TITLE 10

PROPERTY RIGHTS AND TRANSACTIONS

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1973 REPLACEMENT PART

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CREATION AND TERMINATION OF TENANCIES

91.010 Tenancy, when deemed to exist. A tenancy is deemed to exist under this chapter and ORS 105.115 and 105.120 when one has let real estate to another to hold of him as a landlord.

91.020 Tenancies classified. Tenancies are as follows: Tenancy at sufferance, tenancy at will, tenancy for years, tenancy from year to year, tenancy from month to month, tenancy by entirety and tenancy for life. The times and conditions of the holdings shall determine the nature and character of the tenancy.
[Amended by 1969 c.591 §273]

91.030 Tenancy by entirety or for life. A tenancy by entirety and a tenancy for life shall be such as now fixed and defined by the laws of the State of Oregon.
[Amended by 1969 c.591 §274]

91.040 Tenancy at sufferance. One who comes into possession of the real estate of another lawfully, but who holds over by wrong after the termination of his term, is considered as a tenant at sufferance. No notice is required to terminate a tenancy at sufferance.

91.050 Tenancy at will. One who enters into the possession of real estate with the consent of the owners, under circumstances not showing an intention to create a freehold interest, is considered a tenant at will. When the rent reserved in the lease at will is payable at periods of less than three months, a notice to terminate the tenancy is sufficient if it is equal to the interval between the times of payment of rent. The notice to terminate a tenancy at will is sufficient if given for the prescribed period prior to the expiration of the period for which, by the terms of the lease and holding, rents are to be paid.

91.060 Tenancy from year to year. One who enters into the possession of real estate with the consent of the owner, and no certain time is mentioned, but an annual rent is reserved, is considered a tenant from year to year. A notice to terminate a tenancy from year to year is sufficient if it is given 60 days prior to the expiration of the period for which, by the terms of the lease and holding, rents are to be paid.

91.070 Tenancy from month to month. One who holds the lands or tenements of another, under the demise of the other, and no certain time has been mentioned, but a monthly rental has been reserved, is considered a tenant from month to month. Except as otherwise provided by statute or agreement, such tenancy may only be terminated by either the landlord or tenant giving the other, at any time during the tenancy, not less than 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy. The tenancy shall terminate on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy and holding, rents are to be paid.

91.080 Termination when expiration of tenancy fixed by terms of lease. A tenant entering into the possession of real estate may, by the terms of his lease, fix the date of expiration of his tenancy, and when so fixed, no notice is required to render the holding of the tenant wrongful and by force after the expiration of his term as fixed by his lease.

91.090 Termination of tenancy by failure to pay rent; reinstatement. The failure of a tenant to pay the rent reserved by the terms of his lease for the period of 10 days, unless a different period is stipulated in the lease, after it becomes due and payable, operates to terminate his tenancy. No notice to quit or pay the rent is required to render the holding of such tenant thereafter wrongful; however, if the landlord, after such default in payment of rent, accepts payment thereof, the lease is reinstated for the full period fixed by its terms, subject to termination by subsequent defaults in payment of rent.

91.100 Waiver of notice. Any person entering into the possession of real estate under written lease, as the tenant of another, may, by the terms of his lease, waive the giving of any notice prescribed by ORS 91.050 to 91.070.

91.110 Notices to be in writing; how served. All notices required by ORS 91.050 to 91.070 and by ORS 105.120, must be in writing and must be served upon the tenant by being delivered to him in person or by being posted in a conspicuous place on the leased premises in case of his absence, or by being left at his residence or place of abode.

RENT

91.210 Rents payable in advance unless otherwise agreed; demand unnecessary. Unless otherwise expressly provided by the lease or terms of holding, all rents reserved under the lease or terms of holding are due and payable in advance. The tenant shall pay or tender payment thereof on or prior to the first day of the rent paying period provided in his lease or by the terms of his holding, and no demand therefor is necessary to render a tenant in default.

91.220 Tenant in possession liable for rent; remedies for recovery. (1) Every person in possession of land out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold, or for any term of years, is liable for the amount or proportion of rent due from the land in his possession, although it is only a part of what was originally demised.

(2) Such rent may be recovered in an action at law, and the deed of demise, or other instrument in writing, if there is any, showing the provisions of the lease, may be used in evidence by either party to prove the amount due from the defendant.

(3) This section shall not deprive landlords of any other legal remedy for the recovery of their rents, whether secured to them by their leases or provided by law.

EMBLEMENTS

91.310 Farm tenant's right to emblements. When the leasing or occupation is for the purpose of farming or agriculture, the tenant or person in possession shall, after the termination of the lease or occupancy, have free access to the premises to cultivate and harvest or gather any crop or produce of the soil planted or sown by him before the service of notice to quit.

MATTERS RELATING TO GAMBLING LEASES

91.410 Gambling leases prohibited; status of rental contracts; termination; recovery of possession. (1) No person shall let or rent any house, room, shop or other building, or any boat, booth, garden or other place, knowing or having reason to believe it will be used for gambling purposes.

(2) All contracts for the rent of a room, building or place in violation of subsection (1) of this section are void between the parties.

(3) Any person letting or renting any room, building, or place mentioned in subsection (1) of this section which is at any time used by the lessee or occupant thereof, or any other person with his knowledge or consent, for gambling purposes, upon discovery thereof, may avoid and terminate such lease or contract of occupancy, and recover immediate possession of such building or other place by an action at law for that purpose to be brought before any justice of the peace of the county in which the use is permitted.

91.420 Penalty for letting or renting a place for gambling purposes. Violation of subsection (1) of ORS 91.410 results in a forfeiture of twice the amount of the rent of such building or other place for six months to be recovered by action at law instituted by the district attorney in the name of the state.

UNIT OWNERSHIP
(General Provisions)

91.505 Definitions for ORS 91.505 to 91.675. As used in ORS 91.505 to 91.675, unless the context requires otherwise:

(1) "Association of unit owners" means all the unit owners acting as a group in accordance with the declaration and bylaws.

(2) "Building" means a multiple-unit building or single-unit buildings, or any combination thereof, comprising a part of the property.

(3) "Common elements" means the general common elements and the limited common elements.

(4) "Common expenses" means:

(a) Expenses of administration, maintenance, repair or replacement of the common elements;

(b) Expenses agreed upon as common by all the unit owners; and

(c) Expenses declared common by subsection (1) of ORS 91.590 and subsection (2) of ORS 91.595, or by the declaration or the bylaws of the particular condominium.

(5) "Declaration" means the master deed or master lease that is the instrument by which the property is submitted to the provisions of ORS 91.505 to 91.675.

(6) "General common elements," unless otherwise provided in a declaration or by consent of all the unit owners, means:

(a) The land, whether leased or in fee simple, on which a building is located except any portion thereof included in a unit or made a limited common element by the declaration;

(b) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances and exits of a building;

(c) The basements, yards, gardens, parking areas and outside storage spaces;

(d) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal and incinerating;

(e) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(f) The premises for the lodging of janitors or caretakers of the property; and

(g) All other elements of a building necessary or convenient to its existence, maintenance and safety, or normally in common use.

(7) "Leasehold" means the interest of a person, firm or corporation who is the lessee under a lease from the owner in fee and who files a declaration submitting his leasehold interest to the provisions of ORS 91.505 to 91.675.

(8) "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners, as reserved for the use of a certain unit or number of units, to the exclusion of the other units.

(9) "Majority" or "majority of the unit owners," unless otherwise provided in the declaration, means the owners of more than 50 percent in the aggregate of the undivided ownership interests in the general common elements as the percentage of interest in such element appertaining to each unit is expressed in the declaration. Whenever a percentage of the unit owners is specified, percentage means such percentage in the aggregate of such undivided ownership.

(10) "Manager" means the manager, board of managers or other person in charge of the administration of or managing, the property.

(11) "Property" means the land, whether leasehold or in fee simple, all buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which are submitted to the provisions of ORS 91.505 to 91.675.

(12) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or any other instruments or documents affecting the title to real property.

(13) "Unit" means a part of the property including a building or one or more rooms occupying one or more floors of a building or a part or parts thereof, intended for any type of independent use, and with a direct exit to a public street or highway or to a common area or areas leading to a public street or highway.

(14) "Unit designation" means the number, letter or combination thereof designating a unit in the declaration.

(15) "Unit owner" means the person owning a unit in any real estate tenancy relationship recognized under the laws of this state.

[1963 c.541 §2; 1965 c.430 §1; 1967 c.361 §1]

91.510 Short title. ORS 91.505 to 91.675 may be cited as the Unit Ownership Law.

[1963 c.541 §1]

(Creation of Unit Ownership)

91.525 Property submitted to unit ownership by declaration. (1) In order to submit any property to the provisions of ORS 91.505 to 91.675, the owner thereof shall record a declaration in the office of the recording officer of the county in which such property is located. The declaration shall be executed in accordance with ORS 91.530 and acknowledged by the owner of the property.

(2) A preliminary declaration, setting forth as many of the particulars required by ORS 91.530 as may then be practicable, may be recorded before construction of a building described in the declaration is completed. The preliminary declaration shall not relieve the owner from the necessity of filing the declaration as required by ORS 91.530.

[1963 c.541 §§3, 15]

91.530 Contents of declaration; name of property. (1) A declaration shall contain:

(a) A description of the land, whether leased or in fee simple.

(b) The name by which the property shall be known and a general description of each unit and the building or buildings, in-

cluding the number of stories and basements of each building, the number of units and the principal materials of which they are constructed.

(c) The unit designation, location, approximate area of each unit and any other data necessary for proper identification.

(d) A description of the general common elements and the percentage of the interest of each unit owner therein.

(e) A description of the limited common elements, if any, stating to which units their use is reserved and in what percentage.

(f) A statement of the use for which the building or buildings and each of the units is intended.

(g) The name of a person to receive service of process in the cases provided in subsection (1) of ORS 91.635, and the residence or place of business of such person which shall be within the county in which the property is located.

(h) Any other details regarding the property that the person executing the declaration considers desirable.

(2) In the event the declarant proposes to develop the property in two or more stages or proposes to annex additional property to the property described in the declaration, the declaration shall also contain a general description of the plan of development, including:

(a) The maximum number of units to be included in each proposed stage of development.

(b) The dates by which declarant will elect whether to proceed with each stage of development.

(c) A general description of the nature and proposed use of any additional common elements which declarant proposes to annex to the property described in the declaration, if such common elements might substantially increase the proportionate amount of the common expenses payable by existing unit owners.

(d) A chart showing the percentage interest in the common elements of each original unit owner at each stage of development if declarant elected to proceed with all stages of development.

(e) Such other information as the Real Estate Commissioner shall require in order to carry out the purposes of the Oregon Land Development Consumer Protection Act.

(3) No property shall bear a name using a word which is the same as, similar to or pronounced the same as, a word in the name of any other property or subdivision in the same county, except for the words "apartment," "motel," "building," "court," "place," or similar words.

[1963 c.541 §§14, 16; 1965 c.430 §2; 1971 c.414 §1; 1973 c.421 §51]

91.535 Approval of declaration required; prerequisites. (1) Before a declaration may be recorded, it must be approved by the county assessor, the tax collector of the county in which the property is located and the Real Estate Commissioner. No declaration shall be approved unless the requirements of subsections (2), (3) and (5) of this section are met.

(2) The name shall comply with subsection (3) of ORS 91.530.

(3) All ad valorem taxes, special assessments, fees, or other charges required by law to be placed upon the tax roll which have become a lien upon the property or which will become a lien upon the property during the calendar year shall have been paid.

(4) Advance payment of ad valorem taxes, special assessments, fees or other charges which are not on the tax roll and for which payment is required under subsection (3) of this section, shall be made to the assessor utilizing the procedures contained in ORS 92.095 and 311.370.

(5) The declaration shall comply with the requirements of ORS 91.530, the bylaws adopted under ORS 91.555 shall comply with the requirements of ORS 91.560, and the floor plans and plat shall comply with the requirements of ORS 91.540.

[1963 c.541 §17; 1971 c.230 §1; 1973 c.402 §1; 1973 c.803 §1]

91.540 Recording declaration, plat and floor plans. (1) When a declaration is made and approved as required, it shall, upon the payment of the fees provided by law, be recorded by the recording officer. The fact of recording and the date thereof shall be entered thereon. At the time of recording a declaration, the person offering it for record shall also file an exact copy, certified by the recording officer to be a true copy thereof, with the county assessor.

(2) Floor plans of a building described in a declaration shall be recorded simultaneously with the declaration. The floor plans shall show the layout of each unit in a building including the unit designation, location and dimensions of each unit and the common elements to which each has access. There shall

be attached to the floor plans a statement of the registered architect or registered professional engineer who prepared the floor plans certifying that the plans fully and accurately depict the layout of the units and floors of the building, and the date construction of the building was completed.

(3) A plat of the land described in the declaration, complying with ORS 92.080 and based upon a survey, shall be recorded simultaneously with the declaration. The plat shall show the bearing and length of each line, the initial point of the survey giving ties to a corner or corners of record or to monuments set and found and the location of all buildings, roads, roadways and other improvements. A surveyor's affidavit, complying with ORS 92.070, shall be attached to the plat.
[1963 c.541 §§18, 19; 1973 c.803 §2]

91.545 Supplemental information required for additional development and annexation of property. (1) If the original declaration submitting property to ORS 91.505 to 91.675 proposes additional stages of development or the annexation of additional property to the property described in the declaration, a supplemental declaration and floor plans shall be approved and filed by declarant at the time of each annexation. Such supplemental declarations and floor plans shall:

(a) Be consistent with the provisions of the original declaration drawn pursuant to subsection (2) of ORS 91.530.

(b) Contain the information required by subsection (1) of ORS 91.530 in so far as that information relates to the property being annexed.

(c) If additional annexations were contemplated in the original declaration, contain a chart listing the new units and showing the information described in paragraph (d) of subsection (2) of ORS 91.530 in relation to such units.

(2) Such supplemental declarations and floor plans shall be approved and recorded as provided in ORS 91.535 and 91.540. No unit in any additional stage of development shall be conveyed until after such recording.
[1971 c. 414 §3]

(Management of Property; Encumbrances; Conveyances)

91.555 Adoption of bylaws; recording; amendment. (1) The unit owners of each property shall adopt bylaws to govern the administration of the property.

(2) A copy of the bylaws, certified by the chairman and secretary of the association, shall be recorded simultaneously with the declaration of the property to which the bylaws relate.

(3) An amendment of the bylaws shall not be effective unless approved by 75 percent of the unit owners and until a copy of the bylaws as amended, certified by the chairman and secretary of the association of unit owners, is recorded.
[1963 c.541 §20]

91.560 Contents of bylaws. The bylaws shall provide for:

(1) The election from among the unit owners of a board of directors, the number of persons constituting the board, and that the terms of at least one-third of the directors shall expire annually; the powers and duties of the board; the compensation, if any, of the directors; the method of removal from office of directors; and whether or not the board may engage the services of a manager or managing agent.

(2) The method of calling meetings of the unit owners and the percentage, if other than a majority as defined by subsection (9) of ORS 91.505, that shall constitute a quorum.

(3) The election of a chairman, a secretary and a treasurer.

(4) The maintenance, upkeep and repair of the common elements and payment for the expense thereof including the method of approving payment vouchers.

(5) The employment of personnel necessary for the maintenance, upkeep and repair of the common elements.

(6) The manner of collecting from the unit owners their share of the common expenses.

(7) The method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common elements.

(8) Such restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not included in the declaration, as are designed to prevent unreasonable interference with the use of their respective units and of the common elements by the several unit owners.

(9) The method of amending the bylaws subject to subsection (3) of ORS 91.555.

(10) In the event additional units are

proposed to be annexed pursuant to ORS 91.635, the method of apportioning common expenses in the event new units are added during the course of the fiscal year.
[1963 c.541 §21; 1971 c.414 §4]

91.565 Unit deeds. The deed of a unit shall contain:

(1) A description of the land, the name of the property, and the recording index numbers and date of recording of the declaration.

(2) The unit designation of the unit.

(3) The use for which the unit is intended.

(4) Any further details the grantor and grantee may consider desirable.
[1963 c.541 §22; 1971 c.414 §5]

91.570 Removal of unit from blanket mortgage. At the time of the first conveyance of each unit following the recording of the declaration, every mortgage and other lien affecting such unit including the undivided interest of the unit in the common elements, shall be paid and satisfied of record, or the unit being conveyed and its interest in the common elements shall be released therefrom by partial release duly recorded.
[1963 c.541 §23]

91.575 Liens against property; removal from lien; effect of part payment. (1) Subsequent to recording a declaration and while the property remains subject to ORS 91.505 to 91.675, no lien shall arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against each unit and the undivided interest in the common elements appertaining thereto, in the same manner and under the same conditions as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

(2) No labor performed or materials furnished with the consent or at the request of a unit owner, his agent, contractor or subcontractor, shall be the basis for the filing of a mechanic's or materialman's lien against the unit of any other unit owner not consenting to or requesting the labor to be performed or the materials to be furnished, except that consent shall be considered given by the owner of any unit in the case of emergency repairs thereto performed or furnished with the consent or at the request of the manager.

(3) If a lien becomes effective against two or more units, the owner of each unit subject to such a lien shall have the right to have his unit released from the lien by payment of the amount of the lien attributable to his unit. The amount of the lien attributable to a unit and the payment required to satisfy such a lien, in the absence of agreement, shall be determined by application of the percentage established in the declaration. Such partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and the undivided interest in the common elements appertaining thereto not so released by payment, satisfaction or discharge.
[1963 c.541 §24]

91.580 Lien of association against unit; recording; foreclosure. (1) Whenever an association of unit owners, acting through its manager, furnishes to a unit any services, labor or material lawfully chargeable as common expenses, the association of unit owners, upon complying with subsection (2) of this section, shall have a lien upon the individual unit and the undivided interest in the common elements appertaining to such unit for the reasonable value of such common expenses, and the lien shall be prior to all other liens or encumbrances upon the unit except:

(a) Tax and assessment liens, and

(b) A first mortgage or trust deed of record.

(2) An association of unit owners claiming the benefits of subsection (1) of this section shall record in the county in which the unit or some part thereof is located a claim containing a true statement of the account due for such common expenses after deducting all just credits and offsets; the name of the owner of the unit, or reputed owner, if known; a description of the property where the common expenses were furnished and the designation of the unit, sufficient for identification.

(3) The claim shall be verified by the oath of some person having knowledge of the facts and shall be filed with and recorded by the recording officer in the book kept for the purpose of recording liens filed under ORS 87.035. The record shall be indexed as deeds and other conveyances are required by law to be indexed.

(4) The proceedings to foreclose liens created by this section shall conform as nearly as possible to the proceedings to foreclose

liens created by ORS 87.010. The lien may be enforced by the manager acting on behalf of the association of unit owners. An action to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the lien securing the claim for common expenses.
[1963 c.541 §§26, 27]

91.585 Receiver for unit; power of property manager to bid at foreclosure sale. In any foreclosure suit against a unit, the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the rent. The manager, acting on behalf of the unit owners, shall have power, unless prohibited by the declaration, to bid in the unit at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.
[1963 c.541 §28]

91.590 Liability for unpaid share of common expenses. (1) Where the purchaser of a unit obtains title to the unit as a result of foreclosure of the first mortgage or trust deed, such purchaser, his successors and assigns, shall not be liable for any of the common expenses chargeable to such unit which became due prior to the acquisition of title to such unit by such purchaser. Such unpaid share of common expenses shall be a common expense of all the unit owners including such purchaser, his successors and assigns.

(2) In a voluntary conveyance of a unit, the grantee shall be jointly and severally liable with the grantor for all unpaid charges against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of a prospective purchaser the manager shall make and deliver a statement of the unpaid charges against the prospective grantor, and the grantee in that case shall not be liable for, nor shall the unit when conveyed be subject to, a lien filed thereafter for any unpaid charges against the grantor in excess of the amount therein set forth.
[1963 c.541 §§29, 30]

91.595 Records of receipts and expenditures affecting common elements; insurance. (1) The manager shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for examination by the unit owners at convenient hours of week days.

(2) The manager, as trustee for the unit owners, shall, if required by the declaration, the bylaws or by a majority of the unit owners, insure the building against loss or damage by fire and such other hazards as shall be required, without prejudice to the right of each unit owner to insure his own unit for his own benefit. The premiums for such insurance on the building are common expenses.
[1963 c.541 §§25, 31]

(Attributes and Duties of Ownership)

91.605 Status and ownership of units. (1) While the property is submitted to the provisions of ORS 91.505 to 91.675, a unit may be individually conveyed and encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other units of which they form a part, and the corresponding individual titles and interests shall be recordable.

(2) Each unit owner shall be entitled to the exclusive ownership and possession of his unit.
[1963 c.541 §§4, 5]

91.610 Interest of unit owners in common elements. (1) Each unit owner shall be entitled to an undivided interest in the common elements in the percentage expressed in the declaration. Such percentage shall be in the approximate relation that the value of the unit at the date of the declaration bears to the then combined value of all the units having an interest in the particular common elements. Value need not conform to market value. The percentage of undivided interest of each unit owner in the common elements as expressed in a declaration shall not be altered unless all unit owners having an interest in the particular common element

agree thereto and record an amendment to the declaration setting forth the altered percentage of each unit owner having an interest.

(2) The undivided interest in the common elements shall not be separated from the unit to which it appertains and shall be conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(3) The common elements shall remain undivided and no unit owner shall bring any action for partition or division of any part thereof, except as provided in ORS 91.670. Any covenant to the contrary is void.
[1963 c.541 §§6, 7]

91.615 Apportionment of common profits and expenses; liability of unit owner. (1) Unless otherwise provided in the declaration, the common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners according to the percentage of undivided interest of each in the common elements.

(2) No unit owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit.
[1963 c.541 §§8, 12; 1971 c.414 §6]

91.620 Maintenance and improvement of units. A unit owner shall make no repair or alteration or perform any other work on his unit which would jeopardize the soundness or safety of the property, reduce the value thereof or impair any easement or hereditament unless the consent of all the other unit owners affected is first obtained.
[1963 c.541 §9]

91.625 Use and maintenance of common elements. (1) Each unit owner may use the common elements in accordance with the purposes for which they are intended, but may not hinder or encroach upon the lawful rights of the other unit owners.

(2) The necessary work of maintenance, repair and replacement of the common elements and additions or improvements to the common elements shall be carried out only as provided in the bylaws.

(3) The association of unit owners shall have the right, to be exercised by the manager, to have access to each unit as may be necessary for the maintenance, repair or replacement of the common elements, or to make emergency repairs therein necessary for the public safety or to prevent damage to the common elements or to another unit.
[1963 c.541 §§10, 11]

91.630 Compliance with bylaws and other restrictions. Each unit owner shall comply with the bylaws and with the administrative rules and regulations adopted pursuant thereto, and with the covenants, conditions and restrictions in the declaration or in the deed to his unit. Failure to comply therewith shall be grounds for an action maintainable by the association of unit owners or by an aggrieved unit owner.
[1963 c.541 §13]

91.635 Actions by and against unit owners. (1) Actions may be brought on behalf of two or more of the unit owners, as their respective interests may appear, by the manager with respect to any cause of action relating to the common elements or more than one unit. Service of process on two or more unit owners, in any action relating to the common elements or more than one unit, may be made on the person designated in the declaration to receive service of process or in duplicate on the recording officer of the county in which the declaration is filed. The recording officer shall promptly send a copy of the document served by certified or registered mail to the person designated in the declaration to receive service of process. At the time of service on the recording officer, the serving party shall pay to the recording officer a fee of $10, which shall be a taxable disbursement.

(2) If the association of unit owners wishes to designate a person other than the one named in the declaration to receive service of process in the cases provided in subsection (1) of this section, it shall record an amendment to the declaration. The amendment shall be certified by the chairman and the secretary of the association of unit owners, and shall state the name of the successor with his residence or place of business as required by paragraph (g) of subsection (1) of ORS 91.530, and that the person named in the amendment was designated by resolution duly adopted by the association of unit owners.
[1963 c.541 §§38, 39]

91.640 Taxation of units; exemptions; uniform appraisal and assessment. (1) Each unit with its percentage of undivided

interest in the common elements shall be considered a parcel of real property, whether leased or in fee simple, subject to separate assessment and taxation by any taxing unit in like manner as other parcels of real property. A unit based upon a declaration filed by the owner of a leasehold estate shall be assessed in the name of the unit owner and not in the name of the owner of the fee or of the leasehold estate upon which the declaration is based. Neither the building, the property nor any of the common elements shall be considered a separate parcel for purposes of taxation.

(2) In determining the true cash value of a unit with its undivided interest in the common elements, the county assessor may use the percentage of undivided interest in the common elements appertaining to a unit as expressed in the declaration. Determination of true cash value of a unit based upon a leasehold estate shall be the same as a unit in fee simple. There shall be no diminution of value by reason of the term of said lease.

(3) Exemptions from executions and real property taxes apply to the owner of each unit or to the individual units, as the case may be.

(4) The Department of Revenue shall have the authority to make rules and regulations prescribing methods best calculated to secure uniformity according to law in the appraisal and assessment of units constituting part of a property submitted to the provisions of ORS 91.505 to 91.675.

[1963 c.541 §§40, 41, 42; 1967 c.361 §2]

(Removal of Property from Unit Ownership)

91.655 Removal by unit owners; consent of lienholders. (1) All of the unit owners may remove a property from the provisions of ORS 91.505 to 91.675 by executing and recording an instrument to that effect if the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the undivided interest of the unit owner in the property after removal from the provisions of ORS 91.505 to 91.675.

(2) The tax collector for any taxing unit having a lien for taxes or assessments shall have authority to consent to such a transfer of any tax or assessment lien.

[1963 c.541 §32]

91.660 Agreement by unit owners that property is obsolete; damage or destruction. (1) Ninety percent of the unit owners may agree that the property is obsolete in whole or in part and whether or not it shall be renewed and restored or sold and the proceeds of sale distributed. If 90 percent of the unit owners agree to renew and restore the property, the expense thereof shall be paid by all the unit owners as common expenses. If 90 percent of the unit owners agree to sell the property, the property shall be considered removed from the provisions of ORS 91.505 to 91.675.

(2) If within 60 days after the date of the damage to or destruction of all or part of the property, the association of unit owners does not decide to repair, reconstruct or rebuild, the property shall be considered removed from the provisions of ORS 91.505 to 91.675.

[1963 c.541 §§33, 34]

91.665 Common ownership of property removed from unit ownership. If the property is removed from the provisions of ORS 91.505 to 91.675, as provided by ORS 91.655 and 91.660, the property shall be considered owned in common by all the unit owners. The percentage of undivided interest of each unit owner in the property owned in common shall be the same as the percentage of undivided interest previously owned by such owner in the common elements. Liens affecting any unit shall be liens, in accordance with the then existing priorities, against the undivided interest of the unit owner in the property owned in common.

[1963 c.541 §35]

91.670 Action for partition; division of sale proceeds. If the property is removed from the provisions of ORS 91.505 to 91.675, as provided in ORS 91.655 and 91.660, it shall be subject to an action for partition at the suit of any unit owner. The net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among the unit owners in proportion to their respective undivided interests after first paying out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each unit owner.

[1963 c.541 §36]

91.675 Removal no bar to resubmission. The removal of the property from the provisions of ORS 91.505 to 91.675 shall in no way bar its resubmission.

[1963 c.541 §37]

SHORT TITLE; ADMINISTRATION; APPLICATION; DEFINITIONS

91.700 Short title. ORS 91.700 to 91.865 shall be known and may be cited as the "Residential Landlord and Tenant Act."
[1973 c.559 §1]

Note: Section 38, chapter 559, Oregon Laws 1973, provides:

Sec. 38. Transactions entered into before the effective date of this Act [October 5, 1973], and not extended or renewed on and after that date, and the rights, duties and interests flowing from them remain valid and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this Act as though the repeal or amendment had not occurred.

91.705 General definitions. Subject to additional definitions contained in ORS 91.700 to 91.865 which apply to specific sections or parts thereof, and unless the context otherwise requires, in ORS 91.700 to 91.865:

(1) "Action" includes recoupment, counterclaim, setoff, suit in equity and any other proceeding in which rights are determined, including an action for possession.

(2) "Building and housing codes" include any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit.

(3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. "Dwelling unit" in the case of a person who rents space in a mobile home park, as defined in ORS 446.002, but does not rent the mobile home, means the space rented and not the mobile home itself.

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(5) "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by ORS 91.765.

(6) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(7) "Owner" includes a mortgagee in possession and means one or more persons, jointly or severally, in whom is vested:

(a) All or part of the legal title to property; or

(b) All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

(8) "Person" includes an individual or organization.

(9) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

(10) "Rent" means all payments to be made to the landlord under the rental agreement.

(11) "Rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under ORS 91.780 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(12) "Roomer" means a person occupying a dwelling unit that does not include a toilet and either a bathtub or a shower and a refrigerator, stove and kitchen, all provided by the landlord, and where one or more of these facilities are used in common by occupants in the structure.

(13) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others, including a dwelling unit owned, operated or controlled by a public housing authority.
[1973 c.559 §5]

91.710 Exclusions from application of ORS 91.700 to 91.865. Unless created to avoid the application of ORS 91.700 to 91.865, the following arrangements are not governed by ORS 91.700 to 91.865:

(1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar service, but not including residence in off-campus nondormitory housing.

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest.

(3) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization.

(4) Transient occupancy in a hotel or motel.

(5) Occupancy by an employe of a landlord whose right to occupancy is conditional upon employment in and about the premises.

(6) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative.

(7) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.
[1973 c.559 §4]

91.715 Territorial application. ORS 91.700 to 91.865 apply to, regulate and determine rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.
[1973 c.559 §3]

91.720 Applicability of other statutory lien, tenancy and rent provisions. The provisions of ORS 87.535 to 87.551 and 91.010 to 91.220 do not apply to the rights and obligations of landlords and tenants governed by ORS 91.700 to 91.865. Any provisions of ORS 91.700 to 91.865 which reasonably apply only to the structure that is used as a home, residence or sleeping place shall not apply to dwelling units in mobile home parks where space is rented but the mobile home is not rented.
[1973 c.559 §33]

91.725 Administration of remedies; enforcement. (1) The remedies provided by ORS 91.700 to 91.865 shall be so administered that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(2) Any right or obligation declared by ORS 91.700 to 91.865 is enforceable by action unless the provision declaring it specifies a different and limited effect.
[1973 c.559 §2]

91.730 Obligation of good faith. Every duty under ORS 91.700 to 91.865 and every act which must be performed as a condition precedent to the exercise of a right or remedy under ORS 91.700 to 91.865 imposes an obligation of good faith in its performance or enforcement.
[1973 c.559 §6]

91.735 Unconscionability. (1) If the court, as a matter of law, finds:

(a) A rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result; or

(b) A settlement in which a party waives or agrees to forego a claim or right under ORS 91.700 to 91.865 or under a rental agreement was unconscionable when made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) If unconscionability is put into issue by a party or by the court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose and effect of the rental agreement or settlement to aid the court in making the determination.
[1973 c.559 §7]

GENERAL PROVISIONS

91.740 Terms and conditions of rental agreement. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by ORS 91.700 to 91.865 or other rule of law including rent, term of the agreement and other provisions governing the rights and obligations of the parties.

(2) In absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

(3) Rent is payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly instalments at the beginning of each month.

(4) Unless the rental agreement fixes a definite term, the tenancy is week to week in case of a roomer who pays weekly rent, and in all other cases month to month.
[1973 c.559 §8]

91.745 Prohibited provisions in rental agreements. (1) A rental agreement may not provide that the tenant:

(a) Agrees to waive or forego rights or remedies under ORS 91.700 to 91.865;

(b) Authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(c) Agrees to the exculpation or limitation of any liability arising as a result of the other party's wilful misconduct or negligence

or to indemnify the other party for that liability or costs connected therewith.

(2) A provision prohibited by subsection (1) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him to be prohibited and attempts to enforce such provisions, the tenant may recover in addition to his actual damages an amount up to three months' periodic rent.
[1973 c.559 §9]

91.750 Separation of rents and obligations to maintain premises prohibited. A rental agreement, assignment, conveyance, trust deed or security instrument may not permit the receipt of rent free of the obligation to comply with subsection (1) of ORS 91.770.
[1973 c.559 §10]

91.755 Attorney fees. In any action on a rental agreement or arising under ORS 91.700 to 91.865, reasonable attorney fees may be awarded to the prevailing party together with costs and necessary disbursements, notwithstanding any agreement to the contrary. As used in this section, "prevailing party" means the party in whose favor final judgment is rendered.
[1973 c.559 §11]

LANDLORD OBLIGATIONS

91.760 Security deposits. (1) For the purposes of this section, "security deposit" means any payment or deposit of money the primary function of which is to secure the performance of a rental agreement or any part of a rental agreement, but does not mean a payment or deposit, including an advance payment of rent, made to secure the execution of a rental agreement. "Security deposit" shall not include a fee if such fee is clearly designated as nonrefundable.

(2) A security deposit shall be held by the landlord for the tenant who is a party to the rental agreement. The claim of a tenant to the security deposit shall be prior to the claim of any creditor of the landlord, including a trustee in bankruptcy.

(3) The landlord may claim all or part of the security deposit only if the deposit was made for any or all of the purposes provided by subsection (4) of this section.

(4) The landlord may claim from the security deposit only the amount reasonably necessary:

(a) To remedy the tenant's defaults in the performance of the rental agreement; and

(b) To repair damages to the premises caused by the tenant, not including ordinary wear and tear.

(5) In order to claim all or part of the security deposit, within 30 days after the termination of the tenancy and delivery of possession the landlord shall give to the tenant a written accounting which states specifically the basis or bases of the claim.

(6) The security deposit or portion of the deposit not claimed in the manner provided by subsection (5) of this section shall be returned to the tenant not later than 30 days after the termination of the tenancy, delivery of possession to the landlord and demand by the tenant.

(7) If the landlord fails to comply with subsection (6) of this section or if he fails to return any prepaid rent required to be paid to the tenant under ORS 91.700 to 91.865 the tenant may recover the property and money due him in an amount equal to twice the amount wrongfully withheld.

(8) This section does not preclude the landlord or tenant from recovering other damages to which he may be entitled under ORS 91.700 to 91.865.

(9) The holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this section.
[1973 c.559 §12]

91.765 Disclosure of certain matters. (1) The landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) The person authorized to manage the premises; and

(b) An owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and receiving and receipting for notices and demands.

(2) The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord, owner or manager.

(3) A person who fails to comply with subsection (1) of this section becomes an agent of each person who is a landlord for:

(a) Service of process and receiving and receipting for notices and demands; and

(b) Performing the obligations of the

landlord under ORS 91.700 to 91.865 and under the rental agreement and expending or making available for that purpose all rent collected from the premises.
[1973 c.559 §13]

91.770 Landlord to maintain premises in habitable condition; agreement with tenant to maintain premises. (1) A landlord shall at all times during the tenancy maintain the dwelling unit in a habitable condition. For purposes of this section, a dwelling unit shall be considered unhabitable if it substantially lacks:

(a) Effective waterproofing and weather protection of roof and exterior walls, including windows and doors;

(b) Plumbing facilities which conform to applicable law in effect at the time of installation, and maintained in good working order;

(c) A water supply approved under applicable law, which is:

(A) Under the control of the tenant or landlord and is capable of producing hot and cold running water;

(B) Furnished to appropriate fixtures; and

(C) Connected to a sewage disposal system approved under applicable law and maintained in good working order to the extent that the system can be controlled by the landlord;

(d) Adequate heating facilities which conform to applicable law at the time of installation and maintained in good working order;

(e) Electrical lighting with wiring and electrical equipment which conform to applicable law at the time of installation and maintained in good working order;

(f) Building, grounds and appurtenances at the time of the commencement of the rental agreement in every part clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin, and all areas under control of the landlord kept in every part clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin;

(g) An adequate number of appropriate receptacles for garbage and rubbish in clean condition and good repair at the time of the commencement of the lease or rental agreement, and the landlord shall provide and maintain appropriate serviceable receptacles thereafter and arrange for their removal unless the parties by written agreement provide otherwise;

(h) Floors, walls, ceilings, stairways and railings maintained in good repair;

(i) Ventilating, air conditioning and other facilities and appliances, including elevators, maintained in good repair if supplied or required to be supplied by the landlord; or

(j) Safety from the hazards of fire.

(2) The landlord and tenant may agree in writing that the tenant is to perform specified repairs, maintenance tasks and minor remodeling only if:

(a) The agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord;

(b) The agreement does not diminish the obligations of the landlord to other tenants in the premises; and

(c) The terms and conditions of the agreement are clearly and fairly disclosed and adequate consideration for the agreement is specifically stated.
[1973 c.559 §14]

TENANT OBLIGATIONS

91.775 Tenant to maintain premises. The tenant shall:

(1) Use the parts of the premises including the living room, bedroom, kitchen, bathroom and dining room in a reasonable manner considering the purposes for which they were designed and intended;

(2) Keep all areas of the premises under control of the tenant in every part as clean, sanitary and free from all accumulations of debris, filth, rubbish and garbage, as the condition of the premises permits;

(3) Dispose from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner;

(4) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(5) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances including elevators in the premises;

(6) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so; and

(7) Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises.
[1973 c.559 §15]

91.780 Use and occupancy rules and regulations; adoption; enforceability. (1) A landlord, from time to time, may adopt a rule or regulation, however described, concerning the tenant's use and occupancy of the premises. It is enforceable against the tenant only if:

(a) Its purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) It is reasonably related to the purpose for which it is adopted;

(c) It applies to all tenants in the premises in a fair manner;

(d) It is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;

(e) It is not for the purpose of evading the obligations of the landlord; and

(f) The tenant has notice of it at the time he enters into the rental agreement, or when it is adopted.

(2) If a rule or regulation adopted after the tenant enters into the rental agreement works a substantial modification of his bargain, it is not valid unless the tenant consents to it in writing.
[1973 c.559 §16]

91.785 Landlord's access to premises; manner of entry. (1) A tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors.

(2) A landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(3) A landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of his intent to enter and may enter only at reasonable times.

(4) A landlord has no other right of access except:

(a) Pursuant to court order;

(b) As permitted by subsection (2) of ORS 91.825; or

(c) When the tenant has abandoned or surrendered the premises.
[1973 c.559 §17]

91.790 Occupancy of premises as dwelling unit only; notice of tenant's absence. Unless otherwise agreed, the tenant shall occupy his dwelling unit only as a dwelling unit. The rental agreement may require that the tenant notify the landlord of any anticipated extended absence from the premises in excess of seven days no later than the first day of the extended absence.
[1973 c.559 §18]

TENANT REMEDIES

91.800 Effect of landlord's noncompliance with rental agreement or obligation to maintain premises; generally. (1) (a) Except as provided in ORS 91.700 to 91.865, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with ORS 91.770, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in seven days in the case of an essential service or 30 days in all other cases, and the rental agreement shall terminate as provided in the notice subject to paragraphs (b) to (d) of this subsection.

(b) If the breach is remediable by repairs, the payment of damages or otherwise and if the landlord adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate by reason of the breach.

(c) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement.

(d) The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family or other person on the premises with his consent.

(2) Except as provided in ORS 91.700 to 91.865, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or ORS 91.770.

(3) The remedy provided in subsection

(2) of this section is in addition to any right of the tenant arising under subsection (1) of this section.

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant under ORS 91.760 and all prepaid rent.
[1973 c.559 §19]

91.805 Effect of landlord's deliberate refusal or negligent failure to supply heat, water, electricity or other essential services. (1) If contrary to the rental agreement or ORS 91.770 the landlord deliberately refuses or is grossly negligent in failing to supply heat, running water, hot water, electricity or other essential service, the tenant may give written notice to the landlord specifying the breach and may:

(a) Procure reasonable amounts of heat, hot water, running water, electricity or other essential service during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) Recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(c) Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) In addition to the remedy provided in paragraph (c) of subsection (1) of this section the tenant may recover the actual and reasonable cost or fair and reasonable value of the substitute housing not in excess of an amount equal to the periodic rent.

(3) If the tenant proceeds under this section, he may not proceed under ORS 91.800 as to that breach.

(4) Rights of the tenant under this section do not arise:

(a) Until he has given notice to the landlord; or

(b) If the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family or other person on the premises with his consent.
[1973 c.559 §20]

91.810 Tenant entitled to counterclaims in action by landlord for possession or rent. (1) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount, not in excess of the jurisdictional limits of the court in which the action is brought, that he may recover under the rental agreement or ORS 91.700 to 91.865. Unless the parties otherwise agree, the court shall hear and determine all issues within 15 days after the service of the summons and complaint upon the defendant. In the event the tenant counterclaims, the court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court, and shall be paid the balance by the other party. The court may at any time release money paid into court to either party if the parties agree or if the court finds such party to be entitled to the sum so released. If no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession.

(2) In an action for rent when the tenant is not in possession, he may counterclaim as provided in subsection (1) of this section but is not required to pay any rent into court.
[1973 c.559 §21]

91.815 Effect of unlawful ouster or exclusion; wilful diminution of services. If a landlord unlawfully removes or excludes the tenant from the premises or wilfully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric or other essential service, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than two months' periodic rent or twice the actual damages sustained by him, whichever is greater. If the rental agreement is terminated the landlord shall return all security recoverable under ORS 91.760 and all prepaid rent.
[1973 c.559 §22]

LANDLORD REMEDIES

91.820 Effect of tenant's noncompliance with rental agreement or failure to maintain premises; failure to pay rent. (1) (a) Except as provided in ORS 91.700 to 91.865, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with ORS 91.775 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon

a date not less than 30 days after receipt of the notice. If the breach is not remedied in 14 days, the rental agreement shall terminate as provided in the notice subject to paragraphs (b) and (c) of this subsection.

(b) If the breach is remedial by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate.

(c) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least 10 days' written notice specifying the breach and the date of termination of the rental agreement.

(2) If rent is unpaid when due and the tenant fails to pay rent within 10 days thereafter the landlord, after 24 hours' written notice of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period, may immediately terminate the rental agreement and take possession.

(3) Except as provided in ORS 91.700 to 91.865, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or ORS 91.775.
[1973 c.559 §23]

91.825 Effect of tenant's failure to give notice of absence; absence; abandonment. (1) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of seven days as permitted by ORS 91.790 and the tenant wilfully fails to do so, the landlord may recover actual damages from the tenant.

(2) During any absence of the tenant in excess of seven days, the landlord may enter the dwelling unit at times reasonably necessary.

(3) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it for a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, the rental agreement terminates as of the date of the new tenancy. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month to month or week to week, the term of the rental agreement for this purpose is deemed to be a month or a week, as the case may be.
[1973 c.559 §24]

91.830 Waiver of landlord's right to terminate tenancy. Acceptance of rent with knowledge of a default by the tenant or acceptance of performance by him that varies from the terms of the rental agreement constitutes a waiver of the landlord's right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.
[1973 c.559 §25]

91.835 Enforceability of landlord liens; distraint for rent abolished. (1) A lien or security interest on behalf of the landlord in the tenant's household goods is not enforceable unless perfected before October 5, 1973.

(2) Distraint for rent is abolished.
[1973 c.559 §26]

91.840 Disposition of personal property abandoned by tenant. (1) If a tenancy terminates by means including expiration of a lease or surrender or abandonment of the premises but not including termination by court order, and the landlord reasonably believes that the tenant has abandoned goods, chattels or personal property which the tenant has left upon the premises, the landlord shall make reasonable attempts to notify the tenant in writing that the property must be removed from the premises or from the place of safekeeping, if the landlord has stored the goods as provided in subsection (2) of this section, by a specified day not less than 15 days after delivery of the notice or the property will be sold or otherwise disposed of, and if the property is not removed:

(a) The landlord may sell the property at a public or private sale; or

(b) The landlord may destroy or otherwise dispose of the property if he reasonably determines that the value of the property is so low that the cost of storage and conducting a public sale probably exceeds the amount that would be realized from the sale; or

(c) The landlord may sell certain items and destroy or otherwise dispose of the remaining property.

(2) After notifying the tenant as required by subsection (1) of this section the landlord shall store all goods, chattels and personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord shall be

entitled to reasonable storage charges and costs incidental to storage. The landlord may store the property in a commercial storage company, in which case the storage cost shall include the actual storage charge plus the cost of removal of the property to the place of storage.

(3) If the tenant upon the receipt of the notice provided by subsection (1) of this section or otherwise responds in writing to the landlord on or before the day specified in the notice that he intends to remove his property from the premises or from the place of safekeeping, if the landlord has stored the goods as provided in subsection (2) of this section, and does not do so within the time specified in the notice or within 15 days after the delivery of the tenant's response, whichever is later, the tenant's property shall be conclusively presumed to be abandoned. If the tenant removes the property the landlord shall be entitled to the cost of storage for the period the property remains in his safekeeping.

(4) The landlord shall not be responsible for any loss to the tenant resulting from storage unless the loss was caused by the landlord's deliberate or negligent act. In the event of deliberate and malicious violation the landlord shall be liable for twice the actual damages sustained by the tenant.

(5) A public or private sale authorized by this section shall be conducted under the provisions of subsection (3) of ORS 79.5040.

(6) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage and sale and remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the remaining proceeds shall be deposited with the county treasurer of the county in which the sale occurred, and if not claimed within three years shall revert to the general fund of the county available for general purposes.
[1973 c.559 §27]

91.845 Claims for possession, rent, damages after termination of rental agreement. If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement.
[1973 c.559 §28]

91.850 Limitation on recovery of possession of premises. A landlord may not recover or take possession of the dwelling unit by action or otherwise, including wilful diminution of services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity or other essential service to the tenant, except in case of abandonment, surrender or as permitted in ORS 91.700 to 91.865.
[1973 c.559 §29]

MISCELLANEOUS PROVISIONS

Note: Section 40, chapter 559, Oregon Laws 1973, provides:

Sec. 40. (1) The Housing Division of the Department of Commerce shall prepare a Residential Rental Agreement and shall submit the Residential Rental Agreement to the Fifty-eighth Legislative Assembly.

(2) The Residential Rental Agreement shall be prepared to conform to the requirements of sections 1 to 33 of this Act [ORS 91.700 to 91.865] and shall be prepared with the intention that the Residential Rental Agreement shall serve as a model for all other forms of written rental agreements for dwelling units subject to the provisions of sections 1 to 33 of this Act.

91.855 Termination of periodic tenancies; landlord remedies for tenant holdover. (1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 10 days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by giving to the other, at any time during the tenancy, not less than 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy. The tenancy shall terminate on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

(3) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and if the tenant's holdover is wilful and not in good faith the landlord may also recover not more than two months' periodic rent or twice the actual damages sustained by him, whichever is greater. If the landlord consents to the tenant's continued occupancy, subsection (4) of ORS 91.740 applies.
[1973 c.559 §30]

91.860 Landlord and tenant remedies for refusal or abuse of access. (1) If the tenant refuses to allow lawful access, the

landlord may obtain injunctive relief to compel access or may terminate the rental agreement. In either case the landlord may recover actual damages.

(2) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demand for entry otherwise lawful but which has the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the reoccurrence of the conduct or may terminate the rental agreement. In either case the tenant may recover actual damages not less than an amount equal to one month's rent.
[1973 c.559 §31]

91.865 Retaliatory conduct by landlord prohibited; tenant remedies and defenses; landlord entitled to action for possession in certain cases. (1) Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after:

(a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety;

(b) The tenant has complained to the landlord of a violation under ORS 91.770; or

(c) The tenant has organized or become a member of a tenants' union or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section the tenant is entitled to the remedies provided in ORS 91.815 and has a defense in any retaliatory action against him for possession. In an action by or against the tenant, evidence of a complaint within six months before the alleged act of retaliation creates a disputable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services.

(3) Notwithstanding subsections (1) and (2) of this section, a landlord may bring an action for possession if:

(a) The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in his household or upon the premises with his consent;

(b) The tenant is in default in rent; or

(c) Compliance with the applicable building or housing code requires alteration, remodeling or demolition which would effectively deprive the tenant of use of the dwelling unit.

(4) The maintenance of an action under subsection (3) of this section does not release the landlord from liability under subsection (2) of ORS 91.800.
[1973 c.559 §32]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 1, 1973.

Thomas G. Clifford
Legislative Counsel