

House Bill 3196

Sponsored by Representative BUCKLEY; Senator MONNES ANDERSON

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes limitation on rent increases for space in facility for manufactured dwellings and floating homes. Modifies requirements for interaction between landlords and tenants' committees. Establishes penalties for failure of landlord to meet with tenants' committee or make written response to summary of meeting with tenants' committee.

Requires submission of dispute not resolved by informal dispute resolution to binding arbitration at election of one party to dispute. Establishes fee, payable by park owners, to cover costs. Establishes penalty for failure to pay fee within 30 days after fee is due.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to space rental; creating new provisions; amending ORS 90.600, 90.675, 446.525 and 446.547;
3 and declaring an emergency.

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

5 **SECTION 1.** ORS 90.600 is amended to read:

6 90.600. (1) **As used in this section:**

7 (a) **"Anniversary date" means the annual anniversary of a tenancy or, for a tenancy in**
8 **effect on the effective date of this 2009 Act, January 1 of each year of the tenancy.**

9 (b) **"Base rent" means:**

10 (A) **During the first year of a tenancy, the space rent on the first day of a fixed term or**
11 **month-to-month tenancy between a landlord and a tenant or, for a tenancy in effect on the**
12 **effective date of this 2009 Act, the space rent specified in the rental agreement on the ef-**
13 **fective date of this 2009 Act; and**

14 (B) **On an anniversary date, the space rent in effect for the previous year.**

15 (c) **"Capital improvement" means installation, repair or replacement of a major**
16 **infrastructure system at a facility.**

17 (2) **A landlord:**

18 (a) **May increase the rent established in a fixed term or month-to-month tenancy once**
19 **per year on the anniversary date.**

20 (b) *[If a rental agreement is a month-to-month tenancy to which ORS 90.505 to 90.840 apply, the*
21 *landlord] May not increase the rent **on the anniversary date** unless the landlord gives notice in*
22 *writing to [each] **the** affected tenant at least 90 days prior to the effective date of the rent increase*
23 *specifying the amount of the increase, the amount of the new rent and the date on which the in-*
24 *crease becomes effective.*

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

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

28 *[(4) Neither ORS 90.510 (1), requiring a landlord to provide a statement of policy, nor ORS 90.510*

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (4), requiring a landlord to provide a written rental agreement, create a basis for tenant challenge of
 2 a rent increase, judicially or otherwise.]

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

14 [(b) The tenants' committee is entitled to informal dispute resolution in accordance with ORS
 15 446.547 if the landlord or landlord's representative fails to meet with the tenants' committee or fails to
 16 respond in good faith to the written summary as required by paragraph (a) of this subsection.]

17 **(3) The rent increase authorized by this section may not exceed the total of:**

18 **(a) The base rent multiplied by the percentage change in the Portland-Salem Consumer**
 19 **Price Index for All Urban Consumers for All Items as reported by the United States Bureau**
 20 **of Labor Statistics over the previous 12-month period as applied to the specific anniversary**
 21 **date; and**

22 **(b) The tenant's prorated share of the cost of each capital improvement made or to be**
 23 **made in the following year.**

24 **(4) The notice of rent increase required by subsection (2) of this section must specify:**

25 **(a) The percentage change in the index described in subsection (3)(a) of this section; and**

26 **(b) The cost of each capital improvement begun in the year, including the exact nature**
 27 **of the capital improvement, the anticipated completion date, the contractor who will perform**
 28 **the capital improvement, the period during which the cost will be recovered as part of the**
 29 **rent and the prorated share of the cost per tenancy.**

30 **(5) The cost of a capital improvement may only be recovered in equal monthly amounts,**
 31 **and the recovery period must be at least one-half of the estimated useful life of the im-**
 32 **provement. When the cost of the capital improvement has been recovered, the landlord must**
 33 **reduce the rent by an amount equal to the amount by which the rent increased to recover**
 34 **the cost of the capital improvement.**

35 **(6) The Housing and Community Services Department, by rule, shall establish a process**
 36 **by which a landlord may challenge the limitation on rent increases authorized by this sec-**
 37 **tion. The appeal process must provide the landlord an opportunity to present evidence that**
 38 **special circumstances make it difficult to obtain a fair and reasonable return on investment**
 39 **within the limitation on rent increases. The department, by rule, shall develop standards for**
 40 **what constitutes a fair return on investment and criteria for balancing, in specific appeals,**
 41 **the interest of landlords in receiving a fair and reasonable return on investment and the**
 42 **interest of tenants in avoiding excessive rent increases.**

43 **(7) Spaces that have been sold within a facility, but are still available for rent, are subject**
 44 **to the limitation on rent increases authorized by this section.**

45 **(8) Manufactured dwellings or floating homes that are rented within a facility are subject**

1 to the limitation on rent increases authorized by this section.

2 (9) The landlord shall provide the department with rent and rent increase data for the
3 facility.

4 (10) If the landlord does not provide the rent and rent increase data required by sub-
5 section (9) of this section in a timely manner as determined by the department, the depart-
6 ment shall impose a civil penalty against the landlord in the amount of \$100 per day until the
7 landlord provides the data and pays the civil penalty in full.

8 (11) The department shall post on its website:

9 (a) The percentage change in the Portland-Salem Consumer Price Index for All Urban
10 Consumers for All Items as reported by the United States Bureau of Labor Statistics month
11 by month; and

12 (b) Rent and rent increase data for facilities for the previous 10-year period.

13 SECTION 2. Section 3 of this 2009 Act is added to and made a part of ORS 90.505 to 90.840.

14 SECTION 3. (1) Tenants who reside in a facility may elect a committee of seven or fewer
15 members, in a facility-wide election, to represent the tenants. One tenant of record for each
16 rented space within the facility may vote in the election.

17 (2) Upon written request from the tenants' committee, the landlord or a representative
18 of the landlord shall meet with the committee within 10 to 30 days after the request to dis-
19 cuss the tenants' concerns regarding the facility, including concerns about rent and the cost
20 of a capital improvement. Unless the parties agree otherwise, upon a request from the
21 committee, the landlord or a representative of the landlord shall meet with the committee
22 at least once each calendar year. The meeting must be held on the premises, if the facility
23 has suitable meeting space for that purpose, or at a location reasonably convenient to the
24 tenants. After the meeting, the committee shall send a written summary of the issues and
25 concerns addressed at the meeting to the landlord. The landlord or a representative of the
26 landlord shall make a good faith response in writing to the committee's summary within 30
27 days after receipt of the summary.

28 (3) If the landlord or a representative of the landlord does not meet with the committee
29 or does not make a good faith response in writing to a committee's summary of the meeting
30 as required by subsection (2) of this section:

31 (a) The tenants' committee is entitled to informal dispute resolution in accordance with
32 ORS 446.547.

33 (b) The Housing and Community Services Department shall impose a civil penalty against
34 the landlord in the amount of \$1,000 for each violation of the provisions of this subsection.
35 If the landlord does not pay the fine within 30 days after the department determines that a
36 violation described in this subsection occurred and assesses a fine for the violation, the de-
37 partment shall impose an additional civil penalty in the amount of \$100 per violation per day
38 until the landlord pays all civil penalties in full.

39 (4) The department may reduce or waive the civil penalty imposed under subsection (3)
40 of this section if the matter is resolved by informal dispute resolution or binding arbitration
41 under ORS 446.547.

42 SECTION 4. Notwithstanding ORS 90.600 (10) and (12):

43 (1) Not later than 90 days after the effective date of this 2009 Act, a landlord shall provide
44 rent data for the previous five years, or, if the facility has been open less than five years,
45 rent data for the period since the facility opened.

1 **(2) The Housing and Community Services Department shall post rent data received under**
 2 **subsection (1) of this section and shall add additional years of rent and rent increase data**
 3 **until the department's website contains rent and rent increase data for a 10-year period for**
 4 **each facility.**

5 **SECTION 5.** ORS 446.525 is amended to read:

6 446.525. (1) A special assessment is levied annually upon each manufactured dwelling that is
 7 assessed for ad valorem property tax purposes as personal property. The amount of the assessment
 8 is \$6.

9 (2) On or before July 15 of each year, the county assessor shall determine and list the manu-
 10 factured dwellings in the county that are assessed for the current assessment year as personal
 11 property. Upon making a determination and list, the county assessor shall cause the special assess-
 12 ment levied under subsection (1) of this section to be entered on the general assessment and tax roll
 13 prepared for the current assessment year as a charge against each manufactured dwelling so listed.
 14 Upon entry, the special assessment shall become a lien, be assessed and be collected in the same
 15 manner and with the same interest, penalty and cost charges as apply to ad valorem property taxes
 16 in this state.

17 (3) Any amounts of special assessment collected pursuant to subsection (2) of this section shall
 18 be deposited in the county treasury, shall be paid over by the county treasurer to the State Treasury
 19 and shall be credited to the Mobile Home Parks Account to be used exclusively for carrying out
 20 ORS 446.380, 446.385, 446.392 and 446.543 and implementing the policies described in ORS 446.515.

21 (4) In lieu of the procedures under subsection (2) of this section, the Director of the Housing
 22 and Community Services Department may make a direct billing of the special assessment to the
 23 owners of manufactured dwellings and receive payment of the special assessment from those owners.
 24 In the event that under the billing procedures any owner fails to make payment, the unpaid special
 25 assessment shall become a lien against the manufactured dwelling and may be collected under con-
 26 tract or other agreement by a collection agency or may be collected under ORS 293.250, or the lien
 27 may be foreclosed by suit as provided under ORS chapter 88 or as provided under ORS 87.272 to
 28 87.306. Upon collection under this subsection, the amounts of special assessment shall be deposited
 29 in the State Treasury and shall be credited to the Mobile Home Parks Account to be used exclu-
 30 sively for carrying out ORS 446.380, 446.385, 446.392 and 446.543 and implementing the policies de-
 31 scribed in ORS 446.515.

32 **(5) The Housing and Community Services Department shall assess the owners of manu-**
 33 **factured dwelling parks and mobile home parks, as those terms are defined in ORS 446.003,**
 34 **a fee in the amount of \$6 per year for each unit in a park to pay the costs of informal dispute**
 35 **resolution and binding arbitration under ORS 446.547 and to compensate the department for**
 36 **costs incurred to implement ORS 446.547.**

37 **(6) The department shall deposit moneys collected under subsection (5) of this section in**
 38 **the Mobile Home Parks Account and use the moneys and interest earned on the moneys as**
 39 **required in ORS 446.547.**

40 **(7) If a park owner does not pay the fee required by subsection (5) of this section within**
 41 **30 days after the due date determined by the department, the department shall impose a civil**
 42 **penalty against the park owner in the amount of \$100 per day for each day over 30 days after**
 43 **the due date until the park owner pays the fee and the civil penalty in full.**

44 **SECTION 6.** ORS 446.547 is amended to read:

45 446.547. (1) Each mobile home **park** and manufactured dwelling park, **as those terms are de-**

1 **fined in ORS 446.003**, shall establish an informal dispute resolution procedure that [*insures*] **en-**
 2 **su**res each issue with merit [*shall*] **arising out of ORS 90.505 to 90.840 must** be given a fair
 3 hearing within 30 days of receipt of a formal complaint.

4 **(2) Upon the election of a landlord or a tenant, an issue with merit arising out of ORS**
 5 **90.505 to 90.840 that is not resolved by informal dispute resolution under subsection (1) of this**
 6 **section may be submitted to binding arbitration. The decision of the arbitrator is final.**

7 **(3) The Housing and Community Services Department shall prepare and maintain a list**
 8 **of arbitrators. If the parties cannot agree on an arbitrator from the list, or another**
 9 **arbitrator acceptable to all parties, the administrator of the department’s Community Re-**
 10 **sources Division shall select the arbitrator.**

11 **SECTION 7.** ORS 90.675 is amended to read:

12 90.675. (1) As used in this section:

13 (a) “Current market value” means the amount in cash, as determined by the county assessor,
 14 that could reasonably be expected to be paid for personal property by an informed buyer to an in-
 15 formed seller, each acting without compulsion in an arm’s-length transaction occurring on the as-
 16 sessment date for the tax year or on the date of a subsequent reappraisal by the county assessor.

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

21 (c) “Lienholder” means any lienholder of abandoned personal property, if the lien is of record
 22 or the lienholder is actually known to the landlord.

23 (d) “Of record” means:

24 (A) For a manufactured dwelling, that a security interest has been properly recorded in the re-
 25 cords of the Department of Consumer and Business Services pursuant to ORS 446.611 or on a cer-
 26 tificate of title issued by the Department of Transportation prior to May 1, 2005.

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

30 (e) “Personal property” means only a manufactured dwelling or floating home located in a fa-
 31 cility and subject to ORS 90.505 to 90.840. “Personal property” does not include goods left inside a
 32 manufactured dwelling or floating home or left upon a rented space and subject to disposition under
 33 ORS 90.425.

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

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

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

44 (c) The landlord receives possession of the premises from the sheriff following restitution pur-
 45 suant to ORS 105.161.

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

3 (a) Personally delivered to the tenant; or

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

5 (A) The premises;

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

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

9 (4)(a) A landlord shall also give a copy of the notice described in subsection (3) of this section
 10 to:

11 (A) Any lienholder of the personal property;

12 (B) The tax collector of the county where the personal property is located; and

13 (C) The assessor of the county where the personal property is located.

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

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

19 (A) Actually known to the landlord;

20 (B) Of record; and

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

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

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

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

29 (c) The personal property is stored on the rented space;

30 (d) The tenant or any lienholder, except as provided by subsection (18) of this section, may ar-
 31 range for removal of the personal property by contacting the landlord at a described telephone
 32 number or address on or before the specified date;

33 (e) The landlord shall make the personal property available for removal by the tenant or any
 34 lienholder, except as provided by subsection (18) of this section, by appointment at reasonable times;

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

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

41 (h) If the tenant or any lienholder fails to contact the landlord by the specified date or fails to
 42 remove the personal property within 30 days after that contact, the landlord may sell or dispose of
 43 the personal property. If the landlord reasonably believes the county assessor will determine that
 44 the current market value of the personal property is \$8,000 or less, and the landlord intends to
 45 dispose of the property if the property is not claimed, the notice shall state that belief and intent;

1 and

2 (i) If applicable, there is a lienholder that has a right to claim the personal property, except as
 3 provided by subsection (18) of this section.

4 (6) For purposes of subsection (5) of this section, the specified date by which a tenant or
 5 lienholder must contact a landlord to arrange for the disposition of abandoned personal property
 6 must be not less than 45 days after personal delivery or mailing of the notice.

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

8 (a) Shall store the abandoned personal property of the tenant on the rented space and shall ex-
 9 ercise reasonable care for the personal property; and

10 (b) Is entitled to reasonable or actual storage charges and costs incidental to storage or dis-
 11 posal. The storage charge may be no greater than the monthly space rent last payable by the tenant.

12 (8) If a tenant or lienholder, upon the receipt of the notice provided by subsection (3) or (4) of
 13 this section or otherwise, responds by actual notice to the landlord on or before the specified date
 14 in the landlord's notice that the tenant or lienholder intends to remove the personal property from
 15 the premises, the landlord must make that personal property available for removal by the tenant or
 16 lienholder by appointment at reasonable times during the 30 days following the date of the response,
 17 subject to subsection (18) of this section. If the personal property is considered to be abandoned
 18 pursuant to subsection (2)(a) or (b) of this section, but not pursuant to subsection (2)(c) of this sec-
 19 tion, the landlord may require payment of storage charges, as provided in subsection (7)(b) of this
 20 section, prior to allowing the tenant or lienholder to remove the personal property. Acceptance by
 21 a landlord of such payment does not operate to create or reinstate a tenancy or create a waiver
 22 pursuant to ORS 90.412 or 90.417.

23 (9) Except as provided in subsections (18) to (20) of this section, if the tenant or lienholder does
 24 not respond within the time provided by the landlord's notice, or the tenant or lienholder does not
 25 remove the personal property within 30 days after responding to the landlord or by any date agreed
 26 to with the landlord, whichever is later, the personal property is conclusively presumed to be
 27 abandoned. The tenant and any lienholder that have been given notice pursuant to subsection (3)
 28 or (4) of this section shall, except with regard to the distribution of sale proceeds pursuant to sub-
 29 section (13) of this section, have no further right, title or interest to the personal property and may
 30 not claim or sell the property.

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

33 (a) Sell the personal property at a public or private sale, provided that prior to the sale:

34 (A) The landlord may seek to transfer ownership of record of the personal property by comply-
 35 ing with the requirements of the appropriate state agency; and

36 (B) The landlord shall:

37 (i) Place a notice in a newspaper of general circulation in the county in which the personal
 38 property is located. The notice shall state:

39 (I) That the personal property is abandoned;

40 (II) The tenant's name;

41 (III) The address and any space number where the personal property is located, and any plate,
 42 registration or other identification number for a floating home noted on the title, if actually known
 43 to the landlord;

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

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

1 accepted; and

2 (VI) The name and telephone number of the person to contact to inspect the personal property;

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

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

11 (iv) Obtain written proof from the county that all property taxes and assessments on the per-
12 sonal property have been paid or, if not paid, that the county has authorized the sale, with the sale
13 proceeds to be distributed pursuant to subsection (13) of this section; or

14 (b) Destroy or otherwise dispose of the personal property if the landlord determines from the
15 county assessor that the current market value of the property is \$8,000 or less.

16 (11)(a) A public or private sale authorized by this section must be conducted consistent with the
17 terms listed in subsection (10)(a)(B)(i) of this section. Every aspect of the sale including the method,
18 manner, time, place and terms must be commercially reasonable.

19 (b) If there is no buyer at a sale described under paragraph (a) of this subsection, the personal
20 property is considered to be worth \$8,000 or less, regardless of current market value, and the land-
21 lord shall destroy or otherwise dispose of the personal property.

22 (12) Notwithstanding ORS 446.155 (1) and (2), unless a landlord intentionally misrepresents the
23 condition of personal property, the landlord is not liable for the condition of the personal property
24 to:

25 (a) A buyer of the personal property at a sale pursuant to subsection (10)(a) of this section, with
26 or without consideration; or

27 (b) A person or nonprofit organization to whom the landlord gives the personal property pursu-
28 ant to subsection (1)(b), (10)(b) or (11)(b) of this section.

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

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

31 (B) Unpaid rent.

32 (b) After deducting the amounts listed in paragraph (a) of this subsection, the landlord shall
33 remit the remaining proceeds, if any, to the county tax collector to the extent of any unpaid prop-
34 erty taxes and assessments owed on the dwelling or home.

35 (c) After deducting the amounts listed in paragraphs (a) and (b) of this subsection, if applicable,
36 the landlord shall remit the remaining proceeds, if any, to any lienholder to the extent of any unpaid
37 balance owed on the lien on the personal property.

38 (d) After deducting the amounts listed in paragraphs (a), (b) and (c) of this subsection, if appli-
39 cable, the landlord shall remit to the tenant the remaining proceeds, if any, together with an item-
40 ized accounting.

41 (e) If the tenant cannot after due diligence be found, the landlord shall deposit the remaining
42 proceeds with the county treasurer of the county in which the sale occurred. If not claimed within
43 three years, the deposited proceeds revert to the general fund of the county and are available for
44 general purposes.

45 (14) The county tax collector shall cancel all unpaid property taxes and assessments as provided

1 under ORS 311.790 only under one of the following circumstances:

2 (a) The landlord disposes of the personal property after a determination described in subsection
3 (10)(b) of this section.

4 (b) There is no buyer of the personal property at a sale described under subsection (11) of this
5 section.

6 (c)(A) There is a buyer of the personal property at a sale described under subsection (11) of this
7 section;

8 (B) The current market value of the personal property is \$8,000 or less; and

9 (C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes and assessments
10 owed on the personal property after distribution of the proceeds pursuant to subsection (13) of this
11 section.

12 (d)(A) The landlord buys the personal property at a sale described under subsection (11) of this
13 section;

14 (B) The current market value of the personal property is more than \$8,000;

15 (C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes and assessments
16 owed on the personal property after distribution of the proceeds pursuant to subsection (13) of this
17 section; and

18 (D) The landlord disposes of the personal property.

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

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

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

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

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

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

37 (18) The provisions of this section regarding the rights and responsibilities of a tenant to the
38 abandoned personal property also apply to any lienholder, except that the lienholder may not sell
39 or remove the dwelling or home unless:

40 (a) The lienholder has foreclosed the lien on the manufactured dwelling or floating home;

41 (b) The tenant or a personal representative or designated person described in subsection (20)
42 of this section has waived all rights under this section pursuant to subsection (22) of this section;
43 or

44 (c) The notice and response periods provided by subsections (6) and (8) of this section have ex-
45 pired.

1 (19)(a) Except as provided by subsection (20)(d) and (e) of this section, if a lienholder makes a
2 timely response to a notice of abandoned personal property pursuant to subsections (6) and (8) of
3 this section and so requests, a landlord shall enter into a written storage agreement with the
4 lienholder providing that the personal property may not be sold or disposed of by the landlord for
5 up to 12 months. A storage agreement entitles the lienholder to store the personal property on the
6 previously rented space during the term of the agreement, but does not entitle anyone to occupy the
7 personal property.

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

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

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

22 (A) The lienholder make timely periodic payment of all storage charges, as described in sub-
23 section (7)(b) of this section, accruing from the commencement of the 45-day period described in
24 subsection (6) of this section. A storage charge may include a utility or service charge, as described
25 in ORS 90.532, if limited to charges for electricity, water, sewer service and natural gas and if in-
26 cidental to the storage of personal property. A storage charge may not be due more frequently than
27 monthly;

28 (B) The lienholder pay a late charge or fee for failure to pay a storage charge by the date re-
29 quired in the agreement, if the amount of the late charge is no greater than for late charges imposed
30 on facility tenants;

31 (C) The lienholder maintain the personal property and the space on which the personal property
32 is stored in a manner consistent with the rights and obligations described in the rental agreement
33 that the landlord currently provides to tenants as required by ORS 90.510 (4); and

34 (D) The lienholder repair any defects in the physical condition of the personal property that
35 existed prior to the lienholder entering into the storage agreement, if the defects and necessary re-
36 pairs are reasonably described in the storage agreement and, for homes that were first placed on
37 the space within the previous 24 months, the repairs are reasonably consistent with facility stan-
38 dards in effect at the time of placement. The lienholder shall have 90 days after entering into the
39 storage agreement to make the repairs. Failure to make the repairs within the allotted time consti-
40 tutes a violation of the storage agreement and the landlord may terminate the agreement by giving
41 at least 14 days' written notice to the lienholder stating facts sufficient to notify the lienholder of
42 the reason for termination. Unless the lienholder corrects the violation within the notice period, the
43 agreement terminates as provided and the landlord may sell or dispose of the property without fur-
44 ther notice to the lienholder.

45 (e) Notwithstanding subsection (7)(b) of this section, a landlord may increase the storage charge

1 if the increase is part of a facility-wide rent increase for all facility tenants, the increase is no
 2 greater than the increase for other tenants and the landlord gives the lienholder written notice
 3 consistent with the requirements of ORS 90.600 [(1)] (2).

4 (f) During the term of an agreement described under this subsection, the lienholder has the right
 5 to remove or sell the property, subject to the provisions of the lien. Selling the property includes a
 6 sale to a purchaser who wishes to leave the property on the rented space and become a tenant,
 7 subject to the provisions of ORS 90.680. The landlord may condition approval for occupancy of any
 8 purchaser of the property upon payment of all unpaid storage charges and maintenance costs.

9 (g)(A) Except as provided in paragraph (d)(D) of this subsection, if the lienholder violates the
 10 storage agreement, the landlord may terminate the agreement by giving at least 90 days' written
 11 notice to the lienholder stating facts sufficient to notify the lienholder of the reason for the termi-
 12 nation. Unless the lienholder corrects the violation within the notice period, the agreement termi-
 13 nates as provided and the landlord may sell or dispose of the property without further notice to the
 14 lienholder.

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

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

25 (h) Upon the failure of a lienholder to enter into a storage agreement as provided by this sub-
 26 section or upon termination of an agreement, unless the parties otherwise agree or the lienholder
 27 has sold or removed the property, the landlord may sell or dispose of the property pursuant to this
 28 section without further notice to the lienholder.

29 (20) If the personal property is considered abandoned as a result of the death of a tenant who
 30 was the only tenant, this section applies, except as follows:

31 (a) The provisions of this section regarding the rights and responsibilities of a tenant to the
 32 abandoned personal property shall apply to any personal representative named in a will or appointed
 33 by a court to act for the deceased tenant or any person designated in writing by the tenant to be
 34 contacted by the landlord in the event of the tenant's death.

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

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

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

39 (c) The notice described in subsection (5) of this section must refer to any personal represen-
 40 tative or designated person, instead of the deceased tenant, and must incorporate the provisions of
 41 this subsection.

42 (d) If a personal representative, designated person or other person entitled to possession of the
 43 property, such as an heir or devisee, responds by actual notice to a landlord within the 45-day period
 44 provided by subsection (6) of this section and so requests, the landlord shall enter into a written
 45 storage agreement with the representative or person providing that the personal property may not

1 be sold or disposed of by the landlord for up to 90 days or until conclusion of any probate pro-
 2 ceedings, whichever is later. A storage agreement entitles the representative or person to store the
 3 personal property on the previously rented space during the term of the agreement, but does not
 4 entitle anyone to occupy the personal property. If such an agreement is entered, the landlord may
 5 not enter a similar agreement with a lienholder pursuant to subsection (19) of this section until the
 6 agreement with the personal representative or designated person ends.

7 (e) If a personal representative or other person requests that a landlord enter into a storage
 8 agreement, subsection (19)(c) to (e) and (g)(C) of this section applies, with the representative or
 9 person having the rights and responsibilities of a lienholder with regard to the storage agreement.

10 (f) During the term of an agreement described under paragraph (d) of this subsection, the rep-
 11 resentative or person has the right to remove or sell the property, including a sale to a purchaser
 12 or a transfer to an heir or devisee where the purchaser, heir or devisee wishes to leave the property
 13 on the rented space and become a tenant, subject to the provisions of ORS 90.680. The landlord also
 14 may condition approval for occupancy of any purchaser, heir or devisee of the property upon pay-
 15 ment of all unpaid storage charges and maintenance costs.

16 (g) If the representative or person violates the storage agreement, the landlord may terminate
 17 the agreement by giving at least 30 days' written notice to the representative or person stating facts
 18 sufficient to notify the representative or person of the reason for the termination. Unless the rep-
 19 resentative or person corrects the violation within the notice period, the agreement terminates as
 20 provided and the landlord may sell or dispose of the property without further notice to the repre-
 21 sentative or person.

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

26 (21) If a governmental agency determines that the condition of personal property abandoned
 27 under this section constitutes an extreme health or safety hazard under state or local law and the
 28 agency determines that the hazard endangers others in the facility and requires quick removal of
 29 the property, the landlord may sell or dispose of the property pursuant to this subsection. The
 30 landlord shall comply with all provisions of this section, except as follows:

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

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

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

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

42 (B) The notice must state that a governmental agency has determined that the property consti-
 43 tutes an extreme health or safety hazard and must be removed quickly; and

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

45 (d) If the tenant, a lienholder or a personal representative or designated person does not remove

1 the property within the time allowed, the landlord or a buyer at a sale by the landlord under sub-
2 section (11) of this section shall promptly remove the property from the facility.

3 (e) A landlord is not required to enter into a storage agreement with a lienholder, personal
4 representative or designated person pursuant to subsection (19) of this section.

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

9 (A) The landlord;

10 (B) The tenant, or for an abandonment as the result of the death of a tenant who was the only
11 tenant, the personal representative, designated person or other person entitled to possession of the
12 personal property, such as an heir or devisee, as described in subsection (20) of this section; and

13 (C) Any lienholder.

14 (b) A landlord may not, as part of a rental agreement, as a condition to approving a sale of
15 property on rented space under ORS 90.680 or in any other manner, require a tenant, a personal
16 representative, a designated person or any lienholder to waive any right provided by this section.

17 (23) Until personal property is conclusively presumed to be abandoned under subsection (9) of
18 this section, a landlord does not have a lien pursuant to ORS 87.152 for storing the personal prop-
19 erty.

20 **SECTION 8. This 2009 Act being necessary for the immediate preservation of the public**
21 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
22 **on its passage.**

23 _____