

House Bill 4134

Sponsored by Representatives KENY-GUYER, FAHEY, VIAL, MEEK, Senator FREDERICK; Representatives ALONSO LEON, BYNUM, GREENLICK, HERNANDEZ, NOBLE, PILUSO, POWER, REARDON, SALINAS, SANCHEZ, SMITH DB, 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 **as introduced**.

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 93.272; and declaring an emer-
3 gency.

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 that**
7 **contains a provision that is in violation of ORS 93.270 (1)(a) may file a petition under this**
8 **section to remove that provision from the title to the property. The petition shall be filed in**
9 **the circuit court for the county in which the property is located. A fee may not be charged**
10 **for the filing of the petition.**

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

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

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

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

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

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

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

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

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

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

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

30 **(c) The court is authorized to enter a default judgment removing the provision if no**

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 hearing is requested by the owners of record.

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

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

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

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

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

21 **SECTION 2.** ORS 93.272 is amended to read:

22 93.272. (1) **Except as otherwise provided in section 1 of this 2018 Act**, any owner of record
 23 of real property that is subject to an instrument conveying or contracting to convey fee title to the
 24 property that contains a provision that is in violation of ORS 93.270 may file a petition to remove
 25 that provision from the title to the property. The petition shall be filed in the circuit court for the
 26 county in which the property is located. No fee shall be charged for the filing of the petition. The
 27 petition shall contain:

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

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

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

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

43 (4) If a hearing is requested by any person served under subsection (2) of this section, the clerk
 44 of the court shall schedule a hearing within 20 days after the filing of the request for a hearing.
 45 The clerk of the court shall mail notification of the hearing date to the petitioner and to all owners

1 of record listed in the petition.

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

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

10 (7) For the purposes of this section, "owner of record" means a person having any legal or eq-
11 uitable interest in property, including, but not limited to, a purchaser, lienholder or holder of any
12 security interest in such property whose interest is recorded in the public records provided for by
13 Oregon statutes where the owner's interest must be recorded to perfect a lien or security interest
14 or provide constructive notice of the owner's interest.

15 **SECTION 3. Section 1 of this 2018 Act and the amendments to ORS 93.272 by section 2**
16 **of this 2018 Act apply to petitions for removal of provisions in violation of ORS 93.270 (1)(a)**
17 **filed on or after the effective date of this 2018 Act.**

18 **SECTION 4. This 2018 Act being necessary for the immediate preservation of the public**
19 **peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect**
20 **on its passage.**

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