

# Enrolled House Bill 3042

Sponsored by Representative NERON, Senator CAMPOS, Representatives RUIZ, BOWMAN, SMITH G, Senators JAMA, PATTERSON; Representatives ANDERSEN, DEXTER, FAHEY, GAMBA, GRAYBER, HARTMAN, NELSON, PHAM K, Senators MANNING JR, WOODS (Pre-session filed.)

CHAPTER .....

AN ACT

Relating to preservation of publicly supported housing; creating new provisions; amending ORS 456.250, 456.258, 456.259, 456.260, 456.262, 456.263 and 456.264 and section 10, chapter 56, Oregon Laws 2021; and declaring an emergency.

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

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

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

- (a) May not terminate the tenancy under ORS 90.427 (3)(b), (4)(b) or (5).**
- (b) May not provide a rent increase notice more than once in any calendar year.**
- (c) Shall comply with ORS 90.323 and with requirements adopted by the Housing and Community Services Department and applicable to affordable rental housing managed by the department that govern rent increases, including requirements related to rent increase limits, required notices or approval or review by the department.**

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

- (a) Existed on the termination date; and**
- (b) Do not include any tenants who receive tenant-based federal rent subsidy payments under the Housing Choice Voucher Program authorized by 42 U.S.C. 1437f.**

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

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

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

**SECTION 3.** (1) If a property owner or landlord does not timely provide notice required under ORS 456.259 (3) or (4) or 456.260 (1) or (2), the Housing and Community Services Department may record in the real property records of the county in which the property is located, without the consent of the owner, a notice of extension of affordability restrictions. All the terms of an expiring affordability restriction remain in effect during the term of the extension of affordability.

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

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

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

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

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

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

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

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

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

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

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

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

(3) The notice required under this section must be delivered no more than *[14 months and no fewer than 12]* **24 months and at least 20 months** before the *[date described in ORS 456.260 (1)(a)]* **termination date** by:

(a) First class mail to:

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

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

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

(4) **During the period 20 months prior to the termination date, the owner must give a copy of the notice required under this section to any prospective tenant of the property before the owner or landlord may assess a screening charge under ORS 90.295 or enter into a rental agreement.**

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

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

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

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

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

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

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

(2) "Contract" means a written agreement entered into by a property owner under which a participating property becomes publicly supported housing that is subject to an affordability restriction. "Contract" includes, but is not limited to, a deed restriction, loan agreement, operating agreement or any other written agreement that results in an affordability restriction being placed on the property.

(3) "Local government" means a city, county, public corporation or metropolitan service district.

(4) "Participating property" means property that is the subject of a contract by which the property becomes publicly supported housing that is subject to an affordability restriction and that is not eligible for withdrawal under ORS 456.262 (4).

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

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

(A) A contract for rent assistance from the United States Department of Housing and Urban Development, the United States Department of Agriculture or the Housing and Community Services Department that contains an affordability restriction; or

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

(b) "Publicly supported housing" does not include a multifamily rental housing development:

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

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

(C) That receives tenant-based federal rent subsidy payments under the Housing Choice Voucher Program authorized by 42 U.S.C. 1437f;

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

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

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

**(8) "Termination date" means the date upon which the affordability restrictions expire and the property is withdrawn from publicly supported housing as allowed under ORS 456.255 to 456.265 and the contract or expiration of the contract.**

[8] (9) "Third party" means a party that is not a qualified purchaser and that has made an offer to purchase, or has purchased, a participating property from a property owner.

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

456.258. (1) ORS 456.255 to 456.265 do not apply to or restrict the acquisition of property by:

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

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

(c) A purchaser of the participating property by a deed in lieu of foreclosure provided that the contract restrictions are subordinate to the purchaser's interest eligible for foreclosure and a notice of the deed in lieu is provided to the Housing and Community Services Department by the purchaser or property owner at least 30 days prior to the execution of the deed in lieu.

(2) ORS 456.255 to 456.265 may not be interpreted to allow a property owner to terminate or breach a contract or to limit the rights of any tenant of a participating property or any other person who may enforce an affordability restriction against the property owner.

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

(4) Except as required by contract and ORS 456.255 to 456.265, a property owner may not take any action [*during the contract term*] **before the termination date** that would materially interfere with a qualified purchaser's ability to continue maintaining the participating property as publicly supported housing.

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

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

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

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

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

(b) The owner intends to withdraw the participating property from publicly supported housing.

(2) The property owner shall deliver a second notice to each entity entitled to notice under subsection (1) of this section, no sooner than 30 months prior and at least 24 months prior to the [*withdrawal of the participating property from publicly supported housing, including by an expiration of a contract term*] **termination date**.

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

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

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

(4) A local government may:

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

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

[*c*] (b) Make application to the [*Housing and Community Services*] department requesting that a local subsidy program be included in the definition of publicly supported housing, as long as the program otherwise complies with and is not excluded from the definition of publicly supported housing.

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

(a) Intends to withdraw the participating property from publicly supported housing.

(b) Intends to convert the participating property to a nonparticipating use.

(c) Is involved in negotiations with the United States Department of Housing and Urban Development, the Housing and Community Services Department or any other individual or entity regarding an extension of an expiring contract.

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

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

456.262. (1) After the owner of a participating property has delivered the notice under ORS 456.260 (1) or 30 months prior to the date when the contract term would expire as described in ORS 456.260 (1)(a), whichever is earlier, the Housing and Community Services Department may appoint a designee to act as purchaser of the participating property. The appointment becomes effective upon the department delivering to the property owner notice of the appointment of a designee. The department must consult with each local government where the property is located before appointing a designee under this subsection. The department shall enter into a written agreement with the appointed designee requiring that the designee and any of the designee's successors or assigns:

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

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

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

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

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

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

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

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

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

(f) Is executed and acknowledged by **an authorized representative** of the local government or department in the manner provided for the acknowledgment of deeds.

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

(a) **Twenty months following the owner's delivery of all notices required under ORS 456.259 (3) and (4)**;

*[(a)]* (b) Twenty-four months following the owner's delivery of all notices required under ORS 456.260 (2);

*[(b)]* (c) Thirty months following the owner's delivery of all notices required under ORS 456.260 (1); or

*[(c)]* (d) Upon which all affordability restriction periods set forth in any contract expire.

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

(6)(a) Notwithstanding the provisions of ORS 192.311 to 192.478 relating to public records, the documents provided by the property owner to a qualified purchaser under subsection (5) of this section are confidential and exempt from public inspection except with the written consent of the property owner or as ordered by a court.

(b) Notwithstanding paragraph (a) of this subsection, disclosure may be made to potential funding sources, regulatory agencies or agents or consultants of a qualified purchaser in connection with a transaction between the property owner and a qualified purchaser under this section, subject to appropriate confidentiality agreements.

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

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

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

**(c) The notice of right of first refusal is recorded prior to the termination date.**

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

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

(2) A qualified purchaser shall have [30] **45** days from the date the notice is mailed to exercise a right of first refusal by delivering a matching offer to purchase the property by certified mail. The matching offer must contain a commitment from the qualified purchaser to preserve the property as affordable on terms determined by the Housing and Community Services Department. The property owner shall accept the first matching offer the property owner receives from a qualified purchaser under this section.

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

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

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

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

(d) Any nonmaterial term.

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

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

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

(a) More than [24] **36** months have elapsed since the [*participating property was eligible for withdrawal from publicly supported housing under ORS 456.262 (4)*] **termination date**;

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

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

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

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

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

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

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

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

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

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

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

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

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

**(2) ORS 456.259, sections 2 and 3 of this 2023 Act and the amendments to ORS 456.264 by section 8, chapter 56, Oregon Laws 2021, and section 10 of this 2023 Act apply to participating properties with a termination date on or after the effective date of this 2023 Act, except that if the termination date is earlier than 20 months after the effective date of this 2023 Act:**

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

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

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

**Passed by House April 5, 2023**

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

**Passed by Senate June 24, 2023**

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Rob Wagner, President of Senate

**Received by Governor:**

.....M,....., 2023

**Approved:**

.....M,....., 2023

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Tina Kotek, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2023

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Secretary of State