

SUMMARY OF 2013 OREGON LANDLORD-TENANT LEGISLATION

By

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SENATE BILL 91

TENANT LIABILITY INSURANCE.

- A landlord may require a tenant to obtain and maintain renter's liability insurance upon the following conditions:
 - It may not exceed \$100,000 per occurrence (or the customary amount required by landlords for similar properties with similar rents in the same market, whichever is greater).
- Before entering into a new tenancy, the landlord:
 - Must advise the applicant in writing of the insurance requirement and the amount of coverage;
 - May require proof of coverage before the tenancy commences;
 - Must include in the rental agreement the insurance requirements under the statute.
- For an existing tenancy, the landlord may amend the rental agreement upon giving not less than 30-days' notice of the insurance requirement.
- If the tenant fails to obtain the insurance where required the landlord may terminate the tenancy under [ORS 90.392](#), and the tenant may cure the default by complying within 30 days;
- The landlord may require that the tenant provide verification of coverage period.
- The landlord may not require liability insurance if the landlord does not also have a comparable policy.
 - The tenant may request orally or in writing that the landlord provide verification of coverage;
 - Landlord may comply by providing a copy by personal delivery, mail, or posting in a common area.
- Neither landlord nor tenant may harass the other with repeated requests for verification.
- Landlord may not:
 - Require tenant use a particular insurer;
 - Require that the landlord be named as an additional insured;
 - Require that the tenant waive the insurer's right of subrogation.¹
- Landlord may not make a claim against a tenant's policy unless:
 - It is for damages or costs the tenant is otherwise legally liable for;
 - It is for reasonable wear and tear, or acts of God, or the conduct of the landlord;
 - It exceeds the tenant's security deposit;
 - The landlord contemporaneously provides a copy of the claim to the tenant when it is submitted to the company.

¹ The "right of subrogation" means that after the insurer pays the claim, it may take an assignment of that underlying claim from the insured and attempt to obtain recovery from the party that caused the loss.

- Liability insurance may not be required:
 - In those cases in which the household income of the tenant is equal to or less than 50% of the area median income, adjusted for family size as measured up to a five-person family as determined by the State Housing Council;
 - If the dwelling unit has been subsidized by public funds;
- For frivolous claims by landlord tenant may recover actual damages plus \$500.

APPLICANTS FOR TENANCY

- When evaluating an applicant, a landlord may not consider a prior eviction if the action:
 - Was dismissed or resulted in a general judgment for the applicant before the applicant applied;
 - Resulted in a judgment against the applicant that was entered five or more years earlier.
- When evaluating the applicant, a landlord may not consider a previous arrest if it did not result in a conviction.
 - Note: This prohibition does not apply if the arrest resulted in charges that have not been dismissed at the time the applicant submits the application.
- When evaluating the applicant, the landlord may consider criminal conviction and charging history if the conviction or pending charge is for conduct that is:
 - A drug-related crime;
 - A person crime;
 - A sex offense;
 - A crime involving financial fraud, identity theft and forgery; or
 - If the applicant was convicted or charged with a crime that would adversely affect:
 - Property of the landlord or a tenant; or
 - The health, safety or right to peaceful enjoyment of the premises of residents, the landlord or the landlord's agent.

FEES FOR REPEAT VIOLATIONS. A landlord may charge a tenant a fee for a second noncompliance or for a subsequent noncompliance with the written rules that describe the prohibited conduct and the fee for the second noncompliance, or for any third or subsequent noncompliance that occurs within one year after written notice.

- The fee may not exceed:
 - \$50 for the second noncompliance within one year after the warning notice for the same or a similar noncompliance; or
 - \$50 *plus* five percent of the rent payment for the current rental period for a third or subsequent noncompliance within one year after the warning notice for the same or a similar noncompliance.
- The written warning notice shall describe:
 - The specific noncompliance before charging a fee for the second or subsequent noncompliance;
 - The amount of the fee for the second or subsequent noncompliance that occurs within one year after the warning notice;
 - The noncompliance when issuing a fee for the a second or subsequent noncompliance that occurs within one year;
- The landlord shall give a warning notice for noncompliance or assess a fee for a second or

- subsequent noncompliance within 30 days after the act constituting the noncompliance.
- The landlord may terminate for the noncompliance but may not also assess the fee.
 - The landlord may not deduct a fee from the rent payment.
 - The right to assess the fee applies to the following events:
 - Late payment of utility or service charges the tenant owes;
 - Failure to clean up pet waste;
 - Failure to clean up garbage, rubbish and other waste on common areas;
 - Parking violations;
 - Improper use of vehicles;
 - Smoking in non-smoking designated areas; and
 - Unauthorized pets capable of causing damage or injuries as described in [ORS 90.405](#).

HOUSE BILL 2639

Discussion: This Bill addresses several topics, including the creation of a ‘Housing Choice landlord Guarantee Program’ to mitigate damages to landlords’ dwelling units caused by tenants receiving Section 8 assistance, and revisions to state discrimination laws. It applies to both tenants inside and outside of manufactured communities, i.e. regardless of whether the tenant owns their home or not. It becomes effective on July 1, 2014.

SOURCE OF INCOME AND PAST CONDUCT IN SCREENING PROCESS

- Currently, a person may not, because of race, color, religion, sex, sexual orientation, national origin, marital status, familial status, or source of income, refuse to sell, lease or rent any real property to a prospective renter/lessee.
 - “Source of income” now includes federal rent subsidy payments under Section 8 and any other local, state or federal housing assistance;
 - “Source of income” does not include income derived from a specific occupation or income derived in an illegal manner.
- HB 2639 clarifies that the preceding prohibition does not prevent a person from refusing to rent or lease real property to a prospective renter/lessee based upon:
 - Their past conduct, so long as the refusal is consistent with local, state and federal laws, including but not limited to fair housing laws; or
 - The prospective renter’s/lessee’s inability to pay rent, taking into consideration the value of their local, state and federal housing assistance (e.g. Section 8).
 - Provided, however, the refusal to lease or rent based on the inability to pay rent must be consistent with local, state and federal law, including but not limited to fair housing laws.
- ***Discussion.*** Regardless of the legal reason for rejecting a prospective renter/lessee, in all cases, landlords must be consistent with all applicants. The risk and liability is very real; testers can find minor variations in a manager’s response, and depending upon what was said, claim that one tester was treated discriminatorily. Similarly, owners and managers should always be consistent in following the screening criteria they have published. If they do not rent to persons with a criminal record, they should be careful about making exceptions. It is the same for financial qualifications and ability to pay the rent.

THE HOUSING CHOICE LANDLORD GUARANTEE PROGRAM

- Definitions:
 - “Housing Choice Voucher Program” means the federal tenant-based assistance program established under Section 8 [\[42 U.S.C. 1437f\(o\)\]](#);
 - “Landlord” means an owner of a dwelling unit that has entered into an agreement with a local housing authority to receive tenant-based assistance payments under the Housing Choice Voucher Program and that has entered into a rental or lease agreement with a tenant determined to be eligible to receive assistance under the Housing Choice Voucher pursuant to which the housing authority is authorized to make tenant-based assistance payments to landlords within a designated area of operation under the Housing Choice Voucher Program.
 - “Tenant” means an individual or a family who is determined to be eligible to receive tenant-based assistance payments under the Housing Choice Voucher Program and who has entered into a rental or lease agreement with a landlord.
- The Housing and Community Services Department is to develop and implement the Housing Choice Landlord Guarantee Program for providing financial assistance to landlords to mitigate damages caused by tenants as a result of occupancy under the Housing Choice Voucher Program.
- Landlords eligible for assistance under the Housing Choice Landlord Guarantee Program must obtain a judgment against the tenant in the small claims court in the county which the property is located.
- Assistance is limited to reimbursement for only those amounts in the judgment that are related to property damage, unpaid rent or other damages:
 - Caused as a result of the tenant’s occupancy under the Housing Choice Voucher Program that exceed normal wear and tear; and
 - Are in excess of \$500 but not more than \$5,000 per tenancy.
- A landlord must submit a claim for assistance to the department within one year of obtaining a judgment against a tenant.
- When a landlord is deemed eligible to receive assistance, the Housing and Community Services Department shall enter into a reasonable repayment agreement with the responsible tenant that provides for repayment by the tenant to the department of the full or a partial amount of the assistance paid to the landlord.
- Local housing authorities that participate in the Housing Choice Voucher Program are, upon written notice from the department that a tenant has failed to repay the amount required, be prohibited from approving a dwelling unit for the responsible tenant, and may not enter into a contract with a landlord that provides for occupancy of the landlord’s dwelling unit by that tenant at any future time, regardless of the area of operation of the local housing authority where the dwelling unit that sustained the damages was located. (This provision does not apply if it is determined that the tenant has made or is making a good faith effort to comply with the repayment agreement.)
- The Housing and Community Services Department is required to provide an opportunity for the tenant to contest its determination that the tenant has failed to repay amounts due under a repayment agreement or that the tenant has not made or is not making a good faith effort to comply with the repayment agreement.
- There is created within the State Treasury (separate from the General Fund) the Housing Choice Landlord Guarantee Program Fund.

- Interest earned by the Housing Choice Landlord Guarantee Program Fund shall be credited to the fund.
- Moneys in the Housing Choice Landlord Guarantee Program Fund shall consist of:
 - Amounts donated to the fund;
 - Amounts appropriated or otherwise transferred to the fund by the Legislative Assembly;
 - Investment earnings receive on moneys in the fund; and
 - Other amounts deposited in the fund from any source.
- Moneys in the fund are continuously appropriated to the Housing and Community Services Department to carry out the purpose of the law.
- The Housing and Community Services Department may use moneys in the fund to pay the administrative costs associated with the fund and with processing applications, making payments to landlords and administering repayment agreements.
- Local housing authorities are to report annually to the Housing and Community Services Department regarding information required to be provided to the Secretary of Housing and Urban Development regarding each local housing authority's participation in the Housing Choice Voucher Program.
- Local housing authorities are required to annually review internal procedures and processes so as to coordinate the length of the rental and lease terms with market standards for the purpose of achieving the maximum use and benefit in the best interests of tenants and landlords from tenant-based assistance payments under the Housing Choice Voucher Program.
- Local housing authorities are required to facilitate participation of landlords in the Housing Choice Voucher Program by:
 - Ensuring timely inspection of dwelling units and prompt processing of tenant applications and tenant-based assistance payments to landlords;
 - Establishing leases with terms that match the lease length that is standard and customary for dwelling units involved;
 - Establishing a process that allows landlords to provide regular input to local housing authorities.
- The Statewide Housing Choice Advisory Committee is created and the members are to be appointed by the Director of the Housing and Community Services Department.
- The director shall have discretion to determine the number of committee members and the duration of membership.
 - Committee membership must be geographically representative of all regions of the state and shall include an equal number of representatives for each of the following:
 - Local housing authorities and their representatives;
 - Landlords of single and multiple dwelling units and their advocates; and
 - Tenants and their advocates.
- The committee is to:
 - Advise the Housing and Community Services Department with respect to matters of interest and concern regarding the Housing Choice Voucher Program;
 - Discuss and share best practices for maximizing participation by landlords and tenants in the Housing Voucher Program; and

- Develop strategies and outcome measures for gauging the effectiveness of the Housing Choice Voucher Program.
- The committee is to prepare and submit a report to the committees of the Legislative Assembly that have authority over the subject area of housing on the date of the convening of each regular session of the Legislative Assembly regarding participation in and the effectiveness of the Housing Choice Voucher Program in Oregon.
- The Housing and Community Services Department is required to establish and administer the Stable Rental Housing Program to provide rental assistance to persons requiring assistance to achieve or maintain housing stability.
- Subject to State Housing Council approval, the Housing and Community Services Department is to make grants from the Stable Rental Housing Account for purposes of providing:
 - Rental assistance to persons of low income and very low income [*as defined in [ORS 458.610](#)*], who are also identified as being at risk of experiencing homelessness or who require rental assistance to maintain housing stability.
 - Financial assistance with expenses found to support housing stability, including but not limited to application fees, security deposits, move-in expenses, past-due rent, utility payments, transportation expenses, essential furnishings and any other expenses as prescribed by the department by rule.
 - Support services to assist persons of low income and very low income who are at risk of experiencing homelessness or who require rental assistance to maintain housing stability, and the administrative costs of providing the services, to access housing for the purpose of achieving or maintaining housing stability.
 - The Housing and Community Services Department is to adopt rules for determining the eligibility of organizations to receive grants that must, at a minimum, include the requirement that the organization demonstrate it has the capacity to deliver the proposed assistance and services and to measure and report on outcomes related to homelessness and housing stability.
- There is created within the State Treasury, separate and distinct from the General Fund, the Stable Rental Housing Account. Interest earned by the Stable Rental Housing Account shall be credited to the account. Moneys in the Stable Rental Housing Account shall consist of:
 - Amounts donated to the account;
 - Amounts appropriated or otherwise transferred to the account by the Legislative Assembly;
 - Investment earnings received on moneys in the account; and
 - Other amounts deposited in the account from any source.
- Moneys in the account are continuously appropriated to the Housing and Community Services Department to develop and implement the Stable Rental Housing Program.
- The Housing and Community Services Department may use moneys in the account to pay the administrative costs associated with the account and with making grants.
- The Housing and Community Services Department is to prepare and submit a report, after review and approval by the State Housing Council, regarding the status and outcomes of the Stable Rental Housing Program to the committees of the Legislative Assembly that have authority over the subject area of housing on the date of the convening of the 2015 regular session of the Legislative Assembly.
- The Housing and Community Services Department and State Housing Council is required to cooperate with and assist local housing authorities to obtain



federal approval, renewal of an existing waiver of federal requirements or a new waiver of federal requirements, as necessary to make the use and distribution of federal rent subsidy and assistance payments under [42 U.S.C. 1437f](#) (Section 8) as efficient and beneficial as possible to increase the supply of decent, safe, sanitary and affordable housing for persons of low income and very low income in Oregon.

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