

Enrolled
Senate Bill 241

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CHAPTER

AN ACT

Relating to actions for possession of property; creating new provisions; amending ORS 105.115 and 105.130; and declaring an emergency.

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

SECTION 1. 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, 105.123 and 105.126:

(a) When the tenant or person in possession of any premises fails or refuses to pay rent within 10 days after the rent 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.

(c) When the owner or possessor of a recreational vehicle that was placed or driven onto property without the prior consent of the property owner, operator or tenant fails to remove the recreational vehicle. The property owner or operator is not required to serve a notice to quit the property before commencing an action under ORS 105.126 against a recreational vehicle owner or possessor holding property by force as described in this paragraph.

(d) When the person in possession of a premises remains in possession after the time when a purchaser of the premises is entitled to possession in accordance with the provisions of ORS 18.946 or 86.755.

(e) When the person in possession of a premises remains in possession after the time when a deed given in lieu of foreclosure entitles the transferee named in the deed to possession of the premises.

(f) When the person in possession of a premises remains in possession after the time when a seller is entitled to possession in accordance with the provisions of ORS 93.930 (2)(c) or pursuant to a judgment of strict foreclosure of a recorded contract for transfer or conveyance of an interest in real property.

(2) In the case of a dwelling unit to which ORS chapter 90 applies:

(a) The following are causes of unlawful holding by force within the meaning of ORS 105.110 and 105.123:

(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 90.394.

(B) When a rental agreement by its terms has expired and has not been renewed, or when the tenant or person in possession remains in possession after a valid notice terminating the tenancy pursuant to ORS chapter 90, or is holding contrary to any valid condition or covenant of the rental agreement or ORS chapter 90.

(b) A landlord may not file an action for the return of possession of a dwelling unit based upon a cause of unlawful holding by force as described in paragraph (a) of this subsection until after the expiration of a rental agreement for a fixed term tenancy or after the expiration of the time period provided in a notice terminating the tenancy.

(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 2. ORS 105.130 is amended to read:

105.130. (1) Except as provided in this section and ORS 105.135, 105.137 and 105.140 to 105.161, an action pursuant to ORS 105.110 shall be conducted in all respects as other actions in courts of this state.

(2) Upon filing a complaint in the case of a dwelling unit to which ORS chapter 90 applies, the clerk shall:

(a) Collect a filing fee of \$13;

(b) Collect any other fee authorized by law or ordinance; and

(c) With the assistance of the plaintiff or an agent of the plaintiff, complete the applicable summons and provide to the plaintiff or an agent of the plaintiff sufficient copies of the summons and complaint for service.

(3) After a complaint is filed under subsection (2) of this section, if the defendant demands a trial, the plaintiff shall pay an additional filing fee of \$29 and the defendant shall pay a filing fee of \$42.

(4) An action pursuant to ORS 105.110 shall be brought in the name of a person entitled to possession as plaintiff. The plaintiff may appear in person or through an attorney. In an action to which ORS chapter 90 applies, the plaintiff may also appear through a nonattorney who is an agent or employee of the plaintiff or an agent or employee of an agent of the plaintiff.

(5) Notwithstanding ORS 9.160, 9.320 and ORS chapter 180, a state agency may appear in an action brought pursuant to ORS 105.110 through an officer or employee of the agency if:

(a) The Attorney General consents to the representation of the agency by an officer or employee in the particular action or in the class of actions that includes the particular action; and

(b) The agency, by rule, authorizes an officer or employee to appear on its behalf in the particular type of action being conducted.

(6) In addition to the fees charged under subsection (2) of this section, the clerk shall collect a surcharge from the plaintiff at the time a complaint is filed that is subject to the filing fees established by subsection (2) of this section and from a defendant at the time a defendant demands a trial in the action. The surcharge shall be deposited by the State Court Administrator into the State Treasury to the credit of the Housing and Community Services Department Low Income Rental Housing Fund established by ORS 458.350. The amount of the surcharge shall be \$10.

(7) A document or pleading shall be filed by the clerk only if the fees and surcharges required under this section are paid by the person filing the document or pleading or if an application for a waiver or deferral of fees and court costs is granted by the court under ORS 21.680 to 21.698. Fees and surcharges provided for in this section may not be refunded.

(8) An action brought under ORS 105.110 by a person entitled to possession of premises on the basis of circumstances described in ORS 105.115 (1)(d), (e) or (f) is subject to the filing fees and other court or sheriff fees applicable to an action concerning a dwelling unit that is subject to ORS chapter 90. The procedure under ORS 105.105 to 105.168 that is applicable to an action concerning a dwelling unit subject to ORS chapter 90 shall also apply to an action brought under ORS 105.115 (1)(d), (e) or (f), except that the complaint must be in the form prescribed in ORS 105.126.

SECTION 3. The amendments to ORS 105.115 and 105.130 by sections 1 and 2 of this 2009 Act apply to proceedings under ORS 105.105 to 105.168 or actions under ORS 105.110 that begin on or after the effective date of this 2009 Act.

SECTION 4. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by Senate May 12, 2009

Received by Governor:

Repassed by Senate June 17, 2009

.....M,....., 2009

Approved:

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Secretary of Senate

.....M,....., 2009

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President of Senate

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Governor

Passed by House June 10, 2009

Filed in Office of Secretary of State:

.....M,....., 2009

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Speaker of House

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Secretary of State