

Enrolled Senate Bill 194

Sponsored by Senator R BEYER

CHAPTER

AN ACT

Relating to landlord-tenant law; creating new provisions; amending ORS 21.325, 23.164, 23.445, 90.100, 90.110, 90.140, 90.155, 90.297, 90.300, 90.380, 90.400, 90.415, 90.425, 90.510, 90.530, 90.600, 90.610, 90.620, 90.630, 90.632, 90.635, 90.675, 90.775, 91.120, 105.112, 105.115, 105.138, 105.165 and 316.153; and repealing ORS 90.770, 105.125, 105.147 and 105.154 and section 28, chapter 104, Oregon Laws 2001.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2001 Act is added to and made a part of ORS 91.010 to 91.110.

SECTION 2. A dwelling unit purchaser or seller described in ORS 90.110 (2) may only be evicted pursuant to ORS 105.105 to 105.168 after at least 24 hours' written notice of the termination of the occupancy or a notice period set forth in a written agreement of sale, whichever is longer. This section does not create the relationship of landlord and tenant between the seller and purchaser.

SECTION 3. ORS 105.125 is repealed and sections 4 to 6 of this 2001 Act are enacted in lieu thereof.

SECTION 4. (1) In an action pursuant to ORS 105.110, it is sufficient to state in the complaint:

- (a) A description of the premises with convenient certainty;**
- (b) That the defendant is in possession of the premises;**
- (c) That, in the case of a dwelling unit to which ORS chapter 90 does not apply, the defendant entered upon the premises with force or unlawfully holds the premises with force; and**
- (d) That the plaintiff is entitled to the possession of the premises.**

(2) The plaintiff may include, at the plaintiff's option, the defendant's Social Security number in the complaint for the purpose of accuracy in tenant screening information. This subsection does not require a tenant to have a Social Security number in order to enter into a rental agreement.

SECTION 5. For a complaint described in section 4 of this 2001 Act, if ORS chapter 90 applies to the dwelling unit:

- (1) The complaint must be in substantially the following form and be available from the clerk of the court:**

**IN THE CIRCUIT COURT
FOR THE COUNTY OF**

No. _____

RESIDENTIAL EVICTION COMPLAINT

PLAINTIFF (Landlord or agent):

Address: _____

City: _____

State: _____ **Zip:** _____

Telephone: _____

vs.

DEFENDANT (Tenants/Occupants):

MAILING ADDRESS: _____

City: _____

State: _____ **Zip:** _____

Telephone: _____

Defendant's Social Security number _____ (Optional information for purposes of identification.)

1.

Tenants are in possession of the dwelling unit, premises or rental property described above or located at:

2.

Landlord is entitled to possession of the property because of:

- _____ **24-hour notice for personal injury, substantial damage, extremely outrageous act or unlawful occupant. ORS 90.400 (3).**
- _____ **24-hour or 48-hour notice for violation of a drug or alcohol program. ORS 90.400 (9).**
- _____ **72-hour or 144-hour notice for nonpayment of rent. ORS 90.400 (2).**
- _____ **7-day notice with stated cause in a week-to-week tenancy. ORS 90.400 (1)(a) and (e)(A)**
- _____ **10-day notice for a pet violation, a repeat violation in a month-to-month tenancy or without stated cause in a week-to-week tenancy. ORS 90.405, 90.400 (1)(d) or 90.427 (1).**
- _____ **20-day notice for a repeat violation. ORS 90.630 (4).**
- _____ **30-day or 180-day notice without stated cause in a month-to-month tenancy. ORS 90.427 (2) or 90.429.**

_____ 30-day notice with stated cause.
ORS 90.400 (1), 90.630 or 90.632.
_____ Other notice _____
_____ No notice (explain) _____

A COPY OF THE NOTICE RELIED UPON, IF ANY, IS ATTACHED

3.

If the landlord uses an attorney, the case goes to trial and the landlord wins in court, the landlord can collect attorney fees from the defendant pursuant to ORS 90.255 and 105.137 (3).

Landlord requests judgment for possession of the premises, court costs, disbursements and attorney fees.

I certify that the allegations and factual assertions in this complaint are true to the best of my knowledge.

Signature of landlord or agent.

(2) The complaint must be signed by the plaintiff or an attorney representing the plaintiff as provided by ORCP 17, or verified by an agent or employee of the plaintiff or an agent or employee of an agent of the plaintiff.

(3) A copy of the notice relied upon, if any, must be attached to the complaint.

SECTION 6. For a complaint described in section 4 of this 2001 Act, if ORS chapter 90 does not apply to the dwelling unit:

(1) The complaint must be in substantially the following form and be available from the clerk of the court:

IN THE CIRCUIT COURT
FOR THE COUNTY OF _____
EVICITION COMPLAINT
(Tenancy not covered by ORS chapter 90)
No. _____

(Landlord),
Plaintiff(s)

vs.

(Tenant),
Defendant(s)

1.

Defendant is in possession of the following premises:

_____ (city)

2.

Defendant entered upon the premises with force or is unlawfully holding the premises with force.

3.

Plaintiff is entitled to possession of the premises, because:

_____ 30-day notice (month-to-month
tenancy)

_____ 30-day notice (cause)

_____ Other notice (explain) _____

_____ No notice (explain) _____

A COPY OF ANY NOTICE RELIED UPON IS ATTACHED

Wherefore, plaintiff prays for possession of the premises, costs and disbursements and attorney fees, if applicable.

Plaintiff

(2) A copy of the notice relied upon, if any, must be attached to the complaint.

SECTION 7. Section 8 of this 2001 Act is added to and made a part of ORS 105.105 to 105.154.

SECTION 8. Notwithstanding ORCP 7 C, for premises to which ORS chapter 90 or ORS 91.120 applies, the summons must be in substantially the following form and be available from the court clerk:

**IN THE CIRCUIT COURT
FOR THE COUNTY OF**

No. _____

SUMMONS

RESIDENTIAL EVICTION

PLAINTIFF (Landlord or agent):

vs.

DEFENDANT (Tenants/Occupants):

TO: _____ (Street address and city of property occupied by defendant)

_____ (Mailing address if different)

NOTICE TO TENANTS:

READ THESE PAPERS CAREFULLY

YOUR LANDLORD WANTS TO EVICT YOU

ON _____, 2_____ AT _____ A.M./P.M., you must come to the County Court House located at _____. You do not have to pay any fees to the court for this first hearing.

- If you do not appear in court and your landlord does, your landlord will win automatically and can have the Sheriff physically remove you.

- If you do show up in court and your landlord does not, this eviction action will be dropped.

- If both of you show up:

- The judge may ask you to try to reach an agreement with your landlord, but this is voluntary. Trained mediators may be available free of charge to help resolve disputes.

- The court will schedule a trial if you and your landlord do not reach an agreement or if you do not agree to move out.

IF YOU WANT A TRIAL, YOU MUST:

- Show up in court at the time scheduled above;
- On the same day, file an Answer with the Court giving a legal reason why you should not be evicted (the Court can give you a form);
- Give a copy of the Answer to your landlord (or your landlord's agent or attorney); and
- Pay a filing fee of \$_____ (the judge may allow payment to be deferred in certain circumstances).

IF YOU HAVE QUESTIONS, YOU SHOULD SEE AN ATTORNEY IMMEDIATELY. If you need help finding an attorney, you can call the Oregon State Bar's Lawyer Referral Service at 503-684-3763 or toll-free in Oregon at 800-452-7636.

Signature of Plaintiff (landlord or agent)

Plaintiff's address: _____

Plaintiff's telephone number: _____

I certify that this is a true copy of the original summons:

Signature of Plaintiff (landlord or agent)

SECTION 9. ORS 105.147 is repealed and sections 10 to 12 of this 2001 Act are enacted in lieu thereof.

SECTION 10. (1) In an action to recover possession of the premises, if the court has entered an order by stipulation that provides for the defendant to retain possession of the premises contingent upon the defendant's performance or payment of moneys by a certain date as provided under ORS 105.145 (2), and the defendant fails to comply with the order, the plaintiff may obtain and enforce a judgment of restitution of the premises pursuant to this section and sections 11 and 12 of this 2001 Act.

(2) A plaintiff may obtain and enforce a judgment of restitution based upon an order entered as provided under ORS 105.145 (2), provided the order includes only:

(a) Future performance or conduct as described in the order for a period of not more than six months following entry of the order;

(b) Payment of past due rent and other past due amounts pursuant to a schedule provided in the order for a period of not more than six months following entry of the order;

(c) Payment of rent due for future rental periods that follow entry of the order pursuant to a schedule provided in the order for not more than the first three monthly rental periods following entry of the order; and

(d) Payment of any costs, disbursements or attorney fees pursuant to a schedule provided in the order.

(3) The order shall contain a statement providing that 12 months following the entry of the order, the court shall automatically dismiss the order without further notice to either the plaintiff or the defendant.

(4) If the defendant fails to comply with the order, the plaintiff may file with the clerk of the court an affidavit of noncompliance describing how the defendant has failed to comply. The plaintiff shall attach a copy of the order to the affidavit. The affidavit or the order must include the terms of the underlying settlement agreement or stipulation or have a copy of the agreement attached.

(5) Upon receipt of a plaintiff's affidavit:

(a) The court shall enter a judgment of restitution; and

(b) The clerk shall issue a notice of restitution as provided by section 14 of this 2001 Act and attach to the notice a copy of the plaintiff's affidavit of noncompliance and any attachments for service.

(6) The court shall establish a procedure that allows the defendant to request a hearing on the plaintiff's affidavit of noncompliance and delay expiration of the notice of restitution period or execution upon a judgment of restitution pending the hearing.

SECTION 11. (1) To contest a plaintiff's affidavit of noncompliance under section 10 of this 2001 Act and delay expiration of the notice of restitution period or execution upon the judgment of restitution, a defendant shall file a request for hearing with the clerk of the court. The request must be filed prior to issuance by the clerk of a writ of execution of judgment of restitution and must include a statement by the defendant describing how the defendant complied with the order or describing why the defendant should not be required to comply.

(2) The clerk shall make available a document providing for a request for hearing by a defendant. The document must be in substantially the following form:

**IN THE CIRCUIT COURT
FOR THE COUNTY OF**

**Defendant's Request for Hearing to
Contest an Affidavit of Noncompliance
Case No. _____**

Landlord or agent (Plaintiff): _____

vs.

Tenant/Occupant (Defendant): _____

Address of Property: _____

1. My landlord has filed a statement with the court saying that I have not complied with a court-approved agreement and that as a result my landlord is entitled to possession of the property.

2. I deny that the landlord is entitled to possession of the property because (check one or more and explain below):

_____ **a. The landlord is wrong. I did comply with the agreement.**

_____ **b. Before I could comply with the agreement, the landlord was supposed to do what is described below, which the landlord did not do.**

_____ **c. The landlord and I changed the agreement and I complied with the agreement as changed. The change that we agreed to is explained below.**

_____ **d. The landlord prevented me from keeping the agreement. The way that the landlord did that is explained below.**

_____ **e. The agreement was not made in good faith as required by ORS 90.130.**

_____ **f. A portion of the agreement was unconscionable as described in ORS 90.135.**

_____ **g. The landlord is required by law or contract to have good cause to force me to move out and my alleged conduct or performance does not meet the standard of good cause.**

_____ **h. The landlord is claiming that I did not pay rent for a period of time following the date of the agreement. I did not pay that rent because I have claims for money against the landlord to offset the rent. Those claims arise from the landlord's violation of the Residential Landlord and Tenant Act or the rental agreement since the date of the court order and are explained below.**

Explanations:

(Signature of tenant)

SECTION 12. (1) Upon receipt of a timely filed request for hearing described in section 11 of this 2001 Act, the clerk of the court shall:

- (a) Schedule a hearing on the defendant's request as soon as practicable;
- (b) Notify both parties of the hearing date; and
- (c) Mail or send by facsimile a copy of the defendant's request to the plaintiff.

(2)(a) At the hearing, except as provided in paragraph (b) of this subsection, the court may consider only the following issues:

(A) Whether the defendant complied with the order.

(B) Whether the plaintiff complied with any requirement of the order that is a predicate to compliance by the defendant.

(C) Whether the parties agreed to modify the order and complied with the modified order.

(D) Whether one party unfairly prevented compliance by the other party.

(b) If ORS chapter 90 applies to a dwelling unit, in addition to the issues described in paragraph (a) of this subsection, the court may consider the following issues:

(A) Whether the stipulated agreement was entered into in good faith as required by ORS 90.130 or is unconscionable as described in ORS 90.135.

(B) Whether, for a defendant whose noncompliance concerns performance or conduct, the noncompliance constitutes good cause for purposes of an applicable law or contract that requires the plaintiff to have good cause for terminating the tenancy.

(C) Whether, for a defendant whose noncompliance concerns a failure to pay rent due for future rental periods pursuant to section 10 (2)(c) of this 2001 Act, the defendant has claims against the plaintiff for moneys that offset the rent. The defendant's claims must be pursuant to ORS chapter 90 or the rental agreement and must have arisen after the entry of the order.

(c) The defendant may not raise defenses or claims involving issues other than issues described in paragraphs (a) and (b) of this subsection.

(3) If the court finds in favor of the plaintiff after the hearing, the clerk may issue a writ of execution of judgment of restitution. The clerk may not issue the writ earlier than 24 hours after the court's ruling. Further notice to the defendant is not required.

(4) If the court finds in favor of the defendant after the hearing, the court shall set aside the judgment. The court may reinstate the order, terminate the order and enter a judgment dismissing the plaintiff's action in favor of the defendant, enter a new order or schedule a trial on the plaintiff's action as soon as practicable.

(5) The court shall enter a judgment dismissing the plaintiff's action in favor of the defendant without assessment of costs, disbursements, prevailing party fees or attorney fees against either party except as provided in the order and without further notice to either party:

(a) Upon receipt of a writing signed by the plaintiff showing compliance with or satisfaction of the order; or

(b) Twelve months following entry of the order, unless the plaintiff has filed an affidavit of noncompliance and the court has found in favor of the plaintiff on the affidavit.

SECTION 13. ORS 105.154 is repealed and sections 14 to 21 are enacted in lieu thereof.

SECTION 14. (1) If the court renders judgment for restitution of the premises to the plaintiff, the plaintiff may only enforce that judgment in the following manner:

(a) Issuance by the clerk of the court and service upon the defendant of a notice of restitution that shall give the defendant four days to move out of the premises, including removal of all personal property; and

(b) After the expiration of the four-day period provided in the notice of restitution, issuance by the clerk of the court and service by the sheriff upon the defendant of a writ of execution of judgment of restitution, directing the sheriff to enforce the judgment by removing the defendant and the defendant's personal property, not including any manufactured dwelling or floating home to which ORS chapter 90 applies, and by returning possession of the premises to the plaintiff, along with an eviction trespass notice from the sheriff.

(2) Following entry of judgment for restitution of the premises in favor of a plaintiff, or any date for possession as specified in the judgment, whichever is later, the plaintiff may request that the clerk of the court in which the judgment is entered issue a notice of restitution. The notice of restitution shall order the defendant to move out of the premises, including removing all personal property, in no less than four days. The plaintiff may direct the clerk to extend the notice period beyond four days. Following payment of any required fees, the clerk shall issue the notice.

SECTION 15. If the court entered a judgment pursuant to section 10 of this 2001 Act, a notice of restitution issued by the clerk of the court pursuant to section 14 of this 2001 Act must be in substantially the following form:

**IN THE CIRCUIT COURT FOR
THE COUNTY OF _____**

**Notice of Restitution
because of not complying
with a court-approved agreement**

Case Number _____

TO: _____
(Tenant/Defendant)

(Address of rental property)

You and your landlord made a court-approved agreement allowing you to stay in the property. Your landlord claims that you have not kept that agreement. (A copy of the landlord's claim is attached.) Unless you can prove to the court why you should not have to move out, you must move by the MOVE OUT DATE listed below. If you do not, the landlord can have the Sheriff physically remove you.

If you believe that you have kept the agreement or that you have a legal reason for not keeping the agreement, you are entitled to a court hearing. Legal reasons are listed in sections 11 and 12 of this 2001 Act. They include the landlord interfering with your effort to keep the agreement and your complying with a modification of the agreement made by you and your landlord.

To request a hearing, you must go to the court and complete a form explaining why you believe that you have kept (or should not be required to keep) the agreement. You have to do this before _____ a.m./p.m. on _____. The Sheriff will not physically remove you from the property before the hearing.

If the judge rules against you at the hearing, the landlord can have the Sheriff physically remove you 24 hours later.

**DEADLINE TO MOVE OUT
MOVE OUT DATE: _____**

If you do not request a hearing, you must move out of the property no later than 11:59 p.m. on the Move Out Date.

If you and everyone else living there do not move out by that time, the Sheriff will physically remove you. You must also move all of your belongings by that time. Anything you leave behind will be stored or disposed of as allowed by law.

Deputy Court Administrator

SECTION 16. If a court entered a judgment other than pursuant to section 10 of this 2001 Act, a notice of restitution issued by the clerk of the court pursuant to section 14 of this 2001 Act must be in substantially the following form:

In the Circuit Court for the
County of _____

NOTICE OF RESTITUTION

Case Number _____

TO: _____
(Defendant/Tenant)

(Address of property)

DEADLINE TO MOVE OUT
MOVE OUT DATE: _____

The Court has ordered you to move out of the property. You must move out no later than 11:59 p.m. on the Move Out Date.

If you and everyone else living there do not move out by that time, the Sheriff will physically remove you. You must also move all of your belongings by that time. Anything you leave behind will be stored or disposed of as allowed by law.

Deputy Court Administrator

SECTION 17. The writ of execution of judgment of restitution referred to in section 14 of this 2001 Act must be in substantially the following form:

State of Oregon,) WRIT OF
) ss. EXECUTION OF
) JUDGMENT OF
) RESTITUTION
County of _____)

To the Sheriff:

This was a forcible entry and detainer action for possession of the following premises:

(city)
(county)

Judgment was rendered on _____ (date) that the plaintiff have restitution of the premises on or after _____ (date), and also that the plaintiff recover costs and disbursements in the sum of \$_____.

In the name of the State of Oregon, you are ordered to enforce and serve this writ on the defendant, in the manner provided in section 21 (1) of this 2001 Act, after the four-day period provided in the notice of restitution.

If the defendant, and the goods, vehicles, recreational vehicles, manufactured dwellings, floating homes and other personal property belonging to the defendant, are not removed by the end of the four-day period or any delay requested by the plaintiff, whichever is later, and if the plaintiff has paid all fees for enforcement of this execution, you shall immediately make legal service of this writ and an eviction trespass notice on the defendant and deliver possession of the premises to the plaintiff. You shall remove the defendant and any other person subject to the judgment, if present, from the premises.

As determined by the plaintiff as follows, the sheriff or the plaintiff shall remove to or store the defendant's goods, vehicles, recreational vehicles, manufactured dwellings, floating homes and other personal property at a place of safekeeping (choose one or more boxes):

The sheriff shall remove all of the defendant's personal property, except any manufactured dwelling or floating home to which ORS chapter 90 applies.

The sheriff shall remove part of the defendant's personal property, specifically:

The plaintiff shall remove and store all or part of the defendant's personal property.

In the case of a dwelling unit to which ORS chapter 90 applies, the plaintiff may elect to remove and store all or part of the defendant's personal property, except that only the plaintiff shall store any manufactured dwelling or floating home, and it shall be stored on the rented space.

DATED this ____ day of _____, ____.

Deputy Court Administrator

Plaintiff

Address

City/State/Zip

SECTION 18. The eviction trespass notice referred to in section 14 of this 2001 Act must be in substantially the following form:

EVICITION TRESPASS NOTICE

Occupants of these premises located at:

have been evicted by an order of the court in _____ vs. _____, Case Number _____.

Trespassing or entering into or upon these premises without written consent of the landlord will result in arrest and prosecution.

Any personal property present on these premises at the time this notice was served, (date) _____,

is in the possession of the landlord and may be redeemed by contacting the landlord at:

is in possession of the sheriff. Contact the sheriff for further information.

DATED _____

SHERIFF

SECTION 19. (1) For purposes of this section, "process server" means any competent person 18 years of age or older who:

- (a) Is a resident of the State of Oregon;
- (b) Is not the plaintiff, a relative of the plaintiff or an agent of the plaintiff for purposes of management of the premises;
- (c) Is a person regularly employed in the business of serving process; and
- (d) Charges a fee no greater than that set by ORS 21.410 (1)(b) for service of the notice of restitution.

(2) The sheriff or a process server shall serve the notice of restitution under section 15 or 16 of this 2001 Act in the manner provided by this subsection. Notwithstanding ORCP 10, by the end of the next judicial day following the payment of fees:

(a) The sheriff or process server shall mail a copy of the notice of restitution by first class mail to the defendant at the premises; and

(b) The sheriff or process server shall serve the notice of restitution at the premises by personal delivery to the defendant or, if the defendant is not available for service, by attaching a copy of the notice in a secure manner to the main entrance to that portion of the premises of which the defendant has possession.

(3) If service of the notice of restitution is made by a process server, by the end of the next judicial day following service the process server shall file with the clerk of the court a certificate of service in the same manner as provided by ORCP 7 F(2)(a).

SECTION 20. (1) Notwithstanding ORCP 10, the four-day period specified in section 14 (2) of this 2001 Act shall:

(a) Commence at 12:01 a.m. on the day following mailing and service of the notice of restitution pursuant to section 19 of this 2001 Act, including a Saturday or a Sunday or other legal holiday; and

(b) End on the fourth calendar day following the mailing and service except that if the fourth day is a Saturday or a Sunday or other legal holiday, the period shall end at 12 midnight of the day preceding the next judicial day.

(2) Except as provided in subsection (3) of this section, at any time after the expiration of the period provided in the notice of restitution, the plaintiff may request that the clerk of the court issue a writ of execution of judgment of restitution directing the sheriff to enforce the judgment of restitution by returning possession of the premises to the plaintiff. Following payment of any required fees, the clerk shall issue the writ in substantially the form provided by section 17 of this 2001 Act.

(3) Unless the judgment otherwise provides, the clerk may not issue a notice of restitution or a writ of execution of judgment of restitution more than 60 days after the

judgment is entered or after any date for possession as specified in the judgment, whichever is later.

SECTION 21. (1) Following issuance of the writ of execution of judgment of restitution and payment of any fees required by the sheriff, the sheriff shall immediately enforce and serve the writ upon the defendant, along with the eviction trespass notice, as follows:

(a) The sheriff shall mail a copy of the writ and the eviction trespass notice by first class mail to the defendant at the premises;

(b) The sheriff shall serve the writ and the eviction trespass notice at the premises by personal delivery to the defendant or, if the defendant is not available for service, by attaching the writ and notice in a secure manner to the main entrance to that portion of the premises of which the defendant has possession; and

(c) Immediately following the service of the writ and the eviction trespass notice, the sheriff shall return possession of the premises to the plaintiff by removing the defendant or any other person subject to the judgment, if present, and the defendant's personal property, except that:

(A) In the case of a dwelling unit to which ORS chapter 90 applies, after the sheriff removes the defendant or other persons, the plaintiff may elect to remove, store and dispose of all or part of the defendant's personal property pursuant to ORS 105.165; and

(B) If the personal property includes a manufactured dwelling or floating home to which ORS chapter 90 applies, the sheriff may not remove the dwelling or home. The plaintiff shall store and dispose of the dwelling or home pursuant to ORS 105.165 and either ORS 90.425 or 90.675.

(2) Following issuance of the writ, at the plaintiff's request, the sheriff shall delay enforcement and service of the writ.

(3) Any writ not enforced and served within 30 days following issuance shall expire and become unenforceable.

(4) A judgment may not be enforced if the parties have entered a new rental agreement or if the plaintiff has accepted rent for a period of occupancy beginning after the judgment was entered.

SECTION 22. Sections 23 and 24 of this 2001 Act are added to and made a part of ORS 90.505 to 90.840.

SECTION 23. 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.

SECTION 24. (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 (3)(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 section 23 of this 2001 Act, 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 prospec-

tive 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 ORS chapter 90, 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.

SECTION 25. ORS 90.770 is repealed and section 26 of this 2001 Act is enacted in lieu thereof.

SECTION 26. (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 oc-

currence and geographical area where the dispute occurred if the identity of the landlord, tenant, complainant and other persons are protected.

SECTION 27. ORS 90.100 is amended to read:

90.100. 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.

[5] **(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.

[6] **(7)** "Drug and alcohol free housing" means a rental agreement as described in ORS 90.243.

[7] **(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.

[8] **(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.

[9] **(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.

[(10)] **(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.

[(11)] **(12)** “Fee” means a nonrefundable payment of money.

[(12)] **(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.

[(13)] **(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.

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

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

[(16)] **(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.

[(17)] **(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.

[(18)] **(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.

[(19)] **(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.

[(20)] **(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.

[(21)] **(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.

[(22)] **(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.

[(23)] **(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.

[(24)] **(27)** “Person” includes an individual or organization.

[(25)] **(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.

[(26)] **(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.

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

[(28)] **(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).

[(29)] **(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.

[(30)] **(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.

[(31)] **(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.

[(32)] **(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.

[(33)] **(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).

[(34)] **(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.

[(35)] **(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.

[(36)] **(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.

[(37)] **(40)** “Transient lodging” means a room or a suite of rooms.

[(38)] **(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.

[(39)] **(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.

[(40)] **(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.

SECTION 28. ORS 90.110 is amended to read:

90.110. 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 [*under a contract of*] **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**, [*if the occupant is the purchaser or a person who succeeds to the interest of the purchaser*]. **The occupancy by a purchaser or seller described in this subsection may be terminated only pursuant to section 2 of this 2001 Act. 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.

SECTION 29. ORS 90.140 is amended to read:

90.140. **(1)** A landlord may require or accept the following types of payments:

[1] **(a)** Applicant screening charges, pursuant to ORS 90.295;

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

[3] **(c)** Security deposits, pursuant to ORS 90.300;

[4] **(d)** Fees, pursuant to ORS 90.302;

[5] **(e)** Rent, as defined in ORS 90.100;

[6] **(f)** Prepaid rent, as defined in ORS 90.100;

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

[8] **(h)** Late charges or fees, pursuant to ORS 90.260; and

[9] **(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 acknowledgement 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.

SECTION 29a. ORS 90.155 is amended to read:

90.155. (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.

SECTION 30. ORS 90.297 is amended to read:

90.297. (1) Except as provided in ORS 90.295 and in this section, a landlord [*shall*] **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. [*Proof of timely compliance with this requirement shall include a postmark.*]

(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.

SECTION 31. ORS 90.300 is amended to read:

90.300. (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 mod-

ification. 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. [*Proof of timely compliance with this requirement shall include a postmark.*]

(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.

SECTION 32. ORS 90.380 is amended to read:

90.380. (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.

[1] (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 [shall] may not continue a tenancy or enter into a [rental agreement] new tenancy for the dwelling unit until the landlord corrects the conditions [leading to the posting are corrected] that led to the agency’s determination.

[2] (b) If a landlord knowingly violates [subsection (1) of this section] 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 [rental agreement] 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.

[(3)] (5) If, after a landlord and a tenant have entered into a [rental agreement] 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.

[(4)] (6) If the tenancy is terminated, as a result of conditions as described in subsections [(1) and (3)] (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.

[(5)] (7) If conditions at premises [which] **that** existed at the outset of the tenancy and [which] **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.

[(6)(a)] (8)(a) A landlord shall return the money due the **applicant or** tenant under subsections [(4) and (5)] (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. [The money shall be returned within 14 days if the tenancy is terminated under subsection (2) or (3) of this section or within four days if the tenancy is terminated under subsection (5) of this section.]

(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 [tenant's] last-known address **of the applicant or tenant** and mailed within the relevant **four-day or 14-day** period [(four or 14 days)] following the **applicant's or** tenant's notice.

[(7)] (9) If the landlord fails to comply with subsection [(6)] (8) of this section, the **applicant or** tenant may recover the money due in an amount equal to twice the amount due.

SECTION 33. ORS 90.400 is amended to read:

90.400. (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.

SECTION 34. ORS 90.415 is amended to read:

90.415. (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.

[5] **(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.

[(6)] (7) A landlord who accepts partial rent under subsection [(5)] (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.

[(7)] (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.

[(8)] (9) A written agreement under subsection [(7)] (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.

[(9)] (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.

[(10)] (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.

[(11)] (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.

[(12)] (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).

[(13)] (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 [shall] **are** not [be considered to be] partial rent, as that term is used in this section.

[(14)] (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).

~~[(15)]~~ **(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.

SECTION 35. ORS 90.425 is amended to read:

90.425. (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.

~~[(e)]~~ **(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.

~~[(f)]~~ **(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 ~~[shall]~~ **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 ~~[which]~~ **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 [*with certificate of mailing*] **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 [*shall*] **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 [first class] mailing of the notice; or

(b) For all other abandoned personal property, not less than five days after personal delivery or eight days after [first class] 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) [Shall be] **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 [shall] **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 [shall be] **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 \$3,500 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 79.5040 (3).

(b) If there is no buyer at a sale of a manufactured dwelling or floating home, the personal property *[shall be]* **is** considered to be worth \$3,500 or less, regardless of current market value, and the landlord may 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, if:

(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; or

(c) The proceeds of a sale described under subsection (11) of this section 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.

(14) The landlord [*shall not be*] **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 [*shall be*] **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 [*shall be*] **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 [*shall*] **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 [*the tenant's*] **all** rights under this section pursuant to subsection [(25)] **(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 [(21)(d)] **(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 [shall] may not be sold or disposed of by the landlord for up to 12 months[*, so long as the lienholder makes timely periodic payment of all future storage charges as provided by subsection (7)(d) of this section and maintains the dwelling or home and the rented space on which it is stored*]. 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 [such an] a storage agreement [shall arise] 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.

[(19)] (e) During the term of an agreement described under this subsection [(18) of this section], 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 [it upon] 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 [shall terminate] 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 sub-

sequent 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.

~~[(20)]~~ **(g) Upon the failure of a lienholder to enter into a storage agreement as provided by this subsection or upon termination of an agreement [described under subsection (18) of this section], 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.**

~~[(21)]~~ **(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, ~~[the provisions of subsections (1) to (20), (23), (24) and (26) of] this section [shall apply] **applies**, except as follows:~~

~~(a) [The provisions of this section regarding the rights and responsibilities of a tenant to the abandoned dwelling or home 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 **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 [shall] **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[, *so long as the representative or person makes timely periodic payment of all future storage charges as provided by subsection (7)(d) of this section and maintains the dwelling or home and the rented space on which it is stored*]. **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 [shall] **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, subsections (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.**~~

~~[(e)]~~ **(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 *[it upon]* **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 *[shall terminate]* **terminates** as provided and the landlord may sell or dispose of the dwelling or home without further notice to the representative or person.

[(22)] **(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 [described under subsection (21)(d) of this section], 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.

[(23)] **(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.

[(24)] **(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.

[(25)] **(23)(a)** *[Except for personal property that is subject to subsection (21) of this section,]* 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 [*landlord and the tenant and, in the case of a recreational vehicle, manufactured dwelling or floating home, any lienholder and owner*] **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 [*shall*] **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.

[~~(26)~~] **(24)** Until personal property is conclusively presumed to be abandoned under subsection (9) of this section, a landlord [*shall*] **does** not have a lien pursuant to ORS 87.152 for storing the personal property.

SECTION 35a. ORS 90.510 is amended to read:

90.510. (1) [*Effective July 1, 1992.*] 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.[; *and*]

(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) [*Effective July 1, 1992.*]

(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 [the next] 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 [current] 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 [shall] **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 [tenants] 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 659.033.

(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 *[shall]* **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 *[shall not be considered to be]* **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 *[shall be]* **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 *[shall be]* **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, *which shall be provided to the landlord by*. The tenants' association **shall provide the summary to the landlord.**

SECTION 35b. ORS 90.530 is amended to read:

90.530. (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 *[commencing on or after November 1, 1997,]* between a landlord renting a space for a manufactured dwelling or floating home and a *[person]* **tenant** renting the space *[, shall]* **must** comply with the following:

(a) A landlord *[shall]* **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.

SECTION 36. ORS 90.600 is amended to read:

90.600. (1) *[In the case of]* **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, *[shall be construed to]* 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 *[shall be]* **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.

SECTION 36a. ORS 90.610 is amended to read:

90.610. (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.

[(1)] **(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.

[(2)] **(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 *[rented]* **eligible** spaces in the facility object in writing within 30 days of the date the notice was served, the change shall *[be]* **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.

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

(a) [An individual] A signed and dated written communication to the landlord; or

(b) A petition format that [shall include] 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.

[(4)] (6) Notwithstanding subsection [(3)] (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.

[(5)] (7) The landlord's notice of a proposed change in rules or regulations required by subsection [(2)] (3) of this section [shall] 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 [rented] 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 [rented] 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 be delivered] to the landlord is _____ (landlord fill in date).

Unless tenants in at least 51 percent of the [rented] 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.

(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.

[(6)] (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.

[(7)] (10) [No] An agreement under this section [shall] 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.

[(8)] **(11)** ORS 90.510 (1) to (3), requiring a landlord to provide a statement of policy, [shall not be construed to] **do not** create a basis for a tenant to demand informal dispute resolution of a rent increase.

SECTION 37. ORS 90.620 is amended to read:

90.620. (1) The tenant who rents a space for a manufactured dwelling or floating home may terminate [the] 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 agreement to rent required by ORS 90.510 may provide for termination on a specified date not less than 30 days after the parties enter into the agreement.]

(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) [No] **A tenant [shall] may not** be required to give the landlord more than 30 days' written notice to terminate.

SECTION 38. ORS 90.630 is amended to read:

90.630. (1) Except as provided in subsection [(5)] **(4)** of this section, the landlord may terminate [the] 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) As used in subsection (1) of this section, "conduct" includes both the commission of an act and the failure to act.]

[(3)] **(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.

[(4)] **(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.

[(5)] **(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.

[(6)] **(5)** The landlord of a facility may terminate [the] 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.

[(7)] **(6)** The landlord may:

(a) Provide greater financial incentive to encourage the tenant to accept an earlier termination date than that provided in subsection [(6)] **(5)** of this section; or

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

[(8)] **(7)** The Housing and Community Services Department shall adopt rules to implement the provisions of subsection [(6)] **(5)** of this section.

[(9)(a)] **(8)(a)** A landlord [shall] **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.

[(10)] **(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 [(3)(b)] **(5)(b)**, 90.400 (3) or (9) or 90.632 by complying with ORS 105.105 to 105.168.

[(11)] **(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.

[(12)] **(11)** Nothing in subsection [(6)] **(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.

[(13)(a)] **(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 [(3)] **(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.

SECTION 39. ORS 90.632 is amended to read:

90.632. (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 [additional] days if:

[(a)] **(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)] **(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 (3)(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) [and (19)] notwithstanding the expiration of the notice period provided by this section for the tenant to correct the cause.

SECTION 40. ORS 90.675 is amended to read:

90.675. (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.

[(d)] **(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 [shall] **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 [which] **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 [*with certificate of mailing*] **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 [*shall*] **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 \$3,500 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 [*first class*] 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) [*Shall be*] **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 [*shall*] **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 [*shall be*] **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 \$3,500 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 [*shall be*] **is** considered to be worth \$3,500 or less, regardless of current market value, and the landlord may 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 if:

(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; or

(c) The proceeds of a sale described under subsection (11) of this section 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.

(14) The landlord [*shall not be*] **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 [*shall be*] **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 [*shall be*] **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 [*shall*] **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 [*the tenant's*] **all** rights under this section pursuant to subsection [(23)] **(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 [(21)(d)] **(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 [*shall*] **may** not be sold or disposed of by the landlord for up to 12 months[, *so long as the lienholder makes timely periodic payment of all future storage charges as provided by subsection (7)(b) of this section and maintains the property and the rented space on which it is stored*]. **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 [*such an*] **a storage** agreement [*shall arise*] **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).

[(19)] **(f)** During the term of an agreement described under **this** subsection [(18) of this section], 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 [it upon] **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 [shall terminate] **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.

[(20)] **(h) Upon the failure of a lienholder to enter into a storage agreement as provided by this subsection or upon termination of an agreement [described under subsection (18) of this section], 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.**

[(21)] **(19)** If the personal property is considered abandoned as a result of the death of a tenant who was the only tenant, [the provisions of subsections (1) to (20) of] this section [shall apply] **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 [shall]

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[, *so long as the representative or person makes timely periodic payment of all future storage charges as provided by subsection (7)(b) of this section and maintains the property and the rented space on which it is stored*]. **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 [*shall*] 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, subsections (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.

[*e*] **(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 [*it upon*] **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 [*shall terminate*] **terminates** as provided and the landlord may sell or dispose of the property without further notice to the representative or person.

[*22*] **(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 [*described under subsection (21)(d) of this section*], 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.

[(23)] **(21)(a)** [Except for personal property that is subject to subsection (21) of this section.] 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 [landlord and the tenant and any lienholder] **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 [shall] **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.

[(24)] **(22)** Until personal property is conclusively presumed to be abandoned under subsection (9) of this section, a landlord [shall] **does** not have a lien pursuant to ORS 87.152 for storing the personal property.

SECTION 41. ORS 91.120 is amended to read:

91.120. [A landlord or employer of an employee of the landlord, as set forth in ORS 90.110 (7), may only evict the employee] **An employee described in ORS 90.110 (7) may only be evicted** pursuant to ORS 105.105 to 105.168 after [24 hours following] **at least 24 hours'** written notice of the termination of employment or [as] **a notice period** set forth in a written employment contract, whichever is longer. This section does not create the relationship of landlord and tenant between a landlord and such employee.

SECTION 42. ORS 21.325 is amended to read:

21.325. In the circuit court there shall be charged and collected in advance by the clerk of the court the following fees for the following purposes and services:

(1) Making transcription from judgment docket in the format provided in ORCP 70 A, \$6.
(2) Filing and docketing transcript of judgment in the format provided in ORCP 70 A, \$6.
(3) Filing and docketing copy of foreign judgment and affidavit filed as provided in ORS 24.115 and 24.125 or copy of child custody determination of another state filed as provided in ORS 109.787, \$35.

(4) Issuing writs of execution or writs of garnishment, \$4 for each writ.

(5) Preparing clerk's certificate of satisfaction of judgment, \$5.

(6) Issuing an order under ORS 23.710 requiring a judgment debtor to appear when the order is issued by any court other than the court in which the original judgment was entered, \$4.

(7) Issuing notices of restitution as provided in [ORS 105.154] **section 14 of this 2001 Act**, \$3 for each notice.

(8) For any service the clerk may be required or authorized to perform and for which no fee is provided by law, such fees as the Chief Justice of the Supreme Court may establish or authorize, except that a fee may not be charged for location or inspection of court records.

SECTION 43. ORS 23.164 is amended to read:

23.164. (1) A mobile home, and the property upon which the mobile home is situated, that is the actual abode of and occupied by the owner, or the owner's spouse, parent or child, when that mobile home is occupied as a sole residence and no other homestead exemption exists, shall be exempt from execution and from liability in any form for the debts of the owner to the value of \$23,000, except

as otherwise provided by law. When two or more members of a household are debtors whose interests in the homestead are subject to sale on execution, the lien of a judgment or liability in any form, their combined exemptions under this section *[shall]* **may** not exceed \$30,000. The exemption shall be effective without the necessity of a claim thereof by the judgment debtor.

(2) The exemption provided for in subsection (1) of this section *[shall]* **is** not *[be]* impaired by temporary removal or absence with the intention to reoccupy the mobile property as a home, nor by the sale thereof, but shall extend to the proceeds derived from such sale up to \$23,000 or \$30,000, whichever amount is applicable under subsection (1) of this section, while the proceeds are held for a period not exceeding one year and with the intention to procure another mobile or other homestead therewith.

(3) Upon the issuance of an order authorizing sale as provided in ORS 23.445, the levying officer may proceed to advertise and sell the premises and, if the homestead exemption applies, out of the proceeds pay the mobile home owner the sum of \$23,000 or \$30,000, whichever amount is applicable under subsection (1) of this section, and apply the balance of the proceeds on the execution. However, no sale shall be made where the homestead exemption applies unless the sum bid for the property is in excess of the sum of the costs of sale and \$23,000 or \$30,000, whichever amount is applicable. If no such bid is received, the expense of the advertising and preparation for sale shall be borne by the petitioner.

(4)(a) The provisions of subsections (1), (2), (3) and (7) of this section do not apply to construction liens for work, labor or material done or furnished exclusively for the improvement of the mobile home, or to purchase money liens and to mortgages lawfully executed, or to executions issued on a judgment recovered for the purchase price.

(b) The provisions of subsections (3) and (7) of this section do not apply to the sale on execution of a judgment of restitution under *[ORS 105.154]* **section 21 of this 2001 Act** of a mobile home removed from premises by the levying officer pursuant to the execution.

(5) If a debtor owns a mobile home but not the property upon which the mobile home is situated, subsections (1), (2), (3) and (4) of this section shall apply, but the value of the debtor's interest exempt from execution and liability *[shall]* **may** not exceed \$20,000 for an individual debtor, or \$27,000 when two or more members of a household are debtors whose interests in the homestead are subject to execution or liability in any form.

(6) When the owner of a homestead under this section has been granted a discharge in bankruptcy or has conveyed the property, the value thereof, for the purpose of determining a leviable interest in excess of the homestead exemption, shall be the value on the date of the petition in bankruptcy, whether the value is determined in the bankruptcy proceedings or not, or on the date the conveyance becomes effective, whichever shall first occur.

(7) Except as provided in subsection (9) of this section, no mobile home, or property upon which the mobile home is situated, that is the actual abode of and occupied by the judgment debtor, or that is the actual abode of and occupied by a spouse, dependent parent or dependent child of the judgment debtor, shall be sold on execution to satisfy a judgment that at the time of entry does not exceed \$3,000. The judgment shall remain a lien upon the real property owned by the judgment debtor and upon which the mobile home is situated, and the mobile home and real property upon which it is situated may be sold on execution:

(a) At any time after the sale of the mobile home or real property by the judgment debtor; and

(b) At any time after the mobile home or real property is no longer the actual abode of and occupied by the judgment debtor or the spouse, dependent parent or dependent child of the judgment debtor.

(8) The limitation on execution sales imposed by subsection (7) of this section is not impaired by temporary removal or absence with the intention to reoccupy the mobile home and property as a home.

(9) The limitation on execution sales imposed by subsection (7) of this section does not apply if two or more judgments are owing to a single judgment creditor and the total amount owing to the

judgment creditor, determined by adding the amount of each individual judgment as of the date the judgment was entered, is greater than \$3,000.

(10) As used in this section, unless the context requires otherwise, "mobile home" includes, but is not limited to, a houseboat.

SECTION 44. ORS 23.445 is amended to read:

23.445. (1) As used in this section and ORS 23.450 and 23.515:

(a) "Mobile home" does not include a mobile home that is held as inventory for sale or lease in the ordinary course of business.

(b) "Residential real property" means a single family dwelling or condominium unit.

(2) The sheriff [*shall*] **may** not sell the residential real property or the mobile home of a natural person on execution without an order of the court authorizing the sale.

(3) The holder of a judgment desiring to have the residential real property or the mobile home of a natural person sold on execution may petition the court for an order authorizing the sheriff to sell. The petition must:

(a) Identify the judgment under which the property is to be sold and the amount due thereon;

(b) Indicate if the judgment arises out of an order or decree for child support as described in ORS 23.242;

(c) Identify the residential real property or mobile home to be sold;

(d) Allege whether the property is a homestead or not; and

(e) If the property is a homestead, allege facts showing that it may nevertheless be sold on execution.

(4) The petition shall be accompanied by an affidavit disclosing the basis of the allegations contained in the petition. If the sheriff is to serve the papers under subsection (6) of this section, the petition and affidavit shall be accompanied by a deposit sufficient to pay the fees of the sheriff for that service.

(5) Promptly upon the filing of a petition and affidavit as provided in subsections (3) and (4) of this section, the court shall schedule a hearing on the petition, allowing adequate time for notice to the judgment debtor at least 10 days prior to the hearing.

(6) At least 10 days prior to the hearing on the petition, the petitioner shall cause to be served upon the judgment debtor, in the manner provided by ORCP 7 for service of summons, a true copy of the petition and affidavit and of a notice of the time and place of the hearing in substantially the following form:

**NOTICE OF HEARING ON SHERIFF'S
SALE OF YOUR PROPERTY**

This is to notify you that _____ has asked the court to order the sheriff to sell your property located at _____ to satisfy a court judgment against _____.

Before deciding whether to order the sale, the court will hold a hearing on _____, 2_____, at _____ a.m./p.m., in Room _____, _____.

The law provides that your property is your homestead if you, or your spouse, dependent parent or dependent child, actually live in it as your home. If you are temporarily absent from the property but intend to move back in, it is still your homestead.

The law provides that if the property is your homestead, then \$_____ of its value (\$_____ for a mobile home if you do not own the property it is on) may not be taken to satisfy a judgment against you. In addition, a homestead usually may not be sold to satisfy a judgment for \$3,000 or less.

The law provides that your property may be sold despite the fact that it is your homestead and all of its value taken to satisfy a judgment against you if the judgment is for child support.

IF YOU WISH TO PROTECT THIS PROPERTY FROM A SHERIFF'S SALE, YOU SHOULD COME TO THE COURT HEARING.

IF YOU HAVE ANY QUESTIONS, YOU SHOULD SEE A LAWYER AT ONCE.

If you do not own this property, please give this notice and the papers served with it to the owner.

(7) Whether the judgment debtor appears at the hearing on the petition or not, the court shall try the issues without formal pleadings and shall inquire as to the facts alleged in the petition. The judgment creditor shall have the burden of proof on all issues.

(8) Except as provided in ORS 23.164 (9) and 23.240 (7), the court [*shall*] **may** not authorize the sheriff to sell the property if the court finds:

- (a) That the property is the homestead of the judgment debtor;
- (b) That the judgment is subject to the homestead exemption; and
- (c) That the amount of the judgment was \$3,000 or less at the time of entry of the judgment.

(9) If the court authorizes the sheriff to sell the property, the order of the court shall state whether the homestead exemption applies to the property, and if so, the amount of the exemption.

(10) This section does not apply to a writ of execution to enforce a judgment that directs the sale of the particular property or to a writ of execution to enforce a judgment arising out of the foreclosure of:

(a) A construction lien for work, labor or material done or furnished exclusively for the improvement of the property;

(b) A lawfully executed purchase money lien; or

(c) A lawfully executed mortgage or trust deed.

(11) This section does not apply to the sale on execution of a judgment of restitution under [*ORS 105.154*] **section 21 of this 2001 Act** of a mobile home removed from premises by the sheriff pursuant to the execution.

(12) If the petitioner prevails at the hearing, the court shall award the petitioner the costs of service of the papers under subsection (6) of this section.

SECTION 45. ORS 90.635 is amended to read:

90.635. (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 [(6)] **(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 [(6)] **(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.

SECTION 46. ORS 105.112 is amended to read:

105.112. (1) A tenant or former tenant may bring an action to recover personal property taken or retained by a landlord in violation of ORS chapter 90.

(2) An action under this section shall be governed by the provisions of ORS 105.105 to 105.168 except that:

(a) The complaint shall be in substantially the following form and shall be available from the court clerk:

IN THE _____ COURT FOR
THE COUNTY OF _____

(Tenant),)
Plaintiff(s),)
)
vs.) No. _____
)
(Landlord),)
)
Defendant(s).)

COMPLAINT FOR RETURN
OF PERSONAL PROPERTY

I

Defendant(s) (is) (are) in possession of the following personal property belonging to the plaintiff(s):

[] See attached list.

II

Defendant(s) took the personal property alleged in paragraph I from premises rented by plaintiff(s) from defendant(s) at:

_____(street and number)
_____(city)
_____(county)

III

Plaintiff(s) (is) (are) entitled to possession of the personal property because:

_____ Defendant(s) took the personal property wrongfully because plaintiff(s) had not abandoned the property, and because either there was no court order awarding defendant(s) possession of the premises or the plaintiff(s) (was) (were) not continuously absent from the premises for seven days after such an order when defendant(s) removed the personal property.

_____ Defendant(s) lawfully took possession of the personal property after enforcement of a court order for possession of the premises pursuant to ORS 105.165, but refused to return the personal property to plaintiff(s) without payment although plaintiff(s) demanded return of the property within the time provided by ORS 90.425 or 90.675.

_____ Defendant(s) lawfully took possession of the personal property pursuant to [ORS 105.154] **section 21 of this 2001 Act**, but refused to return the personal property to plaintiff(s) although plaintiff(s) offered payment of all sums due for storage and any costs of removal of the personal property and demanded return of the property within the time provided by ORS 90.425 or 90.675.

_____ Other: _____

Wherefore, plaintiff(s) pray(s) for possession of the personal property and costs and disbursements incurred herein.

Date Signature of Plaintiff(s)

(b) The complaint shall be signed by the plaintiff or an attorney representing the plaintiff as provided by ORCP 17 or verified by an agent or employee of the plaintiff or an agent or employee of an agent of the plaintiff.

(c) The answer shall be in substantially the following form and shall be available from the court clerk:

IN THE _____ COURT FOR
THE COUNTY OF _____

(Tenant),)	
)	
)	Plaintiff(s),
)	
)	vs.
)	No. _____
)	
(Landlord),)	
)	
)	Defendant(s).)

ANSWER

I (we) deny that the plaintiff(s) is (are) entitled to possession of the personal property subject of the complaint because:

_____ The defendant(s) did not take and do not have possession of any of the property listed in the complaint.

_____ The defendant(s) took possession of the personal property as provided in ORS 90.425 or 90.675 after giving written notice that it was considered abandoned, and the plaintiff(s) did not make a timely demand for return of the property.

_____ The defendant(s) took possession of the personal property as provided in ORS 90.425 or 90.675 after giving written notice that it was considered abandoned, but not after a sheriff's enforcement of an eviction judgment against the plaintiff(s) as provided in ORS 105.165, and the plaintiff(s) refused to pay charges lawfully due for storage.

_____ Other: _____

I (we) ask that the plaintiff(s) take nothing by the complaint and that I (we) be awarded my (our) costs and disbursements.

Date	Signature of defendant(s)
------	---------------------------

(d) The issue at trial shall be limited to whether the plaintiff is entitled to possession of the personal property listed in the complaint.

(e) No claim for damages shall be asserted by either party in the action for possession of the personal property under this section, but each party may pursue any claim for damages in a separate action.

(f) A party may join an action for possession of personal property with an action for damages or a claim for other relief, but the proceeding *[shall]* **is** not *[be]* governed by the provisions of ORS 105.105 to 105.168.

(g) If the court determines that the plaintiff is entitled to possession of the personal property that is the subject of the complaint, the court shall enter an order directing the sheriff to seize the

personal property to which the court finds the plaintiff entitled, and to deliver that property to the plaintiff. The court may provide that the defendant have a period of time to deliver the property to the plaintiff voluntarily before execution. The costs of execution may be recovered in the manner provided in ORS 29.367.

(h) Subject to the provisions of ORCP 68, a prevailing party who has been represented by counsel may recover attorney fees as provided by ORS 90.255.

SECTION 47. ORS 105.115 is amended to read:

105.115. (1) Except as provided by subsections (2) and (3) of this section, the following are causes of unlawful holding by force within the meaning of ORS 105.110 and [105.125] **sections 4 and 6 of this 2001 Act:**

(a) When the tenant or person in possession of any premises fails or refuses to pay rent within 10 days after it is due under the lease or agreement under which the tenant or person in possession holds, or to deliver possession of the premises after being in default on payment of rent for 10 days.

(b) When the lease by its terms has expired and has not been renewed, or when the tenant or person in possession is holding from month to month, or year to year, and remains in possession after notice to quit as provided in ORS 105.120, or is holding contrary to any condition or covenant of the lease or is holding possession without any written lease or agreement.

(2) In the case of a dwelling unit to which ORS chapter 90 applies, the following are causes of unlawful holding by force within the meaning of ORS 105.110 and [105.125] **section 4 of this 2001 Act:**

(a) When the tenant or person in possession of any premises fails or refuses to pay rent within 72 hours or 144 hours, as the case may be, of the notice required by ORS 90.400 (2).

(b) When a rental agreement by its terms has expired and has not been renewed, or when the tenant or person in possession is holding from month to month or from week to week and remains in possession after a valid notice to quit as provided in ORS 105.120 (2), or is holding contrary to any valid condition or covenant of the rental agreement or ORS chapter 90.

(3) In an action under subsection (2) of this section, ORS chapter 90 shall be applied to determine the rights of the parties, including:

(a) Whether and in what amount rent is due;

(b) Whether a tenancy or rental agreement has been validly terminated; and

(c) Whether the tenant is entitled to remedies for retaliatory conduct by the landlord as provided by ORS 90.385 and 90.765.

SECTION 48. ORS 105.165 is amended to read:

105.165. (1) In the case of a dwelling unit to which ORS chapter 90 applies, the landlord may elect to remove, store and dispose of all or part of the personal property left by the tenant upon the premises following restitution of the premises pursuant to [ORS 105.154] **section 21 of this 2001 Act**, provided that:

(a) The sheriff **or process server** shall first serve the notice of restitution and **the sheriff** shall thereafter deliver possession of the premises to the landlord, as provided in [ORS 105.154] **section 21 of this 2001 Act**; and

(b) The landlord shall store and dispose of the personal property of the tenant pursuant to ORS 90.425 or 90.675, except that if the tenant claims that property within the time provided in ORS 90.425 or 90.675, the landlord must make that property available for removal by the tenant by appointment at reasonable times and without the payment of any costs, charges or other sums, and the notice to the tenant shall so state.

(2) Any cost incurred by the landlord for execution pursuant to [ORS 105.154] **sections 14 or 19 to 21 of this 2001 Act** or for removal, storage or sale of the tenant's property under this section and not recovered pursuant to ORS 90.425 (12) or 90.675 (12) shall be added to the judgment.

(3) If the landlord fails to permit the tenant to recover possession of the tenant's personal property under subsection (1)(b) of this section, the tenant may recover, in addition to any other amount provided by law, twice the actual damages or twice the monthly rent, whichever is greater.

(4) If the tenant's personal property includes a manufactured dwelling or floating home, the landlord shall use the alternative method provided by this section for the dwelling or home. The landlord may use the alternative method provided by this section for all or part of the tenant's other personal property. If a landlord elects to use this alternative method for part of the tenant's other property, the remaining portion, not including any manufactured dwelling or floating home, shall be removed by the sheriff pursuant to [ORS 105.154] **section 21 of this 2001 Act.**

SECTION 49. ORS 90.775 is amended to read:

90.775. The Housing and Community Services Department may adopt rules necessary to carry out the provisions of [ORS 90.770] **section 26 of this 2001 Act.**

SECTION 49a. ORS 105.138 is amended to read:

105.138. (1) Notwithstanding ORS 105.137 (5), if a party to an action to which ORS 90.505 to 90.840 apply moves for an order compelling arbitration and abating the proceedings, the court shall summarily determine whether the controversy between the parties is subject to an arbitration agreement enforceable under section ORS 90.610 [(1)] **(2)** and, if so, shall issue an order compelling the parties to submit to arbitration in accordance with the agreement and abating the action for not more than 30 days, unless the parties agree to an order of abatement for a longer period acceptable to the court.

(2) If the court issues an order compelling arbitration under subsection (1) of this section, the court [shall] **may** not order the payment of rent into court pending the arbitration unless the court finds such an order is necessary to protect the rights of the parties.

SECTION 50. ORS 316.153 is amended to read:

316.153. (1) As used in this section:

(a) "Involuntary move" means a move forced on an owner due to the termination of the owner's rental agreement for a facility space resulting from the closure of the facility, or portion of the facility, as defined in ORS 90.100.

(b) "Mobile home" has the meaning given "manufactured dwelling" in ORS 446.003, and includes only a mobile home with a fair market value of \$50,000 or less on the date that the mobile home is involuntarily moved.

(c) "Qualified individual" means an individual who:

(A) Owns and occupies as a principal residence, on the date of the involuntary move, a mobile home involuntarily moved; and

(B) Has a federal adjusted gross income, as described under ORS 316.013, of \$30,000 or less for the tax year in which the mobile home is involuntarily moved.

(2) A qualified individual is allowed a credit against the taxes otherwise due under this chapter. The amount of the credit is the lesser of:

(a) \$1,500; or

(b) The actual cost of moving and setting up the mobile home after subtracting any payments or reimbursements received by the qualified individual under ORS 90.630 [(6) and (7)] **(5) and (6).**

(3)(a) One-third of the total amount of credit allowed under this section must be claimed by the qualified individual for the tax year in which the mobile home is involuntarily moved and one-third of the credit in each of the two tax years immediately following.

(b) Any credit which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(c) The credit allowed to a qualified individual is available for only one involuntary move of a mobile home.

(d) If the taxpayer is married at the close of the tax year, the credit shall be allowed to only one taxpayer if the spouses file separate returns for the tax year. Marital status shall be determined as provided under section 21 (e)(3) and (4) of the Internal Revenue Code, as amended and in effect on December 31, 1998.

SECTION 51. (1) Except as provided in subsection (2) of this section, sections 23 and 24 of this 2001 Act and the amendments to ORS 90.600, 90.620 and 90.630 by sections 36, 37 and 38 of this 2001 Act apply to month-to-month and fixed term manufactured dwelling and floating home tenancies entered into before, on or after the effective date of this 2001 Act.

(2) Rental agreements that are fixed term tenancies entered into before the effective date of this 2001 Act are not made invalid by the duration of the rental agreement being less than two years. Upon renewal or extension as provided in section 24 of this 2001 Act, the rental agreement must comply with the requirement for a minimum two-year term as provided in section 23 of this 2001 Act.

SECTION 52. (1) The amendments to ORS 90.510 (5) and 90.530 by sections 35a and 35b of this 2001 Act apply to rental agreements entered into before, on or after the effective date of this 2001 Act.

(2) The amendments to ORS 90.530 by section 35b of this 2001 Act do not affect the right of a landlord to keep or continue to hold any one-time, monthly or other periodic amounts charged for a tenant's possession of a pet pursuant to a rental agreement entered into before November 1, 1997, and collected before the effective date of this 2001 Act.

SECTION 53. The amendments to ORS 90.610 by section 36a of this 2001 Act apply to any proposed rule or regulation change for which the landlord gives notice on or after the effective date of this 2001 Act.

SECTION 54. A landlord may, as provided in ORS 90.510 (4)(c), unilaterally amend a rental agreement existing on the effective date of this 2001 Act to incorporate the amendments to ORS 90.510 and 90.610 by sections 35a and 36a of this 2001 Act.

SECTION 55. Section 54 of this 2001 Act is repealed January 2, 2006. The repeal of section 54 of this 2001 Act by this section does not affect the validity of any unilateral amendment of a rental agreement made pursuant to section 54 of this 2001 Act.

SECTION 56. Notwithstanding sections 5, 6, 15 and 16 of this 2001 Act, prior to January 1, 2004, a clerk of the court may:

(1) Make available either the forms set forth in sections 5 and 6 of this 2001 Act or the form set forth in ORS 105.125 (1999 Edition) for plaintiff use in bringing an eviction complaint.

(2) Use either the forms set forth in sections 15 and 16 of this 2001 Act or the form set forth in ORS 105.154 (2) (1999 Edition) for issuing a notice of restitution.

SECTION 57. Section 28, chapter 104, Oregon Laws 2001 (Enrolled House Bill 2609) (amending ORS 90.632), is repealed.

Passed by Senate April 10, 2001

Repassed by Senate June 7, 2001

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Secretary of Senate

.....
President of Senate

Passed by House June 4, 2001

.....
Speaker of House

Received by Governor:

.....M,....., 2001

Approved:

.....M,....., 2001

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2001

.....
Secretary of State