

A-Engrossed
House Bill 4134

Ordered by the House February 12
Including House Amendments dated February 12

Sponsored by Representatives KENY-GUYER, FAHEY, VIAL, MEEK, Senator FREDERICK; Representatives ALONSO LEON, BYNUM, GREENLICK, HERNANDEZ, NOBLE, PILUSO, POWER, REARDON, SALINAS, SANCHEZ, SMITH DB, STARK, WITT, Senators GELSER, MANNING JR, WINTERS (Presession filed.)

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.

Provides specific procedure for petitioning for removal of personally discriminatory restrictions from title of real property.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to real property; creating new provisions; amending ORS 93.270 and 93.272; and declaring
3 an emergency.

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

5 **SECTION 1. (1)(a) Notwithstanding ORS 93.272, any owner of record of real property that**
6 **is subject to an instrument conveying or contracting to convey fee title to the property, or**
7 **a declaration recorded under ORS 94.580, that contains a provision that is in violation of ORS**
8 **93.270 (1)(a) may file a petition under this section to remove that provision from the title to**
9 **the property. The petition shall be filed in the circuit court for the county in which the**
10 **property is located. For a petition filed under this section, the court may not charge any**
11 **filing fees to the petitioner and may not award a prevailing party fee to any party.**

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

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

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

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

17 **(c) The legal description of the property subject to the provision in violation of ORS**
18 **93.270 (1)(a); and**

19 **(d) A clear reference to the provision claimed to be in violation of ORS 93.270 (1)(a).**

20 **(3)(a) Notwithstanding ORCP 7, notice and a copy of the petition shall be served on all**
21 **owners of record of the property via registered or certified mail.**

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

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

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 (a) The petition seeks the removal of a provision that is in violation of ORS 93.270 (1)(a)
2 from the title to the property;

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

5 (c) The court is authorized to enter a default judgment removing the provision if no
6 hearing is requested by the owners of record.

7 (5) If no request for hearing is made by any person served under subsection (3) of this
8 section within 20 days after service on that person, the court shall enter a judgment re-
9 moving the provision from the title to the property if the court determines that the provision
10 is in violation of ORS 93.270 (1)(a).

11 (6) If a hearing is requested by any person served under subsection (3) of this section,
12 the clerk of the court shall schedule a hearing within 20 days after the filing of the request
13 for a hearing. The clerk of the court shall mail notification of the hearing date to the
14 petitioner and to all owners of record listed in the petition.

15 (7) At any hearing under the provisions of this section, the sole issue that shall be de-
16 cided by the court is whether the provision that is the subject of the petition is in violation
17 of ORS 93.270 (1)(a). The matter shall be tried to the court sitting without jury. If the court
18 finds that the provision is not in violation of ORS 93.270 (1)(a), the court shall dismiss the
19 petition. If the court finds that the provision is in violation of ORS 93.270 (1)(a), the court
20 shall enter a judgment removing the provision from the title to the property.

21 (8) If a court finds only part of a provision to be in violation of ORS 93.270 (1)(a) under
22 this section, the court shall enter a judgment removing only that part of the provision that
23 is in violation.

24 (9) For the purposes of this section, "owner of record" has the meaning given that term
25 in ORS 93.272.

26 **SECTION 2.** ORS 93.270 is amended to read:

27 93.270. (1) A person conveying or contracting to convey fee title to real property, **or recording**
28 **a declaration under ORS 94.580**, may not include in an instrument for that purpose a provision:

29 (a) Restricting the use of the real property by any person or group of persons by reason of race,
30 color, religion, sex, sexual orientation, national origin or disability.

31 (b) Restricting the use of the real property:

32 (A) As a certified or registered family child care home pursuant to ORS 329A.250 to 329A.450
33 or as the premises of an exempt family child care provider participating in the subsidy program
34 under ORS 329A.500; or

35 (B) By any home or facility that is licensed under ORS 443.400 to 443.455 or 443.705 to 443.825
36 to provide residential care alone or in conjunction with treatment or training or a combination
37 thereof.

38 (2) Any provision in an instrument executed in violation of subsection (1) of this section is void
39 and unenforceable.

40 (3) An instrument that contains a provision restricting the use of real property in a manner
41 listed in subsection (1)(b) of this section does not give rise to any public or private right of action
42 to enforce the restriction.

43 (4)(a) An instrument that contains a provision restricting the use of real property by requiring
44 roofing materials with a lower fire rating than that required in the state building code established
45 under ORS chapter 455 does not give rise to any public or private right of action to enforce the

1 restriction in an area determined by a local jurisdiction as a wildfire hazard zone. Prohibitions on
2 public or private right of action under this paragraph are limited solely to considerations of fire
3 rating.

4 (b) As used in this subsection, “wildfire hazard zones” are areas that are legally declared by a
5 governmental agency having jurisdiction over the area to have special hazards caused by a combi-
6 nation of combustible natural fuels, topography and climatic conditions that result in a significant
7 hazard of catastrophic fire over relatively long periods each year. Wildfire hazard zones shall be
8 determined using criteria established by the State Forestry Department.

9 **SECTION 3.** ORS 93.272 is amended to read:

10 93.272. (1) **Except as otherwise provided in section 1 of this 2018 Act**, any owner of record
11 of real property that is subject to an instrument conveying or contracting to convey fee title to the
12 property, **or a declaration recorded under ORS 94.580**, that contains a provision that is in vio-
13 lation of ORS 93.270 may file a petition to remove that provision from the title to the property. The
14 petition shall be filed in the circuit court for the county in which the property is located. [*No fee*
15 *shall be charged for the filing of the petition.*] **For a petition filed under this section, the court**
16 **may not charge any filing fees to the petitioner and may not award a prevailing party fee to**
17 **any party.** The petition shall contain:

- 18 (a) The name and mailing address of the person filing the petition;
19 (b) The name and mailing address of all owners of record of the property;
20 (c) The legal description of the property subject to the provision in violation of ORS 93.270; and
21 (d) A clear reference to the provision claimed to be in violation of ORS 93.270.

22 (2) Notice and a copy of the petition shall be served on all owners of record in any manner
23 provided for in ORCP 7. The notice shall inform the owners of record that:

- 24 (a) The petition seeks the removal of a provision that is in violation of ORS 93.270 from the title
25 to the property;
26 (b) The person served may request a hearing within 10 days after service of the petition; and
27 (c) The court is authorized to enter a default judgment removing the provision if no hearing is
28 requested by the owners of record.

29 (3) The petitioner shall file with the court proof of service in the manner provided in ORCP 7
30 F. If no request for hearing is made by any person served within 10 days after service on that per-
31 son, the court shall enter a judgment removing the provision from the title to the property if the
32 court determines that the provision is in violation of ORS 93.270.

33 (4) If a hearing is requested by any person served under subsection (2) of this section, the clerk
34 of the court shall schedule a hearing within 20 days after the filing of the request for a hearing.
35 The clerk of the court shall mail notification of the hearing date to the petitioner and to all owners
36 of record listed in the petition.

37 (5) At any hearing under the provisions of this section, the sole issue that shall be decided by
38 the court is whether the provision that is the subject of the petition is in violation of ORS 93.270.
39 The matter shall be tried to the court sitting without jury. If the court finds that the provision is
40 not in violation of ORS 93.270, the court shall dismiss the petition. If the court finds that the pro-
41 vision is in violation of ORS 93.270, the court shall enter a judgment removing the provision from
42 the title to the property.

43 (6) If a court finds only part of a provision to be in violation of ORS 93.270 under this section,
44 the court shall enter a judgment removing only that part of the provision that is in violation.

45 (7) For the purposes of this section, “owner of record” means a person having any legal or eq-

1 uitable interest in property, including, but not limited to, a purchaser, lienholder or holder of any
2 security interest in such property whose interest is recorded in the public records provided for by
3 Oregon statutes where the owner's interest must be recorded to perfect a lien or security interest
4 or provide constructive notice of the owner's interest.

5 **SECTION 4. Section 1 of this 2018 Act and the amendments to ORS 93.272 by section 3**
6 **of this 2018 Act apply to petitions for removal of provisions in violation of ORS 93.270 (1)(a)**
7 **filed on or after the effective date of this 2018 Act.**

8 **SECTION 5. This 2018 Act being necessary for the immediate preservation of the public**
9 **peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect**
10 **on its passage.**

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