

# TITLE 10

## PROPERTY RIGHTS AND TRANSACTIONS

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### Chapter 91

#### 1979 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.

91.355 [1975 c 501 §1; renumbered 105 920]

**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)**

**91.500 Definitions for ORS 91.500 to 91.671.** As used in ORS 91.500 to 91.671 and 91.990, unless the context requires otherwise:

(1) "Agent" means any person who represents or acts for or on behalf of a developer in selling or offering to sell any unit in a condominium, but such term does not include an attorney-at-law whose representation of another person consists solely of rendering legal services.

(2) "Association of unit owners" means the association provided for under ORS 91.527.

(3) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance, mechanics' lien or otherwise, securing or evidencing the payment of money and affecting more than one unit in a condominium, or an agreement affecting more than one such unit by which the developer holds such condominium under an option, contract to sell or trust agreement.

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

(5) "Commissioner" means the Real Estate Commissioner.

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

(7) "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 91.551, subsection (2) of ORS 91.554, subsection (2) of ORS 91.591, or by the declaration or the bylaws of the particular condominium.

(8) "Conversion condominium" means property submitted to the provisions of ORS 91.500 to 91.671 and 91.990 on which there is a building, improvement or structure which was occupied prior to any negotiation.

(9) "Declaration" means the instrument described in ORS 91.506 by which the property is submitted to the provisions of ORS 91.500 to 91.671 and 91.990.

(10) "Developer" means a declarant or any person who purchases an interest in a condominium from declarant or subsequent developer for the primary purpose of resale. "Declarant" means a person who files a declaration submitting property to the provisions of ORS 91.500 to 91.671 and 91.990.

(11) "Dwelling unit," "premises," "rental agreement" and "tenant" mean those terms as defined in ORS 91.705.

(12) "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.

(13) "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 91.500 to 91.671 and 91.990.

(14) "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.

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

(16) "Negotiation" means any activity preliminary to the execution of a binding agreement for the sale or lease of a condominium unit, including but not limited to advertising, solicitation and promotion of the sale or lease of such a unit.

(17) "Percentage" or "percent of unit owners" means the percent of the voting rights determined under ORS 91.564.

(18) "Property" or "condominium" means the land, whether leasehold or in fee simple and whether contiguous or noncontiguous, all buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which are submitted to the provisions of ORS 91.500 to 91.671 and 91.990.

(19) "Purchaser" means an actual or prospective purchaser of a condominium unit.

(20) "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.

(21) "Sale" includes every disposition or transfer of a condominium unit, or an interest or estate therein, by a developer or his agent, including the offering of such property as a prize or gift when a monetary charge or consideration for whatever purpose is required by

the developer or his agent. "Interest or estate" includes a lessee's interest in a unit for more than three years or less than three years if the interest may be renewed under the terms of the lease for a total period of more than three years. "Interest or estate" also includes a time-share estate. A "time-share estate" means a combination of an undivided interest in a present estate in fee simple in a unit, the magnitude of the interest having been established not later than the creation of the time-share estate either by the project instruments or by the deed conveying the time-share estate, and an exclusive right to possession and occupancy of the unit during an annually recurring period of time established by a recorded schedule set forth or referred to in the deed conveying the time-share estate. "Interest or estate" does not include any security interest under a unit sales contract, trust deed or mortgage.

(22) "Unit" or "condominium unit" means a part of the property consisting of 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 ownership, the boundaries of which are described pursuant to paragraph (c) of subsection (1) of ORS 91.509, 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. An area used for the temporary parking or storage of automobiles, boats, campers or other similar recreational vehicles or equipment may be considered a unit even though consisting of air space only without any building or structure, when such area is auxiliary to a condominium in which the remainder of the units are in or are a part of a building or buildings.

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

(24) "Unit owner" means the person owning any interest recognized under the laws of this state in a unit except when such interest is held solely for security purposes.

(25) "Voting rights" means the portion of the votes allocated to a unit by the declaration in accordance with paragraph (h) of subsection (1) of ORS 91.509. [Formerly 91.505; 1979 c.650 §1]

Note: See note under 91 504.

**91.503 Short title.** ORS 91.500 to 91.671 and 91.990 may be cited as the Unit Ownership Law. [Formerly 91 510]

## WARRANTIES ON NEW UNITS

**91.504 Express warranties; form; exclusion of implied warranties; exemption for consumer products.**(1) The declarant shall expressly warrant against defects in the plumbing, electrical, mechanical, structural, and all other components of the newly constructed units and common elements. Such warranty:

(a) Shall exist on a unit and the related limited common elements for not less than one year from the date of delivery of possession of that unit by the declarant to the first unit owner other than the declarant;

(b) Shall exist on the general common elements for not less than one year from the initial conveyance of title to a unit by the declarant to a unit owner other than the declarant, or, in the case of property developed in stages, for not less than one year from such initial conveyance of title or completion of the construction of the specific general common element, whichever is later;

(c) Shall be contained, in a form approved by the Real Estate Commissioner, in the contract or other agreement to purchase;

(d) Shall be separate from, and in addition to, any warranties provided by any other person; and

(e) Shall be in lieu of any implied warranties by the declarant against defects in the plumbing, electrical, mechanical, structural or other components of any newly constructed unit or common elements.

(2) The warranty required under subsection (1) of this section is not required for consumer products as defined in 15 United States Code 2301 (1). [Formerly 91.643]

Note: Section 30, chapter 650, Oregon Laws 1979, provides:

Sec. 30. (1) Except as provided in subsection (2) of this section, the provisions of this Act apply to all property submitted to ORS 91.500 to 91.671 and 91.990 (the Unit Ownership Law) after the effective date of this Act [October 3, 1979].

(2) If the application of any of the provisions of this Act will impair any legal right of a unit owner in property submitted to the Unit Ownership Law before the effective date of this Act, the provisions of this Act do not apply to property being annexed under ORS 91.518 after the effective date of this Act to that previously submitted property.

(3) Except as provided in subsections (4), (5) and (6) of this section, the provisions of this Act apply to property submitted to the Unit Ownership Law prior to the effective date of this Act.

tive date of this Act to the extent that those provisions are consistent with the provisions of the Unit Ownership Law as it existed immediately prior to the effective date of this Act.

(4) To the extent that the amendments to the Unit Ownership Law by section 1, 2, 3, 4, 10, 11, 13, 18, 19, 20, 21, 21a or 27 of this Act or section 23 or 24 of this Act are inconsistent with the Unit Ownership Law as it existed immediately prior to the effective date of this Act, those provisions shall apply to property submitted to the Unit Ownership Law prior to the effective date of this Act only when an amended declaration or bylaws or a document amending a declaration or bylaws expressly adopting part or all of those provisions that has been approved by all affected unit owners is recorded in accordance with ORS 91.521.

(5) The amendments to the Unit Ownership Law by sections 9, 14, 15, 16 and 17 of this Act and the provisions of section 25 of this Act apply to property submitted to the Unit Ownership Law prior to the effective date of this Act so long as they are not inconsistent with the provisions of a recorded declaration, bylaws, plat or floor plan for the property.

(6) (a) The provisions of section 5 of this Act apply to any notice of intent to submit a building to the provisions of ORS 91.500 to 91.671 and 91.990 given after the effective date of this Act. A notice of intent given before the effective date of this Act under ORS 91.524 as it existed immediately prior to the effective date of this Act shall be considered valid and no additional notice under the provisions of section 5 of this Act shall be required.

(b) The provisions of sections 6a, 7, 8 and 8a of this Act shall apply to all property submitted to the provisions of ORS 91.500 to 91.671 and 91.990 before the effective date of this Act.

(c) The provisions of section 12 of this Act shall first apply to deeds to units recorded after the effective date of this Act.

(d) Except as provided in subsection (4) of section 29 of this Act, the provisions of subsections (1) and (3) of section 29 of this Act apply to all property submitted to the provisions of ORS 91.500 to 91.671 and 91.990 before the effective date of this Act.

(e) Unless inconsistent with the provisions of a recorded declaration or bylaws, the provisions of subsection (2) of section 29 of this Act apply to all property submitted to the provisions of ORS 91.500 to 91.671 and 91.990 before the effective date of this Act.

**91.505** [1963 c.541 §2; 1965 c.430 §1; 1967 c.361 §1; 1977 c.484 §28; renumbered 91.500]

### (Creation of Unit Ownership)

**91.506 Property submitted to unit ownership by declaration.** In order to submit any property to the provisions of ORS 91.500 to 91.671 and 91.990, 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 91.509 and acknowledged by the owner of the property. [Formerly 91.525; 1979 c.650 §26]

**Note:** See note under 91.504.

**91.509 Contents of declaration under ORS 91.506; property name.** (1) A declaration shall contain:

(a) A description of the land then being submitted to unit ownership, 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, including 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, a description of the boundaries and approximate area of each unit and any other data necessary for proper identification.

(d) A description of the general common elements.

(e) An allocation to each unit of an undivided interest in the common elements in accordance with ORS 91.563 and the method used to establish the allocation.

(f) A description of the limited common elements, if any, stating to which units their use is reserved and the allocation of use of any limited common element appertaining to more than one unit.

(g) The method of determining liability for common expenses and right to common profits in accordance with ORS 91.566.

(h) The voting rights allocated to each unit in accordance with ORS 91.564.

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

(j) The name of a person to receive service of process in the cases provided in subsection (1) of ORS 91.578, and the residence or place of business of such person which shall be within the county in which the property is located.

(k) The percentage of voting rights required to approve an amendment of the declaration if such percentage is greater than 75 percent.

(L) A statement as to whether or not the association pursuant to subsection (5) of ORS 91.527 has authority to grant easements,

rights of way, licenses and other similar interests affecting the common elements of the condominium.

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

(2) In the event the declarant 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 the development.

(b) The maximum number of stages in the development.

(c) The date after which any option to annex additional property will expire.

(d) 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.

(e) The minimum allocation of undivided interest in the common elements of each original unit upon completion of development if declarant elected to proceed with all stages of development.

(f) The method used to establish the allocation of undivided interest in the common elements of each unit at each stage of development.

(g) Such other information as the Real Estate Commissioner shall require in order to carry out the purposes of ORS 91.602 to 91.671.

(3) Except where expressly prohibited by the declaration and subject to the requirements of subsection (1) of ORS 91.521:

(a) The date specified in paragraph (c) of subsection (2) of this section may be extended for a period not exceeding two years; and

(b) The staging specified in the declaration under paragraph (b) of subsection (2) of this section and the general description under paragraph (d) of subsection (2) of this section may be changed by an amendment to the declaration.

(4) The information included in the declaration in accordance with paragraphs (a), (e) and (f) of subsection (2) of this section may not be changed unless all owners agree thereto

and record an amendment to the declaration in accordance with ORS 91.500 to 91.671 and 91.990.

(5) No property shall bear a name which is the same as or deceptively similar to:

(a) The name of any other property submitted to the provisions of ORS 91.500 to 91.671 and 91.990 which is located in the same county; or

(b) The name of any other property or subdivision not submitted to the provisions of ORS 91.500 to 91.671 and 91.990 which is located in the same county, unless the name of the property includes the word "condominium" or is followed by the words "a condominium." [Formerly 91.530; 1979 c 650 §2]

Note: See note under 91.504.

91.510 [1963 c.541 §1; renumbered 91.503]

**91.512 Approval of declaration required; prerequisites.** (1) Before a declaration or an amendment thereto may be recorded, it must be approved as provided in this section by the county assessor, the tax collector of the county in which the property is located and the Real Estate Commissioner. No declaration or amendment thereto shall be approved unless the requirements of subsections (2), (3) and (4) of this section are met.

(2) The county assessor of the county in which the property is located shall approve a declaration or amendment thereto if:

(a) The name complies with subsection (3) of ORS 91.509; and

(b) The plat and floor plans comply with the requirements of ORS 91.515.

(3) The tax collector of the county in which the property is located shall approve the declaration if:

(a) 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 during the calendar year have been paid; and

(b) 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 paragraph (a) of this subsection has been made to the tax collector utilizing the procedures contained in ORS 92.095 and 311.370.

(4) The Real Estate Commissioner shall approve the declaration or amendment thereto if:

(a) The declaration or the amendment thereto complies with the requirements of ORS 91.509;

(b) The bylaws adopted under ORS 91.531 comply with the requirements of ORS 91.533; and

(c) The plat and floor plans comply with the requirements of ORS 91.515. [Formerly 91.535; 1979 c 350 §2]

**91.515 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 vertical and horizontal boundaries 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 a registered architect, registered professional land surveyor or registered professional engineer certifying that the plans fully and accurately depict the boundaries of the units and floors of the building, and the date construction of such units and buildings depicted on the floor plans and plat 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.

(4) For the purpose of recording floor plans of a building as required by subsection (2) of this section, such floor plans shall be made a part of the plat required to be recorded by subsection (3) of this section.

(5) Before an amendment to an existing plat or floor plans may be recorded, it must be approved by the county assessor and must be

accompanied by an amendment to the declaration authorizing such amendment to the plat or floor plans. The amendment to the declaration shall be approved and be recorded in accordance with ORS 91.521. The county assessor shall approve an amendment to the floor plans if the amendment complies with subsection (2) of this section and shall approve an amendment to a plat if the amendment complies with subsection (3) of this section. [Formerly 91.540; 1979 c.650 §3]

Note: See note under 91.504.

**91.518 Supplemental information required for additional development and annexation of property.** (1) If the original declaration submitting property to ORS 91.500 to 91.671 and 91.990 proposes the annexation of additional property to the property described in the declaration, a supplemental declaration, plat and floor plans shall be approved and filed by declarant at the time of each annexation. Such supplemental declarations, plats and floor plans shall:

(a) Be consistent with the provisions of the original declaration drawn pursuant to subsection (2) of ORS 91.509.

(b) Contain the information required by subsection (1) of ORS 91.509 in so far as that information relates to the property being annexed.

(c) If additional annexations were contemplated in the original declaration, list the new units and include the information described in paragraph (e) of subsection (2) of ORS 91.509 in relation to such units.

(2) Such supplemental declarations, plats and floor plans shall be approved and recorded as provided in ORS 91.512 and 91.515. No unit in any additional stage of development shall be conveyed until after such recording.

(3) As to property submitted to unit ownership after October 4, 1977, additional units may not be added within land previously submitted to unit ownership unless all unit owners consent to an amendment to the declaration, plat and floor plans in order to provide for such additional units. [Formerly 91.545; 1979 c.650 §27]

Note: See note under 91.504.

**91.519 Relocation of unit boundaries and common elements by amendment to declaration.** (1) Subject to any limitations contained in the declaration, the boundaries

between adjoining units, including any intervening common elements, may be relocated or eliminated by an amendment to the declaration. The owners of the affected units shall submit to the board of directors of the association a proposed amendment which shall identify the units involved, state any reallocations of common element interest, voting rights, common expense liability and right to common profits and contain words of conveyance. The board of directors shall approve the amendment unless it determines within 45 days that the reallocations are unreasonable or the relocation or elimination will impair the structural integrity or mechanical systems of the condominium or lessen the support of any portion of the condominium.

(2) The board of directors of the association may require the owners of the affected units to submit an opinion of a registered architect or registered professional engineer that the proposed relocation or elimination will not impair the structural integrity or mechanical systems of the condominium or lessen the support of any portion of the condominium.

(3) The board of directors of the association or any agent appointed by the board of directors may supervise the work necessary to effect the boundary relocation or elimination.

(4) Any expenses incurred under subsections (2) and (3) of this section shall be charged to the owners of the units requesting the boundary relocation or elimination.

(5) The amendment shall be executed by the owners and mortgagees or trust deed beneficiaries of the affected units, certified by the chairman and secretary of the association and approved and recorded in accordance with paragraph (b) of subsection (1) of ORS 91.521.

(6) A plat and floor plans necessary to show the altered boundaries between the adjoining units shall be recorded in accordance with subsection (4) of ORS 91.515. [1979 c.650 §24]

Note: See note under 91.504.

**91.521 Requirements for amendments to declaration; approval by commissioner and owners.** (1) Except as otherwise provided in ORS 91.500 to 91.671 and 91.990, an amendment of the declaration shall not be effective unless:

(a) Such amendment is approved by 75 percent of the unit owners, or, if the declara-

tion requires a greater percentage, then by that percentage of unit owners required by the declaration; and

(b) A copy of the declaration as amended or the amendment thereto, certified by the chairman and secretary of the association of unit owners, is recorded. Before any amended declaration or amendment to a declaration may be recorded, it must be approved by the Real Estate Commissioner. The Real Estate Commissioner shall approve the amendment if it complies with ORS 91.500 to 91.671 and 91.990.

(2) Except as otherwise provided in ORS 91.500 to 91.671 and 91.990, no amendment may change the allocation of undivided interest in the common elements, liability for common expenses, right to common profits or voting rights of any unit unless such amendment has been approved by the owners of the affected units. [1977 c.658 §8; 1979 c.650 §4]

Note: See note under 91.504.

**91.523 Inapplicability of ORS 91.524 and 91.526 to transient lodgings.** ORS 91.524 and 91.526 do not apply to units rented as transient lodgings at a hotel, motel or inn and do not apply to negotiations, arrangements or agreements for such transient occupancy of the units. [1979 c.650 §8a]

Note: See note under 91.504.

**91.524 Conversion condominium; notice to tenants.** (1) A declarant of a conversion condominium shall give each of the existing tenants of any building which the declarant intends to submit to the provisions of ORS 91.500 to 91.671 and 91.990 notice of the conversion at least 90 days before the conversion condominium is submitted to the provisions of ORS 91.500 to 91.671 and 91.990. Thereafter, until the property is submitted to the provisions of ORS 91.500 to 91.671 and 91.990, the declarant shall provide a copy of such notice to any new tenant before the commencement of the tenancy. The notice of conversion shall:

(a) State that the declarant intends to create a conversion condominium and include general information relating to the nature of condominium ownership;

(b) State that the notice does not constitute a notice to terminate the tenancy;

(c) State whether there will be a substantial alteration of the physical layout of the unit;

(d) State whether the declarant intends to offer the unit for sale and, if so:

(A) Set forth the rights of the tenant under subsections (1) to (3) of ORS 91.526;

(B) Set forth a good faith estimate of the approximate price range for which the unit will be offered for sale to the tenant under subsections (1) and (2) of ORS 91.526; and

(C) Set forth a good faith estimate of the monthly operational, maintenance and any other common expenses or assessments appertaining to the unit;

(e) Be hand delivered to the dwelling unit of the tenant or sent to the tenant at the address of the dwelling unit by certified mail, return receipt requested.

(2) A notice of conversion given under subsection (1) of this section shall:

(a) Be for the sole purpose of providing the tenant with general information regarding the anticipated cost of acquisition of the unit and estimated monthly expenses.

(b) Not obligate the declarant to submit the property to the provisions of ORS 91.500 to 91.671 and 91.990.

(c) Not constitute an offer to sell the unit to the tenant or an offer to sell at a particular price.

(d) Not be a limitation on monthly common expenses or assessments.

(3) The notice of conversion given under subsection (1) of this section must be delivered to the tenant at least 30 days prior to the presentation of an offer to sell under subsections (1) and (2) of ORS 91.526.

(4) The declaration may be recorded prior to the end of the 90-day period required under subsection (1) of this section with the written consent of all tenants who received the notice of conversion less than 90 days before the date of such consent.

(5) The requirement under subsection (1) of this section to provide a copy of the notice of conversion to new tenants shall not extend the 90-day period nor shall such tenant's consent be required to record the declaration prior to the end of the 90-day period as provided for under subsection (4) of this section.

(6) A notice of conversion shall not constitute a notice to terminate the tenancy. [1977 c.484 §26; 1979 c.650 §5]

**Note:** See note under 91.504

**91.525** [1963 c.541 §§3, 15; renumbered 91.506]

**91.526 Rights of tenants in conversion.** (1) Prior to the sale of any dwelling unit which is to be retained as a unit in the conversion condominium without substantial alteration in its physical layout, the declarant shall first offer to sell the respective unit to the tenant who occupies the unit. The offer shall:

(a) Terminate 30 days after its receipt or upon written rejection of the offer by the tenant, whichever occurs earlier.

(b) Be accompanied by a copy of all applicable public reports issued by the Real Estate Commissioner pursuant to ORS 91.614, or where a public report has been waived, a statement to that effect.

(c) Not constitute a notice to terminate the tenancy.

(2) The tenant's dwelling unit may not be shown to any prospective purchasers of a conversion condominium unit without the tenant's permission before the termination of the tenancy.

(3) The declarant shall not sell the unit to a person other than the tenant during the 60 days following the termination of an offer to the tenant under subsection (1) and (2) of this section at a price or on terms more favorable to the purchaser than the price or terms offered to the tenant.

(4) After the property has been submitted to the provisions of the Unit Ownership Law, the declarant, until a unit is offered for sale in accordance with subsections (1) and (2) of this section, shall notify in writing any prospective tenant, prior to the commencement of the tenancy, that the property has been submitted to the provisions of the Unit Ownership Law and the rights of a tenant under subsections (1) to (3) of this section. [1979 c.650 §§6a, 7, 8]

**Note:** See note under 91.504

### **(Management of Property; Encumbrances; Conveyances)**

**91.527 Association of unit owners; powers.** (1) An association of unit owners shall be organized to serve as a means through which the unit owners may take action with regard to the administration, management and operation of the condominium. The association shall be organized as a corporation for profit or nonprofit corporation or as an unincorporated association.

(2) Membership in the association of unit owners shall be limited to unit owners.

(3) The affairs of the association shall be governed by a board of directors as provided for in the bylaws adopted under ORS 91.531.

(4) Subject to the provisions of the condominium's declaration and bylaws, and whether or not the association is unincorporated, the association may:

(a) Adopt and amend bylaws and rules and regulations;

(b) Adopt and amend budgets for revenues, expenditures and reserves and levy and collect assessments for common expenses from unit owners;

(c) Hire and terminate managing agents and other employes, agents and independent contractors;

(d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or on behalf of two or more unit owners on matters affecting the condominium;

(e) Make contracts and incur liabilities;

(f) Regulate the use, maintenance, repair, replacement and modification of common elements;

(g) Cause additional improvement to be made as a part of the common elements;

(h) Acquire by purchase, lease, devise, gift or voluntary grant real property or any interest therein and take, hold, possess and dispose of real property or any interest therein;

(i) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements;

(j) Impose charges for late payments of assessments and, after giving notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws and rules and regulations of the association;

(k) Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of unpaid assessments;

(l) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

(m) Exercise any other powers conferred by the declaration or bylaws;

(n) Exercise all other powers that may be exercised in this state by any such association; and

(o) Exercise any other powers determined by the association to be necessary and proper

for the governance and operation of the association.

(5) Subject to subsection (6) of this section, unless expressly prohibited by the declaration, the association has the authority to execute, acknowledge, deliver and record on behalf of the unit owners easements, rights of way, licenses and other similar interests affecting the general common elements.

(6) The granting of any interest pursuant to subsection (5) of this section shall be first approved by at least 75 percent of the unit owners.

(7) The instrument granting an interest pursuant to subsection (5) of this section shall be executed by the chairman and secretary of the association and acknowledged in the manner provided for acknowledgment of such instruments by such officers and shall state that such grant was approved by at least 75 percent of the unit owners. [1977 c.658 §12; 1979 c.650 §9]

**Note:** See note under 91.504.

**91.530** [1963 c.541 §§14, 16; 1965 c.430 §2; 1971 c.414 §1; 1973 c.421 §51; 1974 s s c.1 §24; 1977 c.658 §5; renumbered 91.509]

**91.531 Adoption of bylaws; recording; amendment; approval by Real Estate Commissioner.** (1) The declarant shall adopt on behalf of the association the initial bylaws which shall govern the administration of the condominium. A copy of the bylaws shall be recorded simultaneously with the declaration of the property to which the bylaws relate.

(2) 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 or the amendment thereto, certified by the chairman and secretary of the association of unit owners, is recorded.

(3) Before any amended bylaws or amendment to a bylaw may be recorded, it must be approved by the Real Estate Commissioner. The Real Estate Commissioner shall approve such amendment if it complies with ORS 91.500 to 91.671 and 91.990. [Formerly 91.555; 1979 c.650 §10]

**Note:** See note under 91.504.

**91.533 Contents of bylaws.** (1) The bylaws shall provide for:

(a) 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.

(b) The method of calling meetings of the board of directors which shall be in compliance with ORS 91.534.

(c) The organization of the association of unit owners in accordance with ORS 91.527, including the date by which the initial meeting shall be held and the method of calling that meeting; the circumstances under which the unit owners will assume administrative responsibility of the condominium; the method of calling all other meetings of the unit owners and the percentage that shall constitute a quorum.

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

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

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

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

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

(i) 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.

(j) The method of amending the bylaws subject to subsection (2) of ORS 91.531.

(2) In the event additional units are proposed to be annexed pursuant to subsection (2) of ORS 91.509, the method of apportioning common expenses in the event new units are added during the course of the fiscal year.

[Formerly 91 560; 1979 c 650 §11]

**Note:** See note under 91 504

**91.534 Board meetings of unit owners association.** (1) All meetings of the board of directors of the association of unit owners shall be open to unit owners.

(2) Except as provided in subsection (3) of this section, board of directors' meetings may be conducted by telephonic communication.

(3) In condominiums where the majority of the units are the principal residences of the occupants:

(a) For other than emergency meetings, notice of board of directors' meetings shall be posted at a place or places on the property at least three days prior to the meeting or notice shall be provided by a method otherwise reasonably calculated to inform unit owners of such meetings.

(b) Only emergency meetings of the board of directors may be conducted by telephonic communication.

(4) Paragraph (a) of subsection (3) of this section first applies to property submitted to the provisions of ORS 91.500 to 91.671 and 91.990 prior to October 3, 1979, upon receipt by the board of directors of the association of unit owners of a written request from at least one unit owner that notice of board of directors meetings be given in accordance with paragraph (a) of subsection (3) of this section. [1979 c.650 §29]

**Note:** See note under 91.504.

**91.535** [1963 c.541 §17; 1971 c.230 §1; 1973 c.402 §1; 1973 c.803 §1; 1977 c.658 §6; renumbered 91.512]

**91.536 Unit deeds; contents.** The deed of a unit shall contain:

(1) The name of the property, and the recording index numbers and date of recording of the declaration and in the case of a staged condominium, the applicable supplemental declaration.

(2) The unit designation of the unit.

(3) Any further details the grantor and grantee may consider desirable. [Formerly 91 565; 1979 c.650 §12]

**Note:** See note under 91 504.

**91.539 Liens against property; removal from lien; effect of part payment.** (1) Subsequent to recording a declaration and while the property remains subject to ORS 91.500 to 91.671 and 91.990, 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 allocation 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. [Formerly 91 575, 1979 c 650 §13]

**Note:** See note under 91.504.

**91.540** [1963 c 541 §§18, 19; 1973 c.803 §2; 1977 c.658 §1; renumbered 91 515]

**91.542 Individual defaulting required under leasehold condominium.** Where a leasehold interest is submitted to the provisions of ORS 91.500 to 91.671 and 91.990, the master lease shall contain independent default clauses, the effect of which shall be that a unit owner cannot be evicted because the board of directors of the association of unit owners has defaulted so long as the unit owner has paid his pro rata share of the funds necessary to correct the default or because another unit owner has defaulted. [1977 c.658 §15]

**91.545** [1971 c 414 §3; 1977 c 658 §18, renumbered 91 518]

**91.546 Lien of association against unit; filing of claim; 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 for any unpaid assessments and interest as provided in paragraph (b) of subsection (2) of this section. 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) (a) 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.

(b) Where a claim has been filed and recorded pursuant to this section and the owner of the unit or undivided interest subject to the claim thereafter fails to pay any assessment chargeable to such unit or undivided interest, then so long as the original or any subsequent unpaid assessment remains unpaid such claim shall automatically accumulate the subsequent unpaid assessments and interest thereon without the necessity of further filings under this section.

(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, except that notwithstanding ORS 87.055, a lien may be continued in force for a period of time not to exceed six years from the date the claim is filed under subsection (3) of this section. For the purpose of determining the date the claim is filed in

those cases where subsequent unpaid assessments have accumulated under the claim as provided in paragraph (b) of subsection (2) of this section, the claim regarding each unpaid assessment shall be deemed to have been filed at the time such unpaid assessment became due. 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.

[Formerly 91.580]

**91.548 Foreclosure against unit; 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. [Formerly 91.585]

**91.551 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.

[Formerly 91 590]

**91.554 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 weekdays.

(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.

[Formerly 91.595]

**91.555** [1963 c.541 §20; 1977 c.658 §17; renumbered 91.531]

**91.557 Termination of initial management agreements and service contracts.** Management agreements and service contracts entered into by the declarant, or, the association of unit owners if the declarant controls its decisions, shall have a termination date or be cancelable within three years after the closing of the sale of the first unit, or, in the case of property developed in two or more stages, within seven years after the closing of the sale of the first unit. [1977 c.658 §13]

**91.560** [1963 c.541 §21; 1971 c.414 §4; 1977 c 484 §29; 1977 c 658 §4a; renumbered 91.533]

### (Attributes and Duties of Ownership)

**91.561 Status and ownership of units.** While the property is submitted to the provisions of ORS 91.500 to 91.671 and 91.990, 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. [Formerly 91 605]

**91.562 Units and common elements distinguished.** Unless otherwise provided in the declaration, if the declaration designates walls, floors or ceilings as boundaries of a unit:

(1) All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof shall be a part of the unit and all other portions of the walls, floors or ceilings shall be a part of the common elements.

(2) The following shall be a part of the unit:

(a) All spaces, nonbearing interior partitions, windows, window frames, exterior doors, door frames and all other fixtures and improvements within the boundaries of the unit; and

(b) All outlets of utility service lines, including but not limited to power, light, gas, hot and cold water, heating, refrigeration, air conditioning and waste disposal within the boundaries of the unit. [1979 c.650 §25]

Note: See note under 91.504

**91.563 Interest of units in common elements.** (1) Each unit shall be entitled to an undivided interest in the common elements in the allocation expressed in the declaration. Such allocation shall be expressed as a fraction or percentage of undivided interest in the common elements. The allocation of undivided interest of each unit 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 allocation of each unit having an interest.

(2) The sums of the undivided interest in the common elements shall equal one if stated as fractions or 100 percent if stated as percentages.

(3) 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.

(4) 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 91.500 to

91.671 and 91.990. Any covenant to the contrary is void.

(5) Notwithstanding subsections (1) and (3) of this section, except where expressly prohibited by the declaration or bylaws, the right of use of any unit in a limited common element may be transferred to any other unit. Such transfer shall occur only if the existing unit owner and all mortgagees of the unit for which the right of use of the limited common element is presently reserved and the unit owner to whom the right of use is being transferred agree to and record an amendment to the declaration setting forth the transfer.

(6) Notwithstanding subsections (1) and (3) of this section, in the case where a single unit is originally designed and constructed to be two or more separate hotel, motel or other similar living accommodations with separate bathrooms and separate entrances from a hallway, balcony, staircase or other common element, the owner, or owners, with the consent of the holder, or holders, of any recorded mortgage or lien on the unit, may separate such unit into two or more units each having such separate bathrooms and entrances from such common elements. Such persons may divide between such separate units the allocation of the common elements assigned to the original unit on substantially the basis that the square footage of such separated units bears to the total square footage of the original unit by recording an amendment to the declaration signed by such owner, or owners, of original unit together with a plat and floor plan of such original unit showing the division thereof into such two or more units. Such separated parts of the original unit shall not be used for any purpose other than the purpose for which such separable parts were originally designed and constructed and thereafter have generally been used. [Formerly 91.610; 1979 c.650 §14]

Note: See note under 91.504.

**91.564 Voting rights of unit owner in association.** Unless otherwise provided in the declaration, an owner of a unit shall have voting rights equal to the unit's allocation of undivided interest in the common elements as expressed in the declaration. [1979 c.650 §23]

Note: See note under 91.504.

**91.565** [1963 c.541 §22; 1971 c.414 §5; renumbered 91.536]

**91.566 Allocation 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 allocation of undivided interest of each unit 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.

(3) From the date that the declaration is recorded, the declarant shall:

(a) Pay assessments due for operating expenses on all unsold units; and

(b) Pay assessments due for reserves on all unsold units, or, at the declarant's option, pay or require the unit owner to pay all accrued reserve assessments against the unit at the time of the initial sale to the unit owner.

[Formerly 91.615; 1979 c.650 §15]

Note: See note under 91.504.

**91.569 Maintenance and improvement of units.** (1) Subject to subsections (2) and (3) of this section and any additional limitations contained in the declaration or bylaws, a unit owner:

(a) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems of the condominium or lessen the support of any portion of the condominium.

(b) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may submit a written request to the board of directors for permission to remove or alter any intervening partition or to create apertures therein, even if the partition in whole or in part is a common element. The board of directors shall approve the change unless it determines within 45 days that the proposed change will impair the structural integrity or mechanical systems of the condominium or lessen the support of any portion of the condominium. The board of directors may require the unit owner, at his own expense, to submit an opinion of a registered architect or registered professional engineer that the proposed change will not impair the structural integrity or mechanical systems of the condominium or lessen the support of any portion of the condominium. Removal of partitions or creation of

apertures under this paragraph is not an alteration of boundaries.

(2) 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, impair any easement or hereditament or increase the common expenses of the association unless the consent of all the other unit owners affected is first obtained.

(3) Unless otherwise provided in the declaration or bylaws, a unit owner may not change the appearance of the common elements or the exterior appearance of a unit without permission of the board of directors of the association. [Formerly 91.620; 1979 c.650 §16]

Note: See note under 91.504.

91.570 [1963 c.541 §23; repealed by 1977 c.658 §3]

**91.572 Use and maintenance of common elements; access for maintenance.** (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. [Formerly 91.625]

91.575 [1963 c.541 §24; renumbered 91.539]

**91.576 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. [Formerly 91.630]

**91.578 Actions by and against unit owners; service of process.** (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 91.509, and that the person named in the amendment was designated by resolution duly adopted by the association of unit owners. [Formerly 91 635]

**91.580** [1963 c.541 §§26, 27; 1977 c.658 §2; renumbered 91 546]

**91.581 Taxation of units; exemptions; uniform appraisal and assessment.** (1) Each unit with its allocation 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 allocation 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 91.500 to 91.671 and 91.990. [Formerly 91.640; 1979 c.650 §17]

Note: See note under 91.504.

### (Removal of Property from Unit Ownership)

**91.584 Removal by unit owners; consent of lienholders.** (1) All of the unit owners may remove a property from the provisions of ORS 91.500 to 91.671 and 91.990 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 91.500 to 91.671 and 91.990.

(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. [Formerly 91.655]

**91.585** [1963 c.541 §28; renumbered 91 548]

**91.587 Removal of property from ORS 91.500 to 91.671 by agreement that property is obsolete or by agreement not to repair damage or destruction to property.** (1) If 90 percent of the unit owners agree that the property is obsolete and shall be sold, the property shall be considered removed from the provisions of ORS 91.500 to 91.671 and 91.990.

(2) Except where the declaration or bylaws provide to the contrary, if all or part of the property is damaged or destroyed, then the association of unit owners shall repair, reconstruct or rebuild the property, unless 60 percent of the unit owners agree that the property shall not be repaired, reconstructed or

rebuilt. If 60 percent of the unit owners agree that the property shall not be repaired, reconstructed or rebuilt, the property shall be considered removed from the provisions of ORS 91.500 to 91.671 and 91.990. [1977 c 658 §11 (enacted in lieu of 91 660)]

91.590 [1963 c 541 §§29, 30, renumbered 91.551]

**91.591 Common ownership of property removed from unit ownership; valuation; liens.** (1) If the property is removed from the provisions of ORS 91.500 to 91.671 and 91.990, as provided by ORS 91.584 and 91.587, the property shall be considered owned in common by all the unit owners. The respective interest of a unit owner shall be the total of the fair market value of his unit and common element interest appertaining to such unit immediately before termination of the condominium. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all units and common element interests. The fair market value of each unit and common element interest appertaining to such unit shall be determined by:

(a) Agreement of all of the unit owners; or

(b) An independent appraiser selected by the board of directors of the association. The decision of the appraiser shall be distributed to the unit owners and shall become final unless within 15 days after the distribution, the board of directors receives written objection from at least 25 percent of the unit owners. In such event, a new appraiser shall be selected by the presiding judge of the circuit court for the county in which the property is located. Such appraiser's decision shall be final.

(2) All costs and expenses incurred under subsection (1) of this section shall be common expenses.

(3) In the event any part of the property has been damaged or destroyed, the appraiser may use any available data and information pertaining to the condominium including, but not limited to, building plans, prior appraisals and information on file with governmental authorities.

(4) 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.

[Formerly 91.665, 1979 c.650 §18]

Note: See note under 91.504.

**91.593 Action for partition; division of sale proceeds.** If the property is removed from the provisions of ORS 91.500 to 91.671 and 91.990, as provided in ORS 91.584 and 91.587, 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.

[Formerly 91.670]

91.595 [1963 c 541 §§25, 31; renumbered 91.554]

**91.596 Removal no bar to resubmission.** The removal of the property from the provisions of ORS 91.500 to 91.671 and 91.990 shall in no way bar its resubmission. [Formerly 91 675]

#### (Regulation of Sales; Filing Requirements)

**91.599 "Condominium" defined for ORS 91.602 to 91.671.** (1) As used in ORS 91.524, 91.602 to 91.671 and 91.990:

(a) "Condominium" includes property, any part of which is residential in nature, submitted to the provisions of ORS 91.500 to 91.671.

(b) "Condominium" does not include any property, which is wholly commercial, industrial or commercial and industrial in nature, submitted to the provisions of ORS 91.500 to 91.671 and 91.990.

(2) As used in ORS 91.602 to 91.671 and 91.990, "condominium" also includes property located outside this state, any part of which is residential in nature, which has been committed to the condominium form of ownership in accordance with the laws of the jurisdiction within which the property is located. [1977 c.484 §1; 1979 c 650 §19]

Note: See note under 91.504.

**91.602 Disclosure requirements by developer; notice of intention to sell or lease units; content; fee.** (1) In accordance with the applicable provisions of ORS 183.310 to 183.500, the Real Estate Commissioner shall adopt rules to insure that each developer

of a condominium discloses fully and accurately to prospective purchasers of condominium units all material circumstances or features affecting such condominium of which he is aware, or in the exercise of reasonable care, should be aware by requiring that prior to negotiating within this state for the sale or lease of a condominium unit located in another state, or prior to the sale or lease of any condominium unit located within this state, the developer or his agent shall notify the commissioner of his intention to sell by way of a "Notice of Intention," which shall contain the following information:

(a) The name and address of the condominium, and the name, address and telephone number of the developer and his agent, if any;

(b) A general narrative description of the condominium stating the total number of units, a description of the types of units, the total number of units that may be included in the condominium pursuant to subsection (2) of ORS 91.509, and a precise statement of the nature of the interest which is being offered;

(c) A general disclosure of the status of construction and the actual or scheduled dates of completion of buildings, recreation facilities, and other common elements;

(d) The significant terms of any financing offered by the developer to purchasers of the condominium units;

(e) A brief description of any warranties for structural elements and mechanical and other systems;

(f) A projection of the budget of the association of unit owners for the operation and maintenance and any other common expenses of the condominium;

(g) A description of any provisions made in the budget of the condominium for reserves for capital expenditures for repair or replacement of common elements and an explanation of the basis for such reserves, or, where no provision is made for such reserves, a statement to that effect;

(h) In the case of a conversion condominium, a statement as to the present condition of all structural components and major mechanical and utility installations in the condominium, which statement shall include the approximate dates of construction, installation and the estimated useful physical life of each such item;

(i) A statement of significant provisions for management of the condominium including:

(A) The apportionment of voting rights among the members of the association of unit owners and a statement of the nature and extent of voting control retained by the developer;

(B) Any provision concerning meetings and required notice thereof; and

(C) A description of the documents by which purchasers may be bound, including the declaration, bylaws, ground leases, management agreement, easements, covenants, restrictions and conditions; and

(j) A statement of the right of any purchaser to void the contract other than as provided by statute, any conditions for the return of deposit and a statement about any present litigation concerning the condominium.

(2) The notice of intention shall be accompanied by a filing fee as follows:

(a) For condominiums developed in a single phase, \$100 plus \$25 for each unit therein, but in no case shall the fee be more than \$1,500.

(b) For condominiums developed in two or more phases, \$100 plus \$25 for each unit in the first phase, and \$25 for each additional unit in a subsequent phase of the same development, but in no case shall the fee be more than \$1,500 for each phase.

(3) The commissioner may reduce or waive all or part of a fee required under subsection (2) of this section. [1977 c 484 §2]

91.605 [1963 c.541 §§4, 5; renumbered 91.561]

**91.606 Additional requirements by commissioner for notice of intention.** The commissioner may require the developer to furnish such additional information with the notice of intention as the commissioner determines to be necessary in the administration and enforcement of ORS 91.500 to 91.671 and 91.990 and for protection of the public, including but not limited to:

(1) A statement of the terms and conditions on which it is intended to transfer or dispose of the land or interest therein, together with copies of any contract, conveyance, lease, assignment or other instrument intended to be used;

(2) Copies of all sales pamphlets and literature to be used in connection with the condominium; and

(3) Any other information that the developer may desire to present. [1977 c.484 §3]

**91.608 Filing information to be kept current; fee for material change in notice.**

(1) The information required by the rules adopted pursuant to ORS 91.602 and the information required by the commissioner pursuant to ORS 91.606 shall be kept current by the developer. Any material change in the information furnished to the commissioner shall be reported by the developer within 10 days after the change occurs.

(2) A developer shall be responsible for the accuracy of and for providing all information required by the rules adopted pursuant to ORS 91.602, all information required by the commissioner pursuant to ORS 91.606, and any information required under this section for as long as the developer retains any unsold interest in the condominium to which the information pertains.

(3) The commissioner shall require a fee after receipt of a material change notice if, because of the changes, a public report must be issued or revised by the commissioner. The fee required by this subsection shall not exceed \$100 plus \$25 for each unsold unit.

(4) The commissioner may, when he considers it necessary for the protection of the public from fraud, deceit, or misrepresentation, after review of any property for which a public report or a waiver of the requirement thereof has been issued by the commissioner prior to October 4, 1977, require, after notice, the person to whom the public report or waiver is issued or the successor in interest of all unsold units in such property, to submit a notice of intention in accordance with ORS 91.602, together with a refiling fee in the amount of \$100 plus \$25 per unit for each unsold unit. [1977 c.484 §4]

**91.610** [1963 c.541 §§6, 7; 1977 c.658 §9; renumbered 91.563]

**91.611 Service of process on nonresident developer; consent for service on commissioner; contents of consent; records of service on commissioner.** (1) Every nonresident developer, at the time of filing the notice of intention and information required by the rules adopted pursuant to ORS 91.602, shall also file with the commissioner an irrevocable consent that if, in any

suit or action commenced against him in this state arising out of a violation of ORS 91.500 to 91.671 and 91.990, personal service of summons or process upon him cannot be made in this state after the exercise of due diligence, a valid service may thereupon be made upon him by service on the commissioner.

(2) The consent shall be in writing executed and verified by an officer of a corporation or association, a general partner of a partnership or by an individual developer and shall set forth:

(a) The name of the developer.

(b) The address to which documents served upon the commissioner are to be forwarded.

(c) If the developer is a corporation or unincorporated association, that the consent signed by such officer was authorized by resolution duly adopted by the board of directors.

(3) The address for forwarding documents served under this section may be changed by filing a new consent in the form prescribed in subsection (2) of this section.

(4) Service on the commissioner of any such process shall be made by delivery to him or a clerk on duty in any office of the commissioner, duplicate copies of such process, with duplicate copies of any papers required by law to be delivered in connection with such service.

(5) When the commissioner is served with any such process, he shall immediately cause one of the copies thereof, with any accompanying papers, to be forwarded by registered mail to the developer at the address set forth in the consent.

(6) The commissioner shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto. [1977 c.484 §5]

**(Examination of Condominium; Public Report)**

**91.614 Examination of condominium; public report; waiver of examination in other state.** (1) Unless the making of a public report has been waived, the commissioner shall make an examination of and issue a public report of his findings regarding any condominium prior to negotiating within this state for the sale or lease of a condominium unit located in another state, or prior to the sale or lease of any condominium unit located

within this state. The public report shall contain all information required by the rules adopted under ORS 91.602 and any information required by the commissioner pursuant to ORS 91.606. If a condominium is located within this state and if no report is made within 45 days after examination of the condominium, the report shall be deemed waived.

(2) The commissioner may waive an examination of a condominium located in another state only when that state has an existing law which provides for the examination of and a public report on the condominium and only where that state will waive examination of a condominium located within this state and will accept in lieu thereof a report prepared by the commissioner under subsection (1) of this section. [1977 c.484 §6]

**91.615** [1963 c.541 §§8, 12; 1971 c.414 §6; 1977 c.658 §16; renumbered 91.566]

**91.617 Notice to prospective buyers of estimation of common expenses.** (1) With regard to the information required by the rules adopted under paragraph (f) of subsection (1) of ORS 91.602, the public report shall contain the following notice in at least 8-point type below such information.

**NOTICE TO PROSPECTIVE  
PURCHASERS**

**THE PROJECTION OF THE BUDGET OF THE ASSOCIATION OF UNIT OWNERS FOR THE OPERATION AND MAINTENANCE AND OTHER COMMON EXPENSES OF THE CONDOMINIUM IS ONLY AN ESTIMATE, PREPARED WITH DUE CARE.**

(2) Where the information required by the rules adopted under paragraph (g) of subsection (1) of ORS 91.602 indicates that no provision is made in the budget of the condominium for reserves for capital expenditures for repair or replacement of common elements, the public report shall contain a statement to that effect in at least 8-point type. [1977 c 484 §7]

**91.620** [1963 c.541 §9; renumbered 91.569]

**91.621 Information includable in public report.** If it is found to be in the public interest, the commissioner may include in the public report any information relating to the nature of condominium interests in general or the condominium for which the public report is being issued. [1977 c 484 §8]

**91.623 Waiver of public report by commissioner.** With respect to any condominium in this state, if, after examination of the notice of intention required pursuant to ORS 91.602 or the reply to the commissioner's request for information pursuant to ORS 91.606, the commissioner concludes that a public report is not necessary to protect the public, he shall waive the provisions of ORS 91.500 to 91.671, 91.990, 92.305 and 92.325 which he considers unnecessary for the protection of the public. The commissioner shall notify the developer within 15 days of receipt of the notice of intention of his approval or disapproval of any waiver. However, the commissioner may for good and sufficient cause, revoke any waiver at any time upon 20 days' notice and a hearing held for such purpose. [1977 c.484 §9]

**91.625** [1963 c.541 §§10, 11; renumbered 91.572]

**91.626 Sale prohibited where public report not issued or waived; distribution and use of public report.** (1) Unless the making of a public report has been waived, no developer or his agent shall sell or lease a condominium unit prior to the issuance of the public report.

(2) A copy of the public report, when issued, shall be given to the prospective purchaser by the developer or his agent, prior to the execution of a contract or agreement for the sale or lease of a condominium unit. The developer or his agent, shall take a receipt from such prospective purchaser upon delivery of a copy of the commissioner's public report, and such receipts shall be kept on file within this state in the possession of the developer or his agent subject to inspection by the commissioner for a period of three years from the date the receipt is taken.

(3) The commissioner's public report shall not be used for advertising purposes unless the report is used in its entirety. No portion of the report shall be underscored, italicized or printed in larger or heavier type than the balance of the report unless the true copy of the report so emphasizes such portion.

(4) The commissioner may furnish at cost copies of his public report for the use of developers.

(5) Violations of this section shall be subject to the provisions of ORS 646.605 to 646.992, in addition to other sanctions provided by law. [1977 c 484 §10]

**91.629 Deposit with commissioner for examination expenses; refund.** When an examination is to be made of a condominium situated in the State of Oregon, or situated outside the state which will be offered for sale within this state, the commissioner, in addition to the filing fee provided in ORS 91.602, may require the developer to advance a deposit. Such deposits shall not exceed \$200 for ordinary and necessary travel, and other expenses incurred in making an examination within the state, and shall not exceed \$200 per day for making an examination in another state. Any unexpended portion of the deposit shall be refunded to the developer. [1977 c.484 §12]

91.630 [1963 c.541 §13; renumbered 91 576]

### (Requirements for Sale)

**91.631 Conditions prerequisite to sale.** (1) No condominium unit shall be sold by a developer by means of a land sale contract unless a collection escrow is established within this state with a person or firm authorized to receive escrows under the laws of this state and all of the following are deposited in the escrow:

(a) A copy of the title report or abstract, as it relates to the property being sold.

(b) The original sales document or a true copy thereof relating to the purchase of the condominium unit.

(c) A commitment to give a partial release for the condominium unit being sold from the terms and provisions of any blanket encumbrance. The commitment shall be in a form satisfactory to the commissioner.

(d) A document in good and sufficient form transferring the interest purchased.

(2) The developer shall submit written authorization allowing the commissioner to inspect all escrow deposits established pursuant to subsection (1) of this section.

(3) In lieu of the procedures provided in subsection (1) of this section, the developer shall conform to such alternative requirement or method which the commissioner may deem acceptable to carry into effect the intent and provisions of this section. [1977 c.484 §13]

**91.634 Documents prerequisite to conveyance of unit.** (1) The developer shall deliver to the purchaser prior to the conveyance of the unit by deed, lease or contract a

copy of the declaration, bylaws, and any ground leases, unit sales agreement and escrow instructions applying to the transaction.

(2) The developer shall take a receipt from the purchaser upon the delivery of the documents referred to in subsection (1) of this section, and such receipts shall be kept on file within this state by the developer or his agent subject to inspection by the commissioner for a period of three years from the date the receipt is taken. [1977 c.484 §11]

91.635 [1963 c 541 §§38, 39; renumbered 91.578]

**91.637 Cancellation of contract to purchase unit; notice to seller; return of payments and reconveyance; extinguishment of encumbrances; waiver prohibited; disclaimer of notice; applicability.** (1) A purchaser of a condominium unit may cancel, for any reason, any contract, agreement or any evidence of indebtedness associated with the sale of the condominium unit within three business days from the date of signing by the purchaser of the first written offer or the first contract to purchase.

(2) Cancellation, under subsection (1) of this section, occurs when the purchaser of an interest gives written notice to the seller at the seller's address.

(3) A notice of cancellation given by a purchaser of a condominium unit need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the purchaser not to be bound by the contract or evidence of indebtedness.

(4) Notice of cancellation, if given by mail, shall be given by certified mail, return receipt requested, and is effective on the date that such notice is deposited with the United States Postal Service, properly addressed and postage prepaid.

(5) Upon receipt of a timely notice of cancellation, the seller shall immediately return to the purchaser all payments received from the purchaser. In case of payments made by check, the seller shall not be required to return the payment to a purchaser until the check is finally paid as provided in ORS 74.2130. Upon return of all such payments the purchaser shall immediately transfer his rights in the interest to the seller, not subject to any encumbrance created or suffered by the purchaser. In the case of cancellation by a purchaser of any evidence of indebtedness, the purchaser shall return his copy of the executed evidence of indebtedness to the seller, and

the seller shall cancel the evidence of indebtedness. Any encumbrances against the purchaser's interest in the unit arising by operation of law from an obligation of the purchaser existing prior to transfer of the interest to the purchaser shall be extinguished by the reconveyance.

(6) No act of a purchaser shall be effective to waive the right of cancellation granted by subsection (1) of this section. A developer may require that a purchaser of a condominium unit execute and deliver to the developer, after the expiration of the three-day cancellation period, a signed statement disclaiming any notice of cancellation that may have been made by the purchaser prior to expiration of the three-day cancellation period for the offer under subsection (1) of this section and that may have been timely and properly done under this section whether or not the statement has been received by the developer. In case of execution of any such statement by the purchaser, the statement shall be sufficient to rescind the notice of cancellation.

(7) This section shall not apply to the sale of a unit in a condominium used or intended to be used solely for commercial or industrial purposes or to the sale of a condominium unit conducted by public auction. [1977 c.484 §14]

**91.640** [1963 c 541 §§40, 41, 42; 1967 c.361 §2; renumbered 91 581]

**91.641 Notice to purchaser of cancellation rights; form.** (1) Subject to subsection (7) of ORS 91.637, the first written real property sales contract signed by the purchaser for the sale of a condominium unit shall contain, either upon the first page of such contract or upon a separate sheet attached to such first page, the following notice in at least 8-point type:

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#### NOTICE TO PURCHASER

BY SIGNING THIS AGREEMENT YOU ARE INCURRING A CONTRACTUAL OBLIGATION TO PURCHASE AN INTEREST IN A CONDOMINIUM. HOWEVER, YOU HAVE THREE BUSINESS DAYS AFTER SIGNING THIS AGREEMENT TO CANCEL THE AGREEMENT BY WRITTEN NOTICE TO THE SELLER OR HIS AGENT AT THE FOLLOWING ADDRESS:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

BEFORE EXECUTING THIS AGREEMENT, OR BEFORE THE THREE-DAY CANCELLATION PERIOD ENDS, YOU SHOULD DO THE FOLLOWING:

(1) CAREFULLY EXAMINE THE PUBLIC REPORT, IF ANY, ON THE CONDOMINIUM AND ANY ACCOMPANYING INFORMATION DELIVERED BY THE SELLER.

(2) INQUIRE OF YOUR LENDER AS TO WHETHER YOU CAN GET ADEQUATE FINANCING AT AN ACCEPTABLE INTEREST RATE.

(3) INQUIRE OF THE SELLER AND THE LENDER WHAT THE AMOUNT OF THE CLOSING COSTS WILL BE.

(2) A copy of the notice set forth in subsection (1) of this section shall be given to each purchaser under a contract described in subsection (1) of this section at the time of or immediately following the purchaser's signing of such contract, for the use of the purchaser.

[1977 c.484 §15]

**91.643** [1977 c.658 §14, 1979 c 650 §20; renumbered 91.504]

**91.646 Escrow documents required of successor to vendor's interest.** (1) A purchaser of a vendor's interest or a holder of an encumbrance secured by a vendor's interest in a land sale contract for which an escrow has been established pursuant to ORS 91.631 shall deposit in the escrow any instruments necessary to assure that the contract vendee can obtain the legal title bargained for upon compliance with the terms and conditions of the contract.

(2) A developer who has sold interests in a condominium under a land sale contract shall not dispose of or subsequently encumber his vendor's interest therein unless the terms of the instrument of disposition or the encumbrance provide the means by which the purchaser or holder of the encumbrance will comply with subsection (1) of this section.

[1977 c 484 §25]

**91.649 Inspection of records.** Records of the sale of any condominium unit shall be subject to inspection by the commissioner and shall be made available to him in Oregon at his request. [1977 c.484 §16]

**(Prohibited Acts)****91.652 Fraud and deceit prohibited.**

No developer or his agent shall, in connection with the sale of a condominium unit, directly or indirectly:

(1) Employ any device, scheme or artifice to defraud;

(2) Make any untrue statement of a material fact or fail to state a material fact necessary to make the statement made, in the light of the circumstances under which it is made, not misleading;

(3) Engage in any act, practice or course of business which operates or would operate as a fraud or deception upon any person;

(4) Issue, circulate or publish any prospectus, circular, advertisement, printed matter, document, pamphlet, leaflet or other literature, including a public report issued pursuant to ORS 91.614, which contains an untrue statement of a material fact or fails to state a material fact necessary in order to make the statements therein made, in the light of the circumstances under which they are made, not misleading;

(5) Issue, circulate or publish any advertising matter or make any written representation, including a public report issued pursuant to ORS 91.614, unless the name of the person issuing, circulating or publishing the matter or making the representation is clearly indicated; or

(6) Make any statement or representation, or issue, circulate or publish any advertising matter containing any statement to the effect that the condominium has been in any way approved or indorsed by the commissioner.

[1977 c.484 §17]

91.655 [1963 c 541 §32, renumbered 91 584]

**91.656 False or misleading advertising prohibited; liability.** It shall be unlawful for any developer or agent of a developer, who with intent, directly or indirectly, to sell a condominium unit, to authorize, use, direct or aid in the publication, distribution or circularization of any advertisement, radio broadcast or telecast concerning the condominium, which contains any statement, pictorial representation or sketch which is false or misleading. Nothing in this section shall be construed to hold the publisher or employe of any newspaper, any job printer, broadcaster or telecaster liable for any publication referred to in ORS 91.500 to 91.671 and 91.990 unless the

publisher, employe, printer, broadcaster or telecaster has actual knowledge of the falsity thereof or has an interest in the condominium advertised or the sale thereof. [1977 c.484 §18]

**91.658 Waiver of legal rights void.**

Any condition, stipulation or provision in any sales contract or lease, or in any other legal document, binding any purchaser or lessee to waive any legal rights under ORS 91.500 to 91.671 and 91.990 against the developer shall be deemed to be contrary to public policy and void. [1977 c.484 §19]

91.660 [1963 c.541 §§33, 34; repealed by 1977 c.658 §10 (91.587 enacted in lieu of 91.660)]

**91.661 Blanket encumbrance permitted only in certain circumstances.** (1)

Subject to the provisions of ORS 91.631, a condominium unit shall not be sold by a developer subject to a blanket encumbrance unless there exists in such blanket encumbrance or other supplementary agreement a provision which by its terms shall unconditionally provide that the purchaser or lessee of the unit can obtain legal title or other interest bargained for, free and clear of such blanket encumbrance, upon compliance with the terms and conditions of the purchase or lease.

(2) In lieu of the requirement of subsection (1) of this section, the developer shall conform to such alternative requirement or method which the commissioner may deem acceptable to carry into effect the intent and provisions of this section. [1977 c.484 §24]

**(Enforcement)**

**91.664 Civil penalty; hearings.** (1) In addition to any other penalties provided by law, the commissioner may impose a civil penalty for violation of the provisions of ORS 91.602 to 91.658 or any of the rules adopted thereunder. No civil penalty shall exceed \$1,000 per violation.

(2) A civil penalty may be imposed by the commissioner after notice and hearing.

(3) All hearings shall be conducted pursuant to the applicable provisions of ORS 183.310 to 183.500.

(4) Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be filed in accordance with the provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner

as execution upon a judgment of a court of record.

(5) All penalties recovered shall be paid into the State Treasury and credited to the General Fund. [1977 c.484 §20]

**91.665** [1963 c.541 §35; renumbered 91 591]

**91.667 Cease and desist order; injunction.** (1) Whenever the commissioner finds that any developer or other person is violating any of the provisions of ORS 91.602 to 91.658 or the rules adopted thereunder or of the alternative requirements of the commissioner prescribed pursuant to subsection (3) of ORS 91.631, the commissioner may order the persons to desist and refrain from violating such provisions or requirements, or from the further sale of condominium units.

(2) Whenever the commissioner finds that any developer or other person is violating, or has violated or is about to violate, any of the provisions of ORS 91.602 to 91.658 or the rules adopted thereunder or the alternative requirements of the commissioner prescribed pursuant to subsection (3) of ORS 91.631, he may bring proceedings in the circuit court within the county in which the violation or threatened violation has occurred or is about to occur, or in the county where such person, firm or corporation resides or carries on business, in the name of and on behalf of the people of the State of Oregon against such person, firm or corporation, and any other person or persons concerned in or in any way participating or about to participate in such violation, to enjoin such person, firm or corporation or any other person from continuing such violation or engaging therein or doing any act or acts in furtherance thereof, and to apply for the appointment of a receiver or conservator of the assets of the defendant where such appointment is appropriate. [1977 c 484 §21]

**91.670** [1963 c.541 §36; renumbered 91 593]

**91.671 Use of fees.** The moneys received under ORS 91.500 to 91.671 and 91.990 shall be paid into the State Treasury and placed to the credit of the General Fund in the Oregon Real Estate Department Account. [1977 c.484 §22]

**91.675** [1963 c.541 §37; renumbered 91.596]

## BUY-IN REFUND

**91.690 When purchaser eligible for refund of buy-in charge or down payment in retirement facility; "retirement facility" defined.** (1) Any retirement facility which requires any resident, as a condition of occupancy or use of the facility, to pay any sum, including a buy-in charge or down payment, prior to or during the first six months of occupancy in addition to monthly payments shall provide that the full buy-in charge or down payment, less actual costs to the home, be refunded to the resident if, for any reason, the resident withdraws from the retirement facility within the first six months of occupancy.

(2) As used in this section, "retirement facility" means a facility which furnishes food, shelter, medical care or other personal services for compensation to three or more persons of the age of 65 or more who are not related to the owner or operator by blood or marriage, and whose interest in the facility is less than ownership interest. [1975 c.489 §§1, 2]

## RESIDENTIAL LANDLORD AND TENANT ACT (General Provisions)

**91.700 Short title.** ORS 91.700 to 91.895 shall be known and may be cited as the "Residential Landlord and Tenant Act." [1973 c 559 §1]

**91.705 General definitions.** Subject to additional definitions contained in ORS 91.700 to 91.895 which apply to specific sections or parts thereof, and unless the context otherwise requires, in ORS 91.700 to 91.895:

(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" regarding a person who rents a space for a mobile home, as defined in ORS 91.873, or who rents moorage space for a floating home, as defined in ORS 488.705, but does not rent the home, means the space rented and not the mobile or floating 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; 1979 c.384 §1; 1979 c.676 §4a; 1979 c.884 §2a]

**91.710 Exclusions from application of ORS 91.700 to 91.895.** Unless created to avoid the application of ORS 91.700 to 91.895, the following arrangements are not governed by ORS 91.700 to 91.895:

(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 91.895 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 87.162 to 87.212 and 91.010 to 91.220 do not apply to the rights and obligations of landlords and tenants governed by ORS 91.700 to 91.895. Any provisions of ORS 91.700 to 91.895 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; 1975 c.648 §70a]

**91.725 Administration of remedies; enforcement.** (1) The remedies provided by ORS 91.700 to 91.895 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 91.895 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 91.895 and every act which must be performed as a condition precedent to the exercise of a right or remedy under ORS 91.700 to 91.895 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 91.895 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]

### (Content of Agreements)

**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 91.895 or other rule of law including rent, term of the agreement and other provisions

governing the rights and obligations of the parties.

(2) The landlord shall provide the tenant with a copy of any written rental agreement and all amendments and additions thereto.

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

(4) 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, 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, and rent may not be increased without a 30-day written notice thereof.

(5) Unless the rental agreement fixes a definite term, the tenancy is week to week in case of a roomer who pays weekly rent regardless of length of stay or amount of prepaid rent, and in all other cases month to month.

[1973 c.559 §8; 1975 c.256 §1; 1979 c.632 §1]

**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 91.895;

(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 91.895, 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, however designated, 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) A security deposit shall not be required or forfeited to the landlord upon the failure of the tenant to maintain a tenancy for a specified term.

(6) 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.

(7) The security deposit or portion of the deposit not claimed in the manner provided by subsection (6) of this section shall be returned

to the tenant not later than 30 days after the termination of the tenancy and delivery of possession to the landlord.

(8) If the landlord fails to comply with subsection (7) of this section or if he fails to return any prepaid rent required to be paid to the tenant under ORS 91.700 to 91.895 the tenant may recover the property and money due him in an amount equal to twice the amount wrongfully withheld.

(9) This section does not preclude the landlord or tenant from recovering other damages to which he may be entitled under ORS 91.700 to 91.895.

(10) 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; 1975 c.256 §2]

**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 91.895 and under the rental agreement and expending or making available for that purpose all rent collected from the premises. [1973 c.559 §13]

**91.767 Disclosure of utility or service payments benefiting other tenants or landlord.**

(1) The landlord shall disclose to the tenant in writing at or before the commencement of the tenancy any utility or service which the tenant pays directly to a utility or service provider which benefits, directly,

the landlord or other tenants. A tenant's payment for a given utility or service benefits the landlord or other tenants if the utility or service is delivered to any area other than the tenant's dwelling unit.

(2) For the purpose of this section, "utility or service" includes electricity, natural gas, oil, water, hot water, heat, air conditioning, and garbage collection and disposal.

(3) If the landlord knowingly fails to disclose those matters required under this section, the tenant may recover twice the actual damages sustained or one month's rent, whichever is greater. [1979 c.599 §2]

**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 uninhabitable 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.

(k) Working locks for all outside doors and keys for such locks which require keys.

(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; 1979 c.643 §2]

91.773 [1975 c.256 §5; repealed by 1979 c.643 §3]

### (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, agreement to the contrary 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; 1979 c.632 §2]

**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 noncompliance with rental agreement or obligation to maintain premises; generally.** (1) (a) Except as provided in ORS 91.700 to 91.895, if there is a material noncompliance by the landlord with the rental agreement or a non-compliance 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 91.895, 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 deliberate refusal or negligent failure of landlord 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 any essential service, the tenant may give written notice to the landlord specifying the breach and may:

(a) Procure reasonable amounts of the 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 contrary to the rental agreement or ORS 91.770 the landlord negligently fails to supply any essential service, the tenant may give written notice to the landlord specifying the breach and may cause the necessary work to be done in a workmanlike manner and, after submitting to the landlord receipts or an agreed upon itemized statement, deduct from his rent the actual and reasonable cost or the fair and reasonable value of the work not exceeding \$200:

(a) The landlord and tenant may agree, at any time, to allow the tenant to exceed the monetary limits of this subsection when making reasonable repairs.

(b) Notwithstanding paragraph (a) of subsection (5) of this section, in case of emergency, written notice required by this subsection, or attempted oral notice followed by written notice, may be given as promptly as the conditions permit.

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

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

(a) Until he has given reasonable notice under the circumstances to the landlord to enable the landlord to provide the essential service; 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.

(6) The landlord may specify people to do all work under this section as long as the tenant's rights under this section are not diminished. [1973 c.559 §20; 1975 c.256 §6]

**91.810 Tenant 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 91.900. 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.

(3) If the tenant does not comply with an order to pay rent into the court as provided in subsection (1) of this section, the tenant shall not be permitted to assert a counterclaim in the action for possession.

(4) When a tenant is granted a continuance for a longer period than two days, and has not been ordered to pay rent into court under subsection (1) of this section, the tenant shall be ordered to pay rent into court under subsection (2) of ORS 105.140. [1973 c.559 §21; 1979 c.854 §1]

**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 noncompliance with rental agreement or failure to maintain premises; failure to pay rent; damage to persons or property.**(1) (a) Except as provided in ORS 91.700 to 91.900, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with ORS 91.775 materially af-

fecting 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 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 in the manner provided in ORS 105.105 to 105.155.

(3) The landlord, after 24 hours' written notice specifying the causes, may immediately terminate the rental agreement and take possession in the manner provided in ORS 105.105 to 105.155, if the tenant, someone in the tenant's control or the tenant's pet:

(a) Seriously threatens immediately to inflict personal injury, or inflicts any substantial personal injury, upon the landlord or other tenants;

(b) Intentionally inflicts any substantial damage to the premises; or

(c) Commits any act which is outrageous in the extreme.

(4) Except as provided in ORS 91.700 to 91.900, 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; 1975 c.256 §3; 1979 c.573 §1a; 1979 c.765 §3]

**91.822 Effect of tenant keeping unpermitted pet.** (1) If the tenant, in violation of the rental agreement, keeps on the prem-

ises a dog, cat or other pet capable of causing damage to persons or property, the landlord may deliver a written notice specifying the violation and stating that the tenancy will terminate upon a date not less than 10 days after the receipt of the notice unless the tenant removes the pet from the premises prior to the termination date specified in the notice. If the pet is not removed by the date specified, the tenancy shall terminate and the landlord may take possession in the manner provided in ORS 105.105 to 105.155.

(2) If substantially the same act which constituted a prior noncompliance of which notice was given under subsection (1) of this section 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.

(3) This section shall not apply to any tenancy governed by ORS 91.873 to 91.900. [1979 c.765 §2]

**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 right of landlord to terminate tenancy.** Acceptance of rent with knowledge of a default by the tenant or accep-

ance 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; notice to tenant.**(1) If a tenancy terminates by expiration of a lease or surrender or abandonment of the premises and the landlord reasonably believes under all the circumstances that the tenant has left goods, chattels, motor vehicles or other personal property upon the premises with no intention of asserting any further claim to the premises or to such personal property, or if the tenant has been continuously absent from the premises for seven days after termination of a tenancy by a court order which has not been executed, the landlord shall make reasonable attempts to notify the tenant in writing, by first class mail indorsed "Please Forward" and addressed to the tenant's last-known address and to any alternate addresses known to the landlord, that the property is considered abandoned and must be removed from the premises or from the place of safekeeping, if the landlord has stored the property 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 abandoned 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, motor vehicles

and other 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 property 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, 1979 c.765 §4]

**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 91.895. [1973 c.559 §29]

#### (Miscellaneous)

**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; 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, or expressed to the landlord in writing an intention to complain 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, 91.785 or 91.850;

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

(d) The tenant has complained to the landlord of a failure to comply with the notice requirements of subsection (4) of ORS 91.740; or

(e) The tenant has testified against the landlord in any judicial, administrative or legislative proceeding.

(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.

(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; 1979 c.643 §1]

### (Mobile or Floating Home Spaces)

**91.870 Prohibitions on retaliatory conduct by landlord.** In addition to the prohibitions of ORS 91.865, the landlord who rents a space for a mobile or floating home may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after:

(1) The tenant has expressed an intention to complain to agencies listed in ORS 91.865;

(2) The tenant has made any complaint to the landlord which is in good faith;

(3) The tenant has filed or expressed intent to file a complaint under ORS 659.045; or

(4) The tenant has performed or expressed intent to perform any other act for the purpose of asserting, protecting or invoking the protection of any right secured to tenants under any federal, state or local law. [1975 c.353 §7; 1979 c.384 §1a]

**91.873 "Rent a space for a mobile or floating home" defined for ORS 91.875 to 91.895.** As used in ORS 91.875 to 91.895, "rent a space for a mobile or floating home" means a transaction in which the owner of a mobile or floating home secures the right to locate the home on the property of another for use as a residence in return for value, and in which the owner of the mobile or floating home retains no interest in the real property at the end of the transaction. [1977 c.348 §3; 1979 c.384 §2]

**91.874 Model rental agreement form.** The Director of Commerce shall promulgate a model mobile home rental agreement form for use by landlords under ORS 91.875. [1977 c.348 §1a]

**91.875 Rental agreement to be in writing; contents; effect of tenant refusal to sign.** (1) Every landlord who rents a space for a mobile or floating home shall provide a written agreement which shall be signed by the landlord and tenant.

(2) The agreement required by subsection (1) of this section shall specify:

(a) The location and approximate size of the rented space;

(b) The rent per month;

(c) All personal property, services and facilities to be provided by the landlord;

(d) All rules and regulations which, if violated, may be cause for eviction;

(e) All refundable deposits, nonrefundable fees and installation charges imposed by the landlord;

(f) Improvements which the tenant may make to the rental space, including plant materials and landscaping;

(g) Provisions for dealing with improvements to the rental space at the termination of the tenancy;

(h) Any conditions the landlord applies in approving a purchaser of a mobile or floating home as a tenant in the event the tenant elects to sell the home. Such conditions may include, but are not limited to, conditions as to children, pets, number of occupants, credit references, character references and criminal records; and

(i) That the tenant shall not sell the tenant's mobile home to a person who intends to leave the mobile home on the rental space until the landlord has accepted the person as a tenant.

(3) With respect to a rental agreement entered into after October 4, 1977, the landlord shall provide a copy of the agreement to the tenant.

(4) If a tenant refuses to sign a written agreement offered by the landlord which does not constitute a modification of the bargain entered into by the landlord and tenant and which does not violate a provision of ORS 91.700 to 91.900 the tenant shall not have a cause of action pursuant to paragraph (a) of subsection (2) of ORS 91.900. [1975 c.353 §2; 1977 c.348 §1; 1979 c.384 §3; 1979 c.573 §2a; 1979 c.676 §1]

**91.880 Termination by tenant; notice to landlord.** (1) The tenant who rents a space for a mobile or floating home may terminate the rental agreement by giving to the landlord not less than 30 days' notice in writing prior to the date designated in the notice for termination.

(2) The agreement to rent required by ORS 91.875 may provide for termination on a

specified date not less than 30 days after the parties enter into the agreement.

(3) No tenant shall be required to give the landlord more than 30 days' written notice to terminate. [1975 c.353 §3; 1977 c.348 §4; 1979 c.384 §4]

**91.885 Termination by landlord; causes specified; notice.** (1) Except as provided in subsection (3) of this section, the landlord may terminate the rental agreement for space for a mobile or floating home by giving to the tenant not less than 30 days' notice in writing prior to the date designated in the notice for termination if the tenant:

(a) Violates a law or ordinance which relates to the tenant's conduct as a mobile or floating home tenant; or

(b) Violates a rule duly imposed as a condition of occupancy.

(2) The notice required by subsection (1) of this section shall set forth facts sufficient to notify the tenant of the reasons for termination of the tenancy.

(3) The tenant may avoid termination of the tenancy by correcting the violation within the 30-day period specified in subsection (1) of this section. However, if substantially the same act or omission which constituted a prior violation of which notice was given recurs within six months, the landlord may terminate the tenancy upon at least 20 days' written notice specifying the violation and the date of termination of the tenancy.

(4) The landlord of a mobile home park, as defined in ORS 446.003, may terminate the rental agreement by giving to the tenant not less than one year's notice in writing prior to the date designated in the notice for termination if the mobile home park is to be closed and the land converted to a different use, which is not required by exercise of eminent domain, or by order of state or local agencies. However, the landlord may terminate the rental agreement by giving the tenant notice of less than one year, if the landlord finds space acceptable to the tenant to which the tenant can move the mobile home.

(5) The landlord may terminate the rental agreement by giving the tenant's personal representative or successor in interest not less than 30 days' notice in writing prior to the date designated in the notice for termination, if a tenant residing alone dies prior to the termination of the tenancy.

(6) Nothing in this section shall limit a landlord's right to terminate a tenancy for nonpayment of rent or any other cause stated in ORS 91.700 to 91.895 by complying with ORS 105.105 to 105.155. [1975 c.353 §4; 1977 c.348 §5; 1979 c.384 §5; 1979 c.676 §2]

**Note:** Sections 5 and 6, chapter 676, Oregon Laws 1979, take effect October 3, 1980, and provide:

**Sec. 5.** ORS 91.885 is repealed and section 6 of this Act is enacted in lieu thereof.

**Sec. 6.** (1) Except as provided in subsection (3) of this section, the landlord may terminate the rental agreement for space for a mobile home by giving to the tenant not less than 30 days' notice in writing before the date designated in the notice for termination if the tenant:

(a) Violates a law or ordinance which related to the tenant's conduct as a mobile home tenant; or

(b) Violates a rule imposed as a condition of occupancy.

(2) The notice required by subsection (1) of this section shall state facts sufficient to notify the tenant of the reasons for termination of the tenancy.

(3) The tenant may avoid termination of the tenancy by correcting the violation within the 30-day period specified in subsection (1) of this section. However, if substantially the same act or omission which constituted a prior violation of which notice was given recurs within six months, the landlord may terminate the tenancy upon at least 20 days' written notice specifying the violation and the date of termination of the tenancy.

(4) The landlord of a mobile home park, as defined in ORS 446.003, may terminate the rental agreement by giving to the tenant not less than 180 days' notice in writing before the date designated in the notice for termination if the mobile home park is to be closed and the land converted to a different use, which is not required by exercise of eminent domain or by order of state or local agencies. However, the landlord may terminate the rental agreement by giving the tenant notice of less than 180 days, if the landlord finds space acceptable to the tenant to which the tenant can move the mobile home.

(5) Nothing in this section shall limit a landlord's right to terminate a tenancy for nonpayment of rent or any other cause stated in ORS 91.700 to 91.895 by complying with ORS 105.105 to 105.155.

**91.890 Right to sell space; landlord commission; notice prior to sale.** (1) No landlord shall deny any mobile or floating home space tenant the right to sell a mobile home on a rented space or require the tenant to remove the home from the space solely on the basis of the sale.

(2) The landlord shall not exact a commission or fee for the sale of a mobile or floating home on a rented space unless the landlord

has acted as agent for the seller pursuant to written contract.

(3) The landlord may not deny the tenant the right to place a "for sale" sign on or in a mobile home owned by the tenant. The size, placement and character of such signs shall be subject to reasonable rules of the landlord.

(4) The landlord may require that a tenant give not more than 30 days' notice in writing prior to the sale of a mobile or floating home on a rented space if the prospective purchaser of the home desires to leave the home on the rented space and become a tenant. The landlord may, for cause as specified in paragraph (h) of subsection (2) of ORS 91.875, reject a prospective purchaser as a tenant. In such case the landlord shall furnish to the seller and purchaser a written statement of the reasons for the rejection.

(5) If the landlord accepts the potential purchaser as a tenant, the landlord shall inform the purchaser, at the time of acceptance, what conditions will be imposed on a subsequent sale. These conditions need not be the same as those in the previous rental agreement. [1975 c.353 §5; 1977 c.348 §6; 1979 c.384 §6; 1979 c.676 §3]

**91.895 Unreasonable conditions of rental or occupancy prohibited.** No landlord shall impose conditions of rental or occupancy which unreasonably restrict the tenant or prospective tenant in his choice of mobile or floating home dealers, fuel suppliers, furnishings, goods, services or accessories. [1975 c.353 §6, 1979 c.384 §7]

**91.900 Causes of action; limit on cause of action of tenant; costs and attorney fees.** (1) Any person aggrieved by a violation of ORS 91.870, 91.885, 91.890 or 91.895 shall have a cause of action against the violator thereof for any damages sustained as a result of the violation or \$200, whichever is greater.

(2) (a) Except as provided in paragraphs (b) and (c) of this subsection, a tenant shall have a cause of action against the landlord for a violation of subsection (1) or (3) of ORS 91.875 for any damages sustained as a result of such violation, or \$100, whichever is greater.

(b) However, the tenant shall have no cause of action if, within 10 days after he requests a written agreement from the landlord, the landlord offers to enter into a written

agreement which does not substantially alter the terms of the oral agreement made when the tenant rented the space and which complies with ORS 91.700 to 91.895.

(c) If, within 10 days after being served with a complaint alleging a violation of ORS 91.875, the landlord offers to enter into a written rental agreement with each of his other tenants which does not substantially alter the terms of the oral agreement made when each tenant rented the space and which complies with ORS 91.700 to 91.895, then the landlord shall not be subject to any further liability to such other tenants for previous violations of ORS 91.875.

(d) A purchaser shall have a cause of action against a seller for damages sustained or \$100, whichever is greater, who sells the tenant's mobile home to the purchaser before the landlord has accepted the purchaser as a tenant if:

(A) The landlord rejects the purchaser as a tenant; and

(B) The seller knew the purchaser intended to leave the mobile home on the space.

(3) Any person who brings an action under subsection (1) or (2) of this section may also recover his costs, necessary disbursements and reasonable attorney fees as determined by the court. [1977 c.348 §7; 1979 c.676 §4]

#### (Penalties)

**91.990 Penalties.** Any person who violates any of the provisions of ORS 91.602 to 91.658 or any rules adopted thereunder or any alternative requirements of the commissioner prescribed pursuant to subsection (3) of ORS 91.631, shall be punished by a fine not exceeding \$10,000, or by imprisonment in the penitentiary for a period not exceeding three years, or in the county jail not exceeding one year, or by both such fine and imprisonment. [1977 c.484 §23]

#### 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,  
October 1, 1979

Thomas G. Clifford  
Legislative Counsel

