**
24 **days prior to the termination date;**

25 **(b) The department has given written notice to the owner 14 days**
26 **in advance; and**

27 **(c) The notice of right of first refusal is recorded prior to the ter-**
28 **mination date.**

29 **SECTION 9.** ORS 456.263 is amended to read:

30 456.263. (1) Before selling a participating property that is subject to a
31 recorded notice of right of first refusal under ORS 456.262 (3) to a third party

1 other than a qualified purchaser, a property owner shall send notice of the
2 owner's intent to accept a purchase offer by registered or certified mail, with
3 return receipt requested, to each party acknowledging under ORS 456.262
4 (3)(f) a notice of right of first refusal under ORS 456.262. The notice delivered
5 under this subsection must contain a copy of the third-party offer or the
6 terms and conditions of the offer to purchase that the owner intends to ac-
7 cept.

8 (2) A qualified purchaser shall have [~~30~~] **45** days from the date the notice
9 is mailed to exercise a right of first refusal by delivering a matching offer
10 to purchase the property by certified mail. The matching offer must contain
11 a commitment from the qualified purchaser to preserve the property as af-
12 fordable on terms determined by the Housing and Community Services De-
13 partment. The property owner shall accept the first matching offer the
14 property owner receives from a qualified purchaser under this section.

15 (3) A qualified purchaser's offer is a matching offer if it is on the same
16 terms and conditions as the third party's offer to purchase, except that a
17 qualified purchaser's offer is considered a matching offer notwithstanding a
18 conflicting term that includes:

19 (a) An earnest money deposit that is no less than the least of the third-
20 party offer, two percent of the sales price or \$250,000.

21 (b) That the earnest money deposit is refundable until the earlier of 90
22 days or the date of closing.

23 (c) That closing shall be scheduled at least 240 days after execution of the
24 purchase agreement.

25 (d) Any nonmaterial term.

26 (e) Any other term that the property owner has agreed to waive.

27 (f) A commitment to maintain the affordability of the property required
28 under subsection (2) of this section.

29 (4) Subsection (1) of this section does not apply if:

30 (a) More than [~~24~~] **36** months have elapsed since the [*participating prop-*
31 *erty was eligible for withdrawal from publicly supported housing under ORS*

1 456.262 (4)] **termination date;**

2 (b) The property owner accepted a third party's offer to purchase the
3 participating property before January 1, 2020, and has provided documenta-
4 tion of the purchase agreement to the [*Housing and Community Services*]
5 department;

6 (c) The third-party offeror agrees to affordability restrictions on the par-
7 ticipating property, as determined by the department, to ensure that the
8 participating property remains publicly supported housing; or

9 (d) Any additional situations as determined by the department by rule.

10 [(5) *A property owner that sells participating property to a third party shall*
11 *certify that the owner has complied with all provisions of this section and ORS*
12 *456.260 and 456.262. A certification of compliance under this section shall:]*

13 [(a) *Be recorded in the real property records of the county in which the*
14 *property is located;]*

15 [(b) *Contain a legal description of the property;]*

16 [(c) *Identify the property owner as the grantor; and]*

17 [(d) *Be acknowledged by the property owner in the manner required for*
18 *acknowledgment of a deed.]*

19 **SECTION 10.** ORS 456.264 is amended to read:

20 456.264. (1) Any person who suffers any ascertainable loss of money or
21 property, real or personal, as a result of the failure of an owner of a par-
22 ticipating property to provide notices or otherwise comply with the pro-
23 visions of ORS 456.259, 456.260, 456.262 or 456.263 **or section 2 (1) of this**
24 **2023 Act** may bring an individual action in an appropriate court to recover
25 actual damages. The court or the jury may award punitive damages, and the
26 court may provide injunctive relief and any other equitable relief the court
27 considers necessary and proper.

28 (2) The court may award reasonable attorney fees and costs at trial and
29 on appeal to a prevailing plaintiff in an action under this section.

30 **SECTION 11.** Section 10, chapter 56, Oregon Laws 2021, is amended to
31 read:

1 **Sec. 10. (1)** [*Section 7 of this 2021 Act and*] The amendments to ORS
2 456.250, 456.258, 456.260, 456.262, 456.263[, 456.264] and 456.265 by sections 1
3 to 5[, 8] and 9 [*of this 2021 Act apply to participating properties subject to an*
4 *affordability restriction or contract that will, by its terms, terminate on or after*
5 *30 months following the effective date of this 2021 Act.*], **chapter 56, Oregon**
6 **Laws 2021, and sections 5 to 9 of this 2023 Act apply to participating**
7 **properties with a termination date on or after July 1, 2024.**

8 **(2)** ORS 456.259, sections 2 and 3 of this 2023 Act and the amend-
9 ments to ORS 456.264 by section 8, chapter 56, Oregon Laws 2021 and
10 section 10 of this 2023 Act apply to participating properties with a
11 termination date on or after the effective date of this 2023 Act, except
12 that if the termination date is earlier than 30 months after the effec-
13 tive date of this 2023 Act:

14 **(a)** The notices required under ORS 456.259 (3) and (4) must be given
15 no later than 30 days after the effective date of this 2023 Act.

16 **(b)** An owner's failure to comply with ORS 456.259 (3) or (4) by the
17 deadline in paragraph (a) of this section may be remedied only by a
18 tenant's recovery of damages, costs and attorney fees as described in
19 ORS 456.264, but does not require an extension of the termination date
20 under ORS 456.259 (5).

21 **SECTION 12.** This 2023 Act being necessary for the immediate
22 preservation of the public peace, health and safety, an emergency is
23 declared to exist, and this 2023 Act takes effect on its passage.

24