

(iii) Any alternative procedure agreed to under paragraph (c) of this subsection.

(E) Refrain from taking any action, other than notifying the United States Department of Housing and Urban Development of the owner's intention to not renew the contract, that would preclude the affected local government or its designee from succeeding to the contract or negotiating with the owner for the purchase of the property.

(b) 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 pursuant to paragraph (a) of this subsection.

(c) Establish an alternative procedure to condemnation, including but not limited to arbitration, mediation or facilitated negotiation. However, an alternative procedure may not be used unless mutually agreed to by the property owner and the local government.

(d) 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 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.

(2) Any notices provided under subsection (1)(a) of this section shall specify whether the owner:

(a) Intends to withdraw the property from a federal housing program.

(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 or the Housing and Community Services Department regarding an extension of an expiring participation contract.

(3) ORS 456.255 to 456.265 do not require a local government to purchase, condemn or otherwise acquire participating property. [1999 c.275 §3]

**Note:** See note under 456.250.

**456.265 Sanctions against withdrawing property owner prohibited.** (1) Except as expressly authorized in ORS 456.260 (1) or as may be provided by contract with the property owner, a local government may not:

(a) Impose any fine, penalty, tax, fee, charge, assessment or other restriction or sanction against a property owner for withdrawing the participating property from a federal housing program.

(b) Except as an exercise of constitutional or statutory powers of condemnation:

(A) Prevent or restrict a property owner from selling or otherwise disposing of participating property.

(B) Require conveyance of participating property to the local government or to another party.

(C) Impose any fine, penalty, tax, fee, charge, assessment or other restriction or sanction against a property owner for refusing an offer by the local government or another party to purchase participating property.

(c) Require a property owner to pay any replacement fee or other fee for tenant relocation from participating property, except as specified in an alternative procedure being used pursuant to ORS 456.260 (1)(c).

(2) Subsection (1) of this section does not prohibit a local government that is certified by a federal agency to carry out an agency responsibility or to exercise agency authority from taking any action within the scope of that responsibility or authority. [1999 c.275 §4]

**Note:** See note under 456.250.

#### AFFORDABLE HOUSING COVENANTS

**456.270 Definitions for ORS 456.270 to 456.295.** As used in ORS 456.270 to 456.295:

(1) "Affordable housing covenant" means a nonpossessory interest in real property imposing

limitations, restrictions or affirmative obligations that encourage development or that ensure continued availability of affordable rental and owner-occupied housing for low or moderate income individuals.

(2) “Area median income” means the median income for the standard metropolitan statistical area in which the affordable housing is located, as determined by the Housing and Community Services Department, adjusted for household size.

(3) “Eligible covenant holder” means:

- (a) A public body, as defined in ORS 174.109;
- (b) An agency of the United States government;
- (c) A public benefit corporation or religious corporation, as those terms are defined in ORS 65.001, one purpose of which is to provide affordable housing for low or moderate income households;
- (d) A consumer housing cooperative, as defined in ORS 456.548;
- (e) A manufactured dwelling park nonprofit cooperative corporation; or
- (f) A federally recognized Indian tribe.

(4) “Low income household” means a household with income less than or equal to 80 percent of the area median income.

(5) “Moderate income household” means a household with income less than or equal to 120 percent and greater than 80 percent of the area median income.

(6) “Subsidy” includes, but is not limited to:

- (a) A grant, loan or contract made by a federal agency, a federally recognized Indian tribe or a public body, as defined in ORS 174.109;
- (b) A grant, loan or contract made by a nonprofit corporation or a limited liability company the sole member of which is a nonprofit corporation;
- (c) A subsidized loan from a lending institution that makes loans for residential housing; or
- (d) A subsidized private transaction.

(7) “Third-party right of enforcement” means a right provided in an affordable housing covenant to a third party to enforce the terms of the covenant. [2007 c.691 §2]

**Note:** 456.270 to 456.295 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 456 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**456.275 Legislative findings.** The Legislative Assembly finds and declares that:

(1) There is a serious shortage of decent, safe and sanitary housing available and affordable to low and moderate income households in the State of Oregon.

(2) The inadequacy in the supply of decent, safe and sanitary affordable housing endangers the public health and jeopardizes the public safety and general welfare of the state.

(3) To obtain the benefits of covenants and restrictions that seek to preserve and maintain affordable housing, the Legislative Assembly authorizes the creation and enforcement of affordable housing covenants. [2007 c.691 §1]

**Note:** See note under 456.270.

**456.280 Covenant creation, effect, conveyance, duration and termination.** (1) A person may create an affordable housing covenant as a condition of giving or receiving a subsidy during ownership or upon conveyance of real property, in the form of a covenant, servitude, easement, condition or restriction in a deed, declaration, land sale contract, trust deed, mortgage, security agreement, assignment, will, trust, rental agreement, lease or other written instrument that is:

- (a) Executed by the owner of the real property and the covenant holder, and
  - (b) Recorded in the deed and mortgage records of the county in which the real property is located.
- (2) The affordable housing covenant creates a real property right in an eligible covenant holder to:
- (a) Limit the use of real property to occupancy by low or moderate income households in rental or

**owner-occupied housing:**

(b) Restrict the rental rate or sale price of real property to ensure affordability by future low and moderate income households; or

(c) Limit, restrict or condition the use and enjoyment of real property to create or retain rental or owner-occupied affordable housing for occupancy by low or moderate income households.

(3) The affordable housing covenant may be conveyed, assigned, modified or terminated by a written instrument recorded in the deed and mortgage records of the county in which the real property is located. The affordable housing covenant may be:

(a) Conveyed or assigned by a written instrument executed by the conveying or assigning covenant holder and the accepting covenant holder;

(b) Modified by a written instrument executed by the covenant holder and the owner of the real property; or

(c) Terminated by a written instrument executed by the covenant holder and a third party with the right to enforce the covenant.

(4) An affordable housing covenant is not invalid because a holder of the covenant is not an eligible covenant holder. A covenant holder who is not an eligible covenant holder may not modify, terminate or commence an action to enforce the covenant. However, the covenant holder may convey or assign the covenant to an eligible covenant holder who may modify or terminate the covenant or commence an action to enforce the covenant.

(5) An affordable housing covenant is unlimited in duration unless:

(a) The instrument creating the covenant provides otherwise;

(b) The duration of the covenant is modified prior to the expiration of its stated term; or

(c) The covenant is terminated.

(6) Upon termination of an affordable housing covenant for any reason prior to the expiration of its stated term, the covenant holder is entitled to receive the difference between the fair market value of the real property immediately before termination and the fair market value of the real property immediately after termination.

(7) An interest in real property in existence when an affordable housing covenant is created is not impaired by the affordable housing covenant unless the owner of the interest is a party to the affordable housing covenant, subordinates the interest to the affordable housing covenant or otherwise agrees to be bound by the affordable housing covenant.

(8) The instrument creating an affordable housing covenant may grant the eligible covenant holder, or a designee of the eligible covenant holder, a right to enter the real property to ensure compliance with the covenant and, if the right is granted, the instrument shall designate the time and manner in which the eligible covenant holder or designee may enter the real property.

(9) An affordable housing covenant holder may assign a third-party right of enforcement, by a written instrument executed by the covenant holder and recorded in the deed and mortgage records of the county in which the real property is located, to a person that qualifies to be an eligible covenant holder but that is not the holder of that covenant.

(10) An affordable housing covenant is automatically terminated if:

(a) The only holder of the covenant is a corporation, as defined in ORS 65.001, that is dissolved without conveying or assigning the covenant; and

(b) No person is entitled to exercise a third-party right of enforcement pursuant to subsection (9) of this section. [2007 c. 691 §3]

**Note:** See note under 456.270.

**456.285 Permissible provisions.** An affordable housing covenant may:

(1) Include limitations, restrictions and affirmative obligations on the sale price or rental rate of real property or the use of real property or the income or assets of purchasers or tenants;

(2) Limit the amount of equity appreciation that a property owner may derive from ownership of the

real property;

- (3) Grant a right of first refusal or an option to purchase to the eligible covenant holder;
- (4) Restrict the class of persons to whom real property may be sold, leased or rented according to, but not limited to, household income, assets, residency and prior homeownership;
- (5) Limit the use of the real property to residential use as the primary residence of a low or moderate income household;
- (6) Limit, condition or prohibit leasing or subletting;
- (7) Impose obligations for maintenance and insurance of the real property;
- (8) Limit, condition or prohibit the owner from allowing liens on the real property; and
- (9) Make other limitations, conditions or prohibitions that affect the affordability of real property for low or moderate income households. [2007 c.691 §4]

**Note:** See note under 456.270.

**456.290 Validity of covenant.** (1) An affordable housing covenant is valid and enforceable even though the covenant is not of a character traditionally recognized at common law or is inconsistent with a common law doctrine of real property law that might invalidate, impair enforcement of or cause the termination of the covenant, including but not limited to common law doctrine that holds that:

- (a) The covenant is not appurtenant to an interest in the real property.
  - (b) The covenant imposes a negative burden.
  - (c) The covenant imposes affirmative obligations upon the owner of an interest in the burdened real property or the eligible covenant holder.
  - (d) The covenant is held by an eligible covenant holder that does not have an interest in the real property that is benefited by enforcement of the covenant against the burdened property.
  - (e) The benefit of the covenant does not touch or concern real property in any other way.
  - (f) There is no privity of estate or privity of contract.
  - (g) The covenant can be or has been conveyed or assigned to a covenant holder.
  - (h) The covenant is an unreasonable restraint on alienability.
  - (i) The covenant is a clog on the equity of redemption.
  - (j) The covenant lacks adequate consideration.
- (2) An affordable housing covenant is valid and enforceable even if the covenant violates the rule against perpetuities set forth in ORS 105.950 to 105.975.
- (3) If a court denies equitable enforcement of an affordable housing covenant because of a change of circumstances that renders the covenant not in the public interest, the court may award damages as the only remedy in an action to enforce the affordable housing covenant.
- (4) The court may not use a comparative economic test as a basis for a determination that an affordable housing covenant is not in the public interest. [2007 c.691 §6]

**Note:** See note under 456.270.

**456.295 Action affecting covenant.** An action affecting an affordable housing covenant may be commenced or intervened in by:

- (1) The owner of an interest in the real property burdened by the covenant;
- (2) An eligible covenant holder of the benefit of the covenant;
- (3) A person that has a third-party right of enforcement; or
- (4) A public body, as defined in ORS 174.109, in the jurisdiction of which the real property burdened by the covenant is located. [2007 c.691 §5]

**Note:** Section 9, chapter 691, Oregon Laws 2007, provides:

**Sec. 9.** (1) Sections 1 to 6 of this 2007 Act [456.270 to 456.295] apply to a covenant:

- (a) Created under sections 1 to 6 of this 2007 Act on or after the effective date of this 2007 Act

[January 1, 2008].

(b) Created before the effective date of this 2007 Act if the covenant would have been enforceable under sections 1 to 6 of this 2007 Act had it been created on or after the effective date of this 2007 Act.

(2) Sections 1 to 6 of this 2007 Act do not invalidate an otherwise enforceable affordable housing covenant, as defined in section 2 of this 2007 Act [456.270], created before, on or after the effective date of this 2007 Act. [2007 c.691 §9]

**Note:** See note under 456.270.

## STATE AND LOCAL COOPERATION WITH HOUSING PROJECTS

**456.305 Definitions for ORS 456.305 to 456.325.** As used in ORS 456.305 to 456.325, unless the context requires otherwise:

(1) "Governing body" means the common council, county court, board of county commissioners, board or other body having charge of the fiscal affairs of the state public body.

(2) "Housing project" means any work or undertaking of a housing authority pursuant to the Housing Authorities Law or any similar work or undertaking of the federal government.

(3) "State public body" means any city, town, county, municipality, commission, district, authority, other subdivision or public body of the state.

**456.310 Purpose; additional powers.** (1) It hereby is found and declared:

(a) That the assistance provided in ORS 456.315 and 456.320 for the remedying of the conditions set forth in the Housing Authorities Law is a matter of state concern and constitutes a public use and purpose and an essential governmental function for which public moneys may be spent and other aid given.

(b) That it is a proper public purpose for any state public body to aid any housing authority operating within its boundaries or jurisdiction or any housing project located therein, as the state public body derives immediate benefits and advantages from such an authority or project.

(c) That ORS 456.305 to 456.325 are necessary in the public interest.

(2) The powers conferred by ORS 456.305 to 456.325 are in addition and supplemental to the powers conferred by any other law.

**456.315 Powers of state public bodies in aiding or cooperating on housing projects.** (1) For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any state public body may upon such terms, with or without consideration, as it may determine:

(a) Dedicate, sell, convey or lease any of its property to a housing authority or the federal government.

(b) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it may otherwise undertake, to be furnished adjacent to or in connection with housing projects.

(c) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places which it may otherwise undertake.

(d) Plan or replan, zone or rezone any part of such state public body and make exceptions from building regulations and ordinances. Any city or town also may change its map.

(e) Enter into agreements with a housing authority or the federal government respecting action to be taken by such state public body pursuant to any of the powers granted by ORS 456.305 to 456.325.

(f) Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of such housing projects.

(g) Purchase or legally invest in any of the bonds of a housing authority and exercise all the rights of any holder of such bonds.

