TITLE 10

PROPERTY RIGHTS AND TRANSACTIONS

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Chapter 90

2001 EDITION

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GENERAL PROVISIONS

90.100 Definitions. Subject to additional definitions contained in this chapter that apply to specific sections or parts thereof, and unless the context otherwise requires, in this chapter:

(1) “Accessory building or structure” means any portable, demountable or permanent structure, including but not limited to cabanas, ramadas, storage sheds, garages, awnings, carports, decks, steps, ramps, piers and pilings, that is:

(a) Owned and used solely by a tenant of a manufactured dwelling or floating home; or

(b) Provided pursuant to a written rental agreement for the sole use of and maintenance by a tenant of a manufactured dwelling or floating home.

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

(3) “Applicant screening charge” means any payment of money required by a landlord of an applicant prior to entering into a rental agreement with that applicant for a residential dwelling unit, the purpose of which is to pay the cost of processing an application for a rental agreement for a residential dwelling unit.

(4) “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.

(5) “Conduct” means the commission of an act or the failure to act.

(6) “Dealer” means any person in the business of selling, leasing or distributing new or used manufactured dwellings or floating homes to persons who purchase or lease a manufactured dwelling or floating home for use as a residence.

(7) “Drug and alcohol free housing” means a rental agreement as described in ORS 90.243.

(8) “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 manufactured dwelling or recreational vehicle or regarding a person who rents moorage space for a floating home as defined in ORS 830.700, but does not rent the home, means the space rented and not the manufactured dwelling, recreational vehicle or floating home itself.

(9) “Essential service” means:

(a) For a tenancy not consisting of rental space for a manufactured dwelling, floating home or recreational vehicle owned by the tenant and not otherwise subject to ORS 90.505 to 90.840:

(A) Heat, plumbing, hot and cold running water, gas, electricity, light fixtures, locks for exterior doors, latches for windows and any cooking appliance or refrigerator supplied or required to be supplied by the landlord; and

(B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.320, the lack or violation of which creates a serious threat to the tenant’s health, safety or property or makes the dwelling unit unfit for occupancy.

(b) For a tenancy consisting of rental space for a manufactured dwelling, floating home or recreational vehicle owned by the tenant or that is otherwise subject to ORS 90.505 to 90.840:

(A) Sewage disposal, water supply, electrical supply and, if required by applicable law, any drainage system; and

(B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.730, the lack or violation of which creates a serious threat to the tenant’s health, safety or property or makes the rented space unfit for occupancy.

(10) “Facility” means:

(a) A place where four or more manufactured dwellings are located, the primary purpose of which is to rent space or keep space for rent to any person for a fee; or

(b) A moorage of contiguous dwelling units that may be legally transferred as a single unit and are 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.

(11) “Facility purchase association” means a group of three or more tenants who reside in a facility and have organized for the purpose of eventual purchase of the facility.

(12) “Fee” means a nonrefundable payment of money.

(13) “First class mail” does not include certified or registered mail, or any other form of mail that may delay or hinder actual delivery of mail to the recipient.

(14) “Fixed term tenancy” means a tenancy that has a fixed term of existence, continuing to a specific ending date and terminating on that date without requiring further notice to effect the termination.

(15) “Floating home” has the meaning given that term in ORS 830.700. As used in this chapter, “floating home” includes an accessory building or structure.

(16) “Good faith” means honesty in fact in the conduct of the transaction concerned.

(17) “Hotel or motel” means “hotel” as that term is defined in ORS 699.005.

(18) “Informal dispute resolution” means, but is not limited to, consultation between the landlord or landlord’s

agent and one or more tenants, or mediation utilizing the services of a third party.

(19) “Landlord” means the owner, lessor or sublessor of the dwelling unit or the building or premises of which it is a part. “Landlord” includes a person who is authorized by the owner, lessor or sublessor to manage the premises or to enter into a rental agreement.

(20) “Landlord’s agent” means a person who has oral or written authority, either express or implied, to act for or on behalf of a landlord.

(21) “Last month’s rent deposit” means a type of security deposit, however designated, the primary function of which is to secure the payment of rent for the last month of the tenancy.

(22) “Manufactured dwelling” means a residential trailer, a mobile home or a manufactured home as those terms are defined in ORS 446.003 (26). “Manufactured dwelling” includes an accessory building or structure. “Manufactured dwelling” does not include a recreational vehicle.

(23) “Manufactured dwelling park” has the meaning given that term in ORS 446.003.

(24) “Month-to-month tenancy” means a tenancy that automatically renews and continues for successive monthly periods on the same terms and conditions originally agreed to, or as revised by the parties, until terminated by one or both of the parties.

(25) “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.

(26) “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.

(27) “Person” includes an individual or organization.

(28) “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.

(29) “Prepaid rent” means any payment of money to the landlord for a rent obligation not yet due. In addition, “prepaid rent” means rent paid for a period extending beyond a termination date.

(30) “Recreational vehicle” has the meaning given that term in ORS 446.003.

(31) “Rent” means any payment to be made to the landlord under the rental agreement, periodic or otherwise, in exchange for the right of a tenant and any permitted pet to occupy a dwelling unit to the exclusion of others. “Rent” does not include security deposits, fees or utility or service charges as described in ORS 90.315 (4) and 90.510 (8).

(32) “Rental agreement” means all agreements, written or oral, and valid rules and regulations adopted under ORS 90.262 or 90.510 (6) embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises. “Rental agreement” includes a lease. A rental agreement shall be either a week-to-week tenancy, month-to-month tenancy or fixed term tenancy.

(33) “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.

(34) “Screening or admission criteria” means a written statement of any factors a landlord considers in deciding whether to accept or reject an applicant and any qualifications required for acceptance. “Screening or admission criteria” includes, but is not limited to, the rental history, character references, public records, criminal records, credit reports, credit references and incomes or resources of the applicant.

(35) “Security deposit” means any refundable 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 fee.

(36) “Squatter” means a person occupying a dwelling unit who is not so entitled under a rental agreement or who is not authorized by the tenant to occupy that dwelling unit. “Squatter” does not include a tenant who holds over as described in ORS 90.427 (4).

(37) “Statement of policy” means the summary explanation of information and facility policies to be provided to prospective and existing tenants under ORS 90.510.

(38) “Surrender” means an agreement, express or implied, as described in ORS 90.148 between a landlord and tenant to terminate a rental agreement that gave the tenant the right to occupy a dwelling unit.

(39) “Tenant” means a person, including a roomer, 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. "Tenant" also includes a minor, as defined and provided for in ORS 109.697. As used in ORS 90.505 to 90.840, "tenant" includes only a person who owns and occupies as a residence a manufactured dwelling or a floating home in a facility and persons residing with that tenant under the terms of the rental agreement.

(40) "Transient lodging" means a room or a suite of rooms.

(41) "Transient occupancy" means occupancy in transient lodging that has all of the following characteristics:

(a) Occupancy is charged on a daily basis and is not collected more than six days in advance;

(b) The lodging operator provides maid and linen service daily or every two days as part of the regularly charged cost of occupancy; and

(c) The period of occupancy does not exceed 30 days.

(42) "Vacation occupancy" means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:

(a) The occupant rents the unit for vacation purposes only, not as a principal residence;

(b) The occupant has a principal residence other than at the unit; and

(c) The period of authorized occupancy does not exceed 45 days.

(43) "Week-to-week tenancy" means a tenancy that has all of the following characteristics:

(a) Occupancy is charged on a weekly basis and is payable no less frequently than every seven days;

(b) There is a written rental agreement that defines the landlord's and the tenant's rights and responsibilities under this chapter; and

(c) There are no fees or security deposits, although the landlord may require the payment of an applicant screening charge, as provided in ORS 90.295. [Formerly 91.705; 1991 c.844 §3; 1993 c.369 §1; 1995 c.324 §1; 1995 c.559 §1; 1997 c.577 §1; 1999 c.676 §§7,7a; 2001 c.596 §27]

90.105 Short title. This chapter shall be known and may be cited as the "Residential Landlord and Tenant Act." [Formerly 91.700]

90.110 Exclusions from application of this chapter. Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(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 of a dwelling unit for no more than 90 days by a purchaser prior to the scheduled closing of a real estate sale or by a seller following the closing of a sale, in either case as permitted under the terms of an agreement for sale of a dwelling unit or the property of which it is a part. The occupancy by a purchaser or seller described in this subsection may be terminated only pursuant to ORS 91.130. A tenant who holds but has not exercised an option to purchase the dwelling unit is not a purchaser for purposes of this subsection.

(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 a squatter.

(6) Vacation occupancy.

(7) Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises. However, the occupancy by an employee as described in this subsection may be terminated only pursuant to ORS 91.120.

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

(9) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes. [Formerly 91.710; 1993 c.369 §2; 1997 c.577 §2; 1999 c.603 §6; 2001 c.596 §28]

90.115 Territorial application. This chapter applies to, regulates and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit located within this state. [Formerly 91.715]

90.120 Applicability of other statutory lien, tenancy and rent provisions; applicability of ORS 90.100 to 90.450 and 90.505 to 90.840. (1) The provisions of ORS 87.152 to 87.212, 91.010 to 91.110, 91.130, 91.210 and 91.220 do not apply to the rights and obligations of landlords and tenants governed by this chapter.

(2) Any provisions of this chapter which reasonably apply only to the structure that is used as a home, residence or

sleeping place shall not apply to a manufactured dwelling, recreational vehicle or floating home where the tenant owns the manufactured dwelling, recreational vehicle or floating home but rents the space on which it is located.

(3) The provisions of ORS 90.505 to 90.840 apply only if:

(a) The tenant owns the manufactured dwelling or floating home;

(b) The tenant rents the space on which the dwelling or home is located; and

(c) The space is in a facility.

(4) Residential tenancies for recreational vehicles and for manufactured dwellings and floating homes that are not subject to ORS 90.505 to 90.840 shall be subject to ORS 90.100 to 90.450. Tenancies described in this subsection include tenancies for:

(a) A recreational vehicle, located inside or outside of a facility, if the tenant owns or rents the vehicle;

(b) A manufactured dwelling or floating home, located inside or outside of a facility, if the tenant rents both the dwelling or home and the space; and

(c) A manufactured dwelling or floating home, located outside a facility, if the tenant owns the dwelling or home and rents the space. [Formerly 91.720; 1991 c.844 §28; 1995 c.559 §5; 1997 c.577 §2a; 1999 c.676 §8]

90.125 Administration of remedies; enforcement. (1) The remedies provided by this chapter 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 this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect. [Formerly 91.725]

90.130 Obligation of good faith. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement. [Formerly 91.730]

90.135 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 this chapter 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. [Formerly 91.735]

90.140 Types of payments landlord may require or accept; written evidence of payment. (1) A landlord may require or accept the following types of payments:

(a) Applicant screening charges, pursuant to ORS 90.295;

(b) Deposits to secure the execution of a rental agreement, pursuant to ORS 90.297;

(c) Security deposits, pursuant to ORS 90.300;

(d) Fees, pursuant to ORS 90.302;

(e) Rent, as defined in ORS 90.100;

(f) Prepaid rent, as defined in ORS 90.100;

(g) Utility or service charges, pursuant to ORS 90.315 (4) or 90.510 (8);

(h) Late charges or fees, pursuant to ORS 90.260; and

(i) Damages, for noncompliance with a rental agreement or ORS 90.325, pursuant to ORS 90.400 (11) or as provided elsewhere in this chapter.

(2) A tenant who requests a writing that evidences the tenant’s payment is entitled to receive that writing from the landlord as a condition for making the payment. The writing may be a receipt, statement of the tenant’s account or other acknowledgment of the tenant’s payment. The writing must include the amount paid, the date of payment and information identifying the landlord or the rental property. If the tenant makes the payment by mail, deposit or a method other than in person and requests the writing, the landlord shall within a reasonable time provide the tenant

with the writing in a manner consistent with ORS 90.150. [1997 c.577 §4; 1999 c.603 §7; 2001 c.596 §29]

90.145 Tenant or applicant who conducts repairs, routine maintenance or cleaning services not employee of landlord; restrictions. (1) A tenant who occupies or an applicant who will occupy a dwelling unit and who conducts repairs, routine maintenance or cleaning services on that dwelling unit in exchange for a reduction in rent pursuant to a written or oral agreement with the landlord shall not be considered to be an employee of the landlord.

(2) A person described in subsection (1) of this section shall not conduct electrical or plumbing installation, maintenance or repair unless properly licensed or certified under ORS chapter 479 or 693.

(3) Nothing in this section diminishes the obligations of a landlord to maintain the dwelling unit in a habitable condition under ORS 90.320 or 90.730.

(4) Any work performed by a tenant or applicant under this section shall be in compliance with ORS chapters 447 and 479. However, a tenant or applicant shall not be required to secure a certificate of registration under ORS 447.010 to 447.156 and 447.992. [1995 c.773 §2; 1999 c.676 §9]

90.147 Delivery of possession. For the purposes of this chapter, delivery of possession occurs:

(1) From the landlord to the tenant, when the landlord gives actual notice to the tenant that the tenant has the right under a rental agreement to occupy the dwelling unit to the exclusion of others. The right to occupy may be implied by actions such as the landlord's delivery of the keys to the dwelling unit; and

(2) From the tenant to the landlord at the termination of the tenancy, when:

(a) The tenant gives actual notice to the landlord that the tenant has relinquished any right to occupy the dwelling unit to the exclusion of others. Relinquishment of the right to occupy may be implied by actions such as the tenant's return of the keys to the dwelling unit;

(b) After the expiration date of an outstanding termination of tenancy notice or the end of a term tenancy, the landlord reasonably believes under all the circumstances that the tenant has relinquished or no longer claims the right to occupy the dwelling unit to the exclusion of others; or

(c) The landlord reasonably knows of the tenant's abandonment of the dwelling unit. [1995 c.559 §9; 1999 c.603 §8]

90.148 Landlord acts that imply acceptance of tenant abandonment or relinquishment of right to occupy. The surrender of a dwelling unit may be implied from the landlord's acceptance of a tenant's abandonment or relinquishment of the right to occupy. The landlord's acceptance may be demonstrated by acts of the landlord that are inconsistent with the existence of the tenancy. A landlord's receipt of the keys to the dwelling unit or a landlord's reasonable efforts to mitigate the landlord's damages by attempting to rent the dwelling unit to a new tenant shall not constitute acts inconsistent with the existence of the tenancy. Reasonable efforts to mitigate damages include preparing the unit for rental. [1999 c.603 §2]

Note: 90.148 was added to and made a part of ORS chapter 90 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

SERVICE OR DELIVERY OF NOTICES

90.150 Service or delivery of actual notice. Where this chapter requires actual notice, service or delivery of that notice shall be executed by one or more of the following methods:

(1) Verbal notice that is given personally to the landlord or tenant or left on the landlord's or tenant's telephone answering device;

(2) Written notice that is personally delivered to the landlord or tenant, left at the landlord's rental office, sent by facsimile to the landlord's residence or rental office or to the tenant's dwelling unit, or attached in a secure manner to the main entrance of the landlord's residence or tenant's dwelling unit;

(3) Written notice that is delivered by first class mail to the landlord or tenant. If the notice is mailed, the notice shall be considered served three days after the date the notice was mailed; or

(4) Any other method reasonably calculated to achieve actual receipt of notice, as agreed to and described in a written rental agreement. [1995 c.559 §3; 1997 c.577 §5; 1999 c.603 §9]

90.155 Service or delivery of written notice. (1) Except as provided in ORS 90.300, 90.425 and 90.675, where

this chapter requires written notice, service or delivery of that written notice shall be executed by one or more of the following methods:

(a) Personal delivery to the landlord or tenant;

(b) First class mail to the landlord or tenant; or

(c) If a written rental agreement so provides, both first class mail and attachment to a designated location. In order for a written rental agreement to provide for mail and attachment service of written notices from the landlord to the tenant, the agreement must also provide for such service of written notices from the tenant to the landlord. Mail and attachment service of written notices shall be executed as follows:

(A) For written notices from the landlord to the tenant, the first class mail notice copy shall be addressed to the tenant at the premises and the second notice copy shall be attached in a secure manner to the main entrance to that portion of the premises of which the tenant has possession; and

(B) For written notices from the tenant to the landlord, the first class mail notice copy shall be addressed to the landlord at an address as designated in the written rental agreement and the second notice copy shall be attached in a secure manner to the landlord's designated location, which shall be described with particularity in the written rental agreement, reasonably located in relation to the tenant and available at all hours.

(2) If a notice is served by mail, the minimum period for compliance or termination of tenancy, as appropriate, shall be extended by three days, and the notice shall include the extension in the period provided.

(3) A landlord or tenant may utilize alternative methods of notifying the other so long as the alternative method is in addition to one of the service methods described in subsection (1) of this section.

(4) Notwithstanding ORS 90.510 (4), after 30 days' written notice, a landlord may unilaterally amend a rental agreement for a manufactured dwelling or floating home that is subject to ORS 90.505 to 90.840 to provide for service or delivery of written notices by mail and attachment service as provided by subsection (1)(c) of this section. [Formerly 90.910; 1997 c.577 §6; 2001 c.596 §29a]

90.160 Calculation of notice periods. (1) Notwithstanding ORCP 10 and not including the seven-day and four-day waiting periods provided in ORS 90.400 (2), where there are references in this chapter to periods and notices based on a number of days, those days shall be calculated by consecutive calendar days, not including the initial day of service, but including the last day until midnight of that last day. Where there are references in this chapter to periods or notices based on a number of hours, those hours shall be calculated in consecutive clock hours, beginning immediately upon service.

(2) Notwithstanding subsection (1) of this section, for 72-hour or 144-hour nonpayment notices under ORS 90.400 (2) that are served pursuant to ORS 90.155 (1)(c), the time period described in subsection (1) of this section begins at 11:59 p.m. the day the notice is both mailed and attached to the premises. The time period shall end 72 hours or 144 hours, as the case may be, after the time started to run at 11:59 p.m. [Formerly 90.402; 1997 c.577 §7]

CONTENT OF AGREEMENTS

90.240 Terms and conditions of rental agreement; rent obligation and payment. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter 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) Notwithstanding ORS 90.245 (1), the parties to a rental agreement to which ORS 90.100 to 90.450 apply may include in the rental agreement a provision for informal dispute resolution.

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

(5) Except as otherwise provided by this chapter:

(a) 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 or weekly installments at the beginning of each month or week, depending on whether the tenancy is month-to-month or week-to-week. Rent shall not be considered to be due prior to the first day of each rental period. Rent may not be increased without a 30-day written notice thereof in the case of a month-to-month tenancy or a seven-day written notice thereof in the case of a week-to-week tenancy.

(b) If a rental agreement does not create a week-to-week tenancy, as defined in ORS 90.100, or a fixed term

tenancy, the tenancy shall be a month-to-month tenancy.

(6) Except as provided by ORS 90.427 (4), a tenant is responsible for payment of rent until the earlier of:

(a) The date that a notice terminating the tenancy expires;

(b) The date that the tenancy terminates by its own terms;

(c) The date that the tenancy terminates by surrender;

(d) The date that the tenancy terminates as a result of the landlord failing to use reasonable efforts to rent the dwelling unit to a new tenant as provided under ORS 90.410 (3);

(e) The date when a new tenancy with a new tenant begins;

(f) Thirty days after delivery of possession without prior notice of termination of a month-to-month tenancy; or

(g) Ten days after delivery of possession without prior notice of termination of a week-to-week tenancy. [Formerly 91.740; 1993 c.369 §3; 1995 c.559 §6; 1997 c.577 §8; 1999 c.603 §10]

90.243 "Drug and alcohol free housing" and "program of recovery" defined. (1) "Drug and alcohol free housing" is a rental agreement for a dwelling in which:

(a) Each of the dwelling units on the premises is occupied or held for occupancy by at least one tenant who is a recovering alcoholic or drug addict and is participating in a program of recovery;

(b) The landlord is a nonprofit corporation incorporated pursuant to ORS chapter 65 or a housing authority created pursuant to ORS 456.055 to 456.235;

(c) The landlord provides:

(A) A drug and alcohol free environment, covering all tenants, employees, staff, agents of the landlord and guests;

(B) An employee who monitors the tenants for compliance with the requirements of paragraph (d) of this subsection;

(C) Individual and group support for recovery; and

(D) Access to a specified program of recovery; and

(d) The rental agreement is in writing and includes the following provisions:

(A) That the tenant shall not use, possess or share alcohol, illegal drugs, controlled substances or prescription drugs without a medical prescription, either on or off the premises;

(B) That the tenant shall not allow the tenant's guests to use, possess or share alcohol, illegal drugs, controlled substances or prescription drugs without a medical prescription, on the premises;

(C) That the tenant shall participate in a program of recovery, which specific program is described in the rental agreement;

(D) That on at least a quarterly basis the tenant shall provide written verification from the tenant's program of recovery that the tenant is participating in the program of recovery and that the tenant has not used alcohol or illegal drugs;

(E) That the landlord has the right to require the tenant to take a urine analysis test regarding drug or alcohol usage, at the landlord's discretion and expense; and

(F) That the landlord has the right to terminate the tenant's tenancy in the drug and alcohol free housing for noncompliance with the requirements of this paragraph, pursuant to ORS 90.400 (1) and (9) or 90.630.

(2) As used in this section, "program of recovery" means a verifiable program of counseling and rehabilitation treatment services, including a written plan, to assist recovering alcoholics or drug addicts to recover from their addiction to alcohol or illegal drugs while living in drug and alcohol free housing. A "program of recovery" includes Alcoholics Anonymous, Narcotics Anonymous and similar programs. [1995 c.559 §7; 1997 c.577 §9; 1999 c.603 §11]

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

(a) Agrees to waive or forego rights or remedies under this chapter;

(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 willful 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 the landlord to be prohibited and attempts to enforce such provisions, the tenant may recover in addition to the actual damages of the tenant an amount up to three months' periodic rent. [Formerly 91.745]

90.250 Receipt of rent without obligation 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 90.320 (1) or 90.730. [Formerly 91.750; 1999 c.676 §10]

90.255 Attorney fees. In any action on a rental agreement or arising under this chapter, 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. [Formerly 91.755]

90.260 Late rent payment charge or fee; restrictions; calculation. (1) A landlord may impose a late charge or fee, however designated, only if:

(a) The rent payment is not received by the fourth day of the weekly or monthly rental period for which rent is payable; and

(b) There exists a written rental agreement that specifies:

(A) The tenant's obligation to pay a late charge on delinquent rent payments;

(B) The type and amount of the late charge, as described in subsection (2) of this section; and

(C) The date on which rent payments are due and the date or day on which late charges become due.

(2) The amount of any late charge shall not exceed:

(a) A reasonable flat amount, charged once per rental period. "Reasonable amount" means the customary amount charged by landlords for that rental market;

(b) A reasonable amount, charged on a per-day basis, beginning on the fifth day of the rental period for which rent is delinquent. This daily charge may accrue every day thereafter until the rent, not including any late charge, is paid in full, through that rental period only. The per-day charge may not exceed six percent of the amount described in paragraph (a) of this subsection; or

(c) Five percent of the periodic rent payment amount, charged once for each succeeding five-day period, or portion thereof, for which the rent payment is delinquent, beginning on the fifth day of that rental period and continuing and accumulating until that rent payment, not including any late charge, is paid in full, through that rental period only.

(3) In periodic tenancies, a landlord may change the type or amount of late charge by giving 30 days' written notice to the tenant.

(4) A landlord shall not deduct a previously imposed late charge from a current or subsequent rental period rent payment, thereby making that rent payment delinquent for imposition of a new or additional late charge or for termination of the tenancy for nonpayment pursuant to ORS 90.400 (2).

(5) A landlord may charge simple interest on an unpaid late charge at the rate allowed for judgments pursuant to ORS 82.010 (2) and accruing from the date the late charge is imposed.

(6) Nonpayment of a late charge alone shall not constitute grounds for termination of a rental agreement for nonpayment of rent pursuant to ORS 90.400 (2), but shall constitute grounds for termination of a rental agreement for cause pursuant to ORS 90.400 (1) or 90.630 (1). A landlord may note the imposition of a late charge on a notice of nonpayment of rent pursuant to ORS 90.400 (2), so long as the notice states or otherwise makes clear that the tenant may cure the nonpayment notice by paying only the delinquent rent, not including any late charge, within the allotted time.

(7) A late charge includes an increase or decrease in the regularly charged periodic rent payment imposed because a tenant does or does not pay that rent by a certain date. [1989 c.506 §15; 1995 c.559 §8; 1997 c.249 §30; 1997 c.577 §9a; 1999 c.603 §12]

90.262 Use and occupancy rules and regulations; adoption; enforceability; restrictions. (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 the tenant of what the tenant 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 written notice of it at the time the tenant 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 the bargain, it is not valid unless the tenant consents to it in writing.

(3) If adopted, an occupancy guideline for a dwelling unit shall not be more restrictive than two people per bedroom and shall be reasonable. Reasonableness shall be determined on a case-by-case basis. Factors to be considered in determining reasonableness include, but are not limited to:

(a) The size of the bedrooms;

(b) The overall size of the dwelling unit; and

(c) Any discriminatory impact on those identified in ORS 659A.421.

(4) As used in this section:

(a) "Bedroom" means a habitable room that:

(A) Is intended to be used primarily for sleeping purposes;

(B) Contains at least 70 square feet; and

(C) Is configured so as to take the need for a fire exit into account.

(b) "Habitable room" means a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas are not included. [Formerly 90.330]

90.263 Vehicle tags. A landlord may not require that a tenant display a nonremovable tag, sticker or other device on a motor vehicle that might reveal or indicate to the public the premises where the tenant resides. [1999 c.397 §2]

Note: 90.263 was added to and made a part of ORS chapter 90 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

90.265 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 material 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 90.400 (11).

(4) As used in this section, "alternative energy device" has the meaning given that term in ORS 469.160. [Formerly 91.757; 1993 c.369 §32; 1995 c.559 §57; 1997 c.577 §10; 1999 c.603 §13]

FEES AND DEPOSITS

90.295 Applicant screening charge; limitations; notice upon denial of tenancy; refund; remedies. (1) A landlord may require payment of an applicant screening charge solely to cover the costs of obtaining information about an applicant as the landlord processes the application for a rental agreement. This activity is known as screening, and includes but is not limited to checking references and obtaining a consumer credit report or tenant screening report. The landlord must provide the applicant with a receipt for any applicant screening charge.

(2) The amount of any applicant screening charge shall not be greater than the landlord's average actual cost of screening applicants. Actual costs may include the cost of using a tenant screening company or a consumer credit reporting agency, and may include the reasonable value of any time spent by the landlord or the landlord's agents in otherwise obtaining information on applicants. In any case, the applicant screening charge may not be greater than the

customary amount charged by tenant screening companies or consumer credit reporting agencies for a comparable level of screening.

(3) A landlord may not require payment of an applicant screening charge unless prior to accepting the payment the landlord:

(a) Adopts written screening or admission criteria;

(b) Gives written notice to the applicant of:

(A) The amount of the applicant screening charge;

(B) The landlord's screening or admission criteria;

(C) The process that the landlord typically will follow in screening the applicant, including whether the landlord uses a tenant screening company, credit reports, public records or criminal records or contacts employers, landlords or other references; and

(D) The applicant's rights to dispute the accuracy of any information provided to the landlord by a screening company or credit reporting agency; and

(c) Gives actual notice to the applicant of an estimate, made to the best of the landlord's ability at that time, of the approximate number of rental units of the type, and in the area, sought by the applicant that are, or within a reasonable future time will be, available to rent from that landlord. The estimate shall include the approximate number of applications previously accepted and remaining under consideration for those units. A good faith error by a landlord in making an estimate under this paragraph does not provide grounds for a claim under subsection (8) of this section.

(4) Regardless of whether a landlord requires payment of an applicant screening charge, if a landlord denies an application for a rental agreement by an applicant and that denial is based in whole or in part on a tenant screening company or consumer credit reporting agency report on that applicant, the landlord shall give the applicant actual notice of that fact at the same time that the landlord notifies the applicant of the denial. Unless written notice of the name and address of the screening company or credit reporting agency has previously been given, the landlord shall promptly give written notice to the applicant of the name and address of the company or agency that provided the report upon which the denial is based.

(5) Except as provided in subsection (4) of this section, a landlord need not disclose the results of an applicant screening or report to an applicant, with respect to information that is not required to be disclosed under the federal Fair Credit Reporting Act. A landlord may give to an applicant a copy of that applicant's consumer report, as defined in the Fair Credit Reporting Act.

(6) Unless the applicant agrees otherwise in writing, a landlord may not require payment of an applicant screening charge when the landlord knows or should know that no rental units are available at that time or will be available within a reasonable future time.

(7) If a landlord requires payment of an applicant screening charge but fills the vacant rental unit before screening the applicant or does not conduct a screening of the applicant for any reason, the landlord must refund the applicant screening charge to the applicant within a reasonable time.

(8) The applicant may recover from the landlord the amount of any applicant screening charge paid, plus $100, if:

(a) The landlord fails to comply with this section and does not within a reasonable time accept the applicant's application for a rental agreement; or

(b) The landlord does not conduct a screening of the applicant for any reason and fails to refund an applicant screening charge to the applicant within a reasonable time. [1993 c.369 §26; 1995 c.559 §10; 1997 c.577 §11; 1999 c.603 §14]

90.297 Prohibition on charging deposit or fee to enter rental agreement; exceptions; deposit allowed for securing execution of rental agreement; remedy. (1) Except as provided in ORS 90.295 and in this section, a landlord may not charge a deposit or fee, however designated, to an applicant who has applied to a landlord to enter a rental agreement for a dwelling unit.

(2) A landlord may charge a deposit, however designated, to an applicant for the purpose of securing the execution of a rental agreement, after approving the applicant's application but prior to entering into a rental agreement. The landlord must give the applicant a written statement describing the terms of the agreement to execute a rental agreement and the conditions for refunding or retaining the deposit.

(a) If a rental agreement is executed, the landlord shall either apply the deposit toward the moneys due the landlord under the rental agreement or refund it immediately to the tenant.

(b) If a rental agreement is not executed due to a failure by the applicant to comply with the agreement to execute, the landlord may retain the deposit.

(c) If a rental agreement is not executed due to a failure by the landlord to comply with the agreement to execute, within four days the landlord shall return the deposit to the applicant either by making the deposit available to the applicant at the landlord's customary place of business or by mailing the deposit by first class mail to the applicant.

(3) If a landlord fails to comply with this section, the applicant or tenant, as the case may be, may recover from the landlord the amount of any fee or deposit charged, plus $100. [1995 c.559 §11; 2001 c.596 §30]

90.300 Security deposits; deposit changes; claims payable from deposit; last month's rent; prepaid rent; accounting. (1) As used in this section, "security deposit" includes any last month's rent deposit.

(2) Except as otherwise provided in this section, a landlord may require the payment of a security deposit. A security deposit or prepaid rent 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 or prepaid rent shall be prior to the claim of any creditor of the landlord, including a trustee in bankruptcy. The holder of the landlord's interest in the premises at the time of termination of the tenancy is responsible to the tenant for any security deposit or prepaid rent and is bound by this section.

(3)(a) A landlord may not change the rental agreement to require the payment of a new or increased security deposit during the first year after the tenancy has begun, except that an additional deposit may be required if the landlord and tenant agree to modify the terms and conditions of the rental agreement to permit a pet or for other cause and the additional deposit relates to that modification. This paragraph does not prevent the collection of a security deposit that was provided for under an initial rental agreement but remained unpaid at the time the tenancy began.

(b) If a landlord requires a new or increased security deposit after the first year of the tenancy, the landlord shall allow the tenant at least three months to pay that deposit.

(4) The landlord may claim all or part of the security deposit only if the security deposit was made for any or all of the purposes provided by subsection (5) of this section.

(5) 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 including, but not limited to, unpaid rent; and

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

(6) A security deposit or prepaid rent shall not be required or forfeited to the landlord upon the failure of the tenant to maintain a tenancy for a minimum number of months in a month-to-month tenancy.

(7) Any last month's rent deposit shall be applied to the rent due for the last month of the tenancy:

(a) Upon either the landlord or tenant giving to the other a notice of termination, pursuant to this chapter, other than a notice of termination under ORS 90.400 (2);

(b) Upon agreement by the landlord and tenant to terminate the tenancy; or

(c) Upon termination pursuant to the provisions of a written rental agreement for a term tenancy.

(8) Any portion of a last month's rent deposit not applied as provided under subsection (7) of this section shall be accounted for and refunded as provided under subsections (10) to (12) of this section. Unless the tenant and landlord agree otherwise, a last month's rent deposit shall not be applied to rent due for any period other than the last month of the tenancy. A last month's rent deposit shall not operate to limit the amount of rent charged unless a written rental agreement provides otherwise.

(9) Upon termination of the tenancy, a landlord shall account for and refund to the tenant the unused balance of any prepaid rent not previously refunded to the tenant as required by ORS 90.380 and 105.120 (4)(b) or any other provision of this chapter, in the same manner as required for security deposits by this section. The landlord may claim from the remaining prepaid rent only the amount reasonably necessary to pay the tenant's unpaid rent.

(10) In order to claim all or part of any prepaid rent or security deposit, within 31 days after the termination of the tenancy and delivery of possession the landlord shall give to the tenant a written accounting that states specifically the basis or bases of the claim. The landlord shall give a separate accounting for security deposits and for prepaid rent.

(11) The security deposit or prepaid rent or portion thereof not claimed in the manner provided by subsections (9) and (10) of this section shall be returned to the tenant not later than 31 days after the termination of the tenancy and delivery of possession to the landlord.

(12) The landlord shall give the written accounting as required by subsection (10) of this section or shall return the security deposit or prepaid rent as required by subsection (11) of this section by personal delivery or by first class mail.

(13) If the landlord fails to comply with subsection (11) of this section or if the landlord in bad faith fails to return all or any portion of any prepaid rent or security deposit due to the tenant under this chapter or the rental agreement, the tenant may recover the money due in an amount equal to twice the amount:

(a) Withheld without a written accounting under subsection (10) of this section; or

(b) Withheld in bad faith.

(14) This section does not preclude the landlord or tenant from recovering other damages under this chapter. [Formerly 91.760; 1993 c.369 §4; 1995 c.559 §12; 1997 c.577 §13; 1999 c.603 §15; 2001 c.596 §31]

90.302 Fees allowed for certain landlord expenses; accounting not required. (1) Except as specifically provided otherwise in this chapter, a landlord may require the payment of a fee, if the fee is related to and designated as being charged for a specific reasonably anticipated landlord expense. A landlord shall provide a receipt for the fee, and the receipt or a written rental agreement shall describe the anticipated landlord expense to be covered by the fee and describe the landlord's duties under subsection (4) of this section.

(2) Except as provided in subsection (3) of this section, a landlord shall not charge a fee more than once, at the beginning of or during the tenancy.

(3) A landlord may charge a fee more than once, at the beginning of or during the tenancy, for:

(a) A late rent payment, pursuant to ORS 90.260;

(b) A dishonored check, pursuant to ORS 30.701 (5);

(c) Removal or tampering with a properly functioning smoke alarm or smoke detector, as provided in ORS 90.325 (7), if a written rental agreement provides for a fee for that removal or tampering; and

(d) Any other noncompliance by the tenant with a written rental agreement that provides for a fee for that noncompliance, provided that the fee shall not be excessive.

(4) A landlord shall not be required to account for or return to the tenant any fee. Upon termination of a tenancy and delivery of possession, a landlord shall first apply any fee to the related landlord expense as reasonably assessed against the tenant, before applying the tenant's security deposit, if any, to that expense.

(5) Nonpayment of a fee shall not constitute grounds for termination of a rental agreement for nonpayment of rent pursuant to ORS 90.400 (2), but shall constitute grounds for termination of a rental agreement for cause pursuant to ORS 90.400 (1) or 90.630 (1).

(6) This section shall not apply to attorney fees awarded pursuant to ORS 90.255 or to applicant screening charges paid pursuant to ORS 90.295. [1995 c.559 §13; 1997 c.577 §14; 1999 c.307 §19; 1999 c.603 §16]

Note: Section 15, chapter 577, Oregon Laws 1997, provides:

Sec. 15. The amendments to ORS 90.302, 90.315 (4) and 90.510 (8) by sections 14, 16 and 26 of this Act apply only to tenancies, whether periodic or fixed term, that are entered into on or after October 1, 1997, or are extended or renewed after that date. [1997 c.577 §15]

LANDLORD RIGHTS AND OBLIGATIONS

90.305 Disclosure of certain matters; retention of rental agreement; inspection of agreement. (1) The landlord 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 is authorized to manage the premises, or to enter into a rental agreement, and fails to comply with subsection (1) of this section becomes an agent of each person who is a landlord for service of process and receiving and receipting for notices and demands.

(4)(a) A landlord shall retain a copy of each rental agreement at the resident manager's office or at the address provided to the tenant under subsection (1)(a) of this section.

(b) A tenant may request to see the rental agreement and, within a reasonable time, the landlord shall make the agreement available for inspection. At the request of the tenant and upon payment of a reasonable charge, not to exceed the lesser of 25 cents per page or the actual copying costs, the landlord shall provide the tenant with a copy of the rental agreement. This subsection shall not diminish the landlord's obligation to furnish the tenant an initial copy of the rental agreement and any amendments under ORS 90.240 (2). [Formerly 91.765; 1993 c.369 §5; 1999 c.603 §17]

90.310 Disclosure of legal proceedings; tenant remedies for failure to disclose; liability of manager. (1) If at

the time of the execution of a rental agreement for a dwelling unit in premises containing no more than four dwelling units the premises are subject to any of the following circumstances, the landlord shall disclose that circumstance to the tenant in writing before the execution of the rental agreement:

(a) Any outstanding notice of default under a trust deed, mortgage or contract of sale, or notice of trustee's sale under a trust deed;

(b) Any pending suit to foreclose a mortgage, trust deed or vendor's lien under a contract of sale;

(c) Any pending declaration of forfeiture or suit for specific performance of a contract of sale; or

(d) Any pending proceeding to foreclose a tax lien.

(2) If the tenant moves as a result of a circumstance that the landlord failed to disclose as required by subsection (1) of this section, the tenant may recover twice the actual damages or twice the monthly rent, whichever is greater, and all prepaid rent, in addition to any other remedy that the law may provide.

(3) This section shall not apply to premises managed by a court appointed receiver.

(4) A manager who has complied with ORS 90.305 shall not be liable for damages under this section if the manager had no knowledge of the circumstances that gave rise to a duty of disclosure under subsection (1) of this section. [Formerly 91.766; 1997 c.249 §31]

90.315 Utility or service payments; additional charges; responsibility for utility or service; remedies. (1) As used in this section, "utility or service" includes but is not limited to electricity, natural or liquid propane gas, oil, water, hot water, heat, air conditioning, cable television, direct satellite or other video subscription service, Internet access or usage, sewer service and garbage collection and disposal.

(2) The landlord shall disclose to the tenant in writing at or before the commencement of the tenancy any utility or service that the tenant pays directly to a utility or service provider that 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.

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

(4)(a) Except for tenancies covered by ORS 90.505 to 90.840, if a written rental agreement so provides, a landlord may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for utility or service provided directly to the tenant's dwelling unit or to a common area available to the tenant as part of the tenancy. A utility or service charge that shall be assessed to a tenant for a common area must be described in the written rental agreement separately and distinctly from such a charge for the tenant's dwelling unit. Unless the method of allocating the charges to the tenant is described in the tenant's written rental agreement, the tenant may require that the landlord give the tenant a copy of the provider's bill as a condition of paying the charges.

(b) A utility or service charge shall include only the value or cost of the utility or service as billed to the landlord by the provider as described in this subsection, except that a landlord may add an additional amount to that value or cost if:

(A) The utility or service charge to which the additional amount is added is for cable television, direct satellite or other video subscription service or for Internet access or usage;

(B) The additional amount added to the utility or service charge of each tenant is not more than 10 percent of the charge to that tenant for cable television, direct satellite or other video subscription service or Internet access or usage;

(C) The total of the utility or service charge plus the additional amount is less than the typical periodic cost that the tenant would incur if the tenant contracted for the cable television, direct satellite or other video subscription service or the Internet access or usage directly with the provider; and

(D) The written rental agreement providing for the utility or service charge describes the additional amount separately and distinctly from the charge itself and any bill or notice from the landlord to the tenant regarding the charge lists the additional amount separately and distinctly from the utility or service charge.

(c) A landlord shall not require an existing tenant to modify a rental agreement, or terminate the tenancy of the tenant for refusing to modify a rental agreement, to obligate the tenant to pay an additional amount for cable television, direct satellite or other video subscription service or Internet access or usage as provided in paragraph (b) of this subsection.

(d) A utility or service charge, including any additional amount added pursuant to paragraph (b) of this subsection, shall not be considered to be rent or a fee. Nonpayment of a utility or service charge shall not constitute grounds for termination of a rental agreement for nonpayment of rent pursuant to ORS 90.400 (2), but shall constitute grounds for

termination of a rental agreement for cause pursuant to ORS 90.400 (1).

(e) If a landlord fails to comply with paragraph (a), (b) or (c) of this subsection, the tenant may recover from the landlord an amount equal to one month's periodic rent or twice the amount wrongfully charged to the tenant, whichever is greater.

(5)(a) If a tenant, under the rental agreement, is responsible for a utility or service and is unable to obtain the service prior to moving into the premises due to a nonpayment of an outstanding amount due by a previous tenant or the owner, the tenant may either:

(A) Pay the outstanding amount and deduct the amount from the rent;

(B) Enter into a mutual agreement with the landlord to resolve the lack of service; or

(C) Immediately terminate the rental agreement by giving the landlord actual notice and the reason for the termination.

(b) If the tenancy terminates, the landlord shall return all moneys paid by the tenant as deposits, rent or fees within four days after termination.

(6) If a tenant, under the rental agreement, is responsible for a utility or service and is unable to obtain the service after moving into the premises due to a nonpayment of an outstanding amount due by a previous tenant or the owner, the tenant may either:

(a) Pay the outstanding amount and deduct the amount from the rent; or

(b) Terminate the rental agreement by giving the landlord actual notice 72 hours prior to the date of termination and the reason for the termination. The tenancy shall not terminate if the landlord restores service or the availability of service during the 72 hours. If the tenancy terminates, the tenant may recover actual damages from the landlord resulting from the shutoff and the landlord shall return:

(A) Within four days after termination, all rent and fees; and

(B) All of the security deposit owed to the tenant under ORS 90.300.

(7) If a landlord, under the rental agreement, is responsible for a utility or service and the utility or service is shut off due to a nonpayment of an outstanding amount, the tenant may either:

(a) Pay the outstanding balance and deduct the amount from the rent; or

(b) Terminate the rental agreement by giving the landlord actual notice 72 hours prior to the date of termination and the reason for the termination. The tenancy shall not terminate if the landlord restores service during the 72 hours. If the tenancy terminates, the tenant may recover actual damages from the landlord resulting from the shutoff and the landlord shall return:

(A) Within four days after termination, all rent prepaid for the month in which the termination occurs prorated from the date of termination or the date the tenant vacates the premises, whichever is later, and any other prepaid rent; and

(B) All of the security deposit owed to the tenant under ORS 90.300.

(8) If a landlord fails to return to the tenant the moneys owed as provided in subsection (5), (6) or (7) of this section, the tenant shall be entitled to twice the amount wrongfully withheld.

(9) This section does not preclude the tenant from pursuing any other remedies under this chapter. [Formerly 91.767; 1993 c.786 §2; 1995 c.559 §14; 1997 c.577 §16; 1999 c.603 §18]

Note: See note under 90.302.

90.318 Criteria for landlord provision of certain recycling services. (1) In a city or the county within the urban growth boundary of a city that has implemented multifamily recycling service, a landlord who has five or more residential dwelling units on a single premises or five or more manufactured dwellings in a single facility shall at all times during tenancy provide to all tenants:

(a) A separate location for containers or depots for at least four principal recyclable materials or for the number of materials required to be collected under the residential on-route collection program, whichever is less, adequate to hold the reasonably anticipated volume of each material;

(b) Regular collection service of the source separated recyclable materials; and

(c) Notice at least once a year of the opportunity to recycle with a description of the location of the containers or depots on the premises and information about how to recycle. New tenants shall be notified of the opportunity to recycle at the time of entering into a rental agreement.

(2) As used in this section, "recyclable material" and "source separate" have the meaning given those terms in ORS 459.005. [1991 c.385 §16]

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

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

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

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

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

(B) Furnished to appropriate fixtures;

(C) Connected to a sewage disposal system approved under applicable law; and

(D) Maintained so as to provide safe drinking water and to be 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) Buildings, grounds and appurtenances at the time of the commencement of the rental agreement in every part safe for normal and reasonably foreseeable uses, 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 safe for normal and reasonably foreseeable uses, clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin;

(g) Except as otherwise provided by local ordinance or by written agreement between the landlord and the tenant, an adequate number of appropriate receptacles for garbage and rubbish in clean condition and good repair at the time of the commencement of the rental agreement, and the landlord shall provide and maintain appropriate serviceable receptacles thereafter and arrange for their removal;

(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 fire hazards, including a working smoke alarm or smoke detector, with working batteries if solely battery-operated, provided only at the beginning of any new tenancy when the tenant first takes possession of the premises, as provided in ORS 479.270, but not to include the tenant's testing of the smoke alarm or smoke detector as provided in ORS 90.325 (6); 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.

(3) Any provisions of this section that reasonably apply only to a structure that is used as a home, residence or sleeping place shall not apply to a manufactured dwelling, recreational vehicle or floating home where the tenant owns the manufactured dwelling, recreational vehicle or floating home, rents the space and, in the case of a dwelling or home, the space is not in a facility. Manufactured dwelling or floating home tenancies in which the tenant owns the dwelling or home and rents space in a facility shall be governed by ORS 90.730, not by this section. [Formerly 91.770; 1993 c.369 §6; 1995 c.559 §15; 1997 c.249 §32; 1997 c.577 §17; 1999 c.307 §20; 1999 c.676 §11]

90.322 Landlord or agent access to premises; manner of entry; denial of entry; remedies. (1) A landlord or, to the extent provided in this section, a landlord's agent may enter into the tenant's dwelling unit or any portion of the premises under the tenant's exclusive control in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, perform agreed yard maintenance or grounds keeping or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers or

contractors. The right of access of the landlord or landlord's agent is limited as follows:

(a) A landlord or landlord's agent may enter upon the premises under the tenant's exclusive control not including the dwelling unit without consent of the tenant and without notice to the tenant, for the purpose of serving notices required or permitted under this chapter, the rental agreement or any provision of applicable law.

(b) In case of an emergency, a landlord may enter the dwelling unit or any portion of the premises under a tenant's exclusive control without consent of the tenant, without notice to the tenant and at any time. "Emergency" includes but is not limited to a repair problem that, unless remedied immediately, is likely to cause serious damage to the premises. If a landlord makes an emergency entry in the tenant's absence, the landlord shall give the tenant actual notice within 24 hours after the entry, and the notice shall include the fact of the entry, the date and time of the entry, the nature of the emergency and the names of the persons who entered.

(c) If the tenant requests repairs or maintenance in writing, the landlord or landlord's agent, without further notice, may enter upon demand, in the tenant's absence or without the tenant's consent, for the purpose of making the requested repairs until the repairs are completed. The tenant's written request may specify allowable times. Otherwise, the entry must be at a reasonable time. The authorization to enter provided by the tenant's written request expires after seven days, unless the repairs are in progress and the landlord or landlord's agent is making a reasonable effort to complete the repairs in a timely manner. If the person entering to do the repairs is not the landlord, upon request of the tenant, the person must show the tenant written evidence from the landlord authorizing that person to act for the landlord in making the repairs.

(d) A landlord and tenant may agree that the landlord or the landlord's agent may enter the dwelling unit and the premises without notice at reasonable times for the purpose of showing the premises to a prospective buyer, provided that the agreement:

(A) Is executed at a time when the landlord is actively engaged in attempts to sell the premises;

(B) Is reflected in a writing separate from the rental agreement and signed by both parties; and

(C) Is supported by separate consideration recited in the agreement.

(e)(A) If a written agreement requires the landlord to perform yard maintenance or grounds keeping for the premises:

(i) A landlord and tenant may agree that the landlord or landlord's agent may enter for that purpose upon the premises under the tenant's exclusive control not including the dwelling unit, without notice to the tenant, at reasonable times and with reasonable frequency. The terms of the right of entry must be described in the rental agreement or in a separate written agreement.

(ii) A tenant may deny consent for a landlord or landlord's agent to enter upon the premises pursuant to this paragraph if the entry is at an unreasonable time or with unreasonable frequency. The tenant must assert the denial by giving actual notice of the denial to the landlord or landlord's agent prior to, or at the time of, the attempted entry.

(B) As used in this paragraph:

(i) "Yard maintenance or grounds keeping" includes, but is not limited to, weeding, mowing grass and pruning trees and shrubs.

(ii) "Unreasonable time" refers to a time of day, day of the week or particular time that conflicts with the tenant's reasonable and specific plans to use the premises.

(f) In all other cases, unless there is an agreement between the landlord and the tenant to the contrary regarding a specific entry, the landlord shall give the tenant at least 24 hours' actual notice of the intent of the landlord to enter and the landlord or landlord's agent may enter only at reasonable times. The landlord or landlord's agent may not enter if the tenant, after receiving the landlord's notice, denies consent to enter. The tenant must assert this denial of consent by giving actual notice of the denial to the landlord or the landlord's agent or by attaching a written notice of the denial in a secure manner to the main entrance to that portion of the premises or dwelling unit of which the tenant has exclusive control, prior to or at the time of the attempt by the landlord or landlord's agent to enter.

(2) A landlord shall not abuse the right of access or use it to harass the tenant. A tenant shall not unreasonably withhold consent from the landlord to enter.

(3) This section does not apply to tenancies consisting of a rental of space in a facility for a manufactured dwelling or floating home under ORS 90.505 to 90.840.

(4) If a tenancy consists of rented space for a manufactured dwelling or floating home that is owned by the tenant, but the tenancy is not subject to ORS 90.505 to 90.840 because the space is not in a facility, this section shall allow access only to the rented space and not to the dwelling or home.

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

(a) Pursuant to court order;

(b) As permitted by ORS 90.410 (2); or

(c) When the tenant has abandoned or relinquished the premises.

(6) If a landlord is required by a governmental agency to enter a dwelling unit or any portion of the premises under a tenant's exclusive control, but the landlord fails to gain entry after a good faith effort in compliance with this section, the landlord shall not be found in violation of any state statute or local ordinance due to the failure.

(7) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access or may terminate the rental agreement pursuant to ORS 90.400 (1) and take possession in the manner provided in ORS 105.105 to 105.168. In addition, the landlord may recover actual damages.

(8) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but that have 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 pursuant to ORS 90.360 (1). In addition, the tenant may recover actual damages not less than an amount equal to one week's rent in the case of a week-to-week tenancy or one month's rent in all other cases. [Formerly 90.335; 1997 c.577 §18; 1999 c.603 §19; 1999 c.676 §12]

TENANT OBLIGATIONS

90.325 Tenant duties. 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, garbage, rodents and vermin, as the condition of the premises permits and to the extent that the tenant is responsible for causing the problem. The tenant shall cooperate to a reasonable extent in assisting the landlord in any reasonable effort to remedy the problem;

(3) Dispose from the dwelling unit all ashes, garbage, rubbish and other waste in a clean, safe and legal manner. With regard to needles, syringes and other infectious waste, as defined in ORS 459.386, the tenant may not dispose of these items by placing them in garbage receptacles or in any other place or manner except as authorized by state and local governmental agencies;

(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) Test at least once every six months and replace batteries as needed in any smoke alarm or smoke detector provided by the landlord and notify the landlord in writing of any operating deficiencies as described in ORS 479.275;

(7) Not remove or tamper with a properly functioning smoke alarm or smoke detector, including removing any working batteries, as provided in ORS 479.300;

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

(9) Behave and require other persons on the premises with the consent of the tenant to behave in a manner that will not disturb the peaceful enjoyment of the premises by neighbors. [Formerly 91.775; 1993 c.369 §7; 1995 c.559 §16; 1999 c.307 §21; 1999 c.603 §20]

90.330 [Formerly 91.780; 1991 c.852 §1; 1995 c.559 §17; renumbered 90.262 in 1995]

90.335 [Formerly 91.785; 1995 c.559 §18; renumbered 90.322 in 1995]

90.340 Occupancy of premises as dwelling unit only; notice of tenant absence. Unless otherwise agreed, the tenant shall occupy the dwelling unit only as a dwelling unit. The rental agreement may require that the tenant give actual notice to 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. [Formerly 91.790; 1995 c.559 §19]

TENANT REMEDIES

90.360 Effect of landlord noncompliance with rental agreement or obligation to maintain premises; generally. (1)(a) Except as provided in this chapter, if there is a material noncompliance by the landlord with the

rental agreement or a noncompliance with ORS 90.320 or 90.730, 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 delivery 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) and (c) of this subsection. However, in the case of a week-to-week tenancy, the rental agreement will terminate upon a date not less than seven days after delivery of the notice if the breach is not remedied.

(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 that 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. However, in the case of a week-to-week tenancy, the tenant may terminate the rental agreement upon at least seven days' written notice specifying the breach and date of termination of the rental agreement.

(2) Except as provided in this chapter, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or ORS 90.320 or 90.730. The tenant shall not be entitled to recover damages for a landlord noncompliance with ORS 90.320 or 90.730 if the landlord neither knew nor reasonably should have known of the condition that constituted the noncompliance and:

(a) The tenant knew or reasonably should have known of the condition and failed to give actual notice to the landlord in a reasonable time prior to the occurrence of the personal injury, damage to personal property, diminution in rental value or other tenant loss resulting from the noncompliance; or

(b) The condition was caused after the tenancy began by the deliberate or negligent act or omission of someone other than the landlord or a person acting on behalf of the landlord.

(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) The tenant may not terminate or recover damages under this section for a condition caused by the deliberate or negligent act or omission of the tenant or other person on the premises with the tenant's permission or consent.

(5) If the rental agreement is terminated, the landlord shall return all security deposits and prepaid rent recoverable by the tenant under ORS 90.300. [Formerly 91.800; 1993 c.369 §8; 1995 c.559 §20; 1997 c.577 §19; 1999 c.603 §21; 1999 c.676 §13]

90.365 Failure of landlord to supply essential services; remedies. (1) If contrary to the rental agreement or ORS 90.320 or 90.730 the landlord intentionally or negligently fails to supply any essential service, the tenant may give written notice to the landlord specifying the breach and that the tenant may seek substitute services, diminution in rent damages or substitute housing. After allowing the landlord a reasonable time and reasonable access under the circumstances to supply the essential service, the tenant 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) If the failure to supply an essential service makes the dwelling unit unsafe or unfit to occupy, procure 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. In addition, the tenant may recover as damages from the landlord the actual and reasonable cost or fair and reasonable value of comparable substitute housing in excess of the rent for the dwelling unit. For purposes of this paragraph, substitute housing is comparable if it is of a quality that is similar to or less than the quality of the dwelling unit with regard to basic elements including cooking and refrigeration services and, if warranted, upon consideration of factors such as location in the same area as the dwelling unit, the availability of substitute housing in the area and the expense relative to the range of choices for substitute housing in the area. A tenant may choose substitute housing of relatively greater quality, but the tenant's damages shall be limited to the cost or value of comparable substitute housing.

(2) If contrary to the rental agreement or ORS 90.320 or 90.730 the landlord fails to supply any essential service, the lack of which poses an imminent and serious threat to the tenant's health, safety or property, the tenant may give written notice to the landlord specifying the breach and that the rental agreement shall terminate in not less than 48 hours unless the breach is remedied within that period. If the landlord adequately remedies the breach before the end of the notice period, the rental agreement shall not terminate by reason of the breach. As used in this subsection and

subsection (3) of this section, "imminent and serious threat to the tenant's health, safety or property" shall not include the presence of radon, asbestos or lead-based paint or the future risk of flooding or seismic hazard, as defined by ORS 455.447.

(3)(a) If contrary to the rental agreement or ORS 90.320 or 90.730 the landlord intentionally or negligently fails to supply any essential service, the tenant may give notice to the landlord as provided in paragraph (b) of this subsection and may cause to be done in a workmanlike manner the work necessary to provide the essential service and, after submitting to the landlord receipts or an agreed upon itemized statement, deduct from the rent the actual and reasonable cost or the fair and reasonable value of the work not exceeding:

(A) $1,000, if the lack of the essential service poses an imminent and serious threat to the tenant's health, safety or property and the work is performed by a licensed or registered professional; or

(B) $500, if the lack of the essential service is significant but does not pose an imminent and serious threat to the tenant's health, safety or property or if work is not performed by a licensed or registered professional.

(b) The notice required by this subsection shall specify the breach and that the tenant may use the remedy specified in paragraph (a) of this subsection if the landlord fails to supply the essential service within the following periods:

(A) If the lack of the essential service poses an imminent and serious threat to the tenant's health, safety or property, the notice shall be written or actual and shall be given to the landlord at least 48 hours before the tenant causes the necessary work to be done to supply the essential service. If the notice is actual, the tenant shall also give the landlord written notice as promptly after the actual notice as conditions permit.

(B) In all other cases, the notice shall be written and given to the landlord at least:

(i) Seventy-two hours before the tenant causes the necessary work to be done to correct a substantial lack of a cooking or refrigeration service; or

(ii) Seven days before the tenant causes the necessary work to be done to correct a substantial lack of any other essential service.

(c) A tenant who conducts repairs pursuant to this subsection shall not be considered to be an employee of the landlord.

(d) 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. The landlord may specify people to do all work under this section if the tenant's rights under this section are not diminished.

(4) For purposes of subsections (1) and (3) of this section, a landlord shall not be considered to be intentionally or negligently failing to supply an essential service if:

(a) The landlord substantially supplies the essential service; or

(b) The landlord is making a reasonable and good faith effort to supply the essential service and the failure is due to conditions beyond the landlord's control.

(5) This section shall not be construed to require a landlord to supply a cooking appliance or a refrigerator if the landlord did not supply or agree to supply a cooking appliance or refrigerator to the tenant.

(6) If the tenant proceeds under this section, the tenant may not proceed under ORS 90.360 (1) as to that breach.

(7) Rights of the tenant under this section do not arise if the condition was caused by the deliberate or negligent act or omission of the tenant or a person on the premises with the tenant's consent.

(8) Service or delivery of actual or written notice shall be as provided by ORS 90.150 and 90.155, including the addition of three days to the notice period if written notice is delivered by first class mail.

(9) Any provisions of this section that reasonably apply only to a structure that is used as a home, residence or sleeping place shall not apply to a manufactured dwelling, recreational vehicle or floating home if the tenant owns the manufactured dwelling, recreational vehicle or floating home and rents the space. [Formerly 91.805; 1995 c.559 §21; 1997 c.577 §20; 1999 c.603 §22; 1999 c.676 §14]

90.370 Tenant counterclaims in action by landlord for possession or rent. (1)(a) 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 the tenant may recover under the rental agreement or this chapter, provided that the tenant must prove that prior to the filing of the landlord's action the landlord reasonably had or should have had knowledge or had received actual notice of the facts that constitute the tenant's counterclaim.

(b) In the event the tenant counterclaims, the court at the landlord's or tenant's request 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 and unless otherwise agreed between the parties, a 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, the tenant 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) If the total amount found due to the tenant on any counterclaims is less than any rent found due to the landlord, and the tenant retains possession solely because the tenant paid rent into court under subsection (1) of this section, no attorney fees shall be awarded to the tenant unless the tenant paid at least the balance found due to the landlord into court no later than the commencement of the trial.

(5) 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). [Formerly 91.810; 1993 c.369 §9; 1995 c.559 §22]

90.375 Effect of unlawful ouster or exclusion; willful diminution of services. If a landlord unlawfully removes or excludes the tenant from the premises, seriously attempts or seriously threatens unlawfully to remove or exclude the tenant from the premises or willfully diminishes or seriously attempts or seriously threatens unlawfully to diminish services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric or other essential service, the tenant may obtain injunctive relief to recover possession or may terminate the rental agreement and recover an amount up to two months' periodic rent or twice the actual damages sustained by the tenant, whichever is greater. If the rental agreement is terminated the landlord shall return all security deposits and prepaid rent recoverable under ORS 90.300. The tenant need not terminate the rental agreement, obtain injunctive relief or recover possession to recover damages under this section. [Formerly 91.815; 1993 c.369 §10; 1995 c.559 §23; 1997 c.577 §21]

90.380 Effect of rental of dwelling in violation of building or housing codes; remedy. (1) As used in this section, "posted" means that a governmental agency has attached a copy of the agency's written determination in a secure manner to the main entrance of the dwelling unit or to the premises or building of which the dwelling unit is a part.

(2)(a) If a governmental agency has posted a dwelling unit as unsafe and unlawful to occupy due to the existence of conditions that violate state or local law and materially affect health or safety to an extent that, in the agency's determination, the tenant must vacate the unit and another person may not take possession of the unit, a landlord may not continue a tenancy or enter into a new tenancy for the dwelling unit until the landlord corrects the conditions that led to the agency's determination.

(b) If a landlord knowingly violates paragraph (a) of this subsection, the tenant may immediately terminate the tenancy by giving the landlord actual notice of the termination and the reason for the termination and may recover from the landlord either two months' periodic rent or up to twice the actual damages sustained by the tenant as a result of the violation, whichever is greater. The tenant need not terminate the tenancy to recover damages under this section.

(3)(a) If a governmental agency has given a written notice to a landlord that a dwelling unit has been determined to be unlawful, but not unsafe, to occupy due to the existence of conditions that violate state or local law and materially affect health or safety to an extent that, in the agency's determination, although the unit is safe for an existing tenant to occupy, another person may not take possession of the unit, the landlord may not enter into a new tenancy for the dwelling unit until the landlord corrects the conditions that led to the agency's determination.

(b) If a landlord knowingly violates paragraph (a) of this subsection, the tenant may recover from the landlord either two months' periodic rent or up to twice the actual damages sustained by the tenant as a result of the violation, whichever is greater.

(c) Notwithstanding paragraph (b) of this subsection, a landlord is not liable to a tenant for a violation of paragraph (a) of this subsection if, prior to the commencement of the tenancy, the landlord discloses to the tenant that the dwelling unit has been determined to be unlawful to occupy.

(d) A disclosure described in paragraph (c) of this subsection must be in writing, include a description of the conditions that led to the agency's determination and state that the landlord is obligated to correct the conditions before entering into a new tenancy. The landlord shall attach a copy of the agency's notice to the disclosure. The notice copy may provide the information required by this paragraph to be disclosed by the landlord to the tenant.

(e) A disclosure described in paragraph (c) of this subsection does not release the landlord from the duties imposed

by this chapter, including the duty to maintain the dwelling unit in a habitable condition pursuant to ORS 90.320 or 90.730. A tenant who enters into a tenancy after the landlord's disclosure does not waive the tenant's other remedies under this chapter. The disclosure does not prevent the governmental agency that made the determination from imposing on the landlord any penalty authorized by law for entering into the new tenancy.

(4)(a) If a governmental agency has made a determination regarding a dwelling unit and has posted or given notice for conditions described in subsection (2)(a) or (3)(a) of this section, a landlord may not accept from an applicant for that dwelling unit a deposit to secure the execution of a rental agreement pursuant to ORS 90.297 unless, before accepting the deposit, the landlord discloses to the applicant as provided by subsection (3)(c) of this section that the dwelling unit has been determined to be unlawful to occupy.

(b) If a landlord knowingly violates paragraph (a) of this subsection or fails to correct the conditions leading to the agency's determination before the date a new tenancy is to begin as provided by the agreement to secure the execution of a rental agreement, an applicant may terminate the agreement to secure the execution of the rental agreement by giving the landlord actual notice of the termination and the reason for termination. As a result of a termination, the applicant may recover from the landlord an amount equal to twice the deposit. If an applicant recovers damages for a violation pursuant to this paragraph, the applicant may not recover any amounts under ORS 90.297.

(5) If, after a landlord and a tenant have entered into a tenancy, a governmental agency posts a dwelling unit as unsafe and unlawful to occupy due to the existence of conditions that violate state or local law, that materially affect health or safety and that:

(a) Were not caused by the tenant, the tenant may immediately terminate the tenancy by giving the landlord actual notice of the termination and the reason for the termination; or

(b) Were not caused by the landlord or by the landlord's failure to maintain the dwelling, the landlord may terminate the tenancy by giving the tenant 24 hours' written notice of the termination and the reason for the termination, after which the landlord may take possession in the manner provided in ORS 105.105 to 105.168.

(6) If the tenancy is terminated, as a result of conditions as described in subsections (2), (4) and (5) of this section, within 14 days of the notice of termination the landlord shall return to the applicant or tenant:

(a) All of the deposit to secure the execution of a rental agreement, security deposit or prepaid rent owed to the applicant under this section or to the tenant under ORS 90.300; and

(b) All rent prepaid for the month in which the termination occurs, prorated, if applicable, to the date of termination or the date the tenant vacates the premises, whichever is later.

(7) If conditions at premises that existed at the outset of the tenancy and that were not caused by the tenant pose an imminent and serious threat to the health or safety of occupants of the premises within six months from the beginning of the tenancy, the tenant may immediately terminate the rental agreement by giving the landlord actual notice of the termination and the reason for the termination. In addition, if the landlord knew or should have reasonably known of the existence of the conditions, the tenant may recover either two months' periodic rent or twice the actual damages sustained by the tenant as a result of the violation, whichever is greater. The tenant need not terminate the rental agreement to recover damages under this section. Within four days of the tenant's notice of termination, the landlord shall return to the tenant:

(a) All of the security deposit or prepaid rent owed to the tenant under ORS 90.300; and

(b) All rent prepaid for the month in which the termination occurs, prorated to the date of termination or the date the tenant vacates the premises, whichever is later.

(8)(a) A landlord shall return the money due the applicant or tenant under subsections (6) and (7) of this section either by making the money available to the applicant or tenant at the landlord's customary place of business or by mailing the money by first class mail to the applicant or tenant.

(b) The applicant or tenant has the option of choosing the method for return of any money due under this section. If the applicant or tenant fails to choose one of these methods at the time of giving the notice of termination, the landlord shall use the mail method, addressed to the last-known address of the applicant or tenant and mailed within the relevant four-day or 14-day period following the applicant's or tenant's notice.

(9) If the landlord fails to comply with subsection (8) of this section, the applicant or tenant may recover the money due in an amount equal to twice the amount due. [Formerly 91.817; 1993 c.369 §11; 1995 c.559 §24; 2001 c.596 §32]

90.385 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, by serving a notice to terminate the tenancy 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 any of the following concerning a violation applicable to the tenancy:

(A) A building, health or housing code materially affecting health or safety;

(B) Laws or regulations concerning the delivery of mail; or

(C) Laws or regulations prohibiting discrimination in rental housing;

(b) The tenant has made any complaint to the landlord that is in good faith and related to the tenancy;

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

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

(e) The tenant successfully defended an action for possession brought by the landlord within the previous six months except if the tenant was successful in defending the action only because:

(A) The termination notice by the landlord was not served or delivered in the manner required by ORS 90.155; or

(B) The period provided by the termination notice was less than that required by the statute upon which the notice relied to terminate the tenancy; or

(f) 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.

(2) As used in subsection (1) of this section, "decreasing services" includes:

(a) Unreasonably restricting the availability of or placing unreasonable burdens on the use of common areas or facilities by tenant associations or tenants meeting to establish a tenant organization; and

(b) Intentionally and unreasonably interfering with and substantially impairing the enjoyment or use of the premises by the tenant.

(3) If the landlord acts in violation of subsection (1) of this section the tenant is entitled to the remedies provided in ORS 90.375 and has a defense in any retaliatory action against the tenant for possession.

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

(a) The complaint by the tenant was made to the landlord or an agent of the landlord in an unreasonable manner or at an unreasonable time or was repeated in a manner having the effect of unreasonably harassing the landlord. A determination whether the manner, time or effect of a complaint was unreasonable shall include consideration of all related circumstances preceding or contemporaneous to the complaint;

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

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

(d) 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.

(5) For purposes of this section, a complaint made by another on behalf of a tenant is considered a complaint by the tenant.

(6) For the purposes of subsection (4)(c) of this section, a tenant who has paid rent into court pursuant to ORS 90.370 shall not be considered to be in default in rent.

(7) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under ORS 90.360 (2). [Formerly 91.865; 1995 c.559 §25; 1997 c.303 §1; 1999 c.603 §23]

90.390 Discrimination against tenant or applicant; tenant defense. (1) A landlord may not discriminate against a tenant in violation of local, state or federal law, including ORS 346.630, 346.660, 346.690, 659A.145 and 659A.421.

(2) If the tenant can prove that the landlord has in fact acted in violation of subsection (1) of this section the tenant has a defense in any discriminatory action brought by the landlord against the tenant for possession, unless the tenant is in default in rent.

(3) A landlord may not discriminate against an applicant because the applicant was in fact a defendant in an action for possession pursuant to ORS 105.105 to 105.168 that prior to the application was dismissed in favor of the defendant or that resulted in final judgment for the defendant. If the landlord knowingly acts in violation of this subsection, the applicant may recover actual damages or $200, whichever is greater. [1993 c.369 §24; 1997 c.577 §22]

LANDLORD REMEDIES

90.400 Effect of tenant noncompliance with rental agreement or failure to maintain premises; failure to pay

rent; damage to persons or property; drug or alcohol violations. (1)(a) Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement, a noncompliance with ORS 90.325 materially affecting health and safety, a material noncompliance with a rental agreement regarding a program of recovery in drug and alcohol free housing or a failure to pay a late charge pursuant to ORS 90.260 or a utility or service charge pursuant to ORS 90.315 (4), the landlord may deliver a written notice to the tenant terminating the tenancy for cause as provided in this subsection. The notice shall specify the acts and omissions constituting the breach and shall state that the rental agreement will terminate upon a date not less than 30 days after delivery of the notice. If the breach is remediable by repairs, payment of damages, payment of a late charge or utility or service charge, change in conduct or otherwise, the notice shall also state that the tenant can avoid termination by remedying the breach within 14 days.

(b) If the breach is not remedied in 14 days, the rental agreement shall terminate as provided in the notice subject to paragraphs (c) and (d) of this subsection.

(c) If the tenant adequately remedies the breach before the date for remedying the breach as specified in the notice, the rental agreement shall not terminate.

(d) If substantially the same act or omission that constituted a prior noncompliance of which notice was given pursuant to paragraph (a) of this subsection recurs within six months after the date specified in that notice as the date for remedying the prior noncompliance, 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. The date of termination specified in the 10-day notice given pursuant to this paragraph may not be sooner than the date of termination specified in the 30-day notice of the prior noncompliance given pursuant to paragraph (a) of this subsection.

(e) In the case of a week-to-week tenancy, the notice periods in:

(A) Paragraph (a) of this subsection shall be changed from 30 days to seven days and from 14 days to four days;

(B) Paragraph (b) of this subsection shall be changed from 14 days to four days; and

(C) Paragraph (d) of this subsection shall be changed from 10 days to four days.

(f) This subsection does not apply to a tenancy governed by ORS 90.505 to 90.840.

(2) The landlord may immediately terminate the rental agreement for nonpayment of rent and take possession of the dwelling unit in the manner provided in ORS 105.105 to 105.168 after written notice, as follows:

(a) In the case of a week-to-week tenancy, by delivering to the tenant at least 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. The landlord shall give this notice no sooner than on the fifth day of the rental period, including the first day the rent is due.

(b) In the case of all other tenancies, by delivering to the tenant:

(A) At least 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. The landlord shall give this notice no sooner than on the eighth day of the rental period, including the first day the rent is due; or

(B) If a written rental agreement so provides, at least 144 hours' written notice of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period. The landlord shall give this notice no sooner than on the fifth day of the rental period, including the first day the rent is due.

(c) The notices described in this subsection shall also specify the date and time by which the tenant must pay the rent to cure the nonpayment of rent.

(d) Payment by a tenant who has received a nonpayment of rent notice under this subsection is timely if mailed to the landlord within the period of the notice unless:

(A) The nonpayment of rent notice is personally served on the tenant;

(B) A written rental agreement and the nonpayment of rent notice expressly state that payment is to be made at a specified location that is either on the premises or at a place where the tenant has made all previous rent payments in person; and

(C) The place so specified is available to the tenant for payment throughout the period of the notice.

(3) Except as provided in subsection (4) of this section, the landlord, after at least 24 hours' written notice specifying the acts and omissions constituting the cause and specifying the date and time of the termination, may immediately terminate the rental agreement and take possession in the manner provided in ORS 105.105 to 105.168, if:

(a) The tenant, someone in the tenant's control or the tenant's pet seriously threatens immediately to inflict personal injury, or inflicts any substantial personal injury, upon the landlord, the landlord's agent or other tenants;

(b) The tenant, someone in the tenant's control, or the tenant's pet inflicts any substantial personal injury upon a neighbor living in the immediate vicinity of the premises or upon a person other than the tenant on the premises with permission of the landlord or another tenant;

(c) The tenant or someone in the tenant's control intentionally inflicts any substantial damage to the premises or the tenant's pet inflicts substantial damage to the premises on more than one occasion;

(d) The tenant has vacated the premises, the person in possession is holding contrary to a written rental agreement that prohibits subleasing the premises to another or allowing another person to occupy the premises without the written permission of the landlord, and the landlord has not knowingly accepted rent from the person in possession; or

(e) The tenant, someone in the tenant's control or the tenant's pet commits any act that is outrageous in the extreme, on the premises or in the immediate vicinity of the premises. An act that is "outrageous in the extreme" is an act not described in paragraphs (a) to (c) of this subsection, but is similar in degree and is one that a reasonable person in that community would consider to be so offensive as to warrant termination of the tenancy within 24 hours, considering the seriousness of the act or the risk to others. Such an act is more extreme or serious than an act that warrants a 30-day termination under subsection (1) of this section. An act that is "outrageous in the extreme" includes, but is not limited to, the following acts by a person:

(A) Prostitution or promotion of prostitution, as described in ORS 167.007 and 167.012;

(B) Manufacture or delivery of a controlled substance, as described in ORS 475.005 but not including delivery as described in ORS 475.992 (2)(b);

(C) Intimidation, as described in ORS 166.155 and 166.165; or

(D) Burglary as described in ORS 164.215 and 164.225.

(4) If the cause for a termination notice given pursuant to subsection (3)(a), (b), (c) or (e) of this section is based upon the acts of the tenant's pet, the tenant may cure the cause and avoid termination of the tenancy by removing the pet from the premises prior to the end of the notice period. The notice shall describe the right of the tenant to cure the cause. If the tenant returns the pet to the premises at any time after having cured the violation, the landlord, after at least 24 hours' written notice specifying the subsequent presence of the offending pet, may terminate the rental agreement and take possession in the manner provided in ORS 105.105 to 105.168. The tenant shall not have a right to cure this subsequent violation.

(5) Someone is in the tenant's control, as that phrase is used in subsection (3) of this section, when that person enters or remains on the premises with the tenant's permission or consent after the tenant reasonably knows or should know of that person's act or likelihood to commit any act of the type described in subsection (3)(a), (b), (c) and (e) of this section.

(6) The landlord's 24 hours' written notice given under subsection (3)(d) of this section shall not be construed as an admission by the landlord that the individual occupying the premises is a lessee or sublessee of the landlord.

(7) With regard to "acts outrageous in the extreme" as described in subsection (3)(e) of this section, an act can be proven to be outrageous in the extreme even if it is one that does not violate a criminal statute. In addition, notwithstanding the reference in subsection (3) of this section to existing criminal statutes, the landlord's standard of proof in an action for possession under this subsection remains the civil standard, proof by a preponderance of the evidence.

(8) If a good faith effort by a landlord to terminate a tenancy pursuant to subsection (3)(e) of this section and to recover possession of the rental unit pursuant to ORS 105.105 to 105.168 fails by decision of the court, the landlord shall not be found in violation of any state statute or local ordinance requiring the landlord to remove that tenant upon threat of fine, abatement or forfeiture as long as the landlord continues to make a good faith effort to terminate the tenancy.

(9) If a tenant living for less than two years in drug and alcohol free housing uses, possesses or shares alcohol, illegal drugs, controlled substances or prescription drugs without a medical prescription, the landlord may deliver a written notice to the tenant terminating the tenancy for cause as provided in this subsection. The notice shall specify the acts constituting the drug or alcohol violation and shall state that the rental agreement will terminate in not less than 48 hours after delivery of the notice, at a specified date and time. The notice shall also state that the tenant can cure the drug or alcohol violation by a change in conduct or otherwise within 24 hours after delivery of the notice. If the tenant cures the violation within the 24-hour period, the rental agreement shall not terminate. If the tenant does not cure the violation within the 24-hour period, the rental agreement shall terminate as provided in the notice. If substantially the same act that constituted a prior drug or alcohol violation of which notice was given reoccurs within six months, the landlord may terminate the rental agreement upon at least 24 hours' written notice specifying the violation and the date and time of termination of the rental agreement. The tenant shall not have a right to cure this subsequent violation.

(10) Except as provided in this chapter, a landlord may pursue any one or more of the remedies listed in this section, simultaneously or sequentially.

(11) Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or ORS 90.325 or 90.740. [Formerly 91.820; 1993 c.369 §12; 1995 c.559 §26; 1997 c.577 §23; 1999 c.603 §24; 1999 c.676 §15; 2001 c.596 §33]

90.402 [1993 c.369 §25; 1995 c.559 §27; renumbered 90.160 in 1995]

90.405 Effect of tenant keeping unpermitted pet. (1) If the tenant, in violation of the rental agreement, keeps on the premises a 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 delivery 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 105.168.

(2) For purposes of this section, "a pet capable of causing damage to persons or property" means an animal that, because of the nature, size or behavioral characteristics of that particular animal or of that breed or type of animal generally, a reasonable person might consider to be capable of causing personal injury or property damage, including but not limited to, water damage from medium or larger sized fish tanks or other personal injury or property damage arising from the environment in which the animal is kept.

(3) If substantially the same act that 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.

(4) This section shall not apply to any tenancy governed by ORS 90.505 to 90.840. [Formerly 91.822; 1995 c.559 §28; 1999 c.603 §25]

90.410 Effect of tenant failure to give notice of absence; absence; abandonment. (1) If the rental agreement requires the tenant to give actual notice to the landlord of an anticipated extended absence in excess of seven days as permitted by ORS 90.340 and the tenant willfully 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 knows or should know 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. [Formerly 91.825; 1993 c.369 §13; 1995 c.559 §29; 1999 c.603 §26]

90.415 Landlord waiver of right to terminate tenancy; exceptions. (1) Except as otherwise provided in this section, a landlord waives the right to terminate a rental agreement for a particular breach if the landlord:

(a) During two or more separate rental periods, accepts rent with knowledge of the default by the tenant; or

(b) Accepts performance by a tenant that varies from the terms of the rental agreement.

(2) For purposes of subsection (1)(a) of this section, a landlord has not accepted rent if within six days after receipt of the rent payment, the landlord refunds the rent.

(3) A landlord does not waive the right to terminate as described in subsection (1)(a) of this section if the termination is pursuant to ORS 90.400 (3).

(4) A landlord does not waive the right to terminate as described in subsection (1) of this section if the landlord and tenant agree otherwise after the breach has occurred.

(5) If a tenancy consists of rented space for a manufactured dwelling or floating home as described in ORS 90.505, a landlord does not waive the right to terminate as described in subsection (1) of this section if:

(a) The breach or default at issue concerns:

(A) Disrepair or deterioration of the manufactured dwelling or floating home pursuant to ORS 90.632; or

(B) A failure to maintain the space, as provided by ORS 90.740 (2), (4)(b) and (4)(h); or

(b) The breach or default at issue concerns the tenant's conduct and, following the breach or default, but prior to acceptance of rent or performance as described in subsection (1) of this section, the landlord gives written notice to the

tenant regarding the breach or default that:

(A) Describes specifically the conduct that constitutes the breach or default, either as a separate and distinct breach or default, a series or group of breaches or defaults or a continuous or ongoing breach or default;

(B) States that the tenant is required to discontinue the conduct or correct the breach or default; and

(C) States that a reoccurrence of the conduct that constitutes a breach or default may result in a termination of the tenancy pursuant to ORS 90.630. For a continuous or ongoing breach or default, the landlord's notice remains effective for 12 months.

(6) Prior to giving a nonpayment of rent termination notice pursuant to ORS 90.400 (2), a landlord who accepts partial rent for a rental period does not waive the right to terminate for nonpayment if:

(a) The landlord accepted the partial rent before the landlord gave any notice of intent to terminate under ORS 90.400 (2) based on the tenant's agreement to pay the balance by a time certain; and

(b) The tenant does not pay the balance of the rent as agreed.

(7) A landlord who accepts partial rent under subsection (6) of this section may proceed to serve a notice under ORS 90.400 (2) to terminate the tenancy if the balance of the rent is not paid, provided:

(a) The notice is served no earlier than it would have been permitted under ORS 90.400 (2) had no rent been accepted; and

(b) The notice permits the tenant to avoid termination of the tenancy for nonpayment of rent by paying the balance within 72 hours or 144 hours, as the case may be, or by any date to which the parties agreed, whichever is later.

(8) After giving a nonpayment of rent termination notice pursuant to ORS 90.400 (2), a landlord who accepts partial rent for a rental period does not waive the right to terminate for nonpayment if the landlord and tenant agree in writing that the acceptance does not constitute waiver.

(9) A written agreement under subsection (8) of this section may provide that the landlord may proceed to terminate the rental agreement and take possession in the manner provided by ORS 105.105 to 105.168 without serving a new notice under ORS 90.400 (2) in the event the tenant fails to pay the balance of the rent by a time certain.

(10) A landlord's acceptance of partial rent for a rental period does not waive the right to terminate the rental agreement if the entire amount of the partial payment was from funds paid under the United States Housing Act of 1937 (42 U.S.C. 1437f) or any state low income rental housing fund administered by the Housing and Community Services Department.

(11) A landlord who accepts rent after the giving of a notice of termination by the landlord or the tenant, other than a nonpayment of rent notice, does not waive the right to terminate on that notice if:

(a) The landlord accepts rent prorated to the termination date specified in the notice; or

(b) Within six days after receipt of the rent payment, the landlord refunds at least the unused balance of the rent prorated for the period beyond the termination date.

(12) A landlord who has served a notice of termination for cause under ORS 90.400 (1), 90.630 or 90.632 does not waive the right to terminate on that notice by accepting rent for the rental period and beyond the period covered by the notice if within six days after the end of the remedy or correction period described in the applicable statute, the landlord refunds the rent for the period beyond the termination date.

(13) A landlord who has served a notice of termination for cause under ORS 90.400 (1), 90.630 or 90.632 and who has commenced proceedings under ORS 105.105 to 105.168 to recover possession of the premises does not waive the right to terminate on that notice:

(a) By accepting rent for any period beyond the expiration of the notice during which the tenant remains in possession provided:

(A) The landlord notifies the tenant in writing, in or after the service of the notice of termination for cause, that acceptance of rent while a termination action is pending will not waive the right to terminate on that notice; and

(B) The rent does not cover a period extending beyond the date of its acceptance.

(b) By serving a notice of nonpayment of rent under ORS 90.400 (2).

(14) A landlord and tenant may by written agreement provide that monthly rent shall be paid in regular installments of less than a month pursuant to a schedule specified in the agreement. Those installment rent payments are not partial rent, as that term is used in this section.

(15) Unless otherwise agreed, a landlord does not waive the right to terminate as described in subsection (1) of this section by accepting:

(a) A last month's rent deposit collected at the beginning of the tenancy, even if the deposit covers a period beyond a termination date; or

(b) Rent distributed pursuant to a court order releasing money paid into court as provided by ORS 90.370 (1).

(16) When a landlord must refund rent under this section, the refund shall be made to the tenant or other payer by personal delivery or first class mail and may be in the form of the tenant's or other payer's check or any other form of check or money. [Formerly 91.830; 1991 c.62 §1; 1995 c.559 §30; 1997 c.577 §24; 1999 c.603 §27; 1999 c.676 §16; 2001 c.596 §34]

90.420 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. [Formerly 91.835]

90.425 Disposition of personal property abandoned by tenant; notice; sale; tax cancellation; storage agreements; hazardous property. (1) As used in this section:

(a) "Current market value" means the amount in cash, as determined by the county assessor, that could reasonably be expected to be paid for a manufactured dwelling or floating home by an informed buyer to an informed seller, each acting without compulsion in an arm's length transaction occurring on the assessment date for the tax year or on the date of a subsequent reappraisal by the county assessor.

(b) "Dispose of the personal property" means that, if reasonably appropriate, the landlord may throw away the property or may give it without consideration to a nonprofit organization or to a person unrelated to the landlord. The landlord may not retain the property for personal use or benefit.

(c) "Goods" includes those goods left inside a recreational vehicle, manufactured dwelling or floating home or left upon the rental space outside a recreational vehicle, manufactured dwelling or floating home, whether the recreational vehicle, dwelling or home is located inside or outside of a facility.

(d) "Lienholder" means any lienholder of an abandoned recreational vehicle, manufactured dwelling or floating home, if the lien is of record or the lienholder is actually known to the landlord.

(e) "Of record" means:

(A) For a manufactured dwelling or recreational vehicle, that a security interest has been properly recorded with the Department of Transportation pursuant to ORS 802.200 (1)(a)(A) and 803.097 for a dwelling or vehicle registered and titled by the department pursuant to ORS 820.500.

(B) For a floating home, that a security interest has been properly recorded with the State Marine Board pursuant to ORS 830.740 to 830.755 for a home registered and titled with the board pursuant to ORS 830.715.

(f) "Owner" means any owner of an abandoned recreational vehicle, manufactured dwelling or floating home, if different from the tenant and either of record or actually known to the landlord.

(g) "Personal property" means goods, vehicles and recreational vehicles and includes manufactured dwellings and floating homes not located in a facility. "Personal property" does not include manufactured dwellings and floating homes located in a facility and therefore subject to being stored, sold or disposed of as provided under ORS 90.675.

(2) A landlord may not store, sell or dispose of abandoned personal property except as provided by this section. This section governs the rights and obligations of landlords, tenants and any lienholders or owners in any personal property abandoned or left upon the premises by the tenant or any lienholder or owner in the following circumstances:

(a) The tenancy has ended by termination or expiration of a rental agreement or by relinquishment or abandonment of the premises and the landlord reasonably believes under all the circumstances that the tenant has left the personal property upon the premises with no intention of asserting any further claim to the premises or to the personal 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 personal property pursuant to ORS 105.165.

(3) Prior to selling or disposing of the tenant's personal property under this section, the landlord must give a written notice to the tenant that shall be:

(a) Personally delivered to the tenant; or

(b) Sent by first class mail addressed and mailed to the tenant at:

(A) The premises;

(B) Any post-office box held by the tenant and actually known to the landlord; and

(C) The most recent forwarding address if provided by the tenant or actually known to the landlord.

(4)(a) In addition to the notice required by subsection (3) of this section, in the case of an abandoned recreational vehicle, manufactured dwelling or floating home, a landlord shall also give a copy of the notice described in subsection (3) of this section to:

(A) Any lienholder of the recreational vehicle, manufactured dwelling or floating home;

(B) Any owner of the recreational vehicle, manufactured dwelling or floating home;

(C) The tax collector of the county where the manufactured dwelling or floating home is located; and

(D) The assessor of the county where the manufactured dwelling or floating home is located.

(b) The landlord shall give the notice copy required by this subsection by personal delivery or first class mail, except that for any lienholder, mail service shall be both by first class mail and by certified mail with return receipt requested.

(c) A notice to lienholders under paragraph (a)(A) of this subsection must be sent to each lienholder at each address:

(A) Actually known to the landlord;

(B) Of record; and

(C) Provided to the landlord by the lienholder in a written notice that identifies the personal property subject to the lien and that was sent to the landlord by certified mail with return receipt requested within the preceding five years. The notice must identify the personal property by describing the physical address of the property.

(5) The notice required under subsection (3) of this section shall state that:

(a) The personal property left upon the premises is considered abandoned;

(b) The tenant or any lienholder or owner must contact the landlord by a specified date, as provided in subsection (6) of this section, to arrange for the removal of the abandoned personal property;

(c) The personal property is stored at a place of safekeeping, except that if the property includes a manufactured dwelling or floating home, the dwelling or home shall be stored on the rented space;

(d) The tenant or any lienholder or owner, except as provided by subsection (17) of this section, may arrange for removal of the personal property by contacting the landlord at a described telephone number or address on or before the specified date;

(e) The landlord shall make the personal property available for removal by the tenant or any lienholder or owner, except as provided by subsection (17) of this section, by appointment at reasonable times;

(f) If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of this section, the landlord may require payment of removal and storage charges, as provided by subsection (7)(d) of this section, prior to releasing the personal property to the tenant or any lienholder or owner;

(g) If the personal property is considered to be abandoned pursuant to subsection (2)(c) of this section, the landlord may not require payment of storage charges prior to releasing the personal property;

(h) If the tenant or any lienholder or owner fails to contact the landlord by the specified date, or after that contact, fails to remove the personal property within 30 days for recreational vehicles, manufactured dwellings and floating homes or 15 days for all other personal property, the landlord may sell or dispose of the personal property. If the landlord reasonably believes that the personal property will be eligible for disposal pursuant to subsection (10)(b) of this section and the landlord intends to dispose of the property if it is not claimed, the notice shall state that belief and intent; and

(i) If the personal property includes a recreational vehicle, manufactured dwelling or floating home and if applicable, there is a lienholder or owner that has a right to claim the recreational vehicle, dwelling or home, except as provided by subsection (17) of this section.

(6) For purposes of subsection (5) of this section, the specified date by which a tenant, lienholder or owner must contact a landlord to arrange for the disposition of abandoned personal property shall be:

(a) For abandoned recreational vehicles, manufactured dwellings or floating homes, not less than 45 days after personal delivery or mailing of the notice; or

(b) For all other abandoned personal property, not less than five days after personal delivery or eight days after mailing of the notice.

(7) After notifying the tenant as required by subsection (3) of this section, the landlord:

(a) Shall store any abandoned manufactured dwelling or floating home on the rented space and shall exercise reasonable care for the dwelling or home;

(b) Shall store all other abandoned personal property of the tenant, including goods left inside a recreational vehicle, manufactured dwelling or floating home or left upon the rented space outside a recreational vehicle, dwelling or home, in a place of safekeeping and shall exercise reasonable care for the personal property, except that the landlord may:

(A) Promptly dispose of rotting food; and

(B) Allow an animal control agency to remove any abandoned pets or livestock. If an animal control agency will not remove the abandoned pets or livestock, the landlord shall exercise reasonable care for the animals given all the

circumstances, including the type and condition of the animals, and may give the animals to an agency that is willing and able to care for the animals, such as a humane society or similar organization;

(c) Except for manufactured dwellings and floating homes, may store the abandoned personal property at the dwelling unit, move and store it elsewhere on the premises or move and store it at a commercial storage company or other place of safekeeping; and

(d) Is entitled to reasonable or actual storage charges and costs incidental to storage or disposal, including any cost of removal to a place of storage. In the case of an abandoned manufactured dwelling or floating home, the storage charge shall be no greater than the monthly space rent last payable by the tenant.

(8) If a tenant, lienholder or owner, upon the receipt of the notice provided by subsection (3) or (4) of this section or otherwise, responds by actual notice to the landlord on or before the specified date in the landlord's notice that the tenant, lienholder or owner intends to remove the personal property from the premises or from the place of safekeeping, the landlord must make that personal property available for removal by the tenant, lienholder or owner by appointment at reasonable times during the next 15 days or, in the case of a recreational vehicle, manufactured dwelling or floating home, 30 days, subject to subsection (17) of this section. If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of this section, but not pursuant to subsection (2)(c) of this section, the landlord may require payment of removal and storage charges, as provided in subsection (7)(d) of this section, prior to allowing the tenant, lienholder or owner to remove the personal property. Acceptance by a landlord of such payment does not operate to create or reinstate a tenancy or create a waiver pursuant to ORS 90.415.

(9) Except as provided in subsections (17) to (19) of this section, if the tenant, lienholder or owner of a recreational vehicle, manufactured dwelling or floating home does not respond within the time provided by the landlord's notice, or the tenant, lienholder or owner does not remove the personal property within the time required by subsection (8) of this section or by any date agreed to with the landlord, whichever is later, the tenant's, lienholder's or owner's personal property is conclusively presumed to be abandoned. The tenant and any lienholder or owner that have been given notice pursuant to subsection (3) or (4) of this section shall, except with regard to the distribution of sale proceeds pursuant to subsection (12) of this section, have no further right, title or interest to the personal property and may not claim or sell the property.

(10) If the personal property is presumed to be abandoned under subsection (9) of this section, the landlord then may:

(a) Sell the personal property at a public or private sale, provided that prior to the sale of a recreational vehicle, manufactured dwelling or floating home:

(A) The landlord may seek to transfer the certificate of title and registration to the personal property by complying with the requirements of the appropriate state agency; and

(B) The landlord shall:

(i) Place a notice in a newspaper of general circulation in the county in which the recreational vehicle, manufactured dwelling or floating home is located. The notice shall state:

(I) That the recreational vehicle, manufactured dwelling or floating home is abandoned;

(II) The tenant's and owner's name, if of record or actually known to the landlord;

(III) The address and any space number where the recreational vehicle, manufactured dwelling or floating home is located, and if actually known to the landlord, the plate, registration or other identification number as noted on the certificate of title;

(IV) Whether the sale is by private bidding or public auction;

(V) Whether the landlord is accepting sealed bids and, if so, the last date on which bids will be accepted; and

(VI) The name and telephone number of the person to contact to inspect the recreational vehicle, manufactured dwelling or floating home;

(ii) At a reasonable time prior to the sale, give a copy of the notice required by sub-subparagraph (i) of this subparagraph to the tenant and to any lienholder and owner, by personal delivery or first class mail, except that for any lienholder, mail service shall be by first class mail with certificate of mailing;

(iii) Obtain an affidavit of publication from the newspaper to show that the notice required under sub-subparagraph (i) of this subparagraph ran in the newspaper at least one day in each of two consecutive weeks prior to the date scheduled for the sale or the last date bids will be accepted; and

(iv) Obtain written proof from the county that all property taxes on the manufactured dwelling or floating home have been paid or, if not paid, that the county has authorized the sale, with the sale proceeds to be distributed pursuant to subsection (12) of this section;

(b) Destroy or otherwise dispose of the personal property if the landlord determines that:

(A) For a manufactured dwelling or floating home, the current market value of the property is $8,000 or less as determined by the county assessor; or

(B) For all other personal property, the reasonable current fair market value is $500 or less or 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) Consistent with paragraphs (a) and (b) of this subsection, sell certain items and destroy or otherwise dispose of the remaining personal property.

(11)(a) A public or private sale authorized by this section shall:

(A) For a recreational vehicle, manufactured dwelling or floating home, be conducted consistent with the terms listed in subsection (10)(a)(B)(i) of this section. Every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable; or

(B) For all other personal property, be conducted under the provisions of ORS 79.0610.

(b) If there is no buyer at a sale of a manufactured dwelling or floating home, the personal property is considered to be worth $8,000 or less, regardless of current market value, and the landlord shall destroy or otherwise dispose of the personal property.

(12)(a) The landlord may deduct from the proceeds of the sale:

(A) The reasonable or actual cost of notice, storage and sale; and

(B) Unpaid rent.

(b) If the sale was of a manufactured dwelling or floating home, after deducting the amounts listed in paragraph (a) of this subsection, the landlord shall remit the remaining proceeds, if any, to the county tax collector to the extent of any unpaid property taxes owed on the dwelling or home.

(c) If the sale was of a recreational vehicle, manufactured dwelling or floating home, after deducting the amounts listed in paragraphs (a) and (b) of this subsection, if applicable, the landlord shall remit the remaining proceeds, if any, to any lienholder to the extent of any unpaid balance owed on the lien on the recreational vehicle, dwelling or home.

(d) After deducting the amounts listed in paragraphs (a), (b) and (c) of this subsection, if applicable, the landlord shall remit to the tenant or owner the remaining proceeds, if any, together with an itemized accounting.

(e) If the tenant or owner 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.

(13) The county tax collector shall cancel all unpaid property taxes owed on a manufactured dwelling or floating home, as provided under ORS 311.790, only under circumstances described in paragraph (a), (b), (c) or (d) of this subsection:

(a) The landlord disposes of the manufactured dwelling or floating home after a determination described in subsection (10)(b) of this section.

(b) There is no buyer of the manufactured dwelling or floating home at a sale described under subsection (11) of this section.

(c)(A) There is a buyer of the manufactured dwelling or floating home at a sale described under subsection (11) of this section;

(B) The current market value of the manufactured dwelling or floating home is $8,000 or less; and

(C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes owed on the dwelling or home after distribution of the proceeds pursuant to subsection (12) of this section.

(d)(A) The landlord buys the manufactured dwelling or floating home at a sale described under subsection (11) of this section;

(B) The current market value of the manufactured dwelling or floating home is more than $8,000;

(C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes owed on the manufactured dwelling or floating home after distribution of the proceeds pursuant to subsection (12) of this section; and

(D) The landlord disposes of the manufactured dwelling or floating home.

(14) The landlord is not responsible for any loss to the tenant, lienholder or owner resulting from storage of personal property in compliance with this section unless the loss was caused by the landlord’s deliberate or negligent act. In the event of a deliberate and malicious violation, the landlord is liable for twice the actual damages sustained by the tenant, lienholder or owner.

(15) Complete compliance in good faith with this section shall constitute a complete defense in any action brought by a tenant, lienholder or owner against a landlord for loss or damage to such personal property disposed of pursuant to this section.

(16) If a landlord does not comply with this section:

(a) The tenant is relieved of any liability for damage to the premises caused by conduct that was not deliberate, intentional or grossly negligent and for unpaid rent and may recover from the landlord up to twice the actual damages sustained by the tenant;

(b) A lienholder or owner aggrieved by the noncompliance may recover from the landlord the actual damages sustained by the lienholder or owner. ORS 90.255 does not authorize an award of attorney fees to the prevailing party in any action arising under this paragraph; and

(c) A county tax collector aggrieved by the noncompliance may recover from the landlord the actual damages sustained by the tax collector, if the noncompliance is part of an effort by the landlord to defraud the tax collector. ORS 90.255 does not authorize an award of attorney fees to the prevailing party in any action arising under this paragraph.

(17) In the case of an abandoned recreational vehicle, manufactured dwelling or floating home, the provisions of this section regarding the rights and responsibilities of a tenant to the abandoned vehicle, dwelling or home shall also apply to any lienholder except that the lienholder may not sell or remove the vehicle, dwelling or home unless:

(a) The lienholder has foreclosed its lien on the recreational vehicle, manufactured dwelling or floating home;

(b) The tenant or a personal representative or designated person described in subsection (19) of this section has waived all rights under this section pursuant to subsection (23) of this section; or

(c) The notice and response periods provided by subsections (6) and (8) of this section have expired.

(18)(a) In the case of an abandoned manufactured dwelling or floating home but not including a dwelling or home abandoned following a termination pursuant to ORS 90.429 and except as provided by subsection (19)(d) and (e) of this section, if a lienholder makes a timely response to a notice of abandoned personal property pursuant to subsections (6) and (8) of this section and so requests, a landlord shall enter into a written storage agreement with the lienholder providing that the dwelling or home may not be sold or disposed of by the landlord for up to 12 months. A storage agreement entitles the lienholder to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property.

(b) The lienholder’s right to a storage agreement arises upon the failure of the tenant, owner or, in the case of a deceased tenant, the personal representative, designated person, heir or devisee to remove or sell the dwelling or home within the allotted time.

(c) To exercise the right to a storage agreement under this subsection, in addition to contacting the landlord with a timely response as described in paragraph (a) of this subsection, the lienholder must enter into the proposed storage agreement within 60 days after the landlord gives a copy of the agreement to the lienholder. The landlord shall give a copy of the proposed storage agreement to the lienholder in the same manner as provided by subsection (4)(b) of this section. The landlord may include a copy of the proposed storage agreement with the notice of abandoned property required by subsection (4) of this section. A lienholder enters into a storage agreement by signing a copy of the agreement provided by the landlord and personally delivering or mailing the signed copy to the landlord within the 60-day period.

(d) The storage agreement may require, in addition to other provisions agreed to by the landlord and the lienholder, that:

(A) The lienholder make timely periodic payment of all storage charges, as described in subsection (7)(d) of this section, accruing from the commencement of the 45-day period described in subsection (6) of this section. A storage charge may include a utility or service charge, as described in ORS 90.510 (8), if limited to charges for electricity, water, sewer service and natural gas and if incidental to the storage of personal property. A storage charge may not be due more frequently than monthly;

(B) The lienholder pay a late charge or fee for failure to pay a storage charge by the date required in the agreement, if the amount of the late charge is no greater than for late charges described in the rental agreement between the landlord and the tenant; and

(C) The lienholder maintain the personal property and the space on which the personal property is stored in a manner consistent with the rights and obligations described in the rental agreement between the landlord and the tenant.

(e) During the term of an agreement described under this subsection, the lienholder shall have the right to remove or sell the property, subject to the provisions of its lien. Selling the property includes a sale to a purchaser who wishes to leave the dwelling or home on the rented space and become a tenant, subject to any conditions previously agreed to by the landlord and tenant regarding the landlord’s approval of a purchaser or, if there was no such agreement, any reasonable conditions by the landlord regarding approval of any purchaser who wishes to leave the dwelling or home on the rented space and become a tenant. The landlord also may condition approval for occupancy of any purchaser of

the property upon payment of all unpaid storage charges and maintenance costs.

(f)(A) If the lienholder violates the storage agreement, the landlord may terminate the agreement by giving at least 90 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for the termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the dwelling or home without further notice to the lienholder.

(B) After a landlord gives a termination notice pursuant to subparagraph (A) of this paragraph for failure of the lienholder to pay a storage charge and the lienholder corrects the violation, if the lienholder again violates the storage agreement by failing to pay a subsequent storage charge, the landlord may terminate the agreement by giving at least 30 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the lienholder.

(C) A lienholder may terminate a storage agreement at any time upon at least 14 days' written notice to the landlord and may remove the property from the rented space if the lienholder has paid all storage charges and other charges as provided in the agreement.

(g) Upon the failure of a lienholder to enter into a storage agreement as provided by this subsection or upon termination of an agreement, unless the parties otherwise agree or the lienholder has sold or removed the manufactured dwelling or floating home, the landlord may sell or dispose of the property pursuant to this section without further notice to the lienholder.

(19) If the personal property consists of an abandoned manufactured dwelling or floating home and is considered abandoned as a result of the death of a tenant who was the only tenant and who owned the dwelling or home, this section applies, except as follows:

(a) Any personal representative named in a will or appointed by a court to act for the deceased tenant or any person designated in writing by the tenant to be contacted by the landlord in the event of the tenant's death has the same rights and responsibilities regarding the abandoned dwelling or home as a tenant.

(b) The notice required by subsection (3) of this section shall be:

(A) Sent by first class mail to the deceased tenant at the premises; and

(B) Personally delivered or sent by first class mail to any personal representative or designated person if actually known to the landlord.

(c) The notice described in subsection (5) of this section shall refer to any personal representative or designated person, instead of the deceased tenant, and shall incorporate the provisions of this subsection.

(d) If a personal representative, designated person or other person entitled to possession of the property, such as an heir or devisee, responds by actual notice to a landlord within the 45-day period provided by subsection (6) of this section and so requests, the landlord shall enter into a written storage agreement with the representative or person providing that the dwelling or home may not be sold or disposed of by the landlord for up to 90 days or until conclusion of any probate proceedings, whichever is later. A storage agreement entitles the representative or person to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property. If such an agreement is entered, the landlord may not enter a similar agreement with a lienholder pursuant to subsection (18) of this section until the agreement with the personal representative or designated person ends.

(e) If a personal representative or other person requests that a landlord enter into a storage agreement, subsection (18)(c), (d) and (f)(C) of this section apply, with the representative or person having the rights and responsibilities of a lienholder with regard to the storage agreement.

(f) During the term of an agreement described under paragraph (d) of this subsection, the representative or person shall have the right to remove or sell the dwelling or home, including a sale to a purchaser or a transfer to an heir or devisee where the purchaser, heir or devisee wishes to leave the dwelling or home on the rented space and become a tenant, subject to any conditions previously agreed to by the landlord and tenant regarding the landlord's approval for occupancy of a purchaser, heir or devisee or, if there was no such agreement, any reasonable conditions by the landlord regarding approval for occupancy of any purchaser, heir or devisee who wishes to leave the dwelling or home on the rented space and become a tenant. The landlord also may condition approval for occupancy of any purchaser, heir or devisee of the dwelling or home upon payment of all unpaid storage charges and maintenance costs.

(g) If the representative or person violates the storage agreement, the landlord may terminate the agreement by giving at least 30 days' written notice to the representative or person stating facts sufficient to notify the representative or person of the reason for the termination. Unless the representative or person corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the dwelling or home without

further notice to the representative or person.

(h) Upon the failure of a representative or person to enter into a storage agreement as provided by this subsection or upon termination of an agreement, unless the parties otherwise agree or the representative or person has sold or removed the manufactured dwelling or floating home, the landlord may sell or dispose of the property pursuant to this section without further notice to the representative or person.

(20) If a governmental agency determines that the condition of a manufactured dwelling, floating home or recreational vehicle abandoned under this section constitutes an extreme health or safety hazard under state or local law and the agency determines that the hazard endangers others in the facility and requires quick removal of the property, the landlord may sell or dispose of the property pursuant to this subsection. The landlord shall comply with all provisions of this section, except as follows:

(a) The date provided in subsection (6) of this section by which a tenant, lienholder, owner, personal representative or designated person must contact a landlord to arrange for the disposition of the property shall be not less than 15 days after personal delivery or mailing of the notice required by subsection (3) of this section.

(b) The date provided in subsections (8) and (9) of this section by which a tenant, lienholder, owner, personal representative or designated person must remove the property shall be not less than seven days after the tenant, lienholder, owner, personal representative or designated person contacts the landlord.

(c) The notice required by subsection (3) of this section shall be as provided in subsection (5) of this section, except that:

(A) The dates and deadlines in the notice for contacting the landlord and removing the property shall be consistent with this subsection;

(B) The notice shall state that a governmental agency has determined that the property constitutes an extreme health or safety hazard and must be removed quickly; and

(C) The landlord shall attach a copy of the agency's determination to the notice.

(d) If the tenant, a lienholder, owner, personal representative or designated person does not remove the property within the time allowed, the landlord or a buyer at a sale by the landlord under subsection (11) of this section shall promptly remove the property from the facility.

(e) A landlord is not required to enter into a storage agreement with a lienholder, owner, personal representative or designated person pursuant to subsection (18) of this section.

(21) In the case of an abandoned recreational vehicle, manufactured dwelling or floating home that is owned by someone other than the tenant, the provisions of this section regarding the rights and responsibilities of a tenant to the abandoned vehicle, dwelling or home shall also apply to that owner, with regard only to the vehicle, dwelling or home, and not to any goods left inside or outside the vehicle, dwelling or home.

(22) In the case of an abandoned motor vehicle, the procedure authorized by ORS 98.830 and 98.835 for removal of abandoned motor vehicles from private property may be used by a landlord as an alternative to the procedures required in this section.

(23)(a) A landlord may sell or dispose of a tenant's abandoned personal property without complying with the provisions of this section if, after termination of the tenancy or no more than seven days prior to the termination of the tenancy, the following parties so agree in a writing entered into in good faith:

(A) The landlord;

(B) The tenant, or for an abandonment as the result of the death of a tenant who was the only tenant, the personal representative, designated person or other person entitled to possession of the personal property, such as an heir or devisee, as described in subsection (19) of this section; and

(C) In the case of a manufactured dwelling, floating home or recreational vehicle, any owner and any lienholder.

(b) A landlord may not, as part of a rental agreement, require a tenant, a personal representative, a designated person or any lienholder or owner to waive any right provided by this section.

(24) Until personal property is conclusively presumed to be abandoned under subsection (9) of this section, a landlord does not have a lien pursuant to ORS 87.152 for storing the personal property. [Formerly 91.840; 1993 c.18 §15; 1993 c.369 §14; 1995 c.559 §31; 1997 c.577 §25; 1999 c.603 §28; 2001 c.44 §1; 2001 c.445 §165; 2001 c.596 §35]

Note: For transition provisions regarding secured transactions, see notes under 79.0628.

90.426 [1995 c.758 §3; repealed by 1997 c.577 §50]

90.427 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.

(3) 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.

(4) 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. In addition, the landlord may recover from the tenant any actual damages resulting from the tenant holding over, including the value of any rent accruing from the expiration or termination of the rental agreement until the landlord knows or should know that the tenant has relinquished possession to the landlord. If the landlord consents to the tenant's continued occupancy, ORS 90.240 (5) applies.

(5) Subsections (1) and (2) of this section shall not apply to a month-to-month tenancy subject to ORS 90.429 or other tenancy created by a rental agreement subject to ORS 90.505 to 90.840. [Formerly 90.900; 1999 c.603 §29; 1999 c.676 §17]

90.429 Termination of tenancy for certain rented spaces not covered by ORS 90.505 to 90.840. If a tenancy consists of rented space for a manufactured dwelling or floating home that is owned by the tenant, but the tenancy is not subject to ORS 90.505 to 90.840 because the space is not in a facility, the landlord may terminate a month-to-month tenancy without a cause specified in ORS 90.400 only by delivering a written notice of termination to the tenant not less than 180 days before the termination date designated in that notice. [Formerly 90.905; 1999 c.676 §18]

90.430 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. [Formerly 91.845]

90.435 Limitation on recovery of possession of premises. A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful 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, relinquishment or as permitted in this chapter. [Formerly 91.850; 1999 c.603 §30]

MISCELLANEOUS

90.450 Right of city to recover from owner for costs of relocating tenant due to condemnation; defense. (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 the 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 terminate a rental agreement because of the receipt of the notice required by subsection (3) of this section except for the reasons set forth in ORS 90.385 (4). The owner is not liable for tenant relocation costs if the termination is for the reasons set forth in ORS 90.385 (4)(b).

(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. [Formerly 90.940; 1997 c.303 §5; 1999 c.603 §31]

90.475 Termination by tenant due to service with Armed Forces. (1) A tenant may terminate a rental agreement upon written notice if the tenant provides the landlord with proof of official orders showing that the tenant is:

(a) Enlisting for active service in the Armed Forces of the United States;

(b) Serving as a member of a National Guard or other reserve component or an active service component of the Armed Forces of the United States and ordered to active service outside the area for a period that will exceed 90 days;

(c) Terminating active service in the Armed Forces of the United States; or

(d) A member of the Public Health Service of the United States Department of Health and Human Services detailed by proper authority for duty with the Army or Navy of the United States and:

(A) Ordered to active service outside the area for a period that will exceed 90 days; or

(B) Terminating the duty and moving outside the area within the period that the member is entitled by federal law to the storage or shipment of household goods.

(2) As used in subsection (1) of this section, "Armed Forces of the United States" means the Air Force, Army, Coast Guard, Marine Corps or Navy of the United States.

(3) A termination of a rental agreement under this section is effective on the earlier of:

(a) A date determined under the provisions of any applicable federal law; or

(b) The later of:

(A) 30 days after delivery of the notice;

(B) 30 days before the earliest reporting date on orders for active service;

(C) A date specified in the notice; or

(D) 90 days before the effective date of the orders if terminating duty described under subsection (1)(d)(B) of this section or terminating any active service described in this section.

(4) Notwithstanding ORS 90.300 (5)(a), 90.302 (3)(d) and 90.430, a tenant who terminates a lease under subsection (1) of this section is not:

(a) Subject to a penalty, fee, charge or loss of deposit because of the termination; or

(b) Liable for any rent beyond the effective date of the termination as determined under subsection (3) of this section. [1999 c.276 §2]

Note: Section 3, chapter 276, Oregon Laws 1999, provides:

Sec. 3. Section 2 of this 1999 Act [90.475] applies to rental agreements entered into, extended or renewed on or after the effective date of this 1999 Act [June 18, 1999]. [1999 c.276 §3]

90.500 [Formerly 91.868; 1991 c.844 §4; 1993 c.580 §2; repealed by 1995 c.559 §58]

MANUFACTURED DWELLING AND FLOATING HOME SPACES

(General Provisions)

90.505 "Rent a space for a manufactured dwelling or floating home" defined; application of statutes. (1) As used in ORS 90.505 to 90.840, "rent a space for a manufactured dwelling or floating home," or similar wording, means a transaction creating a rental agreement in which the owner of a manufactured dwelling or floating home secures the right to locate the dwelling or home on the real property of another in a facility for use as a residence in return for value, and in which the owner of the manufactured dwelling or floating home retains no interest in the real property at the end of the transaction.

(2) Unless otherwise provided, ORS 90.100 to 90.450 apply to rental agreements that are subject to ORS 90.505 to 90.840. However, to the extent of inconsistency, the applicable provisions of ORS 90.505 to 90.840 control over the provisions of ORS 90.100 to 90.450. [Formerly 91.873; 1991 c.844 §5; 1999 c.676 §19]

90.510 Statement of policy; rental agreement; rules and regulations; utility or service charge; remedies. (1) Every landlord who rents a space for a manufactured dwelling or floating home shall provide a written statement of policy to prospective and existing tenants. The purpose of the statement of policy is to provide disclosure of the landlord's policies to prospective tenants and to existing tenants who have not previously received a statement of policy. The statement of policy is not a part of the rental agreement. The statement of policy shall provide all of the following information in summary form:

(a) The location and approximate size of the space to be rented.

(b) The federal fair-housing age classification and present zoning that affect the use of the rented space.

(c) The facility policy regarding rent adjustment and a rent history for the space to be rented. The rent history must, at a minimum, show the rent amounts on January 1 of each of the five preceding calendar years or during the length of the landlord's ownership, leasing or subleasing of the facility, whichever period is shorter.

(d) All personal property, services and facilities to be provided by the landlord.

(e) All installation charges imposed by the landlord and installation fees imposed by government agencies.

(f) The facility policy regarding rental agreement termination including, but not limited to, closure of the facility.

(g) The facility policy regarding facility sale.

(h) The facility policy regarding informal dispute resolution.

(i) Utilities and services available, the person furnishing them and the person responsible for payment.

(j) If a tenants' association exists for the facility, a one-page summary about the tenants' association that shall be provided to the landlord by the tenants' association.

(k) Any facility policy regarding the removal of a manufactured dwelling, including a statement that removal requirements may impact the market value of a dwelling.

(2) The rental agreement and the facility rules and regulations shall be attached as an exhibit to the statement of policy. If the recipient of the statement of policy is a tenant, the rental agreement attached to the statement of policy shall be a copy of the agreement entered by the landlord and tenant.

(3)(a) Prospective tenants shall receive a copy of the statement of policy before signing a rental agreement;

(b) Existing tenants who have not previously received a copy of the statement of policy and who are on month-to-month rental agreements shall receive a copy of the statement of policy at the time a 90-day notice of a rent increase is issued; and

(c) All other existing tenants who have not previously received a copy of the statement of policy shall receive a copy of the statement of policy upon the expiration of their rental agreement and before signing a new agreement.

(4) Every landlord who rents a space for a manufactured dwelling or floating home shall provide a written rental agreement, except as provided by ORS 90.710 (2)(d), that shall be signed by the landlord and tenant and that cannot be unilaterally amended by one of the parties to the contract except by:

(a) Mutual agreement of the parties;

(b) Actions pursuant to ORS 90.530 or 90.600; or

(c) Those provisions required by changes in statute or ordinance.

(5) The agreement required by subsection (4) of this section shall specify:

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

(b) The federal fair-housing age classification;

(c) The rent per month;

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

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

(f) Improvements that the tenant may or must 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 manufactured dwelling or floating home as a tenant in the event the tenant elects to sell the home. Those conditions shall be in conformance with state and federal law and may include, but are not limited to, conditions as to pets, number of occupants and screening or admission criteria;

(i) That the tenant may not sell the tenant's manufactured dwelling or floating home to a person who intends to leave the manufactured dwelling or floating home on the rental space until the landlord has accepted the person as a tenant;

(j) The term of the tenancy;

(k) The process by which the rental agreement or rules and regulations may be changed, which shall identify that the rules and regulations may be changed with 60 days' notice unless tenants of at least 51 percent of the eligible spaces file an objection within 30 days; and

(L) The process by which notices shall be given by either landlord or tenant.

(6) Every landlord who rents a space for a manufactured dwelling or floating home shall provide rules and regulations concerning the tenant's use and occupancy of the premises. A violation of the rules and regulations may be cause for termination of a rental agreement. However, this subsection does not create a presumption that all rules and regulations are identical for all tenants at all times. A rule or regulation shall be enforceable against the tenant only if:

(a) The rule or regulation:

(A) Promotes the convenience, safety or welfare of the tenants;

(B) Preserves the landlord's property from abusive use; or

(C) Makes a fair distribution of services and facilities held out for the general use of the tenants.

(b) The rule or regulation:

(A) Is reasonably related to the purpose for which it is adopted and is reasonably applied;

(B) Is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform the tenant of what the tenant shall or shall not do to comply; and

(C) Is not for the purpose of evading the obligations of the landlord.

(7)(a) A landlord who rents a space for a manufactured dwelling or floating home may adopt a rule or regulation regarding occupancy guidelines. If adopted, an occupancy guideline in a facility shall be based on reasonable factors and shall not be more restrictive than limiting occupancy to two people per bedroom.

(b) As used in this subsection:

(A) "Reasonable factors" may include but are not limited to:

(i) The size of the dwelling.

(ii) The size of the rented space.

(iii) Any discriminatory impact for reasons identified in ORS 659A.421.

(iv) Limitations placed on utility services governed by a permit for water or sewage disposal.

(B) "Bedroom" means a room that is intended to be used primarily for sleeping purposes and does not include bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas.

(8)(a) If a written rental agreement so provides, a landlord may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for utility or service provided directly to the tenant's dwelling unit or to a common area available to the tenant as part of the tenancy. A utility or service charge that shall be assessed to a tenant for a common area must be described in the written rental agreement separately and distinctly from such a charge for the tenant's dwelling unit. A landlord may not increase the utility or service charge to the tenant by adding any costs of the landlord, such as a handling or administrative charge, other than those costs billed to the landlord by the provider for utilities or services as provided by this subsection.

(b) A utility or service charge is not rent or a fee. Nonpayment of a utility or service charge shall not constitute grounds for termination of a rental agreement for nonpayment of rent pursuant to ORS 90.400 (2), but shall constitute grounds for termination of a rental agreement for cause pursuant to ORS 90.630.

(c) As used in this section, "utility or service" has the meaning given that term in ORS 90.315 (1).

(9) Intentional and deliberate failure of the landlord to comply with subsections (1) to (3) of this section is cause for suit or action to remedy the violation or to recover actual damages. The prevailing party is entitled to reasonable attorney fees and court costs.

(10) A receipt signed by the potential tenant or tenants for documents required to be delivered by the landlord pursuant to subsections (1) to (3) of this section is a defense for the landlord in an action against the landlord for nondelivery of the documents.

(11) A suit or action arising under subsection (9) of this section must be commenced within one year after the discovery or identification of the alleged violation.

(12) Every landlord who publishes a directory of tenants and tenant services must include a one-page summary regarding any tenants' association. The tenants' association shall provide the summary to the landlord. [Formerly 91.875; 1991 c.844 §6; 1993 c.580 §3; 1995 c.559 §34; 1997 c.304 §3; 1997 c.305 §1; 1997 c.577 §26; 1999 c.603 §32; 1999 c.676 §20; 2001 c.596 §35a]

Note: See note under 90.302.

90.512 Definitions for ORS 90.514 and 90.518. As used in ORS 90.514 and 90.518:

(1) "Buyer" has the meaning given that term in ORS 72.1030.

(2) "Improvements" has the meaning given that term in ORS 646.400.

(3) "Provider" means a contractor licensed under ORS chapter 701 who adds improvements to a manufactured dwelling park.

(4) "Statement of estimated costs" means a written list of the charges, fees, services, goods and accessories that a provider knows or should know are associated with the making of an improvement contracted by the provider and the total estimated cost to the buyer for the improvement. [2001 c.282 §2; 2001 c.969 §4]

90.514 Disclosure to prospective tenant of improvements required under rental agreement. (1) Before a prospective tenant signs a rental agreement for space in a manufactured dwelling park, the landlord must provide the prospective tenant with a written statement that discloses the improvements that the park will require under the rental agreement. The written statement must be in the format developed by the Attorney General pursuant to ORS 90.516 and include at least the following:

(a) A notice that the tenant may select the provider of an improvement.

(b) Separately stated and identifiable information for each required improvement that specifies:

(A) The dimensions, materials and finish for improvements to be constructed;

(B) The installation charges imposed by the landlord and the installation fees imposed by government agencies;

(C) The system development charges to be paid by the tenant; and

(D) The site preparation requirements and restrictions, including, but not limited to, requirements and restrictions on the use of plants and landscaping.

(c) Identification of the improvements that belong to the tenant and the improvements that must remain with the manufactured dwelling park.

(2) Except as provided in ORS 41.740, a written statement provided under this section is considered to contain all of the terms relating to improvements that a prospective tenant must make under the rental agreement. There may be no evidence of the terms of the written statement other than the contents of the written statement. [2001 c.282 §3]

90.515 [1991 c.844 §2; repealed by 1995 c.559 §58]

90.516 Model statement for disclosure of improvements required under rental agreement; rules. The Attorney General, by rule, shall adopt a model written statement for use by manufactured dwelling park landlords pursuant to ORS 90.514. [2001 c.282 §5]

90.518 Provider statement of estimated cost of improvements. (1) A provider hired to make improvements shall give the buyer of the provider's services a statement of estimated costs for the improvements contracted by the provider prior to the date that the manufactured dwelling is delivered to a manufactured dwelling park.

(2) If a provider fails to give a statement of estimated costs or knowingly fails to give a complete statement of estimated costs, a buyer who does not have actual notice of the total cost for an improvement and suffers an ascertainable loss due to the failure by the provider may bring an action to recover the greater of actual damages or $200.

(3) Except as provided in ORS 41.740, a statement of estimated costs given under this section is considered to contain all of the terms of the agreement between the buyer and the provider hired to make improvements. There may be no evidence of the terms of the statement of estimated costs other than the contents of the statement of estimated costs. [2001 c.282 §4]

90.525 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 facility shall require the prospective tenant to purchase a manufactured dwelling or floating home from a particular dealer or one of a group of dealers.

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

(4) No manufactured dwelling or floating home dealer shall require, as a condition of sale, a purchaser to rent a space for a manufactured dwelling or floating home in a particular facility or one of a group of facilities. [Formerly 91.895; 1991 c.844 §7]

90.528 Use of common areas or facilities. (1) A landlord who rents a space for a manufactured dwelling may require a deposit for the use of common areas or facilities by a tenant or tenants. The amount of any deposit charged for the use of common areas or facilities shall be reasonably based on the potential cleaning cost or other costs associated with the use of the area or facility. Conditions for return of a deposit shall be stated in writing and made available to the tenant or tenants placing the deposit.

(2) No tenant shall be required to acquire a bond or insurance policy as a precondition for the use of common areas or facilities.

(3) A landlord who rents a space for a manufactured dwelling shall not prohibit use of a common area or facility if the purpose of the prohibition is to prevent the use of the area or facility for tenant association meetings, tenant organizing meetings or other lawful tenant activities. [1997 c.303 §§3,4]

Note: 90.528 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 90 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

90.530 Pets in facilities; rental agreements. (1) Notwithstanding a change in the rules and regulations of a manufactured dwelling or floating home facility that would prohibit pets, a tenant may keep a pet that is otherwise legally living with the tenant at the time the landlord provides notice of the proposed change to the rules and regulations of the facility. The tenant may replace a pet with a pet similar to the one living with the tenant at the time the landlord provided notice of the proposed change. New rules and regulations that regulate the activities of pets shall apply to all pets in the facility, including those pets that were living in the facility prior to the adoption of the new rules or regulations.

(2) A rental agreement between a landlord renting a space for a manufactured dwelling or floating home and a tenant renting the space must comply with the following:

(a) A landlord may not charge a one-time, monthly or other periodic amount based on the tenant's possession of a pet.

(b) A landlord may provide written rules regarding control, sanitation, number, type and size of pets. The tenant shall sign a pet agreement and provide proof of liability insurance. The tenant shall make the landlord a co-insured for the purpose of receiving notice in the case of cancellation of the insurance.

(c) A landlord may charge a tenant an amount for a violation of a written pet agreement or rules relating to pets not to exceed $50 for each violation. [1997 c.304 §2; 2001 c.596 §35b]

90.540 Permissible forms of tenancy; minimum fixed term. A rental agreement for a space for a manufactured dwelling or floating home must be a month-to-month or fixed term tenancy. A rental agreement for a fixed term tenancy must have a duration or term of at least two years. [2001 c.596 §23]

90.545 Fixed term tenancy expiration; renewal or extension; new rental agreements; tenant refusal of new rental agreement; written storage agreement upon termination of tenancy. (1) Except if renewed or extended as provided by this section, a fixed term tenancy for space for a manufactured dwelling or floating home shall, upon reaching its ending date, automatically renew as a month-to-month tenancy having the same terms and conditions, other than duration and rent increases pursuant to ORS 90.600, unless the tenancy is terminated pursuant to ORS 90.380 (5)(b), 90.400 (2), (3) or (9), 90.630 or 90.632.

(2) To renew or extend a fixed term tenancy for another term, of any duration that is consistent with ORS 90.540, the landlord shall submit the proposed new rental agreement to the tenant at least 60 days prior to the ending date of the term. The landlord shall include with the proposed agreement a written statement that summarizes any new or revised terms, conditions, rules or regulations.

(3) Notwithstanding ORS 90.610 (3), a landlord's proposed new rental agreement may include new or revised terms, conditions, rules or regulations, if the new or revised terms, conditions, rules or regulations:

(a)(A) Fairly implement a statute or ordinance adopted after the creation of the existing agreement; or

(B) Are the same as those offered to new or prospective tenants in the facility at the time the proposed agreement is submitted to the tenant and for the six-month period preceding the submission of the proposed agreement or, if there have been no new or prospective tenants during the six-month period, are the same as are customary for the rental market;

(b) Are consistent with the rights and remedies provided to tenants under this chapter, including the right to keep a pet pursuant to ORS 90.530;

(c) Do not relate to the age, size, style, construction material or year of construction of the manufactured dwelling or floating home contrary to ORS 90.632 (2); and

(d) Do not require an alteration of the manufactured dwelling or floating home or alteration or new construction of an accessory building or structure.

(4) A tenant shall accept or reject a landlord's proposed new rental agreement at least 30 days prior to the ending of the term by giving written notice to the landlord.

(5) If a landlord fails to submit a proposed new rental agreement as provided by subsection (2) of this section, the

tenancy renews as a month-to-month tenancy as provided by subsection (1) of this section.

(6) If a tenant fails to accept or unreasonably rejects a landlord's proposed new rental agreement as provided by subsection (4) of this section, the fixed term tenancy terminates on the ending date without further notice and the landlord may take possession by complying with ORS 105.105 to 105.168.

(7) If a tenancy terminates under conditions described in subsection (6) of this section, and the tenant surrenders or delivers possession of the premises to the landlord prior to the filing of an action pursuant to ORS 105.110, the tenant has the right to enter into a written storage agreement with the landlord, with the tenant having the same rights and responsibilities as a lienholder under ORS 90.675 (18), except that the landlord may limit the term of the storage agreement to not exceed six months. Unless the parties agree otherwise, the storage agreement must commence upon the date of the termination of the tenancy. The rights under ORS 90.675 of any lienholder are delayed until the end of the tenant storage agreement. [2001 c.596 §24]

(Landlord and Tenant Relations)

90.600 Increases in rent; notice; meeting with tenants; effect of failure to meet. (1) If a rental agreement is a month-to-month tenancy to which ORS 90.505 to 90.840 apply, the landlord may not increase the rent unless the landlord gives notice in writing to each affected tenant at least 90 days prior to the effective date of the rent increase specifying the amount of the increase, the amount of the new rent and the date on which the increase becomes effective.

(2) This section does not create a right to increase rent that does not otherwise exist.

(3) This section does not require a landlord to compromise, justify or reduce a rent increase that the landlord otherwise is entitled to impose.

(4) Neither ORS 90.510 (1), requiring a landlord to provide a statement of policy, nor ORS 90.510 (4), requiring a landlord to provide a written rental agreement, create a basis for tenant challenge of a rent increase, judicially or otherwise.

(5)(a) The tenants who reside in a facility may elect one committee of seven or fewer members in a facility-wide election to represent the tenants. One tenant of record for each rented space may vote in the election. Upon written request from the tenants' committee, the landlord or a representative of the landlord shall meet with the committee within 10 to 30 days of the request to discuss the tenants' nonrent concerns regarding the facility. Unless the parties agree otherwise, upon a request from the tenants' committee, a landlord or representative of the landlord shall meet with the tenants' committee at least once, but not more than twice, each calendar year. The meeting shall be held on the premises if the facility has suitable meeting space for that purpose, or at a location reasonably convenient to the tenants. After the meeting, the tenants' committee shall send a written summary of the issues and concerns addressed at the meeting to the landlord. The landlord or the landlord's representative shall make a good faith response in writing to the committee's summary within 60 days.

(b) The tenants' committee is entitled to informal dispute resolution in accordance with ORS 446.547 if the landlord or landlord's representative fails to meet with the tenants' committee or fails to respond in good faith to the written summary as required by paragraph (a) of this subsection. [Formerly 91.869; 1991 c.844 §8; 1995 c.559 §35; 1997 c.577 §26a; 1999 c.676 §21; 2001 c.596 §36]

90.605 Persons authorized to receive notice and demands on landlord's behalf; written notice to change designated person. Any person authorized by the landlord of a facility to receive notices and demands on the landlord's behalf retains this authority until the authorized person is notified otherwise. Written notice of any change in the name or address of the person authorized to receive notices and demands shall be delivered to the residence of each person who rents a space for a manufactured dwelling or floating home or, if specified in writing by the tenant, to another specified address. [Formerly 91.935; 1991 c.844 §11]

90.610 Informal dispute resolution; notice of proposed change in rule or regulation; objection to change by tenant. (1) As used in this section, "eligible space" means each space in the facility as long as:

(a) The space is rented to a tenant and the tenancy is subject to ORS 90.505 to 90.840; and

(b) The tenant who occupies the space has not:

(A) Previously agreed to a rental agreement that includes the proposed rule or regulation change; or

(B) Become subject to the proposed rule or regulation change as a result of a change in rules or regulations previously adopted in a manner consistent with this section.

(2) Notwithstanding ORS 90.245 (1), the parties to a rental agreement to which ORS 90.505 to 90.840 applies shall provide for a process establishing informal dispute resolution of disputes that may arise concerning the rental agreement for a manufactured dwelling or floating home space.

(3) The landlord may propose changes in rules or regulations, including changes that make a substantial modification of the landlord's bargain with a tenant, by giving written notice of the proposed rule or regulation change, and unless tenants of at least 51 percent of the eligible spaces in the facility object in writing within 30 days of the date the notice was served, the change shall become effective for all tenants of those spaces on a date not less than 60 days after the date that the notice was served by the landlord.

(4) One tenant of record per eligible space may object to the rule or regulation change through either:

(a) A signed and dated written communication to the landlord; or

(b) A petition format that is signed and dated by tenants of eligible spaces and that includes a copy of the proposed rule or regulation and a copy of the notice.

(5) If a tenant of an eligible space signs both a written communication to the landlord and a petition under subsection (4) of this section, or signs more than one written communication or petition, only the latest signature of the tenant may be counted.

(6) Notwithstanding subsection (4) of this section, a proxy may be used only if a tenant has a disability that prevents the tenant from objecting to the rule or regulation change in writing.

(7) The landlord's notice of a proposed change in rules or regulations required by subsection (3) of this section must be given or served as provided in ORS 90.155 and must include:

(a) Language of the existing rule or regulation and the language that would be added or deleted by the proposed rule or regulation change; and

(b) A statement substantially in the following form, with all blank spaces in the notice to be filled in by the landlord:

NOTICE OF PROPOSED RULE
OR REGULATION CHANGE

The landlord intends to change a rule or regulation in this facility.

The change will go into effect unless tenants of at least 51 percent of the eligible spaces object in writing within 30 days. Any objection must be signed and dated by a tenant of an eligible space.

The number of eligible spaces as of the date of this notice is: _____. Those eligible spaces are (space or street identification): _____.

The last day for a tenant of an eligible space to deliver a written objection to the landlord is _____ (landlord fill in date).

Unless tenants in at least 51 percent of the eligible spaces object, the proposed rule or regulation will go into effect on _____.

The parties may attempt to resolve disagreements regarding the proposed rule or regulation change by using the facility's informal dispute resolution process.

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(8) A good faith mistake by the landlord in completing those portions of the notice relating to the number of eligible spaces that have tenants entitled to vote or relating to space or street identification numbers does not invalidate the notice or the proposed rule or regulation change.

(9) After the effective date of the rule or regulation change, when a tenant continues to engage in an activity affected by the new rule or regulation to which the landlord objects, the landlord may give the tenant a notice of termination of the tenancy pursuant to ORS 90.630. The notice shall include a statement that the tenant may request a resolution through the facility's informal dispute resolution process by giving the landlord a written request within seven days from the date the notice was served. If the tenant requests an informal dispute resolution, the landlord may not file an action for possession pursuant to ORS 105.105 to 105.168 until 30 days after the date of the tenant's request for informal dispute resolution or the date the informal dispute resolution is complete, whichever occurs first.

(10) An agreement under this section may not require informal dispute resolution of disputes relating to:

(a) Facility closure;

(b) Facility sale; or

(c) Rent, including but not limited to amount, increase and nonpayment.

(11) ORS 90.510 (1) to (3), requiring a landlord to provide a statement of policy, do not create a basis for a tenant to demand informal dispute resolution of a rent increase. [1991 c.844 §10; 1993 c.580 §1; 1995 c.559 §36; 2001 c.596 §36a]

90.620 Termination by tenant; notice to landlord. (1) The tenant who rents a space for a manufactured dwelling or floating home may terminate a rental agreement that is a month-to-month or fixed term tenancy without cause by giving to the landlord, 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.

(2) The tenant may terminate a rental agreement that is a month-to-month or fixed term tenancy for cause pursuant to ORS 90.315, 90.360 (1), 90.365 (2), 90.375 or 90.380.

(3) A tenant may not be required to give the landlord more than 30 days' written notice to terminate. [Formerly 91.880; 1991 c.67 §15; 1993 c.18 §16; 2001 c.596 §37]

90.630 Termination by landlord; causes; notice; cure; nonpayment of rent. (1) Except as provided in subsection (4) of this section, the landlord may terminate a rental agreement that is a month-to-month or fixed term tenancy for space for a manufactured dwelling or floating 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 related to the tenant's conduct as a tenant, including but not limited to a material noncompliance with ORS 90.740;

(b) Violates a rule or rental agreement provision related to the tenant's conduct as a tenant and imposed as a condition of occupancy, including but not limited to a material noncompliance with a rental agreement regarding a program of recovery in drug and alcohol free housing; or

(c) Fails to pay a:

(A) Late charge pursuant to ORS 90.260;

(B) Fee pursuant to ORS 90.302; or

(C) Utility or service charge pursuant to ORS 90.510 (8).

(2) A violation making a tenant subject to termination under subsection (1) of this section includes a tenant's failure to maintain the space as required by law, ordinance, rental agreement or rule, but does not include the physical condition of the dwelling or home. Termination of a rental agreement based upon the physical condition of a dwelling or home shall only be as provided in ORS 90.632.

(3) 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.

(4) 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 after the date of the notice, the landlord may terminate the tenancy upon at least 20 days' written notice specifying the violation and the date of termination of the tenancy.

(5) The landlord of a facility may terminate a rental agreement that is a month-to-month or fixed term tenancy for a facility space if the facility or a portion of it that includes the space is to be closed and the land or leasehold converted to a different use, which is not required by the exercise of eminent domain or by order of state or local agencies, by:

(a) Not less than 365 days' notice in writing before the date designated in the notice for termination; or

(b) Not less than 180 days' notice in writing before the date designated in the notice for termination, if the landlord finds space acceptable to the tenant to which the tenant can move the manufactured dwelling or floating home and the landlord pays the cost of moving and set-up expenses or $3,500, whichever is less.

(6) The landlord may:

(a) Provide greater financial incentive to encourage the tenant to accept an earlier termination date than that provided in subsection (5) of this section; or

(b) Contract with the tenant for a mutually acceptable arrangement to assist the tenant's move.

(7) The Housing and Community Services Department shall adopt rules to implement the provisions of subsection (5) of this section.

(8)(a) A landlord may not increase the rent for the purpose of offsetting the payments required under this section.

(b) There shall be no increase in the rent after a notice of termination is given pursuant to this section.

(9) This section does not limit a landlord's right to terminate a tenancy for nonpayment of rent pursuant to ORS

90.400 (2) or for other cause pursuant to ORS 90.380 (5)(b), 90.400 (3) or (9) or 90.632 by complying with ORS 105.105 to 105.168.

(10) A tenancy shall terminate on the date designated in the notice and without regard to the expiration of the period for which, by the terms of the rental agreement, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

(11) Nothing in subsection (5) of this section shall prevent a landlord from relocating a floating home to another comparable space in the same facility or another facility owned by the same owner in the same city if the landlord desires or is required to make repairs, to remodel or to modify the tenant's original space.

(12)(a) Notwithstanding any other provision of this section or ORS 90.400, the landlord may terminate the rental agreement for space for a manufactured dwelling or floating home because of repeated late payment of rent by giving the tenant not less than 30 days' notice in writing before the date designated in that notice for termination and may take possession in the manner provided in ORS 105.105 to 105.168 if:

(A) The tenant has not paid the monthly rent prior to the eighth day of the rental period as described in ORS 90.400 (2)(b)(A) or the fifth day of the rental period as described in ORS 90.400 (2)(b)(B) in at least three of the preceding 12 months and the landlord has given the tenant a notice for nonpayment of rent pursuant to ORS 90.400 (2)(b) during each of those three instances of nonpayment;

(B) The landlord warns the tenant of the risk of a 30-day notice for termination with no right to correct the cause, upon the occurrence of a third notice for nonpayment of rent within a 12-month period. The warning must be contained in at least two notices for nonpayment of rent that precede the third notice within a 12-month period or in separate written notices that are given concurrent with, or a reasonable time after, each of the two notices for nonpayment of rent; and

(C) The 30-day notice of termination states facts sufficient to notify the tenant of the cause for termination of the tenancy and is given to the tenant concurrent with or after the third or a subsequent notice for nonpayment of rent.

(b) Notwithstanding subsection (2) of this section, a tenant who receives a 30-day notice of termination pursuant to this subsection shall have no right to correct the cause for the notice.

(c) The landlord may give a copy of the notice required by paragraph (a) of this subsection to any lienholder of the manufactured dwelling or floating home by first class mail with certificate of mailing or by any other method allowed by ORS 90.150 (2) and (3). A landlord is not liable to a tenant for any damages incurred by the tenant as a result of the landlord giving a copy of the notice in good faith to a lienholder. A lienholder's rights and obligations regarding an abandoned manufactured dwelling or floating home shall be as provided under ORS 90.675. [Formerly 91.886; 1991 c.844 §12; 1995 c.559 §37; 1995 c.633 §1; 1999 c.676 §22; 2001 c.596 §38]

90.632 Termination of tenancy due to physical condition of manufactured dwelling or floating home; correction of condition by tenant. (1) A landlord may terminate a month-to-month or fixed term rental agreement and require the tenant to remove a manufactured dwelling or floating home from a facility, due to the physical condition of the manufactured dwelling or floating home, only by complying with this section and ORS 105.105 to 105.168. A termination shall include removal of the dwelling or home.

(2) A landlord shall not require removal of a manufactured dwelling or floating home, or consider a dwelling or home to be in disrepair or deteriorated, because of the age, size, style or original construction material of the dwelling or home or because the dwelling or home was built prior to adoption of the National Manufactured Home Construction and Safety Standards Act of 1974 (42 U.S.C. 5403), in compliance with the standards of that Act in effect at that time or in compliance with the state building code as defined in ORS 455.010.

(3) Except as provided in subsection (5) of this section, if the tenant's dwelling or home is in disrepair or is deteriorated, a landlord may terminate a rental agreement and require the removal of a dwelling or home by giving to the tenant not less than 30 days' written notice before the date designated in the notice for termination.

(4) The notice required by subsection (3) of this section shall:

(a) State facts sufficient to notify the tenant of the causes or reasons for termination of the tenancy and removal of the dwelling or home;

(b) State that the tenant can avoid termination and removal by correcting the cause for termination and removal within the notice period;

(c) Describe what is required to correct the cause for termination;

(d) Describe the tenant's right to give the landlord a written notice of correction, where to give the notice and the deadline for giving the notice in order to ensure a response by the landlord, all as provided by subsection (6) of this section; and

(e) Describe the tenant's right to have the termination and correction period extended as provided by subsection (7) of this section.

(5) The tenant may avoid termination of the tenancy by correcting the cause within the period specified. However, if substantially the same condition that constituted a prior cause for termination of which notice was given recurs within 12 months after the date of the notice, the landlord may terminate the tenancy and require the removal of the dwelling or home upon at least 30 days' written notice specifying the violation and the date of termination of the tenancy.

(6) During the termination notice or extension period, the tenant may give the landlord written notice that the tenant has corrected the cause for termination. Within a reasonable time after the tenant's notice of correction, the landlord shall respond to the tenant in writing, stating whether the landlord agrees that the cause has been corrected. If the tenant's notice of correction is given at least 14 days prior to the end of the termination notice or extension period, failure by the landlord to respond as required by this subsection shall be a defense to a termination based upon the landlord's notice for termination.

(7) Except when the disrepair or deterioration creates a risk of imminent and serious harm to other dwellings, homes or persons within the facility, the 30-day period provided for the tenant to correct the cause for termination and removal shall be extended by at least:

(a) An additional 60 days if:

(A) The necessary correction involves exterior painting, roof repair, concrete pouring or similar work and the weather prevents that work during a substantial portion of the 30-day period; or

(B) The nature or extent of the correction work is such that it cannot reasonably be completed within 30 days because of factors such as the amount of work necessary, the type and complexity of the work and the availability of necessary repair persons; or

(b) An additional six months if the disrepair or deterioration has existed for more than the preceding 12 months with the landlord's knowledge or acceptance as described in ORS 90.415 (1).

(8) In order to have the period for correction extended as provided in subsection (7) of this section, a tenant must give the landlord written notice describing the necessity for an extension in order to complete the correction work. The notice must be given a reasonable amount of time prior to the end of the notice for termination period.

(9) A tenancy shall terminate on the date designated in the notice and without regard to the expiration of the period for which, by the terms of the rental agreement, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

(10) This section does not limit a landlord's right to terminate a tenancy for nonpayment of rent pursuant to ORS 90.400 (2) or for other cause pursuant to ORS 90.380 (5)(b), 90.400 (3) or (9) or 90.630 by complying with ORS 105.105 to 105.168.

(11) A landlord may give a copy of the notice for termination required by this section to any lienholder of the dwelling or home, by first class mail with certificate of mailing or by any other method allowed by ORS 90.150 (2) and (3). A landlord is not liable to a tenant for any damages incurred by the tenant as a result of the landlord giving a copy of the notice in good faith to a lienholder.

(12) When a tenant has been given a notice for termination pursuant to this section and has subsequently abandoned the dwelling or home as described in ORS 90.675 (2), any lienholder shall have the same rights as provided by ORS 90.675, including the right to correct the cause of the notice, within the 90-day period provided by ORS 90.675 (18) notwithstanding the expiration of the notice period provided by this section for the tenant to correct the cause. [1999 c.603 §2b and 1999 c.676 §4; 2001 c.596 §39]

Note: Section 2c, chapter 603, Oregon Laws 1999, provides:

Sec. 2c. Section 2b of this 1999 Act [90.632] applies to month-to-month and fixed term manufactured dwelling or floating home tenancies entered into prior to, on or after the effective date of this 1999 Act [October 23, 1999]. [1999 c.603 §2c]

Note: Section 5, chapter 676, Oregon Laws 1999, provides:

Sec. 5. Section 4 of this 1999 Act [90.632] and the amendments to ORS 90.680 by section 25 of this 1999 Act apply to month-to-month and fixed term manufactured dwelling or floating home tenancies entered into prior to, on or after the effective date of this 1999 Act [October 23, 1999]. [1999 c.676 §5]

90.635 Closure of facility; notice to tenant of tax credit; rules. (1) If a facility is closed or a portion of a facility

is closed, resulting in the termination of the rental agreement between the landlord of the facility and a tenant renting space for a manufactured dwelling, whether because of the exercise of eminent domain, by order of the state or local agencies, or as provided under ORS 90.630 (5), the landlord shall provide notice to the tenant of the tax credit provided under ORS 316.153. The notice shall state the eligibility requirements for the credit, information on how to apply for the credit and any other information required by the Manufactured Dwelling Park Ombudsman by rule.

(2) The notice described under subsection (1) of this section shall be sent to a tenant affected by a facility closure on or before:

(a) The date notice of rental termination must be given to the tenant under ORS 90.630 (5), if applicable; or

(b) In the event of facility closure by exercise of eminent domain or by order of a state or local agency, within 15 days of the date the landlord received notice of the closure.

(3) The landlord shall forward to the Manufactured Dwelling Park Ombudsman a list of the names and addresses of tenants to whom notice under this section has been sent.

(4) The Manufactured Dwelling Park Ombudsman may adopt rules to implement this section, including rules specifying the form and content of the notice described under this section. [1995 c.746 §§47,48; 1997 c.577 §26b; 1999 c.676 §23; 2001 c.596 §45]

Note: 90.635 (4) was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 90 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

90.670 [Formerly 91.915; 1991 c.844 §13; 1993 c.580 §5; repealed by 1997 c.577 §50]

(Ownership Change)

90.675 Disposition of manufactured dwelling or floating home left in facility; notice; sale; tax cancellation; storage agreements; hazardous property. (1) As used in this section:

(a) "Current market value" means the amount in cash, as determined by the county assessor, that could reasonably be expected to be paid for personal property by an informed buyer to an informed seller, each acting without compulsion in an arms-length transaction occurring on the assessment date for the tax year or on the date of a subsequent reappraisal by the county assessor.

(b) "Dispose of the personal property" means that, if reasonably appropriate, the landlord may throw away the property or may give it without consideration to a nonprofit organization or to a person unrelated to the landlord. The landlord may not retain the property for personal use or benefit.

(c) "Lienholder" means any lienholder of abandoned personal property, if the lien is of record or the lienholder is actually known to the landlord.

(d) "Of record" means:

(A) For a manufactured dwelling, that a security interest has been properly recorded with the Department of Transportation pursuant to ORS 802.200 (1)(a)(A) and 803.097 for a dwelling registered and titled by the department pursuant to ORS 820.500.

(B) For a floating home, that a security interest has been properly recorded with the State Marine Board pursuant to ORS 830.740 to 830.755 for a home registered and titled with the board pursuant to ORS 830.715.

(e) "Personal property" means only a manufactured dwelling or floating home located in a facility and subject to ORS 90.505 to 90.840. "Personal property" does not include goods left inside a manufactured dwelling or floating home or left upon a rented space and subject to disposition under ORS 90.425.

(2) A landlord may not store, sell or dispose of abandoned personal property except as provided by this section. This section governs the rights and obligations of landlords, tenants and any lienholders in any personal property abandoned or left upon the premises by the tenant or any lienholder in the following circumstances:

(a) The tenancy has ended by termination or expiration of a rental agreement or by relinquishment or abandonment of the premises and the landlord reasonably believes under all the circumstances that the tenant has left the personal property upon the premises with no intention of asserting any further claim to the premises or to the personal 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 personal property pursuant to ORS 105.165.

(3) Prior to selling or disposing of the tenant's personal property under this section, the landlord must give a written notice to the tenant that shall be:

(a) Personally delivered to the tenant; or

(b) Sent by first class mail addressed and mailed to the tenant at:

(A) The premises;

(B) Any post-office box held by the tenant and actually known to the landlord; and

(C) The most recent forwarding address if provided by the tenant or actually known to the landlord.

(4)(a) A landlord shall also give a copy of the notice described in subsection (3) of this section to:

(A) Any lienholder of the personal property;

(B) The tax collector of the county where the personal property is located; and

(C) The assessor of the county where the personal property is located.

(b) The landlord shall give the notice copy required by this subsection by personal delivery or first class mail, except that for any lienholder, mail service shall be both by first class mail and by certified mail with return receipt requested.

(c) A notice to lienholders under paragraph (a)(A) of this subsection must be sent to each lienholder at each address:

(A) Actually known to the landlord;

(B) Of record; and

(C) Provided to the landlord by the lienholder in a written notice that identifies the personal property subject to the lien and that was sent to the landlord by certified mail with return receipt requested within the preceding five years. The notice must identify the personal property by describing the physical address of the property.

(5) The notice required under subsection (3) of this section shall state that:

(a) The personal property left upon the premises is considered abandoned;

(b) The tenant or any lienholder must contact the landlord by a specified date, as provided in subsection (6) of this section, to arrange for the removal of the abandoned personal property;

(c) The personal property is stored on the rented space;

(d) The tenant or any lienholder, except as provided by subsection (17) of this section, may arrange for removal of the personal property by contacting the landlord at a described telephone number or address on or before the specified date;

(e) The landlord shall make the personal property available for removal by the tenant or any lienholder, except as provided by subsection (17) of this section, by appointment at reasonable times;

(f) If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of this section, the landlord may require payment of storage charges, as provided by subsection (7)(b) of this section, prior to releasing the personal property to the tenant or any lienholder;

(g) If the personal property is considered to be abandoned pursuant to subsection (2)(c) of this section, the landlord may not require payment of storage charges prior to releasing the personal property;

(h) If the tenant or any lienholder fails to contact the landlord by the specified date or fails to remove the personal property within 30 days after that contact, the landlord may sell or dispose of the personal property. If the landlord reasonably believes the county assessor will determine that the current market value of the personal property is $8,000 or less, and the landlord intends to dispose of the property if it is not claimed, the notice shall state that belief and intent; and

(i) If applicable, there is a lienholder that has a right to claim the personal property, except as provided by subsection (17) of this section.

(6) For purposes of subsection (5) of this section, the specified date by which a tenant or lienholder must contact a landlord to arrange for the disposition of abandoned personal property shall be not less than 45 days after personal delivery or mailing of the notice.

(7) After notifying the tenant as required by subsection (3) of this section, the landlord:

(a) Shall store the abandoned personal property of the tenant on the rented space and shall exercise reasonable care for the personal property; and

(b) Is entitled to reasonable or actual storage charges and costs incidental to storage or disposal. The storage charge shall be no greater than the monthly space rent last payable by the tenant.

(8) If a tenant or lienholder, upon the receipt of the notice provided by subsection (3) or (4) of this section or otherwise, responds by actual notice to the landlord on or before the specified date in the landlord's notice that the tenant or lienholder intends to remove the personal property from the premises, the landlord must make that personal property available for removal by the tenant or lienholder by appointment at reasonable times during the next 30 days, subject to subsection (17) of this section. If the personal property is considered to be abandoned pursuant to subsection

(2)(a) or (b) of this section, but not pursuant to subsection (2)(c) of this section, the landlord may require payment of storage charges, as provided in subsection (7)(b) of this section, prior to allowing the tenant or lienholder to remove the personal property. Acceptance by a landlord of such payment does not operate to create or reinstate a tenancy or create a waiver pursuant to ORS 90.415.

(9) Except as provided in subsections (17) to (19) of this section, if the tenant or lienholder does not respond within the time provided by the landlord's notice, or the tenant or lienholder does not remove the personal property within 30 days after responding to the landlord or by any date agreed to with the landlord, whichever is later, the personal property is conclusively presumed to be abandoned. The tenant and any lienholder that have been given notice pursuant to subsection (3) or (4) of this section shall, except with regard to the distribution of sale proceeds pursuant to subsection (12) of this section, have no further right, title or interest to the personal property and may not claim or sell the property.

(10) If the personal property is presumed to be abandoned under subsection (9) of this section, the landlord then may:

(a) Sell the personal property at a public or private sale, provided that prior to the sale:

(A) The landlord may seek to transfer the certificate of title and registration to the personal property by complying with the requirements of the appropriate state agency; and

(B) The landlord shall:

(i) Place a notice in a newspaper of general circulation in the county in which the personal property is located. The notice shall state:

(I) That the personal property is abandoned;

(II) The tenant's name;

(III) The address and any space number where the personal property is located, and if actually known to the landlord, the plate, registration or other identification number as noted on the title;

(IV) Whether the sale is by private bidding or public auction;

(V) Whether the landlord is accepting sealed bids and, if so, the last date on which bids will be accepted; and

(VI) The name and telephone number of the person to contact to inspect the personal property;

(ii) At a reasonable time prior to the sale, give a copy of the notice required by sub-subparagraph (i) of this subparagraph to the tenant and to any lienholder, by personal delivery or first class mail, except that for any lienholder, mail service shall be by first class mail with certificate of mailing;

(iii) Obtain an affidavit of publication from the newspaper to show that the notice required under sub-subparagraph (i) of this subparagraph ran in the newspaper at least one day in each of two consecutive weeks prior to the date scheduled for the sale or the last date bids will be accepted; and

(iv) Obtain written proof from the county that all property taxes on the personal property have been paid or, if not paid, that the county has authorized the sale, with the sale proceeds to be distributed pursuant to subsection (12) of this section; or

(b) Destroy or otherwise dispose of the personal property if the landlord determines from the county assessor that the current market value of the property is $8,000 or less.

(11)(a) A public or private sale authorized by this section shall be conducted consistent with the terms listed in subsection (10)(a)(B)(i) of this section. Every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable.

(b) If there is no buyer at a sale described under paragraph (a) of this subsection, the personal property is considered to be worth $8,000 or less, regardless of current market value, and the landlord shall destroy or otherwise dispose of the personal property.

(12)(a) The landlord may deduct from the proceeds of the sale:

(A) The reasonable or actual cost of notice, storage and sale; and

(B) Unpaid rent.

(b) After deducting the amounts listed in paragraph (a) of this subsection, the landlord shall remit the remaining proceeds, if any, to the county tax collector to the extent of any unpaid property taxes owed on the dwelling or home.

(c) After deducting the amounts listed in paragraphs (a) and (b) of this subsection, if applicable, the landlord shall remit the remaining proceeds, if any, to any lienholder to the extent of any unpaid balance owed on the lien on the personal property.

(d) After deducting the amounts listed in paragraphs (a), (b) and (c) of this subsection, if applicable, the landlord shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting.

(e) 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.

(13) The county tax collector shall cancel all unpaid property taxes as provided under ORS 311.790 only under circumstances described in paragraph (a), (b), (c) or (d) of this subsection:

(a) The landlord disposes of the personal property after a determination described in subsection (10)(b) of this section.

(b) There is no buyer of the personal property at a sale described under subsection (11) of this section.

(c)(A) There is a buyer of the personal property at a sale described under subsection (11) of this section;

(B) The current market value of the personal property is $8,000 or less; and

(C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes owed on the personal property after distribution of the proceeds pursuant to subsection (12) of this section.

(d)(A) The landlord buys the personal property at a sale described under subsection (11) of this section;

(B) The current market value of the personal property is more than $8,000;

(C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes owed on the personal property after distribution of the proceeds pursuant to subsection (12) of this section; and

(D) The landlord disposes of the personal property.

(14) The landlord is not responsible for any loss to the tenant or lienholder resulting from storage of personal property in compliance with this section unless the loss was caused by the landlord's deliberate or negligent act. In the event of a deliberate and malicious violation, the landlord is liable for twice the actual damages sustained by the tenant or lienholder.

(15) Complete compliance in good faith with this section shall constitute a complete defense in any action brought by a tenant or lienholder against a landlord for loss or damage to such personal property disposed of pursuant to this section.

(16) If a landlord does not comply with this section:

(a) The tenant is relieved of any liability for damage to the premises caused by conduct that was not deliberate, intentional or grossly negligent and for unpaid rent and may recover from the landlord up to twice the actual damages sustained by the tenant;

(b) A lienholder aggrieved by the noncompliance may recover from the landlord the actual damages sustained by the lienholder. ORS 90.255 does not authorize an award of attorney fees to the prevailing party in any action arising under this paragraph; and

(c) A county tax collector aggrieved by the noncompliance may recover from the landlord the actual damages sustained by the tax collector, if the noncompliance is part of an effort by the landlord to defraud the tax collector. ORS 90.255 does not authorize an award of attorney fees to the prevailing party in any action arising under this paragraph.

(17) The provisions of this section regarding the rights and responsibilities of a tenant to the abandoned personal property shall also apply to any lienholder, except that the lienholder may not sell or remove the dwelling or home unless:

(a) The lienholder has foreclosed its lien on the manufactured dwelling or floating home;

(b) The tenant or a personal representative or designated person described in subsection (19) of this section has waived all rights under this section pursuant to subsection (21) of this section; or

(c) The notice and response periods provided by subsections (6) and (8) of this section have expired.

(18)(a) Except as provided by subsection (19)(d) and (e) of this section, if a lienholder makes a timely response to a notice of abandoned personal property pursuant to subsections (6) and (8) of this section and so requests, a landlord shall enter into a written storage agreement with the lienholder providing that the personal property may not be sold or disposed of by the landlord for up to 12 months. A storage agreement entitles the lienholder to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property.

(b) The lienholder's right to a storage agreement arises upon the failure of the tenant or, in the case of a deceased tenant, the personal representative, designated person, heir or devisee to remove or sell the dwelling or home within the allotted time.

(c) To exercise the right to a storage agreement under this subsection, in addition to contacting the landlord with a timely response as described in paragraph (a) of this subsection, the lienholder must enter into the proposed storage agreement within 60 days after the landlord gives a copy of the agreement to the lienholder. The landlord shall give a copy of the proposed storage agreement to the lienholder in the same manner as provided by subsection (4)(b) of this

section. The landlord may include a copy of the proposed storage agreement with the notice of abandoned property required by subsection (4) of this section. A lienholder enters into a storage agreement by signing a copy of the agreement provided by the landlord and personally delivering or mailing the signed copy to the landlord within the 60-day period.

(d) The storage agreement may require, in addition to other provisions agreed to by the landlord and the lienholder, that:

(A) The lienholder make timely periodic payment of all storage charges, as described in subsection (7)(b) of this section, accruing from the commencement of the 45-day period described in subsection (6) of this section. A storage charge may include a utility or service charge, as described in ORS 90.510 (8), if limited to charges for electricity, water, sewer service and natural gas and if incidental to the storage of personal property. A storage charge may not be due more frequently than monthly;

(B) The lienholder pay a late charge or fee for failure to pay a storage charge by the date required in the agreement, if the amount of the late charge is no greater than for late charges imposed on facility tenants;

(C) The lienholder maintain the personal property and the space on which the personal property is stored in a manner consistent with the rights and obligations described in the rental agreement that the landlord currently provides to tenants as required by ORS 90.510 (4); and

(D) The lienholder repair any defects in the physical condition of the personal property that existed prior to the lienholder entering into the storage agreement, if the defects and necessary repairs are reasonably described in the storage agreement and, for homes that were first placed on the space within the previous 24 months, the repairs are reasonably consistent with facility standards in effect at the time of placement. The lienholder shall have 90 days after entering into the storage agreement to make the repairs. Failure to make the repairs within the allotted time constitutes a violation of the storage agreement and the landlord may terminate the agreement by giving at least 14 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the lienholder.

(e) Notwithstanding subsection (7)(b) of this section, a landlord may increase the storage charge if the increase is part of a facility-wide rent increase for all facility tenants, the increase is no greater than the increase for other tenants and the landlord gives the lienholder written notice consistent with the requirements of ORS 90.600 (1).

(f) During the term of an agreement described under this subsection, the lienholder shall have the right to remove or sell the property, subject to the provisions of its lien. Selling the property includes a sale to a purchaser who wishes to leave the property on the rented space and become a tenant, subject to the provisions of ORS 90.680. The landlord may condition approval for occupancy of any purchaser of the property upon payment of all unpaid storage charges and maintenance costs.

(g)(A) Except as provided in paragraph (d)(D) of this subsection, if the lienholder violates the storage agreement, the landlord may terminate the agreement by giving at least 90 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for the termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the lienholder.

(B) After a landlord gives a termination notice pursuant to subparagraph (A) of this paragraph for failure of the lienholder to pay a storage charge and the lienholder corrects the violation, if the lienholder again violates the storage agreement by failing to pay a subsequent storage charge, the landlord may terminate the agreement by giving at least 30 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the lienholder.

(C) A lienholder may terminate a storage agreement at any time upon at least 14 days' written notice to the landlord and may remove the property from the facility if the lienholder has paid all storage charges and other charges as provided in the agreement.

(h) Upon the failure of a lienholder to enter into a storage agreement as provided by this subsection or upon termination of an agreement, unless the parties otherwise agree or the lienholder has sold or removed the property, the landlord may sell or dispose of the property pursuant to this section without further notice to the lienholder.

(19) If the personal property is considered abandoned as a result of the death of a tenant who was the only tenant, this section applies, except as follows:

(a) The provisions of this section regarding the rights and responsibilities of a tenant to the abandoned personal property shall apply to any personal representative named in a will or appointed by a court to act for the deceased

tenant or any person designated in writing by the tenant to be contacted by the landlord in the event of the tenant's death.

(b) The notice required by subsection (3) of this section shall be:

(A) Sent by first class mail to the deceased tenant at the premises; and

(B) Personally delivered or sent by first class mail to any personal representative or designated person if actually known to the landlord.

(c) The notice described in subsection (5) of this section shall refer to any personal representative or designated person, instead of the deceased tenant, and shall incorporate the provisions of this subsection.

(d) If a personal representative, designated person or other person entitled to possession of the property, such as an heir or devisee, responds by actual notice to a landlord within the 45-day period provided by subsection (6) of this section and so requests, the landlord shall enter into a written storage agreement with the representative or person providing that the personal property may not be sold or disposed of by the landlord for up to 90 days or until conclusion of any probate proceedings, whichever is later. A storage agreement entitles the representative or person to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property. If such an agreement is entered, the landlord may not enter a similar agreement with a lienholder pursuant to subsection (18) of this section until the agreement with the personal representative or designated person ends.

(e) If a personal representative or other person requests that a landlord enter into a storage agreement, subsection (18)(c) to (e) and (g)(C) of this section apply, with the representative or person having the rights and responsibilities of a lienholder with regard to the storage agreement.

(f) During the term of an agreement described under paragraph (d) of this subsection, the representative or person shall have the right to remove or sell the property, including a sale to a purchaser or a transfer to an heir or devisee where the purchaser, heir or devisee wishes to leave the property on the rented space and become a tenant, subject to the provisions of ORS 90.680. The landlord also may condition approval for occupancy of any purchaser, heir or devisee of the property upon payment of all unpaid storage charges and maintenance costs.

(g) If the representative or person violates the storage agreement, the landlord may terminate the agreement by giving at least 30 days' written notice to the representative or person stating facts sufficient to notify the representative or person of the reason for the termination. Unless the representative or person corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the representative or person.

(h) Upon the failure of a representative or person to enter into a storage agreement as provided by this subsection or upon termination of an agreement, unless the parties otherwise agree or the representative or person has sold or removed the property, the landlord may sell or dispose of the property pursuant to this section without further notice to the representative or person.

(20) If a governmental agency determines that the condition of personal property abandoned under this section constitutes an extreme health or safety hazard under state or local law and the agency determines that the hazard endangers others in the facility and requires quick removal of the property, the landlord may sell or dispose of the property pursuant to this subsection. The landlord shall comply with all provisions of this section, except as follows:

(a) The date provided in subsection (6) of this section by which a tenant, lienholder, personal representative or designated person must contact a landlord to arrange for the disposition of the property shall be not less than 15 days after personal delivery or mailing of the notice required by subsection (3) of this section.

(b) The date provided in subsections (8) and (9) of this section by which a tenant, lienholder, personal representative or designated person must remove the property shall be not less than seven days after the tenant, lienholder, personal representative or designated person contacts the landlord.

(c) The notice required by subsection (3) of this section shall be as provided in subsection (5) of this section, except that:

(A) The dates and deadlines in the notice for contacting the landlord and removing the property shall be consistent with this subsection;

(B) The notice shall state that a governmental agency has determined that the property constitutes an extreme health or safety hazard and must be removed quickly; and

(C) The landlord shall attach a copy of the agency's determination to the notice.

(d) If the tenant, a lienholder or a personal representative or designated person does not remove the property within the time allowed, the landlord or a buyer at a sale by the landlord under subsection (11) of this section shall promptly remove the property from the facility.

(e) A landlord is not required to enter into a storage agreement with a lienholder, personal representative or designated person pursuant to subsection (18) of this section.

(21)(a) A landlord may sell or dispose of a tenant's abandoned personal property without complying with the provisions of this section if, after termination of the tenancy or no more than seven days prior to the termination of the tenancy, the following parties so agree in a writing entered into in good faith:

(A) The landlord;

(B) The tenant, or for an abandonment as the result of the death of a tenant who was the only tenant, the personal representative, designated person or other person entitled to possession of the personal property, such as an heir or devisee, as described in subsection (19) of this section; and

(C) Any lienholder.

(b) A landlord may not, as part of a rental agreement, as a condition to approving a sale of property on rented space under ORS 90.680 or in any other manner, require a tenant, a personal representative, a designated person or any lienholder to waive any right provided by this section.

(22) Until personal property is conclusively presumed to be abandoned under subsection (9) of this section, a landlord does not have a lien pursuant to ORS 87.152 for storing the personal property. [1997 c.577 §27b; 1999 c.603 §33; 1999 c.676 §24; 2001 c.44 §2; 2001 c.596 §40]

90.680 Sale of dwelling or home on rented space; duties and rights of seller, prospective purchaser and landlord. (1) A landlord shall not deny any manufactured dwelling or floating home space tenant the right to sell a manufactured dwelling or floating home on a rented space or require the tenant to remove the dwelling or 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 manufactured dwelling 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 manufactured dwelling or floating home owned by the tenant. The size, placement and character of such signs shall be subject to reasonable rules of the landlord.

(4) If the prospective purchaser of a manufactured dwelling or floating home desires to leave the dwelling or home on the rented space and become a tenant, the landlord may require:

(a) Except when a termination or abandonment occurs, that a tenant give not more than 30 days' notice in writing prior to the sale of the dwelling or home on a rented space;

(b) That the prospective purchaser complete and submit a complete and accurate written application for occupancy of the dwelling or home as a tenant when the sale is complete and that a prospective purchaser may not occupy the dwelling or home until the prospective purchaser is accepted by the landlord as a tenant;

(c) That a tenant give notice to any lienholder, prospective purchaser or person licensed to sell dwellings or homes of the requirements of paragraphs (b) and (d) of this subsection, the location of all properly functioning smoke alarms and any other rules and regulations of the facility such as those described in ORS 90.510 (5)(b), (f), (h) and (i); and

(d) If the sale is not by a lienholder, that the prospective purchaser pay in full all rents, fees, deposits or charges owed by the tenant as authorized under ORS 90.140 and the rental agreement, prior to the landlord's acceptance of the prospective purchaser as a tenant.

(5) If a landlord requires a prospective purchaser to submit an application for occupancy as a tenant under subsection (4) of this section, at the time that the landlord gives the prospective purchaser an application the landlord shall also give the prospective purchaser copies of the statement of policy, the rental agreement and the facility rules and regulations, including any conditions imposed on a subsequent sale, all as provided by ORS 90.510. The terms of the statement, rental agreement and rules and regulations need not be the same as those in the selling tenant's statement, rental agreement and rules and regulations.

(6) The following apply if a landlord receives an application for tenancy from a prospective purchaser under subsection (4) of this section:

(a) The landlord is subject to subsection (7) of this section if the landlord does not accept or reject the prospective purchaser's application within 20 days of receipt or within a longer time period to which the landlord and prospective purchaser agree.

(b) The landlord, for cause as specified in ORS 90.510 (5)(h), may reject the prospective purchaser as a tenant. Except as provided in paragraph (c) of this subsection, the landlord shall furnish to the seller and purchaser a written statement of the reasons for the rejection.

(c) If a rejection under paragraph (b) of this subsection is based upon a consumer report, as defined in 15 U.S.C.

1681a for purposes of the federal Fair Credit Reporting Act, the landlord shall not disclose the contents of the report to anyone other than the purchaser. The landlord shall disclose to the seller in writing that the rejection is based upon information contained within a consumer report and that the landlord cannot disclose the information within the report.

(7) The following apply if a landlord does not require a prospective purchaser to submit an application for occupancy as a tenant under subsection (4) of this section or if the landlord does not accept or reject the prospective purchaser as a tenant within the time required under subsection (6) of this section:

(a) The landlord waives any right to bring an action against the tenant under the rental agreement for breach of the landlord's right to establish conditions upon and approve a prospective purchaser of the tenant's dwelling or home;

(b) The prospective purchaser, upon completion of the sale, may occupy the dwelling or home as a tenant under the same conditions and terms as the tenant who sold the dwelling or home; and

(c) If the prospective purchaser becomes a new tenant, the landlord may only impose conditions or terms on the tenancy that are inconsistent with the terms and conditions of the seller's rental agreement if the new tenant agrees in writing.

(8) A landlord shall not, because of the age, size, style or original construction material of the dwelling or home or because the dwelling or home was built prior to adoption of the National Manufactured Home Construction and Safety Standards Act of 1974 (42 U.S.C. 5403), in compliance with the standards of that Act in effect at that time or in compliance with the state building code as defined in ORS 455.010:

(a) Reject an application for tenancy from a prospective purchaser of an existing dwelling or home on a rented space within a facility; or

(b) Require a prospective purchaser of an existing dwelling or home on a rented space within a facility to remove the dwelling or home from the rented space.

(9) A tenant who has received a notice pursuant to ORS 90.632 has the right to sell the tenant's dwelling or home in compliance with this section during the notice period. The tenant shall provide a prospective purchaser with a copy of any outstanding notice given pursuant to ORS 90.632 prior to a sale. The landlord may also give any prospective purchaser a copy of any such notice. The landlord may require as a condition of tenancy that a prospective purchaser who desires to leave the dwelling or home on the rented space and become a tenant must comply with the notice within the notice period consistent with ORS 90.632. If the tenancy has been terminated pursuant to ORS 90.632, or the notice period provided in ORS 90.632 has expired without a correction of cause or extension of time to correct, a prospective purchaser does not have a right to leave the dwelling or home on the rented space and become a tenant.

(10) Except as provided by subsection (9) of this section, after a tenancy has ended and during the period provided by ORS 90.675 (6) and (8), a former tenant retains the right to sell the tenant's dwelling or home to a purchaser who wishes to leave the dwelling or home on the rented space and become a tenant as provided by this section, if the former tenant makes timely periodic payment of all storage charges as provided by ORS 90.675 (7)(b), maintains the dwelling or home and the rented space on which it is stored and enters the premises only with the written permission of the landlord. Payment of the storage charges or maintenance of the dwelling or home and the space does not create or reinstate a tenancy or create a waiver pursuant to ORS 90.415. A former tenant has no right to enter the premises without the written permission of the landlord, including entry to maintain the dwelling or home or the space or to facilitate a sale. [Formerly 91.890; 1991 c.844 §14; 1993 c.580 §6; 1997 c.577 §27c; 1999 c.676 §25; 1999 c.820 §2]

90.690 [Formerly 91.910; 1991 c.844 §15; 1993 c.580 §7; 1995 c.559 §38; repealed by 1997 c.577 §50]

(Actions)

90.710 Causes of action; limit on cause of action of tenant; attorney fees. (1) Any person aggrieved by a violation of ORS 90.525, 90.630, 90.680 or 90.765 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 90.510 (4) 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 this chapter.

(c) If, within 10 days after being served with a complaint alleging a violation of ORS 90.510, 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 this chapter, then the landlord shall not be subject to any further liability to such other tenants for previous violations of ORS 90.510.

(d) Notwithstanding ORS 41.580 (1), if a landlord and a tenant mutually agree on the terms of an oral agreement for renting residential property, but the tenant refuses to sign a written memorandum of that agreement after it has been reduced to writing by the landlord and offered to the tenant for the tenant's signature, the oral agreement shall be enforceable notwithstanding the tenant's refusal to sign.

(e) A purchaser shall have a cause of action against a seller for damages sustained or $100, whichever is greater, who sells the tenant's manufactured dwelling or floating 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 manufactured dwelling or floating home on the space.

(3) The court may award reasonable attorney fees to the prevailing party in an action under this section. [Formerly 91.900; 1991 c.67 §16; 1991 c.844 §16; 1995 c.559 §39; 1995 c.618 §52]

90.720 Action to enjoin violation of ORS 90.750 or 90.755. In addition to the tenant's cause of action under ORS 90.710, any tenant prevented from exercising the rights in ORS 90.750 or 90.755 may bring an action in the appropriate court having jurisdiction in the county in which the alleged infringement occurred, and upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in any bylaw, rental agreement, regulation or rule, pertaining to a facility, which operates to deprive the tenant of these rights. [Formerly 91.930]

(Landlord Rights and Obligations)

90.725 Landlord access to rented space. (1) A landlord or a landlord's agent may enter onto a rented space, not including the tenant's manufactured dwelling or floating home or an accessory building or structure, in order to inspect the space, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, perform agreed yard maintenance, equipment servicing or grounds keeping or exhibit the space to prospective or actual purchasers of the facility, mortgagees, tenants, workers or contractors. The right of access of the landlord or landlord's agent is limited as follows:

(a) A landlord or landlord's agent may enter upon the rented space without consent of the tenant and without notice to the tenant for the purpose of serving notices required or permitted under this chapter, the rental agreement or any provision of applicable law.

(b) In case of an emergency, a landlord or landlord's agent may enter the rented space without consent of the tenant, without notice to the tenant and at any time. "Emergency" includes but is not limited to a repair problem that, unless remedied immediately, is likely to cause serious damage to the premises. If a landlord or landlord's agent makes an emergency entry in the tenant's absence, the landlord shall give the tenant actual notice within 24 hours after the entry, and the notice shall include the fact of the entry, the date and time of the entry, the nature of the emergency and the names of the persons who entered.

(c) If the tenant requests repairs or maintenance in writing, the landlord or landlord's agent, without further notice, may enter upon demand, in the tenant's absence or without consent of the tenant, for the purpose of making the requested repairs until the repairs are completed. The tenant's written request may specify allowable times. Otherwise, the entry must be at a reasonable time. The authorization to enter provided by the tenant's written request expires after seven days, unless the repairs are in progress and the landlord or landlord's agent is making a reasonable effort to complete the repairs in a timely manner. If the person entering to do the repairs is not the landlord, upon request of the tenant, the person must show the tenant written evidence from the landlord authorizing that person to act for the landlord in making the repairs.

(d)(A) If a written agreement requires the landlord to perform yard maintenance, equipment servicing or grounds keeping for the space:

(i) A landlord and tenant may agree that the landlord or landlord's agent may enter for that purpose upon the space, without notice to the tenant, at reasonable times and with reasonable frequency. The terms of the right of entry must be described in the rental agreement or in a separate written agreement.

(ii) A tenant may deny consent for a landlord or landlord's agent to enter upon the space pursuant to this paragraph if the entry is at an unreasonable time or with unreasonable frequency. The tenant must assert the denial by giving actual notice of the denial to the landlord or landlord's agent prior to, or at the time of, the attempted entry.

(B) As used in this paragraph:

(i) “Yard maintenance, equipment servicing or grounds keeping” includes, but is not limited to, servicing individual septic tank systems or water pumps, weeding, mowing grass and pruning trees and shrubs.

(ii) “Unreasonable time” refers to a time of day, day of the week or particular time that conflicts with the tenant’s reasonable and specific plans to use the space.

(e) In all other cases, unless there is an agreement between the landlord and the tenant to the contrary regarding a specific entry, the landlord shall give the tenant at least 24 hours’ actual notice of the intent of the landlord to enter and the landlord or landlord’s agent may enter only at reasonable times. The landlord or landlord’s agent may not enter if the tenant, after receiving the landlord’s notice, denies consent to enter. The tenant must assert this denial of consent by giving actual notice of the denial to the landlord or the landlord’s agent prior to, or at the time of, the attempt by the landlord or landlord’s agent to enter.

(2) A landlord shall not abuse the right of access or use it to harass the tenant. A tenant shall not unreasonably withhold consent from the landlord to enter.

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

(a) Pursuant to court order;

(b) As permitted by ORS 90.410 (2); or

(c) When the tenant has abandoned or relinquished the premises.

(4) If a landlord is required by a governmental agency to enter a rented space, but the landlord fails to gain entry after a good faith effort in compliance with this section, the landlord shall not be found in violation of any state statute or local ordinance due to the failure.

(5) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access or may terminate the rental agreement pursuant to ORS 90.630 (1) and take possession in the manner provided in ORS 105.105 to 105.168. In addition, the landlord may recover actual damages.

(6) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but that have 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 pursuant to ORS 90.620 (1). In addition, the tenant may recover actual damages not less than an amount equal to one month’s rent. [1999 c.676 §2]

90.730 Landlord to maintain rented space and common areas in habitable condition. (1) A landlord who rents a space for a manufactured dwelling or floating home shall at all times during the tenancy maintain the rented space and the facility common areas in a habitable condition. The landlord does not have a duty to maintain a dwelling or home. A landlord’s habitability duty under this section includes only the matters described in subsections (2) and (3) of this section.

(2) For purposes of this section, a rented space is considered unhabitable if it substantially lacks:

(a) A sewage disposal system and a connection to the space approved under applicable law at the time of installation and maintained in good working order to the extent that the sewage disposal system can be controlled by the landlord;

(b) If required by applicable law, a drainage system reasonably capable of disposing of storm water, ground water and subsurface water, approved under applicable law at the time of installation and maintained in good working order;

(c) A water supply and a connection to the space approved under applicable law at the time of installation and maintained so as to provide safe drinking water and to be in good working order to the extent that the water supply system can be controlled by the landlord;

(d) An electrical supply and a connection to the space approved under applicable law at the time of installation and maintained in good working order to the extent that the electrical supply system can be controlled by the landlord;

(e) At the time of commencement of the rental agreement, buildings, grounds and appurtenances that are kept in every part safe for normal and reasonably foreseeable uses, clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin;

(f) Except as otherwise provided by local ordinance or by written agreement between the landlord and the tenant, an adequate number of appropriate receptacles for garbage and rubbish in clean condition and good repair at the time of commencement of the rental agreement, and for which the landlord shall provide and maintain appropriate serviceable receptacles thereafter and arrange for their removal; and

(g) Completion of any landlord-provided space improvements, including but not limited to installation of carports, garages, driveways and sidewalks, approved under applicable law at the time of installation.

(3)(a) For purposes of this section, “facility common areas” means all areas under control of the landlord and held

out for the general use of tenants.

(b) A facility common area is considered unhabitable if it substantially lacks:

(A) Buildings, grounds and appurtenances that are kept in every part safe for normal and reasonably foreseeable uses, clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin;

(B) Safety from the hazards of fire; and

(C) Trees, shrubbery and grass maintained in a safe manner.

(4) 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 on 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. [1999 c.676 §6]

(Tenant Rights and Obligations)

90.740 Tenant obligations. A tenant shall:

(1) Install the tenant's manufactured dwelling or floating home and any accessory building or structure on a rented space in compliance with applicable laws and the rental agreement.

(2) Except as provided by the rental agreement, dispose from the dwelling or home and the rented space all ashes, garbage, rubbish and other waste in a clean, safe and legal manner. With regard to needles, syringes and other infectious waste, as defined in ORS 459.386, the tenant may not dispose of these items by placing them in garbage receptacles or in any other place or manner except as authorized by state and local governmental agencies.

(3) Behave, and require persons on the premises with the consent of the tenant to behave, in compliance with the rental agreement and with any laws or ordinances that relate to the tenant's behavior as a tenant.

(4) Except as provided by the rental agreement:

(a) Use the rented space and the facility common areas in a reasonable manner considering the purposes for which they were designed and intended;

(b) Keep the rented space in every part free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin as the condition of the rented space permits and to the extent that the tenant is responsible for causing the problem. The tenant shall cooperate to a reasonable extent in assisting the landlord in any reasonable effort to remedy the problem;

(c) Keep the dwelling or home, and the rented space, safe from the hazards of fire;

(d) Install and maintain in the dwelling or home a smoke alarm approved under applicable law;

(e) Install and maintain storm water drains on the roof of the dwelling or home and connect the drains to the drainage system, if any;

(f) Use electrical, water, storm water drainage and sewage disposal systems in a reasonable manner and maintain the connections to those systems;

(g) Refrain from deliberately or negligently destroying, defacing, damaging, impairing or removing any part of the facility, other than the tenant's own dwelling or home, or knowingly permitting any person to do so;

(h) Maintain, water and mow or prune any trees, shrubbery or grass on the rented space; and

(i) Behave, and require persons on the premises with the consent of the tenant to behave, in a manner that does not disturb the peaceful enjoyment of the premises by neighbors. [1999 c.676 §3]

90.750 Right to assemble or canvass in facility; limitations. No provision contained in any bylaw, rental agreement, regulation or rule pertaining to a facility shall:

(1) Infringe upon the right of persons who rent spaces in a facility to peaceably assemble in an open public meeting for any lawful purpose, at reasonable times and in a reasonable manner, in the common areas or recreational areas of the facility. Reasonable times shall include daily the hours between 8 a.m. and 10 p.m.

(2) Infringe upon the right of persons who rent spaces in a facility to communicate or assemble among themselves, at reasonable times and in a reasonable manner, for the purpose of discussing any matter, including but not limited to any matter relating to the facility or manufactured dwelling or floating home living. The discussions may be held in the common areas or recreational areas of the facility, including halls or centers, or any resident's dwelling unit or floating home. The landlord of a facility, however, may enforce reasonable rules and regulations including but not limited to

place, scheduling, occupancy densities and utilities.

(3) Prohibit any person who rents a space for a manufactured dwelling or floating home from canvassing other persons in the same facility for purposes described in this section. As used in this subsection, "canvassing" includes door-to-door contact, an oral or written request, the distribution, the circulation, the posting or the publication of a notice or newsletter or a general announcement or any other matter relevant to the membership of a tenants' association.

(4) This section is not intended to require a landlord to permit any person to solicit money, except that a tenants' association member, whether or not a tenant of the facility, may personally collect delinquent dues owed by an existing member of a tenants' association.

(5) This section is not intended to require a landlord to permit any person to disregard a tenant's request not to be canvassed. [Formerly 91.920; 1991 c.844 §17; 1997 c.303 §2]

90.755 Right to speak on political issues; limitations; placement of political signs. (1) No provision in any bylaw, rental agreement, regulation or rule shall infringe upon the right of a person who rents a space for a manufactured dwelling or floating home to invite public officers, candidates for public office or officers or representatives of a tenant organization to appear and speak upon matters of public interest in the common areas or recreational areas of the facility at reasonable times and in a reasonable manner in an open public meeting. The landlord of a facility, however, may enforce reasonable rules and regulations relating to the time, place and scheduling of the speakers that will protect the interests of the majority of the homeowners.

(2) The landlord shall allow the tenant to place political signs on or in a manufactured dwelling or floating home owned by the tenant. The size, placement and character of such signs shall be subject to the reasonable rules of the landlord. [Formerly 91.925; 1991 c.844 §18; 1995 c.559 §40]

90.760 Notice to tenants' association when park becomes subject to listing agreement. (1) A tenants' association or a facility purchase association may give written notice to the landlord of a facility in which some or all of the members of the associations reside as tenants requesting that the associations be notified, by first class mail to no more than three specified persons and addresses for each association, in the event the facility becomes subject to a listing agreement for the sale of all or part of the facility.

(2) If an association requests notice pursuant to subsection (1) of this section, the landlord shall give written notice to the persons and addresses designated in the request as soon as all or any portion of the facility becomes subject to a listing agreement entered into by or on behalf of the owner. [Formerly 91.905; 1991 c.844 §23]

90.765 Prohibitions on retaliatory conduct by landlord. (1) In addition to the prohibitions of ORS 90.385, a landlord who rents a space for a manufactured dwelling or floating home may not retaliate by increasing rent or decreasing services, by serving a notice to terminate the tenancy or by bringing or threatening to bring an action for possession after:

(a) The tenant has expressed an intention to complain to agencies listed in ORS 90.385;

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

(c) The tenant has filed or expressed intent to file a complaint under ORS 659A.820; or

(d) 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.

(2) If the landlord acts in violation of subsection (1) of this section the tenant is entitled to the remedies provided in ORS 90.710 (1) and has a defense in any retaliatory action against the tenant for possession. [Formerly 91.870; 1991 c.67 §17; 1993 c.18 §17; 2001 c.621 §84]

90.770 [Formerly 91.950; 1991 c.844 §29; 1997 c.249 §33; 1999 c.154 §1; repealed by 2001 c.596 §25 (90.771 enacted in lieu of 90.770)]

90.771 Confidentiality of information regarding disputes. (1) In order to foster the role of the Manufactured Dwelling Park Ombudsman in mediating and resolving disputes between landlords and tenants of manufactured dwelling and floating home facilities, the Housing and Community Services Department shall establish procedures to maintain the confidentiality of information received by the ombudsman pertaining to individual landlords and tenants of facilities and to landlord-tenant disputes. The procedures must comply with the provisions of this section.

(2) Except as provided in subsection (3) of this section, the department shall treat as confidential and not disclose:

(a) The identity of a landlord, tenant or complainant involved in a dispute or of a person who provides information to the department in response to a department investigation of a dispute;

(b) Information provided to the department by a landlord, tenant, complainant or other person relating to a dispute; or

(c) Information discovered by the department in investigating a dispute.

(3) The department may disclose:

(a) Information described in subsection (2) of this section to a state agency; and

(b) Information described in subsection (2) of this section if the landlord, tenant, complainant or other person who provided the information being disclosed, or the legal representative thereof, consents orally or in writing to the disclosure and specifies to whom the disclosure may be made. Only the landlord, tenant, complainant or other person who provided the information to the department may authorize or deny the disclosure of the information.

(4) This section does not prohibit the department from compiling and disclosing examples and statistics that demonstrate information such as the type of dispute, frequency of occurrence and geographical area where the dispute occurred if the identity of the landlord, tenant, complainant and other persons are protected. [2001 c.596 §26 (enacted in lieu of 90.770)]

90.775 Rules; adoption. The Housing and Community Services Department may adopt rules necessary to carry out the provisions of ORS 90.771. [Formerly 91.955; 2001 c.596 §49]

(Facility Purchase by Tenants)

90.800 Policy. (1) The State of Oregon encourages affordable housing options for all Oregonians. One housing alternative chosen by many Oregonians is facility living. The Legislative Assembly finds that many facility residents would like to join together to purchase the facility in which they live in order to have greater control over the costs and environment of their housing. The Legislative Assembly also finds that current market conditions place residents at a disadvantage with other potential investors in the purchase of facilities.

(2) It is the policy of the State of Oregon to encourage facility residents to participate in the housing marketplace by insuring that technical assistance, financing opportunities, notice of sale of facilities and the option to purchase facilities are made available to residents who choose to participate in the purchase of a facility.

(3) The purpose of ORS 90.100, 90.630, 90.760, 90.800 to 90.840, 308.905, 446.003, 456.579 and 456.581 is to strengthen the private housing market in Oregon by encouraging all Oregonians to have the ability to participate in the purchase of housing of their choice. [1989 c.919 §1; 1991 c.844 §24; 1995 c.559 §42]

90.810 Association notification of possible sale of facility. (1) A facility owner shall notify, as described in ORS 90.760, the tenants' association and a facility purchase association within 10 days of receipt of:

(a) Any written offer received by the owner or agent of the owner to purchase the facility which the owner intends to consider; or

(b) Any listing agreement entered into, by the owner or agent of the owner, to effect the sale of the facility.

(2) The notice required by subsection (1) of this section shall be mailed to any association and facility purchase association. [1989 c.919 §8; 1991 c.844 §25; 1995 c.559 §43]

90.815 Incorporation of facility purchase association. A facility purchase association shall comply with the provisions of ORS chapters 60, 62 and 65 before making the offer provided for under ORS 90.820. [1989 c.919 §9; 1991 c.844 §26]

90.820 Facility purchase by association or nonprofit corporation; procedures. (1) Within 14 days of delivery by or on behalf of the facility owner of the notice required by ORS 90.760 (2) or 90.810, a tenants' association or facility purchase association may notify the owner of the facility in which the tenants reside by certified mail or personal service at the address disclosed to the tenants under ORS 90.305 (1)(a) that the association, or a tenants' association supported nonprofit organization, is interested in purchasing the facility.

(2) Upon delivery of the notice required by subsection (1) of this section, the owner shall negotiate in good faith with the association or organization and provide the association or organization an opportunity to purchase the facility as the owner would any bona fide third party potential purchaser.

(3) A facility purchase association or tenants' association actively involved in negotiations with a facility owner

may waive or reduce the time periods for notice described in this section. A facility purchase association or tenants' association may authorize a tenants' association supported nonprofit organization to waive notice on behalf of the association.

(4) This section, ORS 90.760 (2) and 90.810 do not apply to:

(a) Any sale or transfer to a person who would be included within the table of descent and distribution if the facility owner were to die intestate.

(b) Any transfer by gift, devise or operation of law.

(c) Any transfer by a corporation to an affiliate. As used in this paragraph, "affiliate" means any shareholder of the transferring corporation, any corporation or entity owned or controlled, directly or indirectly, by the transferring corporation or any other corporation or entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation.

(d) Any transfer by a partnership to any of its partners.

(e) Any conveyance of an interest in a facility incidental to the financing of the facility.

(f) Any conveyance resulting from the foreclosure of a mortgage, deed of trust or other instrument encumbering a facility or any deed given in lieu of a foreclosure.

(g) Any sale or transfer between or among joint tenants or tenants in common owning a facility.

(h) Any exchange of a facility for other real property, whether or not the exchange also involves the payment of cash or other boot.

(i) The purchase of a facility by a governmental entity under that entity's powers of eminent domain. [1989 c.919 §10; 1991 c.844 §19; 1999 c.222 §1; 1999 c.603 §34a]

90.830 Facility owner affidavit of compliance with procedures. (1) A facility owner may at any time record, in the County Clerk Lien Record of the county where a facility is situated, an affidavit in which the facility owner certifies that:

(a) With reference to an offer by the owner for the sale of the facility, the owner has complied with the provisions of ORS 90.820;

(b) With reference to an offer received by the owner for the purchase of the facility, or with reference to a counteroffer that the owner intends to make, or has made, for the sale of the facility, the owner has complied with the provisions of ORS 90.820;

(c) Notwithstanding compliance with the provisions of ORS 90.820, no contract for the sale of the facility has been executed between the owner and a facility purchase association, tenants' association or tenants' association supported nonprofit organization;

(d) The provisions of ORS 90.820 are inapplicable to a particular sale or transfer of the facility by the owner, and compliance with those subsections is not required; or

(e) A particular sale or transfer of the facility is exempted from the provisions of this section and ORS 90.820.

(2) Any party acquiring an interest in a facility, and any and all title insurance companies and attorneys preparing, furnishing or examining any evidence of title, have the absolute right to rely on the truth and accuracy of all statements appearing in the affidavit and are under no obligation to inquire further as to any matter or fact relating to the facility owner's compliance with the provisions of ORS 90.820.

(3) It is the purpose and intention of this section to preserve the marketability of title to facilities, and, accordingly, the provisions of this section shall be liberally construed in order that all persons may rely on the record title to facilities. [1989 c.919 §11; 1991 c.844 §27; 1999 c.222 §2]

90.840 Park purchase funds, loans. (1) The Director of the Housing and Community Services Department may lend funds available to the Housing and Community Services Department to provide funds necessary to carry out the provisions of ORS 456.581 (2). Such funds advanced shall be repaid to the Housing and Community Services Department as determined by the director.

(2) Notwithstanding any budget limitation, the director may spend funds available from the Mobile Home Parks Purchase Account to employ personnel to carry out the provisions of ORS 456.581 (1). [1989 c.919 §12]

(Dealer Sales of Manufactured Dwellings)

90.860 Definitions for ORS 90.865 to 90.875. As used in ORS 90.865 to 90.875:

(1) "Buyer" has the meaning given that term in ORS 72.1030;

(2) “Facility” has the meaning given that term in ORS 90.100;
(3) “Landlord” has the meaning given that term in ORS 90.100;
(4) “Manufactured dwelling” has the meaning given that term in ORS 90.100;
(5) “Manufactured dwelling park” has the meaning given that term in ORS 446.003;
(6) “Purchase money security interest” has the meaning given that term in ORS 79.1070;
(7) “Secured party” has the meaning given that term in ORS 79.1050; and
(8) “Seller” has the meaning given that term in ORS 72.1030. [2001 c.112 §1]

Note: 90.860 to 90.875 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 90 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: 79.1050 and 79.1070 were repealed by section 187, chapter 445, Oregon Laws 2001. The text of 90.860 was not amended by enactment of the Legislative Assembly to reflect the repeal. Editorial adjustment of 90.860 for the repeal of 79.1050 and 79.1070 has not been made.

90.865 Dealer notice of rent payments and financing. A seller of a manufactured dwelling acting as a vehicle dealer under ORS chapter 822 must provide notice under ORS 90.870 if the manufactured dwelling is to be placed in a facility and the seller:
(1) Pays a portion of the rent for the dwelling; or
(2) Provides financing or assists the buyer in arranging financing that results in a party taking a purchase money security interest in the dwelling and the seller knows that a portion of the proceeds from the financing is to be used to pay a portion of the rent for the dwelling. [2001 c.112 §2]

Note: See first note under 90.860.

90.870 Manner of giving notice; persons entitled to notice. (1) A seller subject to ORS 90.865 must give notice by certified mail to the parties listed in subsection (2) of this section prior to the date the manufactured dwelling is delivered to the facility. The notice must be in writing and include:
(a) A statement that a portion of the rent is being paid by the seller or out of the proceeds from financing; and
(b) The amount and duration of rent that is being paid by the seller or out of the proceeds from financing.
(2) A seller subject to ORS 90.865 must give notice under subsection (1) of this section to:
(a) The buyer;
(b) The landlord; and
(c) The secured party, if any, taking a purchase money security interest in the manufactured dwelling. [2001 c.112 §3]

Note: See first note under 90.860.

90.875 Remedy for failure to give notice. If a seller fails to provide notice under ORS 90.870, a buyer, landlord or secured party without actual notice that suffers an ascertainable loss as a result of the failure may bring an individual action to recover actual damages or $200, whichever is greater. [2001 c.112 §4]

Note: See first note under 90.860.

90.900 [Formerly 91.855; 1995 c.559 §32; renumbered 90.427 in 1995]

90.905 [1991 c.844 §31; 1995 c.559 §33; renumbered 90.429 in 1995]

90.910 [Formerly 91.857; 1991 c.844 §32; 1993 c.369 §33; 1993 c.580 §4; 1995 c.559 §4; renumbered 90.155 in 1995]

90.920 [Formerly 91.860; repealed by 1995 c.559 §58]

90.930 [Formerly 91.862; repealed by 1993 c.369 §39]

90.940 [Formerly 91.866; renumbered 90.450 in 1995]