

## LAW UPDATES

## Housing and Real Property

### RECORDING ELECTRONIC DOCUMENTS

#### **2019 Oregon Laws Ch. 402 (HB 2425)**

HB 2425 allows the county clerk to record electronic documents and documents bearing an electronic signature. The bill provides that the county clerk may charge for electronic delivery of record or file images.

### LIEN INFORMATION STATEMENTS

#### **2019 Oregon Laws Ch. 140 (HB 2459)**

HB 2459 provides that a person holding an encumbrance against real property may request an itemized statement of the amount necessary to pay off another encumbrance from the person that holds the other encumbrance on the same property. The person that receives a request may provide the itemized statement without permission from the obligor unless federal or state law requires obligor's consent. "Encumbrance" is defined as "claim, lien, charge or other liability that is attached to and is binding upon real property in this state as security for payment of a monetary obligation." No required time for response is provided. No remedy for failure to respond is provided.

### LIABILITY OF TRANSFEREE FOR DEFERRED HOMESTEAD PROPERTY TAXES

#### **2019 Oregon Laws Ch. 488 (HB 2460)**

HB 2460 provides that the transferee of a tax-deferred homestead property is liable to Department of Revenue for amounts of outstanding deferred property taxes only if transferee is using the homestead more than 90 days following the death of the qualifying taxpayer, and if the transferee is a potential recipient of the homestead property under intestate succession, by devise, from the estate of the deceased taxpayer, or by gift or assignment from the insolvent taxpayer.

HB 2460 took effect on September 29, 2019.

### HOMESTEAD PROPERTY TAX DEFERRAL PROGRAM

#### **2019 Oregon Laws Ch. 591 (HB 2587)**

Prior to passage of this bill, the statute prohibited the owner of homestead tax-deferred property from pledging said property as security for a reverse mortgage. This bill amends ORS 311.700 to provide that real property that secures a reverse mortgage is not eligible for homestead tax deferral. This prohibition does not apply to property securing a reverse mortgage obligation entered on or after July 1, 2011, and before January 1, 2017, provided the taxpayer has 40% or more equity in the homestead property at the time of filing the deferral claim.

HB 2587 took effect on September 29, 2019.

### RIGHTS OF REDEMPTION

#### **2019 Oregon Laws Ch. 309 (SB 11)**

SB 11 requires a purchaser of residential real property after a foreclosure complaint has been filed and before the end of redemption period to provide notice to the seller regarding the seller's relinquishment of rights and interests in connection with conveyance of the real property, including redemption rights and rights to surplus funds. The purchaser must record an affidavit confirming compliance with the new notice requirements, and the affidavit may be attached to the deed transferring the real property.

New provisions in the bill require the sheriff's notice of execution sale to the judgment debtor to include a new provision regarding transfer of the property by debtor, offers to sell redemption rights and rights to surplus funds. The new provisions require a foreclosure complaint in an action to foreclose residential trust deed to include the new statutory warning regarding offers to purchase property, redemption rights and rights to surplus funds. The complaint also must include contact information for Division of Consumer and Business Services, OSB Lawyer Referral, and other legal assistance programs.

## **ACTIONS ARISING OUT OF CONSTRUCTION, ALTERATION, OR REPAIR**

### **2019 Oregon Laws Ch. 327 (SB 369)**

SB 369 modifies the definition of "substantial completion" for purposes of the statute of limitations applicable to actions arising out of construction, alteration or repair of improvement to real property.

## **RESIDENTIAL RENTAL APPLICANT SCREENING CHARGES**

### **2019 Oregon Laws Ch. 251 (SB 484)**

SB 484 limits a landlord to one applicant screening charge per 60-day period, for each applicant who applies to rent multiple dwelling units owned or managed by the landlord. The bill further requires the landlord to refund the screening charge if a vacancy is filled before screening or if no screening occurs.

## **RESIDENTIAL TENANCIES**

### **2019 Oregon Laws Ch. 1 (SB 608)**

SB 608 included several changes to ORS Chapter 90, with the purpose to enhance rights to tenants in Oregon, due to a recent history of limited rental availability, coupled with a growing trend of uncommonly large increases in residential rents throughout Oregon.

Section 1 of the bill included several changes to ORS 90.427, which deals with the termination of periodic tenancies, both tenancies for fixed terms and month-to-month tenancies. The most significant change is the partial elimination of the ability to terminate a tenancy with no cause. Generally speaking, in a month-to-month tenancy, the landlord may still evict for no reason, using a 30-day notice. However, once the tenant has remained in occupancy for longer than one year, then the ability to remove the tenant for no reason is generally nonexistent.

There are a few specific exceptions to this. For example, a landlord could evict if the landlord intends to demolish the unit or convert it to non-residential use. Another situation is the landlord's intent to undertake repairs or renovations to the unit. However, this scenario requires that the premises is unsafe or unfit for occupancy, or will be during the repairs or renovations. An additional permitted situation is the landlord's, or a member of the landlord's immediate family's, intent to occupy the unit as their primary residence. Finally, the landlord could evict based on a situation where the landlord has accepted an offer to buy the property, the property is the only one that is in the purchase-sale transaction, and the buyer intends to occupy the unit as the buyer's primary residence. This also requires that the landlord furnish the written real estate purchase-sale agreement to the tenant. Under any situation explained in this paragraph, the landlord can deliver to tenant a 90-day notice to vacate, must include one of the reasons just described, and must provide proof of the reason(s) described. Note that, in any type of eviction situation explained in this paragraph, if the landlord owns more than four residential dwelling units, the landlord is also required to pay one month's rent to the tenant.

In a scenario where the tenancy is in a dwelling that is also occupied by the landlord, or that is on the same property as the landlord's primary residence, assuming more than two dwelling units on the property the landlord may evict with a 60-day notice. A 30-day notice is possible if the property is sold in a transaction in which no other property is being purchased, the buyer intends to reside in the property, and the landlord delivers to the tenant written proof of the purchase/sale transaction.

Note that even in a tenancy that is not month-to-month, i.e., a fixed-term lease, section 1 of SB 608 provides that fixed-term tenancies are also subject to the prohibition on no-cause evictions after one year of occupancy. A penalty for violations of some of the above provisions amounts to three months' rent plus actual damages.

Section 2 of the Bill includes changes to the manner in which rent may be increased. The purpose of this is to regulate potentially excessive rent increases.

The bill amends ORS 90.323 to prohibit any rent increases during the first year of the tenancy. It further affixes a rent cap of 7% plus the consumer price index (which provides a running average change). There is an exception, which provides that the landlord is not subject to those regulations if the certificate of occupancy for the dwelling was issued less than 15 years from date of notice of increase, or if the landlord is providing reduced rent to the tenant as part of a federal, state, or local program or subsidy. Any rent increase requires a 90-day written notice. The 90-day notice has specific provisions on what information to include.

If the tenancy is terminated without cause during the first year of tenancy, a landlord may not reset the rent in the subsequent tenancy in excess of the previous rent plus 7% and the consumer price index adjustment. Any damages for violations of the rent increase provisions may result in a penalty of three months' rent plus actual damages.

Section 3 of the bill also enacted virtually identical provisions relating to rent increases in ORS 90.600, which addresses spaces rented for manufactured homes or floating homes.

Section 6 of the bill also made a few changes to ORS 90.100. This statute defines various terms frequently cited within ORS Chapter 90. Noteworthy are the references to the changes in ORS 90.427 (explained above), as well as a change in the model Forcible Entry and Detainer Complaint set forth in the bill. The section in the model complaint form that is essentially a checklist of what type of notice is at issue has been updated to the correct subsections in a notice subject to ORS 90.427. Also, a new line item has been inserted into the model complaint form, which is the 90-day notice provision, the basis for which is explained above.

Section 11 of the Bill specifies that the amendments to ORS 90.427 apply to fixed-term tenancies entered into or renewed on or after the effective date of the 2019 Act (which was on February 28, 2019), and terminations of month-to-month tenancies occurring on or after the 30th day after the effective date. This could be relevant in a scenario where a fixed-term lease (say, a one-year term) had been entered into by the parties prior to the effective date of the act, but does not expire until after the effective date. Those cases can be dealt with per the statutes in place prior to the effective date. This, of course, makes a significant difference on whether and under what circumstances a "no-cause" eviction notice may apply.

Section 12 of the Bill specifies that, as to the "rent-cap" statutes explained above, those provisions apply to rent increase notices delivered on or after the effective date.

SB 608 took effect on February 28, 2019.

## LANDLORD SCREENING

### **2019 Oregon Laws Ch. 268 (SB 970)**

SB 970 creates a number of new restrictions applicable to landlords. Under the bill, a residential landlord may not consider medical marijuana use, a prior drug conviction based solely on the use or possession of marijuana, the possession of a medical marijuana card, or an applicant's status as a medical marijuana patient when evaluating a rental applicant.

Additionally, a landlord may not prohibit a tenant from engaging a real estate broker or licensed manufactured structure dealer to facilitate the sale or sublease of tenant's manufactured or floating home under ORS 90.555, and a landlord of a manufactured or floating home facility must provide the applicant, purchaser or tenant with a copy of an informational handout in a form prescribed by Housing and Community Services Department. A facility landlord may not prohibit facility tenant from subleasing while the facility tenant actively markets for sale the tenant's manufactured or floating home if landlord has a policy of renting manufactured or floating homes that are listed for sale by the landlord.