

House Bill 3294

Sponsored by Representative NGUYEN D

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**.

Requires county clerk to replace recorded instrument with court-ordered version that redacts discriminatory language. Makes changes to court process for reviewing language.

Requires Judicial Department to update form of petition, notice and judgment.

A BILL FOR AN ACT

1
2 Relating to removal of discriminatory language from recorded instruments; creating new provisions;
3 and amending ORS 93.274.

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

5 **SECTION 1. (1) A person may present for recording an instrument described in ORS**
6 **93.274 (8)(c) if the instrument is accompanied by a certified copy of the judgment under ORS**
7 **93.274 (8). The person requesting the recording shall affix a certificate to the first page of**
8 **the instrument, or to a cover sheet authorized by ORS 205.234 (2) and added as a new first**
9 **page to the instrument, that includes substantially the following information:**

10 "Recorded pursuant to the judgment of the Circuit Court for the County of
11 _____, case number _____, dated _____, to replace instrument previ-
12 ously recorded in book _____ and page _____ or instrument number
13 _____ pursuant to ORS 93.274."

14 (2) A county clerk who receives a certified copy of a judgment described in ORS 93.274
15 (8) under subsection (1) of this section with the fees required under ORS 205.320 shall:

16 (a) Record the corrected instrument prepared by the court under ORS 93.274 (8)(c)(B)
17 within the deed and mortgage records of the county, but may not record the judgment;

18 (b) Update the index or other database of the county property records to replace each
19 removed original instrument referenced in the judgment with the number of the corrected
20 instrument and to indicate that the replaced original instruments are no longer the primary
21 official public record and are removed from the chain of title pursuant to the judgment of
22 the court; and

23 (c)(A) Remove the replaced original instrument from the official records; and

24 (B)(i) Maintain the instrument separately from the mortgage and deed records; or

25 (ii) At the discretion of the clerk and the State Archivist, transfer the instrument to the
26 State Archivist to be preserved for historical or archival purposes.

27 (3) The State Archivist or the State Chief Information Officer may adopt rules imple-
28 menting this section, including rules establishing procedures for removing the replaced ori-
29 ginal instrument if the official version is stored on microfilm or digital images.

30 **SECTION 2. ORS 93.274 is amended to read:**

31 93.274. [(1)(a)] (1) [*Notwithstanding*] **As an alternative to the process provided in ORS 93.272,**

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 any owner of record of real property that is subject to an instrument conveying or contracting to
 2 convey fee title to the property, or a **recorded** declaration [*recorded under*] **described in** ORS
 3 94.580, that contains [*a provision that is*] **one or more provisions that are** in violation of **only** ORS
 4 93.270 (1)(a) may file a petition under this section to [*remove that provision*] **remove and redact**
 5 **those provisions** from the [*title to the property*] **instrument**. The petition [*shall*] **must** be filed in
 6 the circuit court for the county in which the property is located. For a petition filed under this
 7 section, the court may not charge any filing fees to the petitioner and may not award a prevailing
 8 party fee to any party.

9 [*(b) An owner may not use this section for removal of provisions that are in violation of both ORS*
 10 *93.270 (1)(a) and (b).*]

11 (2) A petition filed under this section must contain:

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

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

14 (c) The legal description of the property subject to the provision in violation of ORS 93.270
 15 (1)(a); and

16 (d) A clear reference to the [*provision claimed to be in violation of*] **provisions violating** ORS
 17 93.270 (1)(a) **and the recording numbers of and pages upon which the provisions appear**.

18 (3)(a) [*Notwithstanding ORCP 7,*] Notice and a copy of the petition [*shall*] **must** be served on
 19 all owners of record of the property. **Notwithstanding ORCP 7, each owner is considered served**
 20 **on the date that the notice and copy of the petition are sent to the owner** via registered or
 21 certified mail.

22 (b) The petitioner shall submit to the court [*a sworn affidavit certifying the petitioner made a*
 23 *good faith effort to notify*] **an affidavit stating that the petitioner served a copy of the petition,**
 24 in the manner required under this subsection, **to** all owners of record [*of petitioner's intent to file the*
 25 *petition*].

26 (4) The notice required under subsection (3) of this section shall inform the owners of record
 27 that:

28 (a) The petition seeks the [*removal of a provision that is in violation of*] **removal and redaction**
 29 **of one or more provisions that violate** ORS 93.270 (1)(a) from the **instrument affecting** title to
 30 the property;

31 (b) The person served may request a hearing within 20 days after service of the petition; and

32 (c) The court is authorized to enter a default judgment [*removing the provision*] **removing and**
 33 **redacting provisions** if no hearing is requested by the owners of record.

34 (5) If no **hearing is requested** [*request for hearing is made*] by any person served under sub-
 35 section (3) of this section within 20 days after service [*on that person*], the court shall enter a
 36 judgment **under subsection (8) of this section** [*removing the provision from the title to the property*
 37 *if the court determines that the provision is in violation of ORS 93.270 (1)(a)*].

38 (6) If a hearing is requested by [*any*] **a** person served under subsection (3) of this section, the
 39 clerk of the court shall schedule a hearing within 20 days after [*the filing of the request for a*
 40 *hearing*] **the request is received**. The clerk of the court shall mail notification of the hearing date
 41 to the petitioner and to all owners of record listed in the petition.

42 (7) At any hearing under the provisions of this section, the sole issue that shall be decided by
 43 the court is whether the [*provision that is*] **provisions that are** the subject of the petition [*is in*
 44 *violation of*] **violate** ORS 93.270 (1)(a). The matter shall be tried to the court sitting without jury.
 45 If the court finds that [*the provision is not in violation of*] **no provisions violate** ORS 93.270 (1)(a),

1 the court shall dismiss the petition.

2 **(8)(a)** If the court finds that *[the provision is in violation of]* **one or more provisions in an**
3 **instrument violate** ORS 93.270 (1)(a), the court shall enter a judgment *[removing the provision from*
4 *the title to the property]* **invalidating those provisions.**

5 *[(8)]* **(b)** If a court finds only part of a provision *[to be in violation of]* **violates** ORS 93.270 (1)(a)
6 *[under this section]*, the court shall enter a judgment *[removing]* **invalidating** only that part of the
7 provision *[that is in violation]*.

8 **(c) A judgment under this section shall identify each instrument by recording number**
9 **and date and shall:**

10 **(A) Set forth the provisions in violation of ORS 93.270 (1)(a) that are to be redacted and**
11 **the pages of the instrument on which they appear; and**

12 **(B) Include a certified copy of each instrument, upon which the court has physically**
13 **redacted the violating provisions.**

14 (9) For the purposes of this section, “owner of record” has the meaning given that term in ORS
15 93.272.

16 **SECTION 3. On or before January 1, 2025, the Judicial Department shall create a model**
17 **template for the petition, notice and judgments described in ORS 93.274 and shall distribute**
18 **copies to each circuit court and post copies to the department website.**

19 **SECTION 4. Section 1 of this 2023 Act applies to certified copies of judgments that were**
20 **entered before, on or after the effective date of this 2023 Act.**

21 **SECTION 5. (1) The amendments to ORS 93.274 by section 2 of this 2023 Act apply to**
22 **petitions filed and to judgments entered on or after the effective date of this 2023 Act.**

23 **(2) Before January 2, 2026, on the motion of a petitioner, a court may enter a supple-**
24 **mental judgment to a judgment entered before the effective date of this 2023 Act, to conform**
25 **the judgment to the form required by the amendments to ORS 93.274 (8)(c) by section 2 of**
26 **this 2023 Act.**

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