

OSB Professional Liability Fund presents

Malpractice Risks in Residential Landlord-Tenant Law

Wednesday, August 11, 2021
10:00 am – 11:30 am

MCLE ID 81180
1.5 Practical Skills Credit

Speakers: **Vivien Lyon**
Lyon Legal Services

J. Michael Harris
Reeves Kahn Hennessy & Elkins

CLE Materials

- Speaker bios
- PowerPoint slides
- Speakers' outlines
- Senate Bill 278
- Senate Bill 282
- Portland City Code 30.01.085 Relocation Assistance
- Multnomah County Ordinance 1296
- Oregon State Bar Landlord Tenant Resources, including recorded presentation, "Housing Law and COVID-19 in Oregon: An Update on Eviction Moratoriums, Financial Assistance and Legal Services,"
<https://www.osbar.org/public/legalinfo/landlordtenant.html>

Speaker Bios

Vivien Lyon

Vivien Lyon graduated Lewis and Clark Law School and became a member of the Oregon Bar in 2004. She was a staff attorney at Legislative Counsel, drafting criminal law and environmental legislation for the 2005 session. She has worked with unions and nonprofits as well as having owned and/or managed several local businesses. In 2015, she launched Lyon Legal Services with the goal of increasing access to justice, and since then has been representing tenants, nonprofits and small businesses in the Portland and metro area. She also practices administrative law, representing professionals and other licensed entities before state boards and agencies. In her “free” time, she is the legal advisor to a nonprofit that funds acts of kindness internationally. City Council appointed her to the Rental Services Commission in 2020 and is dedicated to protecting and advancing the interests of tenants in this state and nationwide.

J. Michael Harris

An Oregon native, Michael graduated from Lake Oswego High School in 1995, left for California to attend college at the University of California at Santa Cruz, and subsequently returned to Oregon to work for AmeriCorps as a teaching assistant in the Portland Public Schools. Thereafter he attended the University of Oregon School of Law, graduating in 2004. Michael began his legal career working as a court appointed attorney in Hillsboro where he represented defendants in criminal cases, juveniles charged in delinquency cases, and children in dependency cases.

After many years of court appointed work, Michael chose to transition to the civil bar, and began representing landlords in eviction cases in 2011 at the firm of Reeves, Kahn, Hennessy, and Elkins where he is a partner.

Over the past ten years Michael has refined his landlord/tenant practice learning -through trial, error, and settlement- how to navigate the picayune arena of landlord-tenant law. Michael is a seasoned litigator with a robust practice that extends beyond landlord tenant cases, and he even still takes on criminal cases when the opportunity arises.



Malpractice Risks in Residential Landlord-Tenant Law

FOR RENT
858-9805

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Speakers:
Vivien Lyon & J. Michael Harris



Preparation

Landlord

- Develop a factual record
- Closely examine the lease
- Learn about your landlord and tenant

Tenant

- Identify stage of proceedings
- Confirm tenant received a notice
 - If FED filed, notice will usually be on OECL



Contents and Service of a Termination Notice

Landlord

- Calculate the relevant notice period(s). Add more time than required by statute
- Double check dates/address
- Include “all occupants”
- Articulate and document the method of service utilized
- Verify information in for-cause and no-cause notices

Tenant

- Verify notice period
- Check party in interest
- Check validity of service
- Look for issues in different types of notice (for cause, no cause, nonpayment, outrageous conduct)



Other Potential Issues

- Veteran’s services and other statutory notices
- PHB exemption, notice of rights
- Is relocation assistance required?



Filing, First Appearance, and Settlement

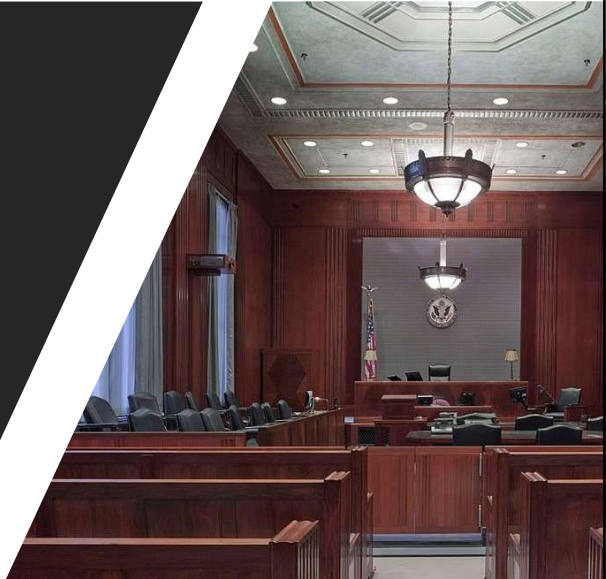
Landlord

- Complaint must include a true copy of notice and required statutory notice information
- Must serve on tenant by end of next judicial day
- File SCRA declaration
- Be realistic in negotiation

Tenant

- Nonpayment: rental asst applied for?
- Draft answer – can be amended
- Stipulated agreement = losing defenses counterclaims
- Ensure tenant can comply with terms: payment dates/amounts, move out date, other terms
- Beware of noncompliance issues

Trial



Landlord

- Establish every facet and element
- Ask court to expedite discovery schedule
- Subpoena witnesses ASAP and consider remote testimony

Tenant

- Consider asking for jury trial
- Ensure tenant's capacity and availability
- Nonpmt FED: ensure tenant notifies if they receive rental assistance

Post-trial / post-tenancy



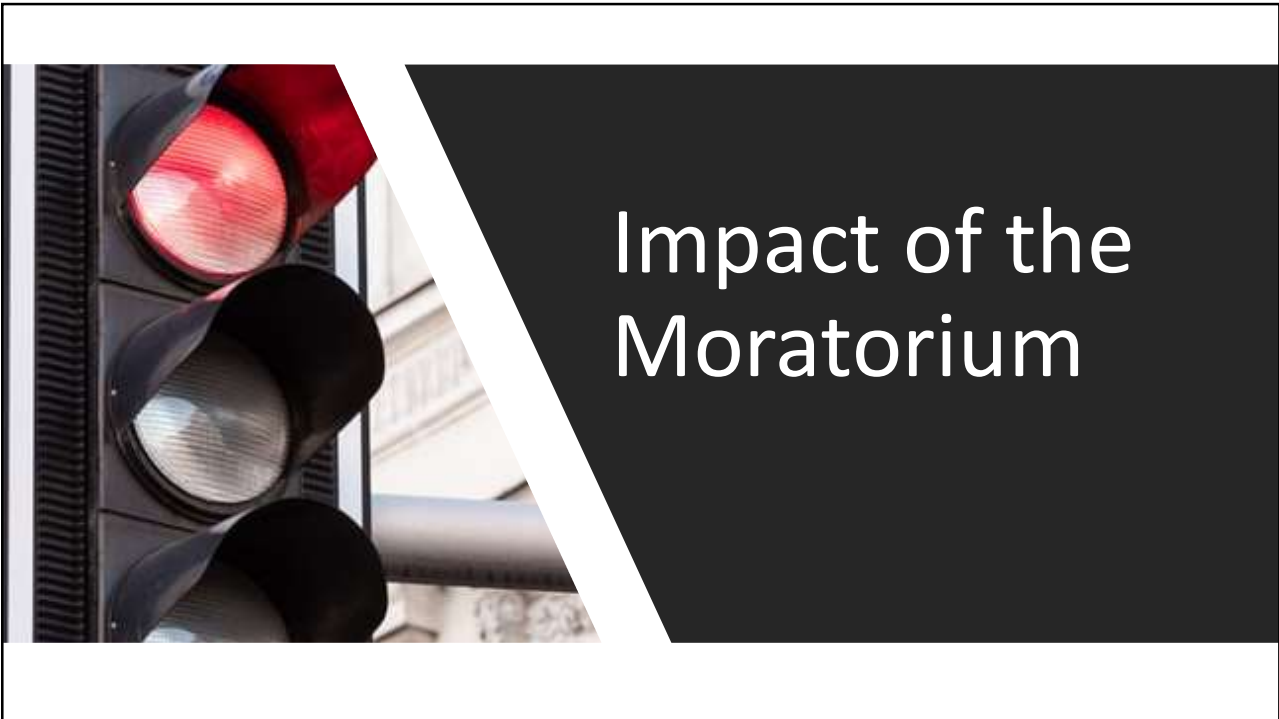
Landlord

- Account for security deposit and prepaid rent
- Send post-tenancy documents *first class mail* to last known mailing address for tenant and 2nd copy to premises
- No wear and tear allowed

Tenant

- Check for timely security deposit and refund (instruct to take pics)
- Scrutinize compliance w/ Portland security deposit ordinance
- Other issues: counterclaims can be brought after tenancy (habitability, retaliation, discrimination)






Impact of the Moratorium

Landlord

- Unpaid rent during pandemic
- Paid rent during pandemic
- Claims during moratorium
- Tolling of statute of limitations

Tenant


- SB 278 – 60 days' grace period if tenant provides proof of application for rental asst
- Multnomah County Ordinance 1296 – extends above to 90 days
- New CDC moratorium – grounds for dismissal

An orange traffic cone with two reflective white bands, positioned on a dark, textured surface. The cone is slightly tilted and casts a shadow to the right.

Tolling of Statute of Limitations – ORS 90.427 and SB 282

- Extends “first year” of a month-to-month to August 31, 2021 if the first year would have ended after April 1, 2020. In other words, tenancies that began after April 1, 2019 have their “first year” vulnerability to month-to-month no-cause evictions artificially extended through August 31, 2021.
- ORS 90.427 allows for month-to-month tenants to be evicted with 30 days’ notice and no assistance paid. The tolling means that month-to-month tenants are vulnerable to this until August 31, 2021.

* Note: this is only relevant outside of Portland

A close-up, slightly blurred image of a map of Oregon, showing various counties and geographical features in different colors like green, yellow, and red.

Jurisdictional Considerations

Landlord/tenant

- Beware of additional protections in municipal/county code
- Portland City Code (PCC) 30.01.085, PCC 30.01.087, Portland Housing Bureau (PHB) Administrative Rules, <https://www.portland.gov/phb/rental-services/trainings>





Resources

Program materials are available at <https://osbplf.org> > Services > CLE & Resources > CLE



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Malpractice Risks in Residential Landlord-Tenant Law - Outline

Prepared by J. Michael Harris and Vivien Lyon

1. PRE-NOTICE PREPARATION

a. Landlord:

- i. Speed is not your friend, slow down now because the case won't later
- ii. What is the basis for the termination notice? Can you terminate on multiple theories? Articulate precisely what provides the right for a landlord to terminate the lease so you can chart your course forward in light of this.
 1. Unpaid Rent 90.394:
 - a. Counterclaims that can offset the debt owed
 - b. Waiver of right to timely payment of rent (check client's ledger)
 - c. When is rent due- check lease, consider reinstating time is of the essence
 - d. Consider propriety of for-cause termination notice to minimize complexity
 - e. DO NOT INCLUDE NON-RENT OBLIGATIONS
 - f. FED cases do not get the rent paid
 2. For Cause 90.392:
 - a. Allowed for *material* lease violations
 - b. What is the nature of violation, and will it rise to the level of materiality
 - c. Waiver by landlord
 3. No-Cause 90.427- qualifying landlord reasons, the new regime without precedent:
 - a. Landlord intends to demolish/convert within reasonable time
 - b. Repairs/renovations will make unsafe/unfit
 - c. Moving in an immediate family member, and there is no *comparable* unit available in the same building
 - d. The landlord *has accepted* an offer to purchase from a buyer who intends to live their as primary residence.
 - e. First year of occupancy: 30 days for month to month and prior notice if an expiring fixed term lease.
 - f. "I know it when I see it" – Justice Potter Stewart, *Jacobellis v. Ohio*
 4. Outrageous conduct ORS 90.396
 - a. Not defined, exactly, but principles of *suis generis* certainly suggests you should pay close attention to the types of conduct set forth in the statute which really focus on life/safety issues.

- iii. Develop a factual record, most FED cases are going to be on a for-cause basis so you need to verify through investigation that you can actually prove your case *or* to see if the tenant might have a retaliation defense that you need to be prepared for:
 1. Investigate the circumstances surrounding the dispute. Don't trust the competency of property managers, and insist on seeing their file. Review their work.
 2. Interview witnesses, ask about dispute itself as well as collateral issues (bias, un-made repairs, harassing conduct).
 3. Review correspondence between landlord and tenant, mindful of defenses a tenant may have (retaliation, failure to repair, etc.).
 4. Review the payment history ORS 90.220 controls order of application of payments, try to get your number as accurate as possible. While *Hicky v. Scott*, 310 Or. App. 825 (2021) may be a landlord's new best friend, the courts are not sympathetic to inaccuracies in a termination notice.
 5. Waiver of any rights under the lease and reinstatement if necessary.
 6. Closely examine the lease: does it specify a particular method of service, is that method allowed by law, if you intend to use "nail and mail" then does the lease allow for meaningful *reciprocal notice* by a tenant to a landlord, are there illegal terms in the lease.
 7. Learn about your landlord: are they the owner of the property or is it owned by a legal entity, do they have an ownership interest in more than four residential rental properties.
 8. Learn about your tenant: are they the original tenant on the lease, have any tenants left, are new occupants in the property, has your landlord engaged in conduct (i.e. accepted rent) that can create a LL/T relationship even if an occupant isn't "on the lease". Get information to allow you to prepare an SCRA declaration.

b. Tenant: Initial Inquiry

- i. Has the client received a notice?
 1. Before you can evaluate the case, you must see the notice to vacate
 2. If an FED has been filed, you can usually see the notice relied on in OEI

2. CONTENTS AND SERVICE OF A TERMINATION NOTICE

a. Landlord

- i. Attention to detail, the courts are picayune and you may lose for being 1 minute off in your calculations.
- ii. Calculate the relevant notice period(s), adding in *extra days* to account for mailing and seek authorization from client to extend even more time to the tenants: slow your client down, an FED takes ~30 days to fully execute on a writ, what is another day or so?

- iii. Double check the dates, address, and names of all the tenants, being sure to add “all other occupants” to the notice to cover any unknown persons.
 - iv. Articulate and document the method of service utilized: be prepared to establish with painstaking specificity the efforts taken to issue the notice so you can lay a foundation in court later on. (at my office I have my staff scan the mailing envelope, and whoever actually deposits the notice in the mail initials the scan so they can testify to the mailing)
 - v. For-cause: state with specificity the lease provision violated, the conduct that constitute the violation, and suggest a *possible* cure- tenants are not required to adopt the landlord’s proposed cure, they are only obligated to cure the violation of the lease itself, so monitor the situation and adapt as necessary. *Hicky v. Scott*, 310 Or. App. 825 (2021)
 - vi. No-cause: articulate the QLR to support the termination, pay any money owed to the tenant at the time you serve the termination notice. It is not the “intended sale” of the property that constitutes a QLR but the sale itself, which means duly executed sale agreement *not* necessarily closing of the transaction (be mindful of the common FHA rules that require a buyer to move in/take possession within 60 days of closing and advise client to adjust their sales agreement accordingly); no QLR for sale of duplexes that are fully rented.
 - vii. Unpaid rent: be mindful of the payment history and whether the landlord properly applied prior rent payments (you can only use ORS 90.394 for *unpaid rent*, not unpaid fees), what is due date for the rent as reflected in the lease (rent is not always due on the 1st day of the month), and any potential counterclaims the tenant might have (such as habitability, unauthorized entry, etc.) to offset the unpaid rent.
 - viii. Outrageous conduct: articulate the conduct with specificity in the termination notice. Given the additional time that is added to any notice to account for the service period, *add even more*- one more day since is not going to make a substantial difference when an eviction case will take you about a month to fully litigate and have the sheriff remove the tenant.
 - ix. INCLUDE CONTACT INFORMATION FOR VETERAN’S SERVICES AND ANY OTHER REQUIRED NOTICES YOU MAY BE OBLIGATED TO PROVIDE GIVEN YOUR JURISDICTION.
 - x. Do one last check before you mail the notice, consequences can attach at the point it issues and it is unclear to what extent a landlord’s subsequent efforts to “rescind” a notice will mitigate.
 - xi. Notwithstanding the foregoing, if you’ve made an error in the notice rescind the notice and re-serve.
- b. Tenant
- i. Did the landlord give the proper amount of notice - see jurisdiction
 - ii. Service - how was notice served?

1. Check lease to see if it allows posting and mailing - if not, that's not proper service
 2. If posting and mailing is allowed, check that notice was posted on the portion of the premises to which tenant has exclusive control. In a home rental situation, that will be the doorway of the bedroom, not the front door
 3. Tenants don't know what "personal service" is - they will often say that they were personally served if the LL left the notice on their door, or slipped it under or left it on their kitchen counter. Clarify whether it was handed to them
- iii. Contents - Types of notice
 1. For-cause: Ask client about alleged bases for termination - analyze whether they are material violations of the lease or tenant's duties. Could it be retaliatory? How close in time to asserting legal right, etc.
 2. No-cause: does the landlord give a qualifying landlord reason? Jurisdiction question. PHB exemption?
 3. Nonpayment Eviction [see Moratorium section]
 4. Outrageous conduct: what defenses does client have? Can landlord prove it? Is it retaliatory?
 - iv. Contents - Other required notices
 1. Check for veteran's notice, exemption, notice of rights, etc.
3. **FILING, FIRST APPEARANCE, AND SETTLEMENT**
- a. Landlord
 - i. You must attach a copy of the termination notice(s) relied upon, you must serve by the end of the next judicial day following the payment of the filing fee. *ORS 105.135*.
 - ii. Prepare and file (or bring to first appearance) your SCRA declaration.
 - iii. If the tenant defaults, consider sticking around a bit (or asking the clerk to call you) in the event they are just running late.
 - iv. Settlement agreements are restricted in what they can require of a party and the duration for compliance 6 months or 3 months for future rent. *ORS 105.146*.
 - v. Be realistic in your negotiations, mindful of the time it will take to litigate an eviction case and the associated expense to a client (including their ability to collect). Be reasonable, but don't give up the farm. Be nice, you're dealing with someone's home.
 - vi. This document will become a binding contract, so be mindful of vague provisions, remind the parties the ORLTA still applies, but remember that at a non-compliance hearing it will be the clear provisions of the settlement agreement that the court considers not "other violations" outside the four corners.
 - b. Tenant
 - i. Stipulated agreement = losing any defenses and often any counterclaims

- ii. Don't let client agree to terms that they can't comply with
 - 1. Payment dates/amounts that are unrealistic
 - 2. Any move out dates must be far out enough for tenant to find new housing, arrange for moving
 - 3. Other terms that tenant may struggle to meet
- iii. Calendar any dates on stip agmt, follow up with tenant to ensure compliance
 - 1. If noncompliance likely, negotiate new terms with landlord/atty
 - 2. If noncompliance occurs, request hearing
 - a. At noncompliance hearing, only issue will be whether LL prevented compliance, or whether tenant really did comply

4. TRIAL

a. Landlord

- i. Landlord tenant trials are the most picayune litigation experience most attorneys will have and they move very quickly.
- ii. Be prepared to have to establish every facet and element, and lay foundation for things you ordinarily might assume would not be contested (such as proving that the termination notice was physically deposited into the mail with a first-class stamp).
- iii. Due to the speed of trial settings in FED cases, the trial will be set before any discovery can be taken in the normal course, consider seeking an order from the court expediting the discovery schedule.
- iv. Subpoena your witnesses ASAP and consider seeking permission for remote testimony (a happy witness is always better than a reluctant one).

b. Tenant

- i. Jury trial - consider asking for jury trial
- ii. Ensure that the tenant can invest the time to prepare for and attend trial, and can handle the stress of trial
- iii. Ensure tenant notifies you if they receive rental assistance between FED filing and 60/90day grace period

5. POST-TRIAL/POST-TENANCY

a. Landlord

- i. Investigate and document at the close of the tenancy just as you did at the start: photographs, repair quotes, evidence of prior condition, etc.
- ii. Accounting for the security deposit and prepaid rent within 30 days of landlord's possession (be early, not late).
- iii. Document and send just like the termination notice, being sure to mail to any forwarding address provided *and* to the property itself.

- iv. No withholding for wear and tear (erring on the side of caution), a tenant can seek double damages for improper amounts withheld and a landlord can always sue on a breach of contract theory if they want.
- v. A security deposit can be used for any lease violation, prepaid rent *only* for unpaid rent.
- vi. Violation of the law governing the accounting can subject client to liability for twice the sum withheld or if the accounting is not issued, even if the landlord has an offset defense based upon damage to the property or other lease violation.

b. Tenant

- i. Did security deposit accounting and refund happen timely?
 - 1. 31 days to “send”
 - 2. Can’t withhold for normal wear and tear, etc.
 - 3. Are there pics to show condition of unit when vacated? When tenancy began?
 - 4. In Portland, see city code on sec dep requirements

6. **IMPACT OF THE MORATORIUM**

a. Landlord

- i. Unpaid rent accrued during the pandemic cannot serve as the basis for an eviction until 2/28/22, nor can any collections action be initiated for the accrued balance.
- ii. For unpaid rent *after* the end of the moratorium a landlord can proceed with a termination on such a basis, but if a tenant provides documentation that they’ve applied for rental assistance then they are granted additional time and a landlord cannot pursue an eviction. 60 days in Oregon/90 days in Mult. Co.
- iii. Your landlord clients may not like taking money from the government on “principle” but if they refuse to participate in the program they will be foregoing the right to pursue this termination.
- iv. The moratorium has no impact on for-cause evictions (other than those based upon occupancy restrictions), only on rent-based terminations or terminations based upon failure to pay other monetary obligations under the lease.
- v. The “moratorium” itself evolved over a series of bills passed out of the legislature, and also a series of orders issued by the governor, so close attention must be paid to any FED or landlord-tenant claims that existed or arose during the moratorium.
- vi. Be mindful of the impact of the legislation tolling the statute of limitations during the pandemic, which means that a claim otherwise subject to the one-year SOL is may still be valid.

b. Tenant

- i. See SB 278 and Multnomah County Ord 1296
- ii. Unpaid rent accrued during the pandemic cannot serve as the basis for an eviction until 2/28/22, nor can any collections action be initiated for the

- accrued balance.
- iii. For unpaid rent after the end of the moratorium a landlord can proceed with a termination on such a basis, but if a tenant provides documentation that they've applied for rental assistance then they are granted additional time and an landlord cannot pursue an eviction.
 - iv. The court will dismiss an eviction if -
 - 1. The Landlord did not attach the required notice;
 - 2. The Tenant's nonpayment was substantially caused by the Landlord's failure to reasonably participate with a rental assistance program (this does not require that landlord apply for the Landlord Compensation fund);
 - 3. The Landlord receives rental assistance covering the rent owed in the termination notice;
 - 4. The Tenant provided the documentation before the case was filed. However, if the Tenant provides the documentation at any time after the Landlord filed the case and at or before the first appearance, the court will postpone the first appearance for at least 60 days. In Multnomah County, this should now be 90 days.
 - v. If application denied or 60-day grace period (90 days Mult Cty) expires without payment, Landlord may apply to Oregon Housing and Community Services for nonpayment amount accrued during grace period. (not the same as Landlord Compensation Fund (LCF) created by HB 4401)
- c. Penalties/consequences for violating SB 278
- i. Injunctive relief to recover possession or address any other violation.
 - ii. Landlord's failure to comply is a defense in an FED.
 - 1. Tenant is not entitled to a prevailing party fee, costs or attorney fees if the Landlord delivered all notices as required, did not know or have reasonable cause to know that the Tenant had provided documentation when the FED was filed and the Landlord promptly dismissed the FED when they became aware that the Tenant provided the documentation.
- d. The moratorium allows for-cause evictions and qualifying landlord reason evictions
- i. Tenant defense attys should consider whether a for-cause notice may be retaliatory if 1) issued shortly after tenant supplies documentation of rental assistance application and/or 2) the "causes" in the notice are not material violations
 - ii. Nontenant guests - SB 282A temporarily suspends the right of a landlord to enforce rules related to guests and to evict based on an unauthorized person residing on the premises.
- e. Impact of moratorium on ORS 90.427
- i. Extends "first year" of a month-to-month to August 31, 2021 if the first year

would have ended after April 1, 2020. In other words, tenancies that began after April 1, 2019 have their “first year” vulnerability to month-to-month no-cause evictions artificially extended through August 31, 2021.

7. JURISDICTIONAL CONSIDERATION

a. Landlord

- i. Before you issue a termination notice or file an eviction, double check your municipal/county code for any additional protections a tenant might have or obligations a landlord may bear.
 1. Check the PHB regulations and be prepared to get frustrated.
 2. Current PHB regs *may very well exceed what is codified and may be invalid*, but at this time they have the force of law and this is a clear malpractice trap.
 3. Apply ASAP for the exemption, it can take weeks to issue.
 4. Consider changing the ownership of the property if you’re seeking an exemption (i.e. taking it out of the trust or LLC and returning it to your client) and if you do so take necessary steps to ensure continued insurance coverage.
- ii. In Portland, no-cause evictions often require the payment of additional money to tenant, even if the landlord owns four or fewer properties. PCC 30.01.085
- iii. Even if a landlord is exempt from payment of relocation assistance to a tenant, they must obtain an “acknowledgment letter” from the PHB affirming that exemption, the tenant must be given a description of their additional rights under city code (I advise providing them with a copy of the code and not attempting to give legal advice to an adverse party), and while the code requires payment of this money 45 days prior to the termination date the code also is written in such a way that if your landlord owns more than four rental properties in the state, they can be obligated to pay *both* one month’s rent and the relocation assistance.
- iv. A detailed rent payment history for the past two years is required with *every* termination notice, and out of an abundance of caution the tenant’s right materials should be supplied as well. 30.01.087(F)
- v. A description of the tenant’s additional rights under the city law for security deposits must be included with an accounting. 30.01.087(E)
- vi. A final walkthrough inspection must occur within 7 days of the end of the tenancy, and the tenant must be invited to the inspection with no less than 24 hours prior notice.
- vii. Failure to comply with any of the foregoing exposes a landlord to significant liability.

b. Tenant

- i. Before you issue a termination notice or file an eviction, double check your municipal/county code for any additional protections a tenant might have or

obligations a landlord may bear.

1. Representing tenants, the very first thing you ask for is the address and the name of the owner and property management company
- ii. Outside Portland - State law changed regarding “no-cause” evictions. Can still evict with 30 days’ notice during first year of tenancy but only if month-to-month. See Moratorium Issues
- iii. In Portland, no-cause evictions often require the payment of additional money to tenant, even if the landlord owns four or fewer dwelling units.
 1. Also applies to mobile homes and manufactured homes in parks
- iv. Analyze any PHB exemption acknowledgment letter - the PCC regulations

Enrolled
Senate Bill 278

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Human Services)

CHAPTER

AN ACT

Relating to residential tenancies; creating new provisions; amending section 2, chapter 3, Oregon Laws 2020 (third special session); and declaring an emergency.

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

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 90.

SECTION 2. (1) As used in this section:

(a) "Documentation" includes electronic mail, a screenshot or other written or electronic documentation from a rent assistance provider verifying the submission of an application for rental assistance.

(b) "Nonpayment" means the nonpayment of a payment that is due to a landlord, including a payment of rent, late charges, utility or service charges or any other charge or fee as described in the rental agreement or ORS 90.140, 90.302, 90.315, 90.392, 90.394, 90.560 to 90.584 or 90.630.

(2)(a) If a tenant provides the landlord with documentation that the tenant has applied for rental assistance, a landlord may not:

(A) Deliver a termination notice for nonpayment; or

(B) Initiate or continue an action for possession based on a termination notice for nonpayment.

(b) A tenant may provide documentation by any method reasonably calculated to achieve receipt by the landlord, including by sending a copy or photograph of the documentation by electronic mail or text message.

(c) If 60 days have passed since the tenant provided documentation under this subsection:

(A) A landlord may deliver to the tenant a new termination notice for nonpayment, to which this section does not apply, without providing the notice under subsection (4) of this section; or

(B) If a claim for possession was postponed under subsection (5)(b) of this section, the court shall promptly set the matter for trial.

(3) Except as provided in subsection (2)(c)(A) of this section, a landlord shall deliver the notice described in subsection (4) of this section along with:

(a) Any notice of termination for nonpayment; and

(b) Any summons for a complaint seeking possession based on nonpayment given by the landlord or service processor, including a summons delivered under ORS 105.135 (3)(b).

(4) The notice required under subsection (3) of this section must be in substantially the following form:

THIS IS AN IMPORTANT NOTICE ABOUT YOUR RIGHTS TO PROTECTION AGAINST EVICTION FOR NONPAYMENT.

For information in Spanish, Korean, Russian, Vietnamese or Chinese, go to the Judicial Department website at www.courts.oregon.gov.

Until February 28, 2022, if you give your landlord documentation that you have applied for rental assistance at or before your first appearance in court, you may be temporarily protected from eviction for nonpayment. Documentation may be made by any reasonable method, including by sending a copy or photograph of the documentation by electronic mail or text message. "Documentation" includes electronic mail, a screenshot or other written or electronic documentation verifying the submission of an application for rental assistance.

To apply for rental assistance, go to www.oregonrentalassistance.org, dial 211 or go to www.211info.org. To find free legal assistance for low-income Oregonians, go to www.oregonlawhelp.org.

(5)(a) A court shall enter a judgment dismissing a complaint for possession that is based on a termination notice for nonpayment if the court determines that:

(A) The landlord failed to attach the notice as required under subsection (3) of this section.

(B) The tenant's nonpayment was substantially caused by the landlord's failure to reasonably participate with a rental assistance program. This subparagraph does not require that a landlord apply for compensation under section 2, chapter 3, Oregon Laws 2020 (third special session).

(C) The landlord receives rental assistance covering the rent owed under the notice.

(D) The tenant provided the landlord with documentation of application for rental assistance as described in subsection (2) of this section before the claim was filed.

(b) If the tenant provides the landlord or court with documentation of application for rental assistance as described in subsection (2) of this section at any time after the landlord commenced the action for possession and at or before the first appearance, at the first appearance the court shall, on its own motion, postpone the first appearance to a date not earlier than 60 days after the documentation was delivered.

(6) If a landlord violates this section:

(a) A tenant may obtain injunctive relief to recover possession or address any other violation;

(b) The tenant has a defense to an action for possession by the landlord.

(7) Notwithstanding ORS 105.137 (4), if a claim for possession is dismissed under this section, the tenant is not entitled to prevailing party fees, costs or attorney fees if the landlord:

(a) Delivered to the tenant all notices required under subsection (3) of this section as required;

(b) Did not know, and did not have reasonable cause to know, at the time of commencing the action that the tenant had provided documentation of application for rental assistance under subsection (2) of this section; and

(c) Promptly dismissed the action upon becoming aware of the documentation of application for rental assistance.

SECTION 3. Section 2 of this 2021 Act applies only to a notice of termination for non-payment given on or after July 1, 2021.

SECTION 4. Section 5 of this 2021 Act is added to and made a part of ORS 105.105 to 105.168.

SECTION 5. The clerk shall include the notice described in section 2 (4) of this 2021 Act with the summons and complaint mailed to a defendant under ORS 105.135 (3)(a).

SECTION 6. (1)(a) The Judicial Department shall translate the notice form under section 2 (4) of this 2021 Act into the Spanish, Korean, Russian, Vietnamese and Chinese languages and shall display links to the English and translated forms prominently on the main webpage at www.courts.oregon.gov.

(b) Each form on the Judicial Department website must include a statement in English, Spanish, Korean, Russian, Vietnamese and Chinese indicating that the form and translations can be found on the Judicial Department website and the web address where the forms may be found.

(2) The department shall prepare a summary of sections 2 and 3 of this 2021 Act, deliver a copy of the summary to each circuit court in this state for posting at the clerk's counter and publish the summary on the department's website.

SECTION 7. In distributing rental assistance to residential tenants funded by federal, state or local moneys, the Housing and Community Services Department, other public bodies and local governments, along with their subgrantees, shall promptly provide a dated application receipt to each tenant who applies for assistance. The receipt may be in an electronic format.

SECTION 8. Sections 2, 5, 6 and 7 of this 2021 Act are repealed on March 1, 2022.

SECTION 9. The Housing and Community Services Department shall provide a grant to a third party to make distributions to compensate landlords who, under section 2 of this 2021 Act, have delayed termination notices or eviction proceedings. A landlord may apply for compensation for nonpayment that accrued during the delay if the landlord demonstrates that:

(1) The tenant's application for rental assistance was denied; or

(2) Sixty days have passed since the tenant provided documentation of application for rental assistance without the landlord receiving rental assistance.

SECTION 10. Section 9 of this 2021 Act is repealed on March 1, 2023.

SECTION 11. Sections 2, 5, 6, 7 and 9 of this 2021 Act become operative on July 1, 2021.

SECTION 12. Section 2, chapter 3, Oregon Laws 2020 (third special session), is amended to read:

Sec. 2. (1) The Housing and Community Services Department shall make distributions to compensate residential landlords for [80] **100** percent of the past-due rent of qualified tenants that the landlord has not collected after April 1, 2020, **and on or before the earlier of June 30, 2021, or the date of the application**, if the landlord or the landlord's designee:

(a) Submits an application to the department for all of the landlord's tenants who have not paid rent and have delivered to the landlord a signed declaration under section 7 (1)(b) [*of this 2020 third special session Act*], **chapter 3, Oregon Laws 2020 (third special session), as in effect on June 30, 2021;**

(b) Includes in the application a copy of the tenants' declarations;

(c) Provides the department with a description of the unpaid rent for all current tenants;

[(d) *Agrees to forgive the remaining 20 percent of the unpaid rent due from qualified tenants that has accrued between April 1, 2020, and the date of the application, upon receiving a distribution under this subsection;*]

[(e)] **(d)** *Agrees to repay to the department any amount [that was forgiven by the landlord or] that was paid to the landlord under this section and the landlord later receives from the qualified tenant or on the tenant's behalf, within the period requested by the department;*

[(f)] **(e)** *Is not a member of the tenant's immediate family, as defined in ORS 90.427;*

[(g)] (f) During the pendency of the distribution application, agrees to not give a termination notice without cause or for nonpayment, as those terms are defined in section 3, chapter 13, Oregon Laws 2020 (first special session); and

[(h)] (g) Provides any other information or materials required by the department.

(2)(a) The department shall develop an online application for landlords to apply for distributions under this section.

(b) The application must be made available in languages other than English.

(c) The application period must be open more than once to allow for greater outreach and participation.

(3) The department may establish any qualifications, priorities, restrictions or limits on the distributions made under this section, to prioritize landlords with fewer units and landlords with a higher percentage of unpaid rents. Restrictions or limits may include:

(a) Limits per tenant, per landlord or per time period;

(b) The number of units a landlord must own; or

(c) The percentage or amount of total rent unpaid.

(4) The department may coordinate with local housing authorities to administer this section, including through making distributions to landlords.

(5) The department or local housing authority shall mail to tenants copies of a notice of distribution to their landlords [*and the amount of rent forgiveness agreed to by their landlords*].

(6) The department may conduct outreach to landlords and tenants, including outreach to non-English speakers.

(7) Notwithstanding ORS 276A.300, 279A.025, 279A.050 (6)(g), 279A.205 and 456.571, the department shall expedite the implementation of the landlord compensation fund.

(8) As used in this section, "landlord" includes a manufactured dwelling park nonprofit cooperative as defined in ORS 62.803.

SECTION 13. (1) The amendments to section 2, chapter 3, Oregon Laws 2020 (third special session), by section 12 of this 2021 Act apply to all applications submitted or approved before, on or after the effective date of this 2021 Act.

(2) The Housing and Community Services Department shall make distributions to adjust the compensation under section 2 (1), chapter 3, Oregon Laws 2020 (third special session), for landlords whose applications were approved before the effective date of this 2021 Act without requiring that the landlord submit an additional application.

SECTION 14. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate March 24, 2021

Repassed by Senate June 22, 2021

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House June 17, 2021

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Shemia Fagan, Secretary of State

Enrolled
Senate Bill 282

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Human Services)

CHAPTER

AN ACT

Relating to rental housing; creating new provisions; amending ORS 90.303 and 105.163 and sections 3, 4 and 7, chapter 13, Oregon Laws 2020 (first special session), and section 22, chapter 3, Oregon Laws 2020 (third special session); and declaring an emergency.

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

EVICITION MORATORIUM

SECTION 1. Section 3, chapter 13, Oregon Laws 2020 (first special session), as amended by section 8, chapter 3, Oregon Laws 2020 (third special session), is amended to read:

Sec. 3. (1) As used in this section and in section 7, **chapter 3, Oregon Laws 2020 (third special session)** [of this 2020 third special session Act]:

(a) "Emergency period" means the period beginning on April 1, 2020, and ending on [December 31, 2020, except as the period may be extended through] June 30, 2021[, under section 7 (1) of this 2020 third special session Act].

(b) "End of the grace period" means [March 31, 2021, unless the period is extended through June 30, 2021, under section 7 (1) of this 2020 third special session Act] **February 28, 2022.**

(c) "Nonpayment" means the nonpayment of a payment that becomes due during the emergency period to a landlord, including a payment of rent, late charges, utility or service charges or any other charge or fee as described in the rental agreement or ORS 90.140, 90.302, 90.315, 90.392, 90.394, 90.560 to 90.584 or 90.630.

(d) "Nonpayment balance" includes all or a part of the net total amount of all items of nonpayment by a tenant during the emergency period.

(e) "Termination notice without cause" means a notice delivered by a landlord under ORS 90.427 (3)(b), (4)(b) or (c), or (8)(a)(B) or (b)(B).

(2) Before the end of the grace period, notwithstanding this chapter or ORS 105.105 to 105.168, a landlord may not, and may not threaten to:

(a) Deliver a notice of termination of a rental agreement based on a tenant's nonpayment balance;

(b) Initiate or continue an action under ORS 105.110 to take possession of a dwelling unit based on a notice of termination for nonpayment delivered during the emergency period;

(c) Take any action that would interfere with a tenant's possession or use of a dwelling unit based on a tenant's nonpayment balance;

(d) Assess a late fee or any other penalty on a tenant's nonpayment; **or**
[(e) Report a tenant's nonpayment balance as delinquent to any consumer credit reporting agency;
or]

[(f) (e) File an action to recover the nonpayment balance.

(3) Notwithstanding ORS 90.220 (9), before applying payments received from a tenant or on behalf of a tenant to a tenant's nonpayment balance, a landlord shall first apply the payments, in the following order, to:

(a) Rent for the current rental period;

(b) Utility or service charges;

(c) Late rent payment charges; and

(d) Fees or charges owed by the tenant under ORS 90.302 or other fees or charges related to damage claims or other claims against the tenant.

[(4)(a) Before June 30, 2021, a landlord may not deliver a termination notice without cause and may not file an action under ORS 105.110 based on a termination notice without cause.]

[(b)] (4) If the first year of occupancy would end after April 1, 2020, and before August 31, 2021, for the purposes of a termination notice without cause, the "first year of occupancy" is extended to mean a period lasting until August 31, 2021.

(5)(a) A landlord may deliver a written notice to a tenant before the end of the grace period stating that the tenant continues to owe any rent [due.] **that accrued from April 1, 2020, through June 30, 2021, but**

[(b) If the emergency period is extended under section 7 (1) of this 2020 third special session Act,] the notice must also include a statement that eviction for nonpayment of rent, charges and fees accrued from April 1, 2020, to June 30, 2021, is not allowed before [June 30, 2021] **February 28, 2022.**

[(c) If the emergency period is not extended under section 7 (1) of this 2020 third special session Act, the notice must also include:]

[(A) A statement that eviction for nonpayment of rent, charges and fees accrued from April 1, 2020, to December 31, 2020, is not allowed before March 31, 2021; and]

[(B) A copy of both the notice and declaration form described in section 7 (3) of this 2020 third special session Act.]

[(d)] (b) The notice may also include information regarding tenant resources and may offer a voluntary payment plan for the nonpayment balance. If the notice offers a voluntary payment plan, the notice must state that the payment plan is voluntary. The notice may include a request that the tenant contact the landlord to discuss the voluntary payment plan.

(6)(a) If a tenancy terminates before the end of the grace period, a landlord may claim from the security deposit or last month's rent deposit to repay the unpaid rent balance that accrued during the emergency period under ORS 90.300 (7) or (9).

(b) Prior to the end of the grace period, a tenant with an unpaid rent balance that accrued during the emergency period is not considered to be in default in rent under ORS 90.385 (4)(c) or 90.390 (2).

(c) A landlord's acceptance of a partial payment of rent before the end of the grace period does not constitute a waiver of a landlord's right to terminate the tenancy for:

(A) A violation of the rental agreement, notwithstanding ORS 90.412 (2); or

(B) Nonpayment of the rent balance owed under ORS 90.394 after the end of the grace period, notwithstanding ORS 90.417 (4).

(7) A termination notice given under ORS 90.394 must substantially state that:

(a) Eviction for nonpayment of rent, charges and fees that accrued on and after April 1, 2020, and before June 30, 2021, is not allowed before February 28, 2022; and

(b) Information regarding tenant resources is available at www.211info.org.

SECTION 2. The amendments to section 3, chapter 13, Oregon Laws 2020 (first special session), by section 1 of this 2021 Act become operative on July 1, 2021.

SECTION 3. Section 4, chapter 13, Oregon Laws 2020 (first special session), as amended by section 24, chapter 3, Oregon Laws 2020 (third special session), is amended to read:

Sec. 4. Section 3, chapter 13, Oregon Laws 2020 (first special session), as amended by section 8 [of this 2020 third special session Act], **chapter 3, Oregon Laws 2020 (third special session), and section 1 of this 2021 Act**, is repealed on [September 1, 2021] **March 1, 2022**.

SECTION 4. Section 22, chapter 3, Oregon Laws 2020 (third special session), is amended to read:

Sec. 22. (1) The amendments to ORS [90.385, 90.394,] 105.113 [and 105.124 by sections 18 to 21 of this 2020 third special session Act] **by section 20, chapter 3, Oregon Laws 2020 (third special session)**, become operative on July 1, 2021.

(2) The amendments to ORS 90.385, 90.394 and 105.124 by sections 18, 19 and 21, chapter 3, Oregon Laws 2020 (third special session), become operative on March 1, 2022.

SECTION 5. Section 7, chapter 13, Oregon Laws 2020 (first special session), as amended by section 17, chapter 3, Oregon Laws 2020 (third special session), is amended to read:

Sec. 7. Notwithstanding ORS 12.125, the period of limitation is tolled until [July 1, 2021] **March 1, 2022**, for claims by a landlord based on a tenant's nonpayment or nonpayment balance, both as defined in section 3, chapter 13, Oregon Laws 2020 (first special session).

TENANT REPORTING AND SCREENING

SECTION 6. Section 7 of this 2021 Act is added to and made a part of ORS chapter 90.

SECTION 7. A landlord may not report to any consumer credit reporting agency a tenant's nonpayment of rent, charges or fees that accrued on or after April 1, 2020, and before July 1, 2021.

SECTION 8. ORS 90.303 is amended to read:

90.303. (1) When evaluating an applicant, a landlord may not consider an action to recover possession pursuant to ORS 105.105 to 105.168 if the action:

(a) Was dismissed or resulted in a general judgment for the applicant before the applicant submits the application.

(b) Resulted in a general judgment against the applicant that was:

(A) Entered five or more years before the applicant submits the application[.]; or

(B) Entered on claims that arose on or after April 1, 2020, and before March 1, 2022.

(2) When evaluating the applicant, a landlord may not consider a previous arrest of the applicant if the arrest did not result in a conviction. This subsection does not apply if the arrest has resulted in charges for criminal behavior as described in subsection (3) of this section that have not been dismissed at the time the applicant submits the application.

(3) When evaluating the applicant, the landlord may not consider criminal conviction and charging history unless the conviction or pending charge is for conduct that is:

(a) A drug-related crime, but not including convictions based solely on the use or possession of marijuana;

(b) A person crime;

(c) A sex offense;

(d) A crime involving financial fraud, including identity theft and forgery; or

(e) Any other crime if the conduct for which the applicant was convicted or charged is of a nature that would adversely affect:

(A) Property of the landlord or a tenant; or

(B) The health, safety or right to peaceful enjoyment of the premises of residents, the landlord or the landlord's agent.

(4) When evaluating an applicant, a landlord may not consider the possession of a medical marijuana card or status as a medical marijuana patient.

(5) When evaluating an applicant, a landlord may not consider an applicant's unpaid rent, including rent reflected in judgments or referrals of debt to a collection agency, that accrued on or after April 1, 2020, and before March 1, 2022.

SECTION 9. ORS 105.163 is amended to read:

105.163. (1) A person who was a defendant in an action under ORS 105.105 to 105.168 may apply by motion to the court where the judgment was entered for an order setting aside the judgment and sealing the official records of the action pertaining to the applicant. The court shall grant the motion if the court finds that:

(a) The judgment was a judgment of restitution entered against the applicant, [*a period of at least five years has passed from the date of entry of the judgment and*] the applicant has satisfied any money award included in the judgment[;] **and:**

(A) At least five years have passed from the date of the judgment; or

(B) The judgment was based on claims that arose on or after April 1, 2020, and before March 1, 2022;

(b) The judgment was a judgment by stipulation of the parties under ORS 105.145 (2) and the applicant has complied with the terms of the stipulated agreement and satisfied any money award included in the judgment; or

(c) The judgment was a judgment or judgment of dismissal entered in the applicant's favor.

(2) The applicant shall serve a copy of the motion filed under subsection (1) of this section upon the person who was the plaintiff in the action under ORS 105.105 to 105.168. Within 30 days of service of the motion, if a written objection is filed, the court shall schedule a hearing.

(3) If, under subsection (2) of this section, no objection is filed or after a hearing the court determines that the applicant is eligible for relief under subsection (1) of this section, the court shall enter an appropriate order setting aside the judgment and sealing the official records of the action pertaining to the applicant. Upon entry of the order, the judgment that is the subject of the motion shall be deemed not to have been entered, and the applicant may answer accordingly any questions relating to its occurrence.

(4) The court may not charge a filing fee for the filing of a motion under subsection (1) of this section.

SECTION 10. ORS 90.303, as amended by section 8 of this 2021 Act, is amended to read:

90.303. (1) When evaluating an applicant, a landlord may not consider an action to recover possession pursuant to ORS 105.105 to 105.168 if the action:

(a) Was dismissed or resulted in a general judgment for the applicant before the applicant submits the application.

(b) Resulted in a general judgment against the applicant that was[;]

[*(A) entered five or more years before the applicant submits the application; or*].

[*(B) Entered on claims that arose after April 1, 2020, and before March 1, 2022.*]

(2) When evaluating the applicant, a landlord may not consider a previous arrest of the applicant if the arrest did not result in a conviction. This subsection does not apply if the arrest has resulted in charges for criminal behavior as described in subsection (4) of this section that have not been dismissed at the time the applicant submits the application.

(3) When evaluating the applicant, the landlord may not consider criminal conviction and charging history unless the conviction or pending charge is for conduct that is:

(a) A drug-related crime, but not including convictions based solely on the use or possession of marijuana;

(b) A person crime;

(c) A sex offense;

(d) A crime involving financial fraud, including identity theft and forgery; or

(e) Any other crime if the conduct for which the applicant was convicted or charged is of a nature that would adversely affect:

(A) Property of the landlord or a tenant; or

(B) The health, safety or right to peaceful enjoyment of the premises of residents, the landlord or the landlord's agent.

(4) When evaluating an applicant, a landlord may not consider the possession of a medical marijuana card or status as a medical marijuana patient.

[(5) When evaluating an applicant, a landlord may not consider an applicant's unpaid rent, including rent reflected in judgments or referrals of debt to a collection agency, that accrued on or after April 1, 2020, and before March 1, 2022.]

SECTION 11. ORS 105.163, as amended by section 9 of this 2021 Act, is amended to read:

105.163. (1) A person who was a defendant in an action under ORS 105.105 to 105.168 may apply by motion to the court where the judgment was entered for an order setting aside the judgment and sealing the official records of the action pertaining to the applicant. The court shall grant the motion if the court finds that:

(a) The judgment was a judgment of restitution entered against the applicant, the applicant has satisfied any money award included in the judgment and[.]

[(A)] at least five years have passed from the date of the judgment; [or]

[(B) Judgments based on claims that arose on or after April 1, 2020, and before March 1, 2022;]

(b) The judgment was a judgment by stipulation of the parties under ORS 105.145 (2) and the applicant has complied with the terms of the stipulated agreement and satisfied any money award included in the judgment; or

(c) The judgment was a judgment or judgment of dismissal entered in the applicant's favor.

(2) The applicant shall serve a copy of the motion filed under subsection (1) of this section upon the person who was the plaintiff in the action under ORS 105.105 to 105.168. Within 30 days of service of the motion, if a written objection is filed, the court shall schedule a hearing.

(3) If, under subsection (2) of this section, no objection is filed or after a hearing the court determines that the applicant is eligible for relief under subsection (1) of this section, the court shall enter an appropriate order setting aside the judgment and sealing the official records of the action pertaining to the applicant. Upon entry of the order, the judgment that is the subject of the motion shall be deemed not to have been entered, and the applicant may answer accordingly any questions relating to its occurrence.

(4) The court may not charge a filing fee for the filing of a motion under subsection (1) of this section.

SECTION 12. The amendments to ORS 90.303 and 105.163 by sections 10 and 11 of this 2021 Act become operative on January 2, 2028.

NONTENANT GUESTS

SECTION 13. Section 14 of this 2021 Act is added to and made a part of ORS chapter 90.

SECTION 14. (1) Notwithstanding ORS 90.262 (3) or 90.510 (7), a landlord may not enforce a restriction by any means including assessing a fee or terminating the tenancy, if the restriction is based on:

(a) A maximum occupancy guideline for the number of tenants or guests lower than an amount required by federal, state or local law or regulation.

(b) The maximum duration of a guest's stay in the tenancy.

(2) If a tenant's guest resides in the dwelling unit more than 15 days in any 12-month period, a landlord may require that:

(a) The tenant's guest satisfy the screening or admissions criteria ordinarily considered by the landlord for tenants, except that the landlord may not use criteria related to credit reports, credit references or income; and

(b) The tenant and the guest enter into a temporary occupancy agreement as provided in ORS 90.275, except that the landlord may not require that the agreement have an ending date earlier than February 28, 2022.

(3) This section does not prohibit a landlord from assessing a fee allowed by ORS 90.302 or terminating a tenancy based upon the conduct of a tenant's guest or based on the tenant's guest's failure to comply with subsection (2) of this section.

(4) Notwithstanding ORS 90.403 or 90.412, acceptance of a payment by a landlord from the tenant or guest does not make the guest a tenant under this chapter.

(5) As used in this section, "guest" means an individual who is staying temporarily, including overnight, within the dwelling unit at the invitation of the tenant.

SECTION 15. Section 14 of this 2021 Act is repealed on March 1, 2022.

UNIT CAPTIONS

SECTION 16. The unit captions used in this 2021 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2021 Act.

EMERGENCY CLAUSE

SECTION 17. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate April 14, 2021

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House May 11, 2021

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Shemia Fagan, Secretary of State

30.01.085 Portland Renter Additional Protections.

City Code Section

(Added by Ordinance No. 187380; amended by Ordinance Nos. 188219, 188519, 188558, 188628, 188849, 189421 and 189726, effective November 1, 2019.)

A. In addition to the protections set forth in the Residential Landlord and Tenant Act, the following additional protections apply to Tenants that have a Rental Agreement for a Dwelling Unit covered by the Act. For purposes of this chapter, unless otherwise defined herein, capitalized terms have the meaning set forth in the Act.

B. A Landlord may terminate a Rental Agreement without a cause or for a qualifying landlord reason specified in the Act only by delivering a written notice of termination (the “Termination Notice”) to the Tenant of (a) not less than 90 days before the termination date designated in that notice as calculated under the Act; or (b) the time period designated in the Rental Agreement, whichever is longer. Not less than 45 days prior to the termination date provided in the Termination Notice, a Landlord shall pay to the Tenant, as relocation assistance, a payment (“Relocation Assistance”) in the amount that follows: \$2,900 for a studio or single room occupancy (“SRO”) Dwelling Unit, \$3,300 for a one-bedroom Dwelling Unit, \$4,200 for a two-bedroom Dwelling Unit and \$4,500 for a three-bedroom or larger Dwelling Unit. For purposes of this Subsection, a Landlord that declines to renew or replace an expiring Rental Agreement is subject to the provisions of this Subsection. The requirements of this Subsection are intended to apply per Dwelling Unit, not per individual Tenant.

C. As allowed by the Act, a Landlord may not increase a Tenant's Rent or Associated Housing Costs by 5 percent or more over a rolling 12-month period unless the Landlord gives notice in writing (the “Increase Notice”) to each affected Tenant: (a) at least 90 days prior to the effective date of the Rent increase; or (b) the time period designated in the Rental Agreement, whichever is longer. The Increase Notice must specify the amount of the increase, the amount of the new Rent or Associated Housing Costs and the date, as calculated under the Act, when the increase becomes effective. If, within 45 calendar days after a Tenant receives an Increase Notice indicating a Rent increase of 10 percent or more within a rolling 12-month period and a Tenant provides written notice to the Landlord of the Tenant’s request for Relocation Assistance (the “Tenant’s Notice”), then, within 31 calendar days of receiving the Tenant’s Notice, the Landlord shall pay to the Tenant Relocation Assistance in the amount that follows: \$2,900 for a studio or SRO Dwelling Unit, \$3,300 for a one-bedroom Dwelling Unit, \$4,200 for a two-bedroom Dwelling Unit and \$4,500 for a three-bedroom or larger Dwelling Unit. After the Tenant receives the Relocation Assistance from the Landlord, the Tenant shall have 6 months from the effective date of the Rent increase (the “Relocation Period”) to either: (i) pay back the Relocation Assistance and remain in the Dwelling Unit and, subject to the Act, shall be obligated to pay the increased Rent in accordance with the Increase Notice for the duration of the Tenant’s occupancy of the Dwelling Unit; or (ii) provide the Landlord with a notice to terminate the

Rental Agreement in accordance with the Act (the “Tenant’s Termination Notice”). In the event that the Tenant has not repaid the Relocation Assistance to the Landlord or provided the Landlord with the Tenant’s Termination Notice on or before the expiration of the Relocation Period, the Tenant shall be in violation of this Subsection. For purposes of this Subsection, a Landlord that conditions the renewal or replacement of an expiring Rental Agreement on the Tenant’s agreement to pay a Rent increase of 10 percent or more within a rolling 12-month period is subject to the provisions of this Subsection. For purposes of this Subsection, a Landlord that declines to renew or replace an expiring Rental Agreement on substantially the same terms except for the amount of Rent or Associated Housing Costs terminates the Rental Agreement and is subject to the provisions of this Subsection. The requirements of this Subsection are intended to apply per Dwelling Unit, not per individual Tenant. For purposes of this Subsection, a Tenant may only receive and retain Relocation Assistance once per tenancy per Dwelling Unit.

D. A Landlord shall include a description of a Tenant’s rights and obligations and the eligible amount of Relocation Assistance under this Section 30.01.085 with each and any Termination Notice, Increase Notice, and Relocation Assistance payment.

E. A Landlord shall provide notice to the Portland Housing Bureau (PHB) of all payments to Tenants of Relocation Assistance within 30 days of making such payments. This Subsection shall be effective beginning May 1, 2018.

F. For the purposes of this Section 30.01.085, the expiration of Rent concessions specified in the Rental Agreement is not considered a substantial change to a Rental Agreement.

G. For the purposes of this Section 30.01.085 and determining the amount of Relocation Assistance a Landlord shall pay, a Rental Agreement for a single bedroom in a Dwelling Unit as defined by PCC 33.910 is considered a SRO Dwelling Unit.

H. For the purposes of this Section 30.01.085 and determining the amount of Relocation Assistance a Landlord shall pay, if a Landlord is paying relocation assistance required by the Act and Relocation Assistance required by Section 30.01.085 to the Tenant for the same Termination Notice, the Relocation Assistance required by Section 30.01.085 may be reduced by the relocation assistance required by the Act if both payments are paid at the same time and as a single payment.

I. The provisions of this Section 30.01.085 that pertain to Relocation Assistance do not apply to the following so long as the Landlord has submitted a required exemption application form to PHB for which PHB shall have issued an exemption acknowledgement letter, a copy of which the Landlord shall have provided to the Tenant:

1. Rental Agreements for week-to-week tenancies;
2. Tenants that occupy the same Dwelling Unit as the Landlord;

- 3.** Tenants that occupy one Dwelling Unit in a Duplex where the Landlord's principal residence is the second Dwelling Unit in the same Duplex;
 - 4.** Tenants that occupy an Accessory Dwelling Unit that is subject to the Act in the City of Portland so long as the owner of the Accessory Dwelling Unit lives on the site, or Tenancies where the owner occupies the Accessory Dwelling Unit and the Tenant occupies a Dwelling Unit on the site;
 - 5.** a Landlord that temporarily rents out the Landlord's principal residence during the Landlord's absence of not more than 3 years;
 - 6.** a Landlord that temporarily rents out the Landlord's principal residence during the Landlord's absence due to active duty military service;
 - 7.** a Dwelling Unit where the Landlord is terminating the Rental Agreement in order for an Immediate Family member to occupy the Dwelling Unit;
 - 8.** a Dwelling Unit regulated or certified as affordable housing by a federal, state or local government is exempt from paying Relocation Assistance for a Rent increase of 10 percent or more within a rolling 12-month period:
 - a.** so long as such increase does not increase a Tenant's portion of the Rent payment by 10 percent or more within a rolling 12-month period; or
 - b.** in Lease Agreements where the Rent or eligibility is periodically calculated based on the Tenant's income or other program eligibility requirements and a Rent increase is necessary due to program eligibility requirements or a change in the Tenant's income.
- This exemption by Subsection 30.01.085 I.8. does not apply to private market-rate Dwelling Units with a Tenant who is the recipient of a federal, state, or local government voucher;
- This exemption by Subsection 30.01.085 I.8. applies to Rent increases and does not apply to Termination Notices;
- 9.** a Dwelling Unit that is subject to and in compliance with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
 - 10.** a Dwelling Unit rendered immediately uninhabitable not due to the action or inaction of a Landlord or Tenant;
 - 11.** a Dwelling Unit rented for less than 6 months with appropriate verification of the submission of a demolition permit prior to the Tenant renting the Dwelling Unit;
 - 12.** a Dwelling Unit where the Landlord has provided a Fixed Term Tenancy and notified the Tenant prior to occupancy, of the Landlord's intent to sell or permanently convert the Dwelling Unit to a use other than as a Dwelling Unit subject to the Act.

A Landlord that authorizes a property manager that is subject to, and manages property in accordance with ORS 696, to manage a Dwelling Unit, does not waive a Dwelling Unit exemption as a result of the collective number of Dwelling Units managed by such a property manager. For purposes of the exemptions provided in this Subsection, "Dwelling Unit" is defined by PCC 33.910, and not by ORS 90.100. For purposes of the exemptions provided in this Subsection, "Accessory Dwelling Unit" is defined by PCC 33.205. For purposes of the exemptions provided in this Subsection, "Duplex" is defined by PCC 33.910. For purposes of the exemptions provided in this Subsection, "Immediate Family" is defined by PHB in administrative rules.

J. A Landlord that fails to comply with any of the requirements set forth in this Section 30.01.085 shall be liable to the Tenant for an amount up to 3 times the monthly Rent as well as actual damages, Relocation Assistance, reasonable attorney fees and costs (collectively, "Damages"). Any Tenant claiming to be aggrieved by a Landlord's noncompliance with the foregoing has a cause of action in any court of competent jurisdiction for Damages and such other remedies as may be appropriate.

K. In carrying out the provisions of this Section 30.01.085, the Director of PHB, or a designee, is authorized to adopt, amend and repeal administrative rules to carry out and administer the provisions of this Section 30.01.085.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

ORDINANCE NO. 1296

Extending the 60 day protection period in SB 278 (2021) to 90 days and Declaring an Emergency.

The Multnomah County Board of Commissioners Finds:

- A. On March 11, 2020, the Multnomah County Chair issued Executive Rule No. 388 declaring an emergency for the entire County to address the continued spread of the COVID-19 illness, loss of life, an extreme public health risk, and its significant economic impacts.
- B. On March 17, 2020, an Addendum to Executive Rule No. 388 provided additional measures to address the emergency conditions.
- C. On March 19, 2020, the Multnomah County Board of Commissioners (“Board”) ratified Executive Order 388 and its Addendum and adopted Ordinance No. 1282 to address the impacts of COVID-19 by creating a countywide residential eviction moratorium and six- month repayment grace period. The purpose of these measures was to promote housing stability during the COVID-19 pandemic to allow County residents to stay home, and to avoid a preventable increase in homelessness due to the economic effects of COVID-19.
- D. On April 1, 2020, and following the Board’s action, the Governor of the State of Oregon issued a statewide moratorium on evictions with Executive Order 20-13.
- E. On April 9, 2020, the Board adopted Resolution 2020-019 to continue the emergency declared in Executive Rule 388 and its Addendum until July 8, 2020.
- F. On April 16, 2020, the Board adopted Ordinance 1284 to further address the impacts of COVID-19 and suspended enforcement of the County’s residential eviction moratorium established by Ordinance 1282 while a statewide residential eviction moratorium was in place.
- G. On July 2, 2020, the Board adopted Resolution 2020-059 to continue the emergency declared in Executive Rule 388 and its Addendum until September 30, 2020.
- H. On September 24, 2020, the Board adopted Resolution 2020-080 to continue the emergency declared in Executive Rule 388 and its Addendum until January 8, 2021.
- I. The State of Oregon provided statewide renter protections in HB 4213 (2020 First Special Session) with effective dates of April 1, 2020 to September 30, 2020. HB 4213 continued and refined the statewide residential eviction moratorium created by the Governor in Executive Order 20-13 and established a statewide six-month repayment grace period.
- J. On September 24, 2020, the Board repealed Ordinance Nos. 1282 and 1284 and replaced them with Ordinance No. 1287 to provide continued renter protections in Multnomah County in response to COVID-19.

K. On December 17, 2020, the Board adopted Resolution 2020-110 to continue the emergency declared in Executive Rule 388 and its Addendum until July 2, 2021, or until rescinded.

L. The State of Oregon extended statewide renter protections in HB 4401 (2020 Third Special Session). HB 4401 extended the emergency period and the end of the repayment grace period until June 30, 2021.

M. The State of Oregon further extended statewide renter protections in SB 278 (2021 Regular Session). SB 278 provides that if a tenant provides the landlord with documentation that the tenant has applied for rental assistance, a landlord may not:

(A) Deliver a termination notice for nonpayment; or

(B) Initiate or continue an action for possession based on a termination notice for non-payment.

N. On June 24, 2021, the Board adopted Resolution 2021-058 to continue the emergency declared in Resolution 2020-110 and its Addendum until December 31, 2021, or until rescinded.

O. On September 4, 2020, the Center for Disease Control and Prevention (“CDC”), located within the U.S. Department of Health and Human Services, issued an Order temporarily halting evictions in the United States. Section 502 of Title V, Division N of the Consolidated Appropriations Act, 2021 extended the Order until January 31, 2021. With the extension of the Order, Congress also provided \$25 billion for emergency rental assistance for the payment of rent and rental arrears. Congress later provided an additional \$21.55 billion in emergency rental assistance when it passed the American Rescue Plan.

P. On January 29, 2021, following an assessment of the ongoing pandemic, the CDC renewed the Order until March 31, 2021. On March 28, the CDC renewed the Order until June 30, 2021. This Order further extends the prior Eviction Moratorium until July 31, 2021, while the Department of the Treasury disburses the remaining funds to state and local jurisdictions, and those grantees continue to accelerate efforts to deploy rental assistance on behalf of tenants.

Q. The County supports uniform implementation and enforcement of residential rental protections to ensure consistent renter protections that further address the COVID-19 public health emergency and address its significant and long lasting impacts in Multnomah County. In addition to the factual support in the CDC orders and SB 278, this action is deemed necessary because:

1. Of the estimated 15,148 households who have applied for state-funded rent assistance, approximately 10,202 reside in Multnomah County. The average total annual amount of short-term rent assistance distributed in Multnomah County under pre-pandemic conditions was approximately \$10 million. The County and its partners are now responsible for distributing almost \$100 million, requiring a significant reorganization and expansion of its systems. The scale of projected need as compared to other Oregon counties requires additional time for service providers to process applications, and to meet the legislative intent of Senate Bill 278.

2. Historically, recovery from an economic downturn takes longer for communities of color. Low-income communities of color have always faced disproportionate barriers to economic opportunities that allow them to pay rising rents and other housing costs. But the COVID-19 pandemic created additional obstacles for those communities, which will continue to exist beyond the lifting of public health restrictions and the statewide eviction moratorium. Statewide landlord data on renters' ability to pay rent has shown consistent volatility in properties that are generally more affordable to low-income households. The locations of these properties correlate with areas of Multnomah County where there are higher population rates of low-income households, communities of color, and higher rates of unvaccinated residents.
3. Despite overall improvement in national employment rates, employment in the leisure and hospitality industry in Multnomah County remains approximately 40 percent below pre-pandemic levels. Due to lower barriers to entry, many low-income Multnomah County residents depend on the leisure and hospitality industry for employment and income. The nature of this work generally does not allow for teleworking and often requires face-to-face interactions (restaurants, conventions, etc.). As such, the leisure and hospitality industry was one of the first sectors to lay off much of its workforce at the beginning of the pandemic, and therefore, will be one of the last to recover, placing many low-income residents at risk of eviction and in need of timely rent assistance.
4. Extending the protection from eviction established by SB 278 will ensure that providers have sufficient time to reach these households and process rent assistance applications, mitigating further disproportionate impacts of the COVID-19 pandemic on local communities of color.
5. This Ordinance does not relieve tenants of the obligation to pay rent. It is designed to provide sufficient time for both tenants and landlords to secure emergency financial assistance as provided by funding designed to respond to the economic impacts of the COVID-19 pandemic.

R. The County is committed to responding to the impacts of the COVID-19 pandemic.

Multnomah County Ordains as Follows:

1. It is now considered necessary to adopt and incorporate by reference Sections 2, 3, and 5 of SB 278 (2021 Regular Session), and extend the timeline of 60 days established by SB 278 in Sections 2(2)(c) and 2(5)(b) to 90 days;
2. This action is necessary to avoid mass evictions for non-payment of rent directly attributed to the lingering impacts of COVID-19 pandemic, promote housing stability, and protect the health and safety of community members in Multnomah County, and;
3. This Ordinance being necessary for the health, safety and general welfare of the people of Multnomah County, an emergency is declared and this ordinance will take effect on July 9, 2021, and is rescinded on March 1, 2022.

FIRST READING AND ADOPTION:

July 8, 2021



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury

Deborah Kafoury, Chair

REVIEWED:
JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By *Jenny M. Madkour*

Jenny M. Madkour, County Attorney