

HB 3526 - Testimony in favor

David Antinucci - Realtor®
Principal Broker at Allegiant Realty Group, McMinnville

The proposal to reduce tenant notice time requirements from 90 days to 59 days positively addresses certain objective barriers for Primary Residence Borrower-Buyers to purchase homes that are held as rentals.

BACKGROUND

- The **guidelines** for the issuance of Primary Residence Mortgage Loans of both government backed mortgages (HUD 4155.1 Chapter 4 Section B, comma 2) and of conventional mortgages (Freddie Mac 8405.1) require, among other things, that Borrowers **occupy the Mortgaged Premises within 60 days** of executing a mortgage loan. Borrowers commit to this requirement in writing when obtaining the mortgage loan.
- In the **current legislative picture** (ORS 90.427 4cC and 5d) Landlords who intend to terminate a lease of over 12 months because of the sale of the property, are required to **give tenants 90-days prior notice**.
- In order to be considered served, **legal notices** delivered by mail must be mailed by first class mail and are **considered served 3 days after they are mailed**.
- As of 2022, **over 70% of Borrower-Buyers take advantage of Primary Residence Mortgage Loans**, as these are purposely structured to render primary home ownership more accessible: government backed mortgages (FHA, VA and USDA) allow for low downpayment loans and Conventional Primary Residence mortgages benefit from advantageous rates.
- The **duration of a typical residential real estate purchase**, from acceptance of the offer to closing of the transaction, **is 30-45 days**.
- The commitment to a definitive interest rate for a mortgage loan, referred to as a "**rate lock**", **is typically offered for a period of 60 days**. Renewing a rate lock or obtaining a longer rate lock from the outset comes with increased costs.

The current 90-day notice requirement represents a barrier to home ownership for Primary Residence Borrower-Buyers. The length of this requirement affects them negatively with regards to competitiveness vis a vis investors, cash buyers or second-home buyers, and/or requires them to become *pro-tempore* landlords before occupying their new Primary Residence. Buyers have been known to (very hesitantly) commit to occupying their new Primary Residence within the 60-day maximum required by mortgage guidelines without any certainty that this will be possible.

In the current legislative regime, **assuming that the Investor-Seller agrees to give notice on the very day that a purchase agreement can be produced**, the following are the Borrower-Buyer's options:

- The Borrower-Buyer can offer to purchase 90 days after their offer is accepted, so they can occupy at closing.
 - Their offered closing date will be considerably later than for other types of buyers, and will not be competitive in this respect - Sellers are less likely to consider offers closing so much further into the future than the alternatives.
 - A standard 60-day rate lock will not cover them until closing: they will either
 - need to lock their rate 30 days after having committed to the purchase, or
 - need to pay extra for a rate lock extension, or
 - need to apply for a more costly 90-day rate lock.
- The Borrower-Buyer can offer to purchase closer to 40 days after their offer is accepted.
 - Their offer will be competitive in terms of closing date, but they will have to improvise as *pro-tempore* landlords for up to 50 days after closing. This is not something that Primary Residence Buyers should be forced to do, as being a landlord requires a certain level of knowledge, preparedness and entails risks beyond the purchase of a home.

The problems described above are exacerbated when, as is common in real-world scenarios, Sellers are not willing to commit to giving notices to tenants on the very day that they accept an offer, but will instead generally accept to do so after the Buyers' contingencies are, at least in part, removed. Buyers have a statutory 3 day period to review Seller's Property Disclosure Statements, typically 15 days for professional inspections and can terminate a purchase due to other facts, such as title issues or failure of the property to appraise. Since it is not uncommon for the Professional Inspection contingency to result in the early termination of a sale, it does not seem unreasonable for Investor-Seller to want to limit the risk of vacating a property prematurely, and consequently to opt for waiting that the 15-day inspection contingency period pass, before issuing any notice. As a result, Buyers have been known to hesitantly commit to the 60-day occupancy required by their mortgage loan, out of necessity, without being at all certain that they will have a vacated property to occupy by then.

A 59-day notice requirement will alleviate the situation described above, by allowing Borrower-Buyers to make reasonably competitive offers while complying with mortgage guidelines. In fact, it should be noted that, since in most cases notices are delivered by mail, and thus an additional 3 days must pass before they are considered served, a 56-day notice requirement would be more reasonable.