

Enrolled House Bill 2002

Sponsored by Representative KOTEK; Representatives KENY-GUYER, MARSH

CHAPTER

AN ACT

Relating to preserving affordable housing; creating new provisions; and amending ORS 456.250, 456.260, 456.262 and 456.263.

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

SECTION 1. ORS 456.250 is amended to read:

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

(1) "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.

(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 [*or other district, political subdivision or any board, commission or agency thereof*].

(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.

(5) "**Property owner**" or "**owner**" means the owner or long-term lessee of a participating property.

[(5)(a)] (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 [chapter 59, Oregon Laws 2016] **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).

[(6)] (7) "Qualified purchaser" means a local government entitled to notice under ORS 456.260 (2), the Housing and Community Services Department or a designee appointed by the department under ORS 456.262.

(8) "Third party offeror" or "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 2. Section 3 of this 2019 Act is added to and made a part of ORS 456.255 to 456.265.

SECTION 3. (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 that would materially interfere with a qualified purchaser's ability to continue maintaining the participating property as publicly supported housing.

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

SECTION 4. ORS 456.260 is amended to read:

456.260. [(1) For the purpose of dealing with expiring and terminating contracts for participating properties, the owner of a participating property shall:]

[(a) Provide notice by registered or certified mail, return receipt requested, to each local government entitled to notice and the Housing and Community Services Department two years prior to the date when:]

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

[(A)] (a) [The contract for the property to participate in publicly supported housing will expire or terminate] 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)] (b) The owner intends to withdraw the participating property [will be withdrawn] from publicly supported housing[, whether by sale, transfer, nonrenewal of the contract or otherwise, such that the property will no longer be a participating property].

[(b) Consent to reasonable inspection of the property and inspection of the owner reports on file with the Housing and Community Services Department or the United States Department of Housing and Urban Development, if applicable.]

[(c) Maintain the contract for property participation in publicly supported housing in good standing during the notice period referred to under this section.]

[(d) Refrain from taking any action, other than notifying the United States Department of Housing and Urban Development or other party to the contract of the owner's intention to not renew the contract or to withdraw the participating property from publicly supported housing, that would preclude a qualified purchaser from succeeding to the contract or negotiating with the owner for the purchase of the property.]

(2) [A] The property owner shall send a copy of the notice in subsection (1) of this section to each local government [is entitled to notice under this section if] within which the participating property is located [within the boundaries of the local government].

(3) [If the property owner does not comply with the notice requirements under subsection (1) of this section,] If the notice is not delivered timely, the property owner shall extend the affordability restriction on the participating property [by the number of months that the property owner is in noncompliance with the notice requirements under] for no less than 24 months after delivering the untimely notice under subsection (1) of this section and [immediately] provide notice of the extension to the Housing and Community Services Department and each local government that is entitled to notice [of the extension of the affordability restriction pursuant to this section together with the notice required] under subsection [(1)] (2) of this section.

[(4) Subsection (1) of this section does not apply when:]

[(a) A local government or the state takes the participating property by eminent domain or a negotiated purchase in lieu of eminent domain;]

[(b) There is a forced sale of the participating property under a foreclosure; or]

[(c) The participating property is subject to a deed in lieu of foreclosure.]

[(5)] (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) 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) 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.

[(6)] (5) Any notices provided under subsection (1)[(a)] of this section shall 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.

[(7) ORS 456.255 to 456.265 do not require the Housing and Community Services Department or a local government to purchase, condemn or otherwise acquire participating property.]

[(8) The Housing and Community Services Department shall adopt rules to implement the provisions of this section with respect to the duties, powers and functions of the department.]

SECTION 5. ORS 456.262 is amended to read:

456.262. (1) A property owner shall provide notice in a format prescribed by the Housing and Community Services Department, including by electronic delivery or registered or cer-

tified mail, to each local government entitled to notice under ORS 456.260 and to the department, no sooner than 30 months prior and at least 24 months prior to any withdrawal of the participating property from publicly supported housing, including by an expiration of a contract. [Except as provided in subsection (2) of this section, a property owner shall provide notice by registered or certified mail, return receipt requested, to the Housing and Community Services Department and each local government entitled to notice under ORS 456.260, of the opportunity to offer to purchase a participating property at least 13 months prior to the occurrence of any of the following actions if the action will result in withdrawal of the participating property from publicly supported housing:]

[(a) Refinancing of the primary mortgage;]

[(b) Recapitalizing for purposes of rehabilitation or repair;]

[(c) Entering into an agreement to sell the property to a new property owner; or]

[(d) Withdrawing the participating property from publicly supported housing.]

[(2) Subsection (1) of this section does not apply when:]

[(a) A local government or the state takes the participating property by eminent domain or a negotiated purchase in lieu of eminent domain;]

[(b) There is a forced sale of the participating property under a foreclosure; or]

[(c) The participating property is subject to a deed in lieu of foreclosure.]

[(3)(a) The property owner shall provide the notice required in subsection (1) of this section to afford the qualified purchasers the opportunity to purchase required by this section within the time frames indicated in subsection (5) of this section.]

[(b) A property owner is under no obligation to accept a qualified purchaser's offer made pursuant to subsection (5) of this section.]

[(4)] (2) The department may appoint a designee to act as purchaser of the participating property. **The appointment becomes effective upon the department delivering to** [and shall give] 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 [must] shall enter into a written agreement with the appointed designee [providing] 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.

[(5) A qualified purchaser may, within 90 days from the date of a property owner's notice under subsection (1) of this section, submit an offer to the property owner to purchase the participating property. Failure by all qualified purchasers to submit a timely offer constitutes an irrevocable waiver of the each qualified purchaser's rights under this section, and, subject to ORS 456.263, the property owner may sell the participating property to a third party or withdraw the participating property from publicly supported housing.]

(3) After the property owner has delivered the notice under subsection (1) of this section, 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 (4) of this section. A property owner is under no obligation to accept an offer made under this subsection.

(4) At any time after a qualified purchaser has made an offer to purchase the participating property under subsection (3) of this section and no later than two months before the owner may withdraw the property under subsection (5) of this section, 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 (3) 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 (5) of this section;

(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 the local government or department in the manner provided for the acknowledgment of deeds.

[(6)] (5) [If, within 210 days from the date of a property owner's notice under subsection (1) of this section or within such other period of time to which the qualified purchasers and the property owner may agree, the property owner has not accepted any qualified purchaser's offer to purchase the participating property, each qualified purchaser's offer shall expire, each qualified purchaser's right to purchase the participating property under this section shall terminate and, subject to ORS 456.263,] The property owner may [sell the participating property to a third party or] withdraw the participating property from publicly supported housing and terminate the affordability restrictions upon the latest of:

(a) 24 months following the owner's delivery of all notices required under subsection (1) of this section;

(b) 30 months following the owner's delivery of all notices required under ORS 456.260 (1); or

(c) Expiration of all affordability restrictions period set forth in any contract.

[(7)] (6) At any time after the notice described in subsection (1) of this section has been provided, [a qualified purchaser may request, in writing, that the property owner make available,] 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.

[(8)(a)] (7)(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 [(7)] (6) 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.

[(9) The department shall adopt rules to implement the provisions of this section.]

SECTION 6. ORS 456.263 is amended to read:

456.263. [(1)(a) Within the first 180 days following the expiration of the offer to purchase period described in ORS 456.262 (6), a property owner may accept a third party's offer to purchase the participating property. This acceptance shall be made subject to the property owner providing each qualified purchaser the right of first refusal to purchase the property on the same terms and conditions as the third party's offer to purchase, subject to subsection (2) of this section, unless those terms and conditions are modified by mutual consent between the qualified purchaser and the property owner.]

[(b) The property owner shall provide notice, by registered or certified mail, return receipt requested, to each qualified purchaser of the terms and conditions of the third party's offer to purchase.]

(1) Before selling a participating property that is subject to a recorded notice of right of first refusal under ORS 456.262 (4) 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 (4)(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 days from the date the notice is mailed to exercise [its] a right of first refusal by [submitting] 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.

[(c)] (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, [but for modifications to ensure compliance with subsection (2) of this section, unless those terms and conditions are modified by mutual consent among the qualified purchaser and the property owner.]

[(2) If a qualified purchaser exercises its right of first refusal, the qualified purchaser and property owner shall execute a purchase agreement on the same terms and conditions as the third party's offer, except that:] except that a qualified purchaser's offer is considered a matching offer notwithstanding a conflicting term that includes:

(a) [The] An earnest money deposit [may not exceed the lesser of] 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 [must be] is refundable [for at least] until the earlier of 90 days[; and] 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.

[(3)] (4) Subsection (1) of this section does not apply [when] if:

[(a) A local government or the state takes the participating property by eminent domain or a negotiated purchase in lieu of eminent domain;]

[(b) There is a forced sale of the participating property under a foreclosure;]

[(c) The participating property is subject to a deed in lieu of foreclosure or a negotiated purchase to avoid foreclosure;]

[(d) There are more than 30 years remaining before the first scheduled termination of an affordability restriction on the property;]

(a) More than 24 months have elapsed since the participating property was eligible for withdrawal from publicly supported housing under ORS 456.262 (5);

[(e)] (b) The property owner accepted a third party's offer to purchase the participating property before [October 6, 2017] the effective date of this 2019 Act, and has provided documentation of the purchase agreement to the Housing and Community Services Department;

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

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

[(4)] (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.

[(5) The department shall adopt rules to implement the provisions of this section.]

SECTION 7. The amendments to ORS 456.260, 456.262 and 456.263 by sections 4 to 6 of this 2019 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 2019 Act.

Passed by House June 20, 2019

Received by Governor:

.....M.,....., 2019

Timothy G. Sekerak, Chief Clerk of House

Approved:

.....M.,....., 2019

Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate June 30, 2019

Filed in Office of Secretary of State:

.....M.,....., 2019

Peter Courtney, President of Senate

Bev Clarno, Secretary of State