

# TITLE 10

## PROPERTY RIGHTS AND TRANSACTIONS

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### Chapter 91

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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.

**91.115 Tenant not to deny landlord's title.** A tenant is not permitted to deny the title of the tenant's landlord at the time of the commencement of the relation. [1981 c 892 §85]

## 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

**91.230 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. [Formerly 91 310]

## MATTERS RELATING TO GAMBLING LEASES

**91.240 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. [Formerly 91 410]

**91.245 Penalty for letting or renting a place for gambling purposes.** Violation of ORS 91.240 (1) 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. [Formerly 91 420]

**91.310** [Renumbered 91.230]

**91.355** [1975 c 501 §1; renumbered 105.920]

**91.410** [Renumbered 91 240]

**91.420** [Renumbered 91 245]

**91.500** [Formerly 91 505; 1979 c 650 §1; 1981 c 647 §1; renumbered 94 004]

**91.503** [Formerly 91 510; 1981 c.647 §2; renumbered 94.011]

**91.504** [Formerly 91 643; renumbered 94 017]

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

**91.506** [Formerly 91.525; 1979 c.650 §26; 1981 c 647 §3, renumbered 94.023]

**91.509** [Formerly 91 530; 1979 c 650 §2; 1981 c 647 §4; renumbered 94.029]

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

**91.512** [Formerly 91 535; 1979 c 350 §2; 1981 c 697 §7; renumbered 94 036]

**91.515** [Formerly 91.540, 1979 c 650 §3; renumbered 94 042]

- 91.518** [Formerly 91 545; 1979 c 650 §27; 1981 c 647 §5; renumbered 94.047]
- 91.519** [1979 c.650 §24; renumbered 94.053]
- 91.521** [1977 c 658 §8, 1979 c 650 §4; 1981 c.647 §6; renumbered 94 059]
- 91.523** [1979 c.650 §8a, 1981 c 886 §1, renumbered 94 109]
- 91.524** [1977 c 484 §26; 1979 c 650 §5; 1981 c 886 §2, renumbered 94 116]
- 91.525** [1963 c 541 §§3, 15, renumbered 91 506]
- 91.526** [1979 c 650 §§6a, 7, 8; 1981 c 886 §3; renumbered 94 122]
- 91.527** [1977 c.658 §12, 1979 c 650 §9, 1981 c.647 §7; renumbered 94 146]
- 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** [Formerly 91.555, 1979 c 650 §10; 1981 c 647 §8, renumbered 94 152]
- 91.533** [Formerly 91 560, 1979 c 650 §11; 1981 c 647 §9; renumbered 94 158]
- 91.534** [1979 c 650 §29, renumbered 94 164]
- 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** [Formerly 91 565; 1979 c 650 §12, renumbered 94.171]
- 91.539** [Formerly 91.575; 1979 c 650 §13, renumbered 94 185]
- 91.540** [1963 c 541 §§18, 19, 1973 c 803 §2, 1977 c.658 §1; renumbered 91 515]
- 91.542** [1977 c 658 §15; renumbered 94 190]
- 91.545** [1971 c 414 §3; 1977 c 658 §18, renumbered 91 518]
- 91.546** [Formerly 91 580, 1981 c 647 §10, renumbered 94 195]
- 91.548** [Formerly 91 585, renumbered 94 202]
- 91.551** [Formerly 91 590; renumbered 94 208]
- 91.554** [Formerly 91 595, 1981 c 647 §11, renumbered 94 214]
- 91.555** [1963 c 541 §20, 1977 c 658 §17, renumbered 91 531]
- 91.557** [1977 c 658 §13; 1981 c 647 §12; renumbered 94 221]
- 91.560** [1963 c 541 §21, 1971 c 414 §4, 1977 c 484 §29, 1977 c.658 §4a; renumbered 91 533]
- 91.561** [Formerly 91 605; renumbered 94 231]
- 91.562** [1979 c 650 §25, renumbered 94 237]
- 91.563** [Formerly 91 610, 1979 c 650 §14, renumbered 94 243]
- 91.564** [1979 c 650 §23; 1981 c 647 §13, renumbered 94 255]
- 91.565** [1963 c.541 §22; 1971 c.414 §5; renumbered 91.536]
- 91.566** [Formerly 91 615, 1979 c 650 §15; 1981 c 647 §14; renumbered 94 260]
- 91.569** [Formerly 91 620; 1979 c 650 §16, renumbered 94.265]
- 91.570** [1963 c 541 §23; repealed by 1977 c 658 §3]
- 91.572** [Formerly 91 625; 1981 c.647 §15; renumbered 94.270]
- 91.575** [1963 c 541 §24, renumbered 91 539]
- 91.576** [Formerly 91 630; 1981 c 647 §16; renumbered 94 275]
- 91.578** [Formerly 91 635, renumbered 94 280]
- 91.580** [1963 c 541 §§26, 27, 1977 c 658 §2; renumbered 91 546]
- 91.581** [Formerly 91 640; 1979 c 650 §17, renumbered 94 285]
- 91.584** [Formerly 91 655, renumbered 94 295]
- 91.585** [1963 c 541 §28, renumbered 91 548]
- 91.587** [1977 c 658 §11 (enacted in lieu of 91 660), renumbered 94.300]
- 91.590** [1963 c 541 §§29, 30; renumbered 91 551]
- 91.591** [Formerly 91 665; 1979 c 650 §18; renumbered 94 306]
- 91.593** [Formerly 91 670, renumbered 94 312]
- 91.595** [1963 c 541 §§25, 31; renumbered 91 554]
- 91.596** [Formerly 91 675, renumbered 94 318]
- 91.599** [1977 c 484 §1, 1979 c 650 §19, 1981 c 647 §19, 1981 c 886 §7, renumbered 94 324]
- 91.602** [1977 c 484 §2; renumbered 94 331]
- 91.605** [1963 c 541 §§4, 5, renumbered 91 561]
- 91.606** [1977 c 484 §3, renumbered 94 336]
- 91.608** [1977 c 484 §4; renumbered 94 342]
- 91.610** [1963 c 541 §§6, 7, 1977 c 658 §9, renumbered 91 563]
- 91.611** [1977 c 484 §5, renumbered 94 348]
- 91.614** [1977 c 484 §6, renumbered 94 359]
- 91.615** [1963 c 541 §§8, 12, 1971 c 414 §6, 1977 c 658 §16; renumbered 91 566]
- 91.617** [1977 c 484 §7, renumbered 94 366]
- 91.620** [1963 c 541 §9, renumbered 91 569]
- 91.621** [1977 c 484 §8, renumbered 94 372]
- 91.623** [1977 c 484 §9; renumbered 94 378]
- 91.625** [1963 c 541 §§10, 11, renumbered 91 572]
- 91.626** [1977 c 484 §10, 1981 c 647 §34, renumbered 94 384]
- 91.629** [1977 c 484 §12, renumbered 94 391]
- 91.630** [1963 c 541 §13, renumbered 91 576]

**91.631** [1977 c 484 §13, renumbered 94 400]

**91.634** [1977 c 484 §11; 1981 c 647 §20; renumbered 94.406]

**91.635** [1963 c.541 §§38, 39; renumbered 91 578]

**91.637** [1977 c 484 §14; 1981 c 647 §21; renumbered 94.412]

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

**91.641** [1977 c 484 §15; 1981 c.647 §22; renumbered 94.424]

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

**91.646** [1977 c 484 §25; renumbered 94.431]

**91.649** [1977 c 484 §16; renumbered 94 437]

**91.652** [1977 c 484 §17; renumbered 94 448]

**91.655** [1963 c.541 §32; renumbered 91 584]

**91.656** [1977 c.484 §18; renumbered 94 454]

**91.658** [1977 c.484 §19; renumbered 94 460]

**91.660** [1963 c.541 §§33, 34; repealed by 1977 c.658 §10 (91.587 enacted in lieu of 91 660)]

**91.661** [1977 c 484 §24; renumbered 94 465]

**91.664** [1977 c 484 §20; renumbered 94 470]

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

**91.667** [1977 c 484 §21; renumbered 94.475]

**91.670** [1963 c.541 §36; renumbered 91.593]

**91.671** [1977 c 484 §22; renumbered 94.480]

**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, and includes a domiciliary accommodation or arrangement described in ORS 105.830 (1). [1975 c.489 §§1, 2; 1981 c 841 §3]

### 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, 91.010 to 91.110, 91.210 and 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 ORS 91.770 (1). [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 at trial and on appeal 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, 1981 c 897 §28]

**91.757 Landlord's interest in alternative energy device installed by tenant.** (1) An alternative energy device installed in a dwelling unit by a tenant with the landlord's written permission is not a fixture in which the landlord has a legal interest, except as otherwise expressly provided in a written agreement between the landlord and tenant.

(2) As a condition to a grant of written permission referred to in subsection (1) of this section, a landlord may require a tenant to do one or more of the following:

(a) Provide a waiver of the landlord's liability for any injury to the tenant or other installer resulting from the tenant's or installer's negligence in the installation of the alternative energy device;

(b) Secure a waiver of the right to a lien against the property of the landlord from each contractor, subcontractor, laborer and materi-

al supplier who would obtain the right to a lien when the tenant installs or causes the installation of the alternative energy device; or

(c) Post a bond or pay a deposit in an amount not to exceed the cost of restoring the premises to its condition at the time of installation of the alternative energy device.

(3) Nothing in this section:

(a) Authorizes the installation of an alternative energy device in a dwelling unit without the landlord's written permission; or

(b) Limits a landlord's right to recover damages and obtain injunctive relief as provided in ORS 91.820 (4).

(4) As used in this section, "alternative energy device" has the meaning given that term in ORS 469.160. [1981 c 576 §2]

#### (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;

(j) Safety from the hazards of fire; or

(k) Working locks for all dwelling entrance doors, and, unless contrary to applicable law, latches for all windows, by which access may be had to that portion of the premises which the tenant is entitled under the rental agreement to occupy to the exclusion of others 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; 1981 c 753 §1]

**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) 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 the intent of the landlord to enter and may enter only at reasonable times.

(b) If repairs or maintenance are requested by the tenant, or entry of the tenant's dwelling unit is necessary to perform repairs or maintenance required for other portions of the premises, except in the case of an emergency or an agreement to the contrary or unless it is impracticable to do so, the landlord or persons acting on behalf of the landlord may enter upon demand or in the tenant's absence until completing the repairs or maintenance, provided:

(A) The landlord has given at least 24 hours' notice in writing, specifying the purposes of the entry and the persons who will perform the repairs or maintenance, and stating that those persons are authorized by the landlord to enter upon demand or in the tenant's absence;

(B) The entry is for the purposes stated in the notice and by the persons specified in the notice or persons acting under their supervision; and

(C) The entry occurs at reasonable times.

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

- (a) Pursuant to court order;
- (b) As permitted by ORS 91.825 (2); or
- (c) When the tenant has abandoned or surrendered the premises. [1973 c 559 §17, 1979 c 632 §2, 1981 c 753 §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 noncompliance with ORS 91.770, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in seven days in the case of an essential service or 30 days in all other cases, and the rental agreement shall terminate as provided in the notice subject to paragraphs (b) to (d) of this subsection.

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

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

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

(2) Except as provided in ORS 91.700 to 91.895, 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 emer-

gency, 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 non-payment 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 ORS 105.140 (2). [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 non-compliance with ORS 91.775 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice. If the breach is not remedied in 14 days, the rental agreement shall terminate as provided in the notice subject to paragraphs (b) and (c) of this subsection.

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

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

(2) If rent is unpaid when due and the tenant fails to pay rent within seven days the landlord, after 72 hours' written notice of nonpayment and the landlord's 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 105.165.

(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 105.165, 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; 1981 c.753 §3]

**91.822 Effect of tenant keeping unpermitted pet.** (1) If the tenant, in violation of the rental agreement, keeps on the premises 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 105.165.

(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 acceptance of performance by him that varies from the terms of the rental agreement constitutes a waiver of the landlord's right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred. [1973 c.559 §25]

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

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

**91.840 Disposition of personal property abandoned by tenant; notice to tenant.** (1) The landlord may dispose of any goods, chattels, motor vehicles or other personal property left upon the premises by the tenant in the manner provided by subsections (3) and (4) of this section, after giving notice as required by subsection (2) of this section, in the following circumstances only:

(a) 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 the property upon the premises with no intention of asserting any further claim to the premises or to the property;

(b) The tenant has been absent from the premises continuously for seven days after termination of a tenancy by a court order that has not been executed; or

(c) The landlord elects to remove the property pursuant to ORS 105.165.

(2) To dispose of the tenant's property under this section, the landlord must give a written notice to the tenant which shall be:

(a) Sent by first class, certified or registered mail;

(b) Addressed to the tenant's last-known address and to any of the tenant's alternate addresses known to the landlord; and

(c) Mailed in an envelope indorsed "Please Forward."

(3) The notice required under subsection (2) of this section shall state 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 (4) 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 the landlord 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.

(4) After notifying the tenant as required by subsections (2) and (3) 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 stor-

age charge plus the cost of removal of the property to the place of storage.

(5) If the tenant upon the receipt of the notice provided by subsections (2) and (3) of this section or otherwise responds in writing to the landlord on or before the day specified in the notice that the tenant intends to remove the property from the premises or from the place of safekeeping, if the landlord has stored the property as provided in subsection (4) 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. Except as provided in ORS 105.165, if the tenant removes the property the landlord shall be entitled to the cost of storage for the period the property remains in the landlord's safekeeping.

(6) 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.

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

(8) 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.

(9) Complete compliance in good faith with this section shall constitute a complete defense in any action brought by a tenant against a landlord for loss or damage to such personal property disposed of pursuant to this section. [1973 c 559 §27; 1979 c 765 §4; 1981 c.753 §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 hold-over.** (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, ORS 91.740 (4) 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]

**91.862 Refusal to rent to blind person because of dog guide prohibited; extra fee prohibited.** (1) No landlord, as defined in ORS 91.705 (5) shall refuse to rent a dwelling unit, as defined in ORS 91.705 (3), to a blind person on the basis of the person's use or possession of a dog guide, as defined in ORS 346.610. A blind person may maintain an action pursuant to ORS 346.630 (2) for compensatory damages, and attorney fees and court costs, if any landlord refuses to rent a dwelling unit on the basis of the person's use or possession of such dog guide.

(2) No blind person shall be required to pay an additional fee or an excessive deposit for the dog guide. [1981 c.179 §3]

**Note:** 91 862 was enacted into law by the Legislative Assembly but was not added to or made a part of any series in ORS chapter 91 by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

**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 ORS 91.740 (4); 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 ORS 91.800 (2). [1973 c 559 §32, 1979 c 643 §1]

**91.866 Right of city to recover from owner for costs of relocating tenant due to condemnation.** (1) A city with a population that exceeds 300,000 shall have a right of action against the owner of any premises to recover the reasonable costs of relocation incurred by the city because the condition of the premises causes condemnation and relocation of the tenants at public expense. In order to recover the costs, the city must allege and prove that, due to action or inaction of the owner, the premises are or have been in multiple and material violation of applicable health or safety codes for a period of more than 30 days and that such violation endangers the health or safety of the tenants or the public, or both.

(2) It shall be an affirmative defense to recovery of relocation costs incurred for any tenant that the condition was caused by the action or negligence of that tenant.

(3) The official responsible for city code enforcement shall notify the owner in writing when the official finds the premises to be in a condition that may cause tenant relocation. The notice shall also inform the owner of the potential liability for relocation costs.

(4) A landlord may not evict a tenant because of the receipt of the notice required by subsection (3) of this section except for the reasons set forth in ORS 91.865 (3). The owner is not liable for tenant relocation costs if the eviction is for the reasons set forth in ORS 91.865 (3)(a).

(5) The action provided in subsection (1) of this section is in addition to any other action that may be brought against an owner under any other provision of law. [1981 c 430 §2]

### (Mobile or Floating Home Spaces)

**91.868 Definitions for ORS 91.870 to 91.900.** As used in ORS 91.870 to 91.900:

(1) "Dealer" means any person in the business of selling, leasing or distributing new or used mobile homes or floating homes to persons who purchase or lease a mobile or floating home for use as a residence.

(2) "Facility" means a mobile home park, or a dock or pier owned by one person where four or more floating homes are secured, the primary purpose of which is to rent space or keep space for rent to any person for a fee.

(3) "Floating home" has the meaning given that term in ORS 488.705.

(4) "Mobile home" has the meaning given that term in ORS 446.003.

(5) "Mobile home park" has the meaning given that term in ORS 446.003. [1981 c 478 §2]

**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 ORS 91.900 (2)(a). [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** [1975 c 353 §4, 1977 c.348 §5, 1979 c 384 §5, 1979 c 676 §2, repealed by 1979 c 676 §5 (91 886 enacted in lieu of 91 885)]

**91.886 Termination by landlord; causes; notice.** (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 105.165. [1979 c 676 §6 (enacted in lieu of 91 885)]

**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 ORS 91.875 (2)(h), 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.** (1) No landlord shall impose conditions of rental or

occupancy which unreasonably restrict the tenant or prospective tenant in choosing a fuel supplier, furnishings, goods, services or accessories.

(2) No landlord of a mobile or floating home facility shall require the prospective tenant to purchase a mobile home or floating home from a particular dealer or one of a group of dealers.

(3) No landlord renting a space for a mobile or floating home shall give preference to a prospective tenant who purchased a mobile or floating home from a particular dealer.

(4) No mobile or floating home dealer shall require, as a condition of sale, a purchaser to rent a space for a mobile or floating home in a particular facility or one of a group of facilities.

(5) No landlord shall unreasonably restrict tenant meetings relating to mobile or floating home living. If the meeting is held in a facility recreation hall or similar common area, no restriction may be placed on the use of the area for this purpose if reserved and used in accordance with facility recreation hall regulations. [1975 c 353 §6, 1979 c.384 §7; 1981 c 478 §3]

**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, 91.886, 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 ORS 91.875 (1) or (3) 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 the tenant 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 the other tenants of the landlord 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 costs, necessary disbursements and reasonable attorney fees at trial and on appeal as determined by the court. [1977 c 348 §7; 1979 c 676 §4, 1981 c 897 §29]

**91.990** [1977 c 484 §23; renumbered 94 991]

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