

**Enrolled**  
**Senate Bill 293**

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CHAPTER .....

AN ACT

Relating to landlord-tenant law; creating new provisions; and amending ORS 86.755, 90.100, 90.220, 90.230, 90.295, 90.297, 90.300, 90.316, 90.317, 90.367, 90.385, 90.417, 90.425, 90.427, 90.449, 90.453, 90.456, 90.472, 90.475, 90.555, 90.634 and 105.836.

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

**SECTION 1.** ORS 90.220 is amended to read:

90.220. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule of law including rent, term of the agreement and other provisions governing the rights and obligations of the parties.

(2) The terms of a fixed term tenancy, including the amount of rent, may not be unilaterally amended by the landlord or tenant.

(3) The landlord shall provide the tenant with a copy of any written rental agreement and all amendments and additions thereto.

*[(4) Before the landlord enters into a new rental agreement with an applicant or accepts any payment from an applicant, the landlord shall provide the applicant with a written list of all deposits, fees and rent that are charged by the landlord. The landlord and applicant may agree to amend the written list before entering into the rental agreement. The list may be included in the written rental agreement. The written rental agreement must, at a minimum, include a description of the fees that the landlord may charge.]*

*[(5) (4) Except as provided in this subsection, the rental agreement must include a disclosure of the smoking policy for the premises that complies with ORS 479.305. A disclosure of smoking policy is not required in a rental agreement subject to ORS 90.505 to 90.840 for space in a facility as defined in ORS 90.100.*

*[(6) (5) Notwithstanding ORS 90.245 (1), the parties to a rental agreement to which ORS 90.100 to 90.465 apply may include in the rental agreement a provision for informal dispute resolution.*

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

*[(8) (7) Except as otherwise provided by this chapter:*

*(a) Rent is payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit, periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly or weekly installments at the beginning of each month or week, depending on whether the tenancy is month-to-month or*

week-to-week. Rent may not be considered to be due prior to the first day of each rental period. Rent may not be increased without a 30-day written notice thereof in the case of a month-to-month tenancy or a seven-day written notice thereof in the case of a week-to-week tenancy.

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

[(9)] (8) Except as provided by ORS 90.427 (7), a tenant is responsible for payment of rent until the earlier of:

- (a) The date that a notice terminating the tenancy expires;
- (b) The date that the tenancy terminates by its own terms;
- (c) The date that the tenancy terminates by surrender;
- (d) The date that the tenancy terminates as a result of the landlord failing to use reasonable efforts to rent the dwelling unit to a new tenant as provided under ORS 90.410 (3);
- (e) The date when a new tenancy with a new tenant begins;
- (f) Thirty days after delivery of possession without prior notice of termination of a month-to-month tenancy; or
- (g) Ten days after delivery of possession without prior notice of termination of a week-to-week tenancy.

**SECTION 1a.** ORS 90.230 is amended to read:

90.230. (1) If a tenancy is for the occupancy of a recreational vehicle in a manufactured dwelling park, mobile home park or recreational vehicle park, all as defined in ORS 197.492, the landlord shall provide a written rental agreement for a month-to-month, week-to-week or fixed-term tenancy. The rental agreement must state:

(a) If applicable, that the tenancy may be terminated by the landlord under ORS 90.427 without cause upon 30 **or 60** days' written notice for a month-to-month tenancy or upon 10 days' written notice for a week-to-week tenancy.

(b) That any accessory building or structure paid for or provided by the tenant belongs to the tenant and is subject to a demand by the landlord that the tenant remove the building or structure upon termination of the tenancy.

(c) That the tenancy is subject to the requirements of ORS 197.493 (1) for exemption from placement and occupancy restrictions.

(2) If a tenant described in subsection (1) of this section moves following termination of the tenancy by the landlord under ORS 90.427, and the landlord failed to provide the required written rental agreement before the beginning of the tenancy, the tenant may recover the tenant's actual damages or twice the periodic rent, whichever is greater.

(3) If the occupancy fails at any time to comply with the requirements of ORS 197.493 (1) for exemption from placement and occupancy restrictions, and a state agency or local government requires the tenant to move as a result of the noncompliance, the tenant may recover the tenant's actual damages or twice the periodic rent, whichever is greater. This subsection does not apply if the noncompliance was caused by the tenant.

(4) This section does not apply to a vacation occupancy.

**SECTION 2.** ORS 90.295 is amended to read:

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

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

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

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

(a) Adopts written screening or admission criteria;

(b) Gives written notice to the applicant of:

(A) The amount of the applicant screening charge;

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

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

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

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

**(d) Gives written notice to the applicant of the amount of rent the landlord will charge and the deposits the landlord will require, subject to change in the rent or deposits by agreement of the landlord and the tenant before entering into a rental agreement.**

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

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

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

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

(8) The applicant may recover from the landlord **twice** the amount of any applicant screening charge paid, plus ~~[\$100]~~ **\$150**, if:

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

(b) The landlord does not conduct a screening of the applicant for any reason and fails to refund an applicant screening charge to the applicant within a reasonable time.

**SECTION 3.** ORS 90.297 is amended to read:

90.297. (1) Except as provided in ORS 90.295 and in this section, a landlord may not charge a deposit or fee, however designated, to an applicant who has applied to a landlord to enter a rental agreement for a dwelling unit.

(2) A landlord may charge a deposit, however designated, to an applicant for the purpose of securing the execution of a rental agreement, after approving the applicant's application but prior

to entering into a rental agreement. The landlord must give the applicant a written statement describing:

**(a) The amount of rent and the fees the landlord will charge and the deposits the landlord will require; and**

**(b)** The terms of the agreement to execute a rental agreement and the conditions for refunding or retaining the deposit.

[(a)] **(3)** 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)] **(4)** 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)] **(5)** If a rental agreement is not executed due to a failure by the landlord to comply with the agreement to execute, within four days the landlord shall return the deposit to the applicant either by making the deposit available to the applicant at the landlord's customary place of business or by mailing the deposit by first class mail to the applicant.

[(3)] **(6)** 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] **\$150**.

**SECTION 4.** ORS 90.300, as amended by section 5, chapter 28, Oregon Laws 2010, is amended to read:

90.300. (1) As used in this section, "security deposit" includes any last month's rent deposit.

(2)(a) Except as otherwise provided in this section, a landlord may require a tenant to pay a security deposit. The landlord shall provide the tenant with a receipt for any security deposit the tenant pays. The landlord shall hold a security deposit or prepaid rent for the tenant who is a party to the rental agreement. A tenant's claim to the security deposit or prepaid rent is prior to the claim of a creditor of the landlord, including a trustee in bankruptcy.

(b) Except as provided in ORS 86.755 (8), the holder of the landlord's interest in the premises at the time the tenancy terminates is responsible to the tenant for any security deposit or prepaid rent and is bound by this section.

**(3) A written rental agreement, if any, must list a security deposit paid by a tenant or required by a landlord.**

[(3)] **(4)** A landlord may not charge a tenant a pet security deposit for keeping a service animal or companion animal that a tenant with a disability requires as a reasonable accommodation under fair housing laws.

[(4)(a)] **(5)(a)** Except as otherwise provided in this subsection, a landlord may not change the rental agreement to require the tenant to pay a new or increased security deposit during the first year after the tenancy has begun. Subject to subsection [(3)] (4) of this section, the landlord may require an additional deposit 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 the modification. This paragraph does not prevent a landlord from collecting a security deposit that an initial rental agreement provided for but that 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 the new or increased deposit.

[(5)] **(6)** The landlord may claim all or part of the security deposit only if the landlord required the security deposit for any or all of the purposes specified in subsection [(6)] (7) of this section.

[(6)(a)] **(7)(a)** 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.

(b) A landlord is not required to repair damage caused by the tenant in order for the landlord to claim against the deposit for the cost to make the repair. Any labor costs the landlord assesses under this subsection for cleaning or repairs must be based on a reasonable hourly rate. The land-

lord may charge a reasonable hourly rate for the landlord's own performance of cleaning or repair work.

(c) Defaults and damages for which a landlord may recover under this subsection include, but are not limited to:

(A) Carpet cleaning, other than the use of a common vacuum cleaner, if:

(i) The cleaning is performed by use of a machine specifically designed for cleaning or shampooing carpets;

(ii) The carpet was cleaned immediately before the tenant took possession; and

(iii) The written rental agreement provides that the landlord may deduct the cost of carpet cleaning regardless of whether the tenant cleans the carpet before the tenant delivers possession as described in ORS 90.147.

(B) Loss of use of the dwelling unit during the performance of necessary cleaning or repairs, if the cleaning or repairs are performed in a timely manner.

[(7)] **(8)** A landlord may not require a tenant to pay or to forfeit a security deposit or prepaid rent to the landlord for the tenant's failure to maintain a tenancy for a minimum number of months in a month-to-month tenancy.

[(8)] **(9)** The landlord must apply any last month's rent deposit to the rent due for the last month of the tenancy:

(a) When either the landlord or the tenant gives to the other a notice of termination, pursuant to this chapter, other than a notice of termination under ORS 90.394;

(b) When the landlord and tenant agree to terminate the tenancy; or

(c) When the tenancy terminates in accordance with the provisions of a written rental agreement for a term tenancy.

[(9)] **(10)** A landlord shall account for and refund as provided in subsections [(11) to (13)] **(12) to (14)** of this section any portion of a last month's rent deposit the landlord does not apply as provided under subsection [(8)] **(9)** of this section. Unless the tenant and landlord agree otherwise, the tenant may not require the landlord to apply a last month's rent deposit to rent due for any period other than the last month of the tenancy. A last month's rent deposit does not limit the amount of rent charged unless a written rental agreement provides otherwise.

[(10)] **(11)** When the tenancy terminates, a landlord shall account for and refund to the tenant, in the same manner this section requires for security deposits, the unused balance of any prepaid rent the landlord has not previously refunded to the tenant under ORS 90.380 and 105.120 (5)(b) or any other provision of this chapter. The landlord may claim from the remaining prepaid rent only the amount reasonably necessary to pay the tenant's unpaid rent.

[(11)] **(12)** In order to claim all or part of any prepaid rent or security deposit, within 31 days after the tenancy terminates and the tenant delivers 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.

[(12)] **(13)** The landlord shall return to the tenant the security deposit or prepaid rent or the portion of the security deposit or prepaid rent that the landlord does not claim in the manner provided by subsections [(10) and] (11) **and (12)** of this section not later than 31 days after the tenancy terminates and the tenant delivers possession to the landlord.

[(13)] **(14)** The landlord shall give the written accounting required under subsection [(11)] **(12)** of this section or shall return the security deposit or prepaid rent as required by subsection [(12)] **(13)** of this section by personal delivery or by first class mail.

[(14)] **(15)** If a security deposit or prepaid rent secures a tenancy for a space for a manufactured dwelling or floating home the tenant owns and occupies, whether or not in a facility, and the dwelling or home is abandoned as described in ORS 90.425 (2) or 90.675 (2), the 31-day period described in subsections [(11) and] (12) **and (13)** of this section commences on the earliest of:

(a) Waiver of the abandoned property process under ORS 90.425 (26) or 90.675 (22);

(b) Removal of the manufactured dwelling or floating home from the rented space;

(c) Destruction or other disposition of the manufactured dwelling or floating home under ORS 90.425 (10)(b) or 90.675 (10)(b); or

(d) Sale of the manufactured dwelling or floating home pursuant to ORS 90.425 (10)(a) or 90.675 (10)(a).

[(15)] **(16)** If the landlord fails to comply with subsection [(12)] **(13)** 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 [(11)] **(12)** of this section; or

(b) Withheld in bad faith.

[(16)(a)] **(17)(a)** A security deposit or prepaid rent in the possession of the landlord is not garnishable property, as provided in ORS 18.618.

(b) If a landlord delivers a security deposit or prepaid rent to a garnishor in violation of ORS 18.618 (1)(b), the landlord that delivered the security deposit or prepaid rent to the garnishor shall allow the tenant at least 30 days after a copy of the garnishee response required by ORS 18.680 is delivered to the tenant under ORS 18.690 to restore the security deposit or prepaid rent. If the tenant fails to restore a security deposit or prepaid rent under the provisions of this paragraph before the tenancy terminates, and the landlord retains no security deposit or prepaid rent from the tenant after the garnishment, the landlord is not required to refund or account for the security deposit or prepaid rent under subsection [(10)] **(11)** of this section.

[(17)] **(18)** This section does not preclude the landlord or tenant from recovering other damages under this chapter.

**SECTION 5.** ORS 90.316 is amended to read:

90.316. [(1) As used in this section, “carbon monoxide alarm” and “carbon monoxide source” have the meanings given those terms in ORS 105.836.]

[(2)] **(1) Unless a dwelling unit contains one or more properly functioning carbon monoxide alarms installed in compliance with State Fire Marshal rules and with any applicable requirements of the state building code when a tenant takes possession of the dwelling unit, a landlord may not enter into a rental agreement creating a new tenancy in [a dwelling unit that] the dwelling unit if the dwelling unit:**

(a) Contains a carbon monoxide source [or that]; or

(b) Is **located** within a structure that contains a carbon monoxide source [unless, at the time the tenant takes possession of the dwelling unit, the dwelling unit contains one or more properly functioning carbon monoxide alarms installed in compliance with State Fire Marshal rules and with any applicable requirements of the state building code.] **and the dwelling unit is connected to the room in which the carbon monoxide source is located by a door, ductwork or a ventilation shaft.**

(2) The landlord shall provide a new tenant with alarm testing instructions as described in ORS 90.317.

(3) If a carbon monoxide alarm is battery-operated or has a battery-operated backup system, the landlord shall supply working batteries for the alarm at the beginning of a new tenancy.

**SECTION 6. ORS 90.317 is added to and made a part of ORS chapter 90.**

**SECTION 7.** ORS 90.317 is amended to read:

90.317. (1) [If a rental dwelling unit that is subject to ORS chapter 90 has a carbon monoxide source or is located within a structure having a carbon monoxide source, the] **A** landlord shall ensure that [the] **a** dwelling unit has one or more carbon monoxide alarms installed in compliance with State Fire Marshal rules and the state building code **if the dwelling unit:**

(a) **Contains a carbon monoxide source; or**

(b) **Is located within a structure that contains a carbon monoxide source and the dwelling unit is connected to the room in which the carbon monoxide source is located by a door, ductwork or a ventilation shaft.**

(2) The landlord shall provide the tenant of the dwelling unit with a written notice containing instructions for testing of the alarms. The landlord shall provide the written notice to the tenant no later than at the time that the tenant first takes possession of the premises.

[2] (3) If the landlord receives written notice from the tenant of a deficiency in a carbon monoxide alarm, other than dead batteries, the landlord shall repair or replace the alarm.

(4) Supplying and maintaining a carbon monoxide alarm required under this section is a habitable condition requirement under ORS 90.320.

**SECTION 7a.** ORS 90.367 is amended to read:

90.367. (1) A tenant who receives actual notice that the property that is the subject of the tenant's rental agreement with a landlord is in foreclosure may apply the tenant's security deposit or prepaid rent to the tenant's obligation to the landlord. The tenant must notify the landlord in writing that the tenant intends to do so. **The giving of the notice provided by this subsection by the tenant does not constitute a termination of the tenancy.**

(2) **A landlord may not terminate the tenancy of a tenant:**

(a) **Because the tenant has applied the security deposit or prepaid rent as allowed under this section.**

(b) **For nonpayment of rent during the month in which the tenant applies the security deposit or prepaid rent pursuant to this section unless an unpaid balance remains due after applying all payments, including the security deposit or prepaid rent, to the rent.**

(3) **If the tenant has not provided the written notice applying the security deposit or prepaid rent as required under subsection (1) of this section before the landlord gives a termination notice for nonpayment of rent, the tenant must provide the written notice within the notice period provided by ORS 90.392 or 90.394. If the tenant does not provide the written notice, the landlord may terminate the tenancy based upon ORS 90.392 or 90.394.**

(4) **Application of the security deposit or prepaid rent to an obligation owed to the landlord does not constitute a partial payment under ORS 90.417.**

(5) **If the landlord provides written evidence from a lender or trustee that the property is no longer in foreclosure, the landlord may require the tenant to restore the security deposit or prepaid rent to the amount required prior to the tenant's application of the security deposit or prepaid rent. The landlord shall allow the tenant at least two months to restore the security deposit or prepaid rent.**

**SECTION 8.** ORS 90.385 is amended to read:

90.385. (1) Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services, by serving a notice to terminate the tenancy or by bringing or threatening to bring an action for possession after:

(a) The tenant has complained to, or expressed to the landlord in writing an intention to complain to, a governmental agency charged with responsibility for enforcement of any of the following concerning a violation applicable to the tenancy:

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

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

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

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

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

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

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

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

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

(f) The tenant has performed or expressed intent to perform any other act for the purpose of asserting, protecting or invoking the protection of any right secured to tenants under any federal, state or local law.

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

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

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

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

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

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

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

(c) The tenant *[is]* **was** in default in rent **at the time of the service of the notice upon which the action is based**; or

(d) Compliance with the applicable building or housing code requires alteration, remodeling or demolition which would effectively deprive the tenant of use of the dwelling unit.

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

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

(7) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under ORS 90.360 (2).

**SECTION 8a.** ORS 90.417 is amended to read:

90.417. (1) A tenant's duty regarding rent payments is to tender to the landlord an offer of the full amount of rent owed within the time allowed by law and by the rental agreement provisions regarding payment. A landlord may refuse to accept a rent tender that is for less than the full amount of rent owed or that is untimely.

(2) A landlord may accept a partial payment of rent. The acceptance of a partial payment of rent in a manner consistent with subsection [(3)] (4) of this section does not constitute a waiver under ORS 90.412 (2)(b) of the landlord's right to terminate the tenancy under ORS 90.394 for nonpayment of the balance of the rent owed.

(3) 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. Installment rent payments described in this subsection are not partial payment of rent for purposes of this section.

(4) The acceptance of a partial payment of rent waives the right of the landlord to terminate the tenant's rental agreement under ORS 90.394 for nonpayment of rent unless:

(a)(A) The landlord accepted the partial payment of rent before the landlord gave a nonpayment of rent termination notice under ORS 90.394 based on the tenant's agreement to pay the balance by a time certain and the tenant does not pay the balance of the rent as agreed;

(B) The landlord's notice of termination is served no earlier than it would have been permitted under ORS 90.394 had no rent been accepted; and

(C) 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; or

(b) The landlord accepted a partial payment of rent after giving a nonpayment of rent termination notice under ORS 90.394 and entered into a written agreement with the tenant that the acceptance does not constitute waiver. The agreement may provide that the landlord may terminate the rental agreement and take possession as provided in ORS 105.105 to 105.168 without serving a new notice under ORS 90.394 if the tenant fails to pay the balance of the rent by a time certain.

**(5) Application of a tenant's security deposit or prepaid rent to an obligation owed to a landlord in foreclosure under ORS 90.367 does not constitute a partial payment of rent.**

[5] (6) Notwithstanding any acceptance of a partial payment of rent under subsection (4) of this section, the tenant continues to owe the landlord the unpaid balance of the rent.

**SECTION 8b.** 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 recreational vehicle that is not a manufactured structure as defined in ORS 446.561, that a security interest has been properly recorded with the Department of Transportation pursuant to ORS 802.200 (1)(a)(A) and 803.097.

(B) For a manufactured dwelling or recreational vehicle that is a manufactured structure as defined in ORS 446.561, that a security interest has been properly recorded for the manufactured dwelling or recreational vehicle in the records of the Department of Consumer and Business Services pursuant to ORS 446.611 or on a certificate of title issued by the Department of Transportation prior to May 1, 2005.

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

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

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

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

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

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

(c) The landlord receives possession of the premises from the sheriff following restitution pursuant to ORS 105.161.

(3) Prior to selling or disposing of the tenant's personal property under this section, the landlord must give a written notice to the tenant that must 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 must be both by first class mail and by certified mail with return receipt requested.

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

(A) Actually known to the landlord;

(B) Of record; and

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

(5) The notice required under subsection (3) of this section must 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 must be stored on the rented space;

(d) The tenant or any lienholder or owner, except as provided by subsection (18) 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 (18) of this section, by appointment at reasonable times;

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

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

(h) If the tenant or any lienholder or owner fails to contact the landlord by the specified date, or after that contact, fails to remove the personal property within 30 days for recreational vehicles, manufactured dwellings and floating homes or 15 days for all other personal property, the landlord may sell or dispose of the personal property. If the landlord reasonably believes that the personal property will be eligible for disposal pursuant to subsection (10)(b) of this section and the landlord intends to dispose of the property if the property 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 (18) 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 is:

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

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

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

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

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

(A) Promptly dispose of rotting food; and

(B) Allow an animal control agency to remove any abandoned pets or livestock. If an animal control agency will not remove the abandoned pets or livestock, the landlord shall exercise reasonable care for the animals given all the circumstances, including the type and condition of the animals, and may give the animals to an agency that is willing and able to care for the animals, such as a humane society or similar organization;

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

(d) Is entitled to reasonable or actual storage charges and costs incidental to storage or disposal, including any cost of removal to a place of storage. In the case of an abandoned manufactured dwelling or floating home, the storage charge may 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 15 days or, in the case of a recreational vehicle, manufactured dwelling or floating home, 30 days following the date of the response, subject to subsection (18) of this section. If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of this section, but not pursuant to subsection (2)(c) of this section, the landlord may require payment of removal and storage charges, as provided in subsection (7)(d) of this section, prior to allowing the tenant, lienholder or owner to remove the personal property. Acceptance by a landlord of such payment does not operate to create or reinstate a tenancy or create a waiver pursuant to ORS 90.412 or 90.417.

(9) Except as provided in subsections (18) to (20) of this section, if the tenant, lienholder or owner of a recreational vehicle, manufactured dwelling or floating home does not respond within the time provided by the landlord's notice, or the tenant, lienholder or owner does not remove the personal property within the time required by subsection (8) of this section or by any date agreed to with the landlord, whichever is later, the tenant's, lienholder's or owner's personal property is conclusively presumed to be abandoned. The tenant and any lienholder or owner that have been given notice pursuant to subsection (3) or (4) of this section shall, except with regard to the distribution of sale proceeds pursuant to subsection (13) 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 ownership of record of 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 any plate, registration or other identification number for a recreational vehicle or floating home noted on the certificate of title, if actually known to the landlord;

(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 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 must 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 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 and assessments 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 (13) of this section;

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

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

(B) For all other personal property, the reasonable current fair market value is [~~\$500~~] **\$1,000** 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 must:

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

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

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

(12) Notwithstanding ORS 446.155 (1) and (2), unless a landlord intentionally misrepresents the condition of a manufactured dwelling or floating home, the landlord is not liable for the condition of the dwelling or home to:

(a) A buyer of the dwelling or home at a sale pursuant to subsection (10)(a) of this section, with or without consideration; or

(b) A person or nonprofit organization to whom the landlord gives the dwelling or home pursuant to subsection (1)(b), (10)(b) or (11)(b) of this section.

(13)(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 and assessments 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 landlord shall deposit the remaining proceeds with the county treasurer of the county in which the sale occurred. If not claimed within three years, the deposited proceeds revert to the general fund of the county and are available for general purposes.

(14) The county tax collector shall cancel all unpaid property taxes and assessments owed on a manufactured dwelling or floating home, as provided under ORS 311.790, only under one of the following circumstances:

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

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

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

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

(C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes and assessments owed on the dwelling or home after distribution of the proceeds pursuant to subsection (13) of this section.

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

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

(C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes and assessments owed on the manufactured dwelling or floating home after distribution of the proceeds pursuant to subsection (13) of this section; and

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

(15) The landlord is not responsible for any loss to the tenant, lienholder or owner resulting from storage of personal property in compliance with this section unless the loss was caused by the

landlord's deliberate or negligent act. In the event of a deliberate and malicious violation, the landlord is liable for twice the actual damages sustained by the tenant, lienholder or owner.

(16) 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.

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

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

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

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

(18) 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 also apply to any lienholder except that the lienholder may not sell or remove the vehicle, dwelling or home unless:

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

(b) The tenant or a personal representative or designated person described in subsection (20) of this section has waived all rights under this section pursuant to subsection (26) of this section; or

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

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

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

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

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

(A) The lienholder make timely periodic payment of all storage charges, as described in subsection (7)(d) of this section, accruing from the commencement of the 45-day period described in subsection (6) of this section. A storage charge may include a utility or service charge, as described

in ORS 90.532, if limited to charges for electricity, water, sewer service and natural gas and if incidental to the storage of personal property. A storage charge may not be due more frequently than monthly;

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

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

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

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

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

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

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

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

(a) The following persons have the same rights and responsibilities regarding the abandoned dwelling or home as a tenant:

(A) Any personal representative named in a will or appointed by a court to act for the deceased tenant.

(B) 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 must 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 must refer to any personal representative or designated person, instead of the deceased tenant, and must incorporate the provisions of this subsection.

(d) If a personal representative, designated person or other person entitled to possession of the property, such as an heir or devisee, responds by actual notice to a landlord within the 45-day period provided by subsection (6) of this section and so requests, the landlord shall enter into a written storage agreement with the representative or person providing that the dwelling or home may not be sold or disposed of by the landlord for up to 90 days or until conclusion of any probate proceedings, whichever is later. A storage agreement entitles the representative or person to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property. If such an agreement is entered, the landlord may not enter a similar agreement with a lienholder pursuant to subsection (19) of this section until the agreement with the personal representative or designated person ends.

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

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

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

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

(21) If the personal property is other than a 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 personal property, this section applies except as follows:

(a) The following persons have the same rights and responsibilities regarding the abandoned personal property as a tenant:

(A) An heir or devisee.

(B) Any personal representative named in a will or appointed by a court to act for the deceased tenant.

(C) 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 must be:

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

(B) Personally delivered or sent by first class mail to any heir, devisee, personal representative or designated person, if actually known to the landlord; and

(C) Sent by first class mail to the attention of an estate administrator of the Department of State Lands.

(c) The notice described in subsection (5) of this section must refer to the heir, devisee, personal representative, designated person or estate administrator of the department, instead of the deceased tenant, and must incorporate the provisions of this subsection.

(d) The landlord shall allow a person that is an heir, devisee or personal representative of the tenant, or an estate administrator of the department, to remove the personal property if the person contacts the landlord within the period provided by subsection (6) of this section, complies with the requirements of this section and provides the landlord with reasonable evidence that the person is an heir, devisee or personal representative, or an estate administrator of the department.

(e) If neither an heir, devisee nor personal representative of the tenant, nor an estate administrator of the department, contacts the landlord within the time period provided by subsection (6) of this section, the landlord shall allow removal of the personal property by the designated person of the tenant, if the designated person contacts the landlord within that period and complies with the requirements of this section and provides the landlord with reasonable evidence that the person is the designated person.

(f) A landlord who allows removal of personal property under this subsection is not liable to another person that has a claim or interest in the personal property.

(22) 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 immediate vicinity 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 must 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 must 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 must 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 must be consistent with this subsection;

(B) The notice must 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 (19) of this section.

(23)(a) If an official or agency referred to in ORS 453.876 notifies the landlord that the official or agency has determined that all or part of the premises is unfit for use as a result of the presence of an illegal drug manufacturing site involving methamphetamine, and the landlord complies with this subsection, the landlord is not required to comply with subsections (1) to (22) and (24) to (27) of this section with regard to personal property left on the portion of the premises that the official or agency has determined to be unfit for use.

(b) Upon receiving notice from an official or agency determining the premises to be unfit for use, the landlord shall promptly give written notice to the tenant as provided in subsection (3) of

this section. The landlord shall also attach a copy of the notice in a secure manner to the main entrance of the dwelling unit. The notice to the tenant shall include a copy of the official's or agency's notice and state:

(A) That the premises, or a portion of the premises, has been determined by an official or agency to be unfit for use due to contamination from the manufacture of methamphetamine and that as a result subsections (1) to (22) and (24) to (27) of this section do not apply to personal property left on any portion of the premises determined to be unfit for use;

(B) That the landlord has hired, or will hire, a contractor to assess the level of contamination of the site and to decontaminate the site;

(C) That upon hiring the contractor, the landlord will provide to the tenant the name, address and telephone number of the contractor; and

(D) That the tenant may contact the contractor to determine whether any of the tenant's personal property may be removed from the premises or may be decontaminated at the tenant's expense and then removed.

(c) To the extent consistent with rules of the Department of Human Services, the contractor may release personal property to the tenant.

(d) If the contractor and the department determine that the premises or the tenant's personal property is not unfit for use, upon notification by the department of the determination, the landlord shall comply with subsections (1) to (22) and (24) to (27) of this section for any personal property left on the premises.

(e) Except as provided in paragraph (d) of this subsection, the landlord is not responsible for storing or returning any personal property left on the portion of the premises that is unfit for use.

(24) 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 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.

(25) 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.

(26)(a) A landlord may sell or dispose of a tenant's abandoned personal property without complying with subsections (1) to (25) and (27) of this section if, after termination of the tenancy or no more than seven days prior to the termination of the tenancy, the following parties so agree in a writing entered into in good faith:

(A) The landlord;

(B) The tenant, or for an abandonment as the result of the death of a tenant who was the only tenant, the personal representative, designated person or other person entitled to possession of the personal property, such as an heir or devisee, as described in subsection (20) or (21) of this section; and

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

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

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

**SECTION 9.** ORS 90.449 is amended to read:

90.449. (1) A landlord may not terminate or fail to renew a tenancy, **serve a notice to terminate a tenancy, bring or threaten to bring an action for possession, increase rent, decrease services** or refuse to enter into a rental agreement:

(a) Because a tenant or applicant is, or has been, a victim of domestic violence, sexual assault or stalking.

(b) Because of a violation of the rental agreement or a provision of this chapter, if the violation consists of an incident of domestic violence, sexual assault or stalking committed against the tenant or applicant.

(c) Because of criminal activity relating to domestic violence, sexual assault or stalking in which the tenant or applicant is the victim, or of any police or emergency response related to domestic violence, sexual assault or stalking in which the tenant or applicant is the victim.

(2) A landlord may not impose different rules, conditions or standards or selectively enforce rules, conditions or standards against a tenant or applicant on the basis that the tenant or applicant is or has been a victim of domestic violence, sexual assault or stalking.

(3) Notwithstanding subsections (1) and (2) of this section, a landlord may terminate the tenancy of a victim of domestic violence, sexual assault or stalking if the landlord has previously given the tenant a written warning regarding the conduct of the perpetrator relating to domestic violence, sexual assault or stalking and:

(a) The tenant permits or consents to the perpetrator's presence on the premises and the perpetrator is an actual and imminent threat to the safety of persons on the premises other than the victim; or

(b) The perpetrator is an unauthorized occupant and the tenant permits or consents to the perpetrator living in the dwelling unit without the permission of the landlord.

(4) If a landlord violates this section:

(a) A tenant or applicant may recover up to two months' periodic rent or twice the actual damages sustained by the tenant or applicant, whichever is greater;

(b) The tenant has a defense to an action for possession by the landlord; and

(c) The applicant may obtain injunctive relief to gain possession of the dwelling unit.

(5) Notwithstanding ORS 105.137 (4), if a tenant asserts a successful defense under subsection (4) of this section to an action for possession, the tenant is not entitled to prevailing party fees, attorney fees or costs and disbursements if the landlord:

(a) Did not know, and did not have reasonable cause to know, at the time of commencing the action that a violation or incident on which the action was based was related to domestic violence, sexual assault or stalking; and

(b) Promptly dismissed tenants other than the perpetrator from the action upon becoming aware that the violation or incident on which the action was based was related to domestic violence, sexual assault or stalking.

**SECTION 9a.** ORS 90.453 is amended to read:

90.453. (1) As used in this section:

**(a) "Immediate family member" means, with regard to a tenant who is a victim of domestic violence, sexual assault or stalking, any of the following who is not a perpetrator of the domestic violence, sexual assault or stalking against the tenant:**

**(A) An adult person related by blood, adoption, marriage or domestic partnership, as defined in ORS 106.310, or as defined or described in similar law in another jurisdiction;**

**(B) A cohabitant in an intimate relationship;**

**(C) An unmarried parent of a joint child; or**

**(D) A child, grandchild, foster child, ward or guardian of the victim or of anyone listed in subparagraph (A), (B) or (C) of this paragraph.**

[(a)] **(b) "Qualified third party" means a person that has had individual contact with the tenant and is a law enforcement officer, attorney or licensed health professional or is a victim's advocate at a victim services provider.**

[(b)] **(c) "Verification" means:**

**(A) A copy of a valid order of protection issued by a court pursuant to ORS 30.866, 107.095 (1)(c), 107.716, 107.718 or 163.738 or any other federal, state, local or tribal court order that restrains a person from contact with the tenant;**

**(B) A copy of a federal agency or state, local or tribal police report regarding an act of domestic violence, sexual assault or stalking against the tenant;**

(C) A copy of a conviction of any person for an act of domestic violence, sexual assault or stalking against the tenant; or

(D) A statement substantially in the form set forth in subsection (3) of this section.

[(c)] (d) "Victim services provider" means:

(A) A nonprofit agency or program receiving moneys administered by the Department of Human Services or the Department of Justice that offers safety planning, counseling, support or advocacy to victims of domestic violence, sexual assault or stalking; or

(B) A prosecution-based victim assistance program or unit.

(2)(a) If a tenant gives a landlord at least 14 days' written notice, and the notice so requests, the landlord shall release the tenant **and any immediate family member of the tenant** from the rental agreement.

(b) The notice given by the tenant must specify the release date **and must list the names of any immediate family members to be released in addition to the tenant.**

(c) The notice must be accompanied by verification that the tenant:

(A) Is protected by a valid order of protection; or

(B) Has been the victim of domestic violence, sexual assault or stalking within the 90 days preceding the date of the notice. For purposes of this subparagraph, any time the perpetrator was incarcerated or residing more than 100 miles from the victim's home does not count as part of the 90-day period.

(3) A verification statement must be signed by the tenant and the qualified third party and be in substantially the following form:

---

QUALIFIED THIRD PARTY  
VERIFICATION

---

Name of qualified third party

---

Name of tenant

PART 1. STATEMENT BY TENANT

I, \_\_\_\_\_ (Name of tenant), do hereby state as follows:

(A) I or a minor member of my household have been a victim of domestic violence, sexual assault or stalking, as those terms are defined in ORS 90.100.

(B) The most recent incident(s) that I rely on in support of this statement occurred on the following date(s): \_\_\_\_\_.

\_\_\_\_\_ The time since the most recent incident took place is less than 90 days; or

\_\_\_\_\_ The time since the most recent incident took place is less than 90 days if periods when the perpetrator was incarcerated or was living more than 100 miles from my home are not counted. The perpetrator was incarcerated from \_\_\_\_\_ to \_\_\_\_\_. The perpetrator lived more than 100 miles from my home from \_\_\_\_\_ to \_\_\_\_\_.

(C) I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

\_\_\_\_\_  
(Signature of tenant)

Date: \_\_\_\_\_

PART 2. STATEMENT BY QUALIFIED THIRD PARTY

I, \_\_\_\_\_ (Name of qualified third party), do hereby verify as follows:

(A) I am a law enforcement officer, attorney or licensed health professional or a victim's advocate with a victims services provider, as defined in ORS 90.453.

(B) My name, business address and business telephone are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(C) The person who signed the statement above has informed me that the person or a minor member of the person's household is a victim of domestic violence, sexual assault or stalking, based on incidents that occurred on the dates listed above.

(D) I reasonably believe the statement of the person above that the person or a minor member of the person's household is a victim of domestic violence, sexual assault or stalking, as those terms are defined in ORS 90.100. I understand that the person who made the statement may use this document as a basis for gaining a release from the rental agreement with the person's landlord.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

\_\_\_\_\_  
(Signature of qualified third party  
making this statement)

Date: \_\_\_\_\_

(4) A tenant **and any immediate family member** who is released from a rental agreement pursuant to subsection (2) of this section:

- (a) Is not liable for rent or damages to the dwelling unit incurred after the release date; and
- (b) Is not subject to any fee solely because of termination of the rental agreement.

(5) Notwithstanding the release from a rental agreement of a tenant who is a victim of domestic violence, sexual assault or stalking[, *any other tenant remains*] **and any tenant who is an immediate family member of that tenant, other tenants remain** subject to the rental agreement.

(6) A landlord may not disclose any information provided by a tenant under this section to a third party unless the disclosure is:

- (a) Consented to in writing by the tenant;
- (b) Required for use in an eviction proceeding;
- (c) Made to a qualified third party; or
- (d) Required by law.

(7) The provision of a verification statement under subsection (2) of this section does not waive the confidential or privileged nature of a communication between the victim of domestic violence, sexual assault or stalking and a qualified third party.

**SECTION 9b.** ORS 90.456 is amended to read:

90.456. Notwithstanding the release of a **tenant who is a victim of domestic violence, sexual assault or stalking, and any immediate family members of that tenant**, from a rental agreement under ORS 90.453 or the exclusion of a perpetrator of domestic violence, sexual assault or stalking as provided in ORS 90.459 or 105.128, if there are any remaining tenants of the dwelling unit, the tenancy shall continue for those tenants. Any fee, security deposit or prepaid rent paid by the victim, perpetrator or other tenants shall be applied, accounted for or refunded by the landlord following termination of the tenancy and delivery of possession by the remaining tenants as provided in ORS 90.300 and 90.302.

**SECTION 9c. ORS 105.117 is added to and made a part of ORS chapter 91.**

**SECTION 10.** ORS 86.755 is amended to read:

86.755. (1) The trustee shall hold the trustee's sale on the date and at the time and place designated in the notice of sale, which must be at a designated time after 9 a.m. and before 4 p.m., based on the standard of time set forth in ORS 187.110 and at a designated place in the county or one of the counties where the property is situated. The trustee may sell the property in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash. Any person, including the beneficiary under the trust deed, but excluding the trustee, may bid at the trustee's sale. The attorney for the trustee, or an agent that the trustee or the attorney designates, may conduct the sale and act in the sale as the trustee's auctioneer.

(2) The trustee or the attorney for the trustee, or an agent that the trustee or the attorney conducting the sale designates, may postpone the sale for one or more periods totaling not more than 180 days from the original sale date, giving notice of each adjournment by public proclamation made at the time and place set for sale. The trustee, the attorney or an agent that the trustee or the attorney designates may make the proclamation.

(3) The purchaser shall pay at the time of sale the price bid, and, within 10 days following payment, the trustee shall execute and deliver the trustee's deed to the purchaser.

(4) The trustee's deed shall convey to the purchaser the interest in the property that the grantor had, or had the power to convey, at the time the grantor executed the trust deed, together with any interest the grantor or the grantor's successors in interest acquire after the execution of the trust deed.

(5)(a) The purchaser at the trustee's sale is entitled to possession of the property on the 10th day after the sale. A person that remains in possession after the 10th day under any interest, except an interest prior to the trust deed or an interest the grantor or a successor of the grantor created voluntarily is a tenant at sufferance. The purchaser may obtain possession of the property from a tenant at sufferance by following the procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure.

(b) Except as provided in paragraph (c) of this subsection, at any time after the trustee's sale the purchaser may follow the procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure to obtain possession of the property from a person that holds possession under an interest that the grantor or a successor of the grantor created voluntarily if, not earlier than 30 days before the date first set for the sale, the person was served with not less than 30 days' written notice of the requirement to surrender or deliver possession of the property.

(c) If the property purchased at the trustee's sale is a dwelling unit, as defined in ORS 90.100 [(9)], that the person holds under a tenancy that the grantor or a successor of the grantor created voluntarily and in good faith, the purchaser may follow the procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure to obtain possession if after the sale the purchaser terminates the tenancy in a written notice given to the person:

(A) At least 60 days before the termination date specified in the notice, if the tenancy is a fixed term tenancy, as defined in ORS 90.100, and at least 30 days before the date first set for the trustee's sale the person provided the trustee with a copy of the rental agreement that established the fixed term tenancy. The provisions of this subparagraph do not apply to a purchaser that does not intend to terminate a fixed term tenancy before the date on which the fixed term tenancy ends.

(B) At least 30 days before the termination date specified in the notice, if:

(i) The tenancy is a month-to-month tenancy or week-to-week tenancy, as those terms are defined in ORS 90.100, and at least 30 days before the date first set for the trustee's sale the person provided the trustee with a copy of the rental agreement that established the tenancy or with other written evidence of the existence of a rental agreement, if the person cannot provide the rental agreement; or

(ii) The tenancy is a fixed term tenancy for which the person has provided notice to the trustee as provided in subparagraph (A) of this paragraph and the purchaser intends to occupy the property that is subject to the fixed term tenancy as the purchaser's primary residence.

(d) A purchaser may not commence a proceeding under ORS 105.105 to 105.168 that is authorized under this subsection before the later of:

(A) The 10th day after the trustee's sale;

(B) The date specified in a written notice of the requirement to surrender or deliver possession of the property if the notice is required by and is given to the person in accordance with paragraph (b) of this subsection;

(C) The date specified in a written notice of the purchaser's intent to terminate a tenancy if the notice is required by and is given to the person in accordance with paragraph (c) of this subsection; or

(D) The date on which the term of a fixed term tenancy ends, if the property is a dwelling unit and the purchaser has not terminated the tenancy in accordance with paragraph (c) of this subsection.

(e) For the purposes of this subsection:

(A) A month-to-month tenancy or a week-to-week tenancy that a grantor or a successor of the grantor first created after a notice of sale was served under ORS 86.750 is presumed not to be a tenancy created in good faith.

(B) A fixed term tenancy that a grantor or a successor of the grantor created after a notice of sale was served under ORS 86.750 is not a tenancy created in good faith.

(6) A purchaser shall serve a notice under subsection (5) of this section by first class mail and not by certified or registered mail or a form of mail that may delay or hinder actual delivery of mail to the addressee. The notice is effective three days after the notice is mailed.

(7)(a) Notwithstanding the provisions of subsection (5)(c) of this section and except as provided in paragraph (b) of this subsection, the purchaser is not a landlord subject to the provisions of ORS chapter 90 unless the purchaser:

(A) Accepts rent from the person who possesses the property under a tenancy described in subsection (5)(c) of this section;

(B) Enters into a new rental agreement with the person who possesses the property under a tenancy described in subsection (5)(c) of this section; or

(C) Fails to terminate the tenancy as provided in subsection (5)(c) of this section within 30 days after the date of the sale.

(b) The purchaser may act as a landlord for purposes of terminating a tenancy in accordance with the provisions of ORS 90.396.

(8)(a) Except as provided in paragraph (b) of this subsection, the purchaser is not liable to the person who possesses the property under a tenancy described in subsection (5)(c) of this section for:

(A) Damage to the property or diminution in rental value; or

(B) Returning a security deposit.

(b) A purchaser that is a landlord under the provisions of subsection (7)(a) of this section is liable to the person who possesses the property under a tenancy described in subsection (5)(c) of this section for:

(A) Damage to the property or diminution in rental value that occurs after the date of the trustee's sale; or

(B) Returning a security deposit the person pays after the date of the trustee's sale.

(9)(a) Notwithstanding subsection (2) of this section, except when a beneficiary has participated in obtaining a stay, foreclosure proceedings that are stayed by order of the court, by proceedings

in bankruptcy or for any other lawful reason shall, after release from the stay, continue as if uninterrupted, if within 30 days after release the trustee sends amended notice of sale by registered or certified mail to the last-known address of the persons listed in ORS 86.740 and 86.750 (1).

(b) In addition to the notice required under paragraph (a) of this subsection, the trustee shall send amended notice of sale:

(A) By registered or certified mail to:

(i) The address provided by each person who was present at the time and place set for the sale that was stayed; and

(ii) The address provided by each member of the Oregon State Bar who by registered or certified mail requests the amended notice of sale and includes with the request the notice of default or an identification number for the trustee's sale that would assist the trustee in identifying the property subject to the trustee's sale and a self-addressed, stamped envelope measuring at least 8.5 by 11 inches in size; or

(B) By posting a true copy or a link to a true copy of the amended notice of sale on the trustee's Internet website.

(10) The amended notice of sale must:

(a) Be given at least 20 days prior to the amended date of sale;

(b) Set an amended date of sale that may be the same as the original sale date, or date to which the sale was postponed, provided the requirements of this subsection and ORS 86.740 and 86.750 are satisfied;

(c) Specify the time and place for sale;

(d) Conform to the requirements of ORS 86.745; and

(e) State that the original sale proceedings were stayed and the date the stay terminated.

(11) If the publication of the notice of sale was not completed before the date the foreclosure proceedings were stayed by order of the court, by proceedings in bankruptcy or for any other lawful reason, after release from the stay, in addition to complying with the provisions of subsections (9) and (10) of this section, the trustee shall complete the publication by publishing an amended notice of sale that states that the notice has been amended following release from the stay and that contains the amended date of sale. The amended notice must be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks, except that the required number of publications must be reduced by the number of publications that were completed before the effective date of the stay. The last publication must be made more than 20 days before the date the trustee conducts the sale.

**SECTION 11.** ORS 90.100 is amended to read:

90.100. As used in this chapter, unless the context otherwise requires:

(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" includes 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) "Carbon monoxide alarm" has the meaning given that term in ORS 105.836.

(6) "Carbon monoxide source" has the meaning given that term in ORS 105.836.

[(5)] (7) "Conduct" means the commission of an act or the failure to act.

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

[(7)] (9) "Domestic violence" means:

- (a) Abuse between family or household members, as those terms are defined in ORS 107.705; or
- (b) Abuse, as defined in ORS 107.705, between partners in a dating relationship.

[(8)] (10) "Drug and alcohol free housing" means a dwelling unit described in ORS 90.243.

[(9)] (11) "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.

[(10)] (12) "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.

[(11)] (13) "Facility" means a manufactured dwelling park or a marina.

[(12)] (14) "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.

[(13)] (15) "Fee" means a nonrefundable payment of money.

[(14)] (16) "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.

[(15)] (17) "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.

[(16)] (18) "Floating home" has the meaning given that term in ORS 830.700. "Floating home" includes an accessory building or structure.

[(17)] (19) "Good faith" means honesty in fact in the conduct of the transaction concerned.

[(18)] (20) "Hotel or motel" means "hotel" as that term is defined in ORS 699.005.

[(19)] (21) "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.

[(20)] (22) "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.

[(21)] (23) "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.

[22] (24) “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.

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

[24] (26) “Manufactured dwelling park” means 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 charge or fee.

[25] (27) “Marina” means 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 charge or fee.

[26] (28) “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.

[27] (29) “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.

[28] (30) “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.

[29] (31) “Person” includes an individual or organization.

[30] (32) “Premises” means:

(a) A dwelling unit and the structure of which it is a part and facilities and appurtenances therein;

(b) Grounds, areas and facilities held out for the use of tenants generally or the use of which is promised to the tenant; and

(c) A facility for manufactured dwellings or floating homes.

[31] (33) “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.

[32] (34) “Recreational vehicle” has the meaning given that term in ORS 446.003.

[33] (35) “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 90.532.

[34] (36) “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.

[35] (37) “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.

[36] (38) “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.

[(37)] (39) "Security deposit" means a 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. "Security deposit" does not include a fee.

[(38)] (40) "Sexual assault" has the meaning given that term in ORS 147.450.

[(39)] (41) "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 (7).

[(40)] (42) "Stalking" means the behavior described in ORS 163.732.

[(41)] (43) "Statement of policy" means the summary explanation of information and facility policies to be provided to prospective and existing tenants under ORS 90.510.

[(42)] (44) "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.

[(43)] (45) "Tenant":

(a) Except as provided in paragraph (b) of this subsection:

(A) 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.

(B) Means a minor, as defined and provided for in ORS 109.697.

(b) For purposes of ORS 90.505 to 90.840, means 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.

(c) Does not mean a guest or temporary occupant.

[(44)] (46) "Transient lodging" means a room or a suite of rooms.

[(45)] (47) "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.

[(46)] (48) "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.

[(47)] (49) "Victim" means:

(a) The person against whom an incident related to domestic violence, sexual assault or stalking is perpetrated; or

(b) The parent or guardian of a minor household member against whom an incident related to domestic violence, sexual assault or stalking is perpetrated, unless the parent or guardian is the perpetrator.

[(48)] (50) "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 12.** ORS 90.555 is amended to read:

90.555. (1) A facility tenant may not rent the tenant's manufactured dwelling or floating home to another person for a period exceeding three days unless the facility landlord, facility tenant and dwelling or home renter enter into a written subleasing agreement specifying the rights and obli-

gations of the landlord, tenant and renter during the renter's occupancy of the dwelling or home. The subleasing agreement shall include, but need not be limited to, provisions that require the dwelling or home renter to timely pay directly to the facility landlord the space rent, any separately assessed fees payable under the rental agreement and any separately billed utility or service charge described in ORS 90.532 (1)(b) or (c), and provisions that grant the dwelling or home renter the same rights as the facility tenant to cure a violation of the rental agreement for the facility space, to require facility landlord compliance with ORS 90.730 and to be protected from retaliatory conduct under ORS 90.765. This subsection does not authorize a facility tenant to rent a manufactured dwelling or floating home to another person in violation of the rental agreement between the facility tenant and the facility landlord.

(2) Notwithstanding ORS 90.100 [(43)] **45**, a facility tenant who enters into a subleasing agreement continues to be the tenant of the facility space and retains all rights and obligations of a facility tenant under the rental agreement and this chapter. The occupancy of a manufactured dwelling or floating home by a renter as provided in a subleasing agreement does not constitute abandonment of the dwelling or home by the facility tenant.

(3) The rights and obligations of the dwelling or home renter under a subleasing agreement are in addition to the rights and obligations retained by the facility tenant under subsection (2) of this section. The rights and obligations of the dwelling or home renter under the subleasing agreement are separate from any rights or obligations of the renter under ORS 90.100 to 90.465 applicable to the renter's occupancy of the manufactured dwelling or floating home owned by the facility tenant.

(4) Unless otherwise provided in the subleasing agreement, a facility landlord may terminate a subleasing agreement:

(a) Without cause by giving the dwelling or home renter written notice not less than 30 days prior to the termination;

(b) If a condition described in ORS 90.380 (5)(b) exists for the facility space, by giving the renter the same notice to which the facility tenant is entitled under ORS 90.380 (5)(b); or

(c) Subject to the cure right established in subsection (1) of this section and regardless of whether the landlord terminates the rental agreement of the facility tenant:

(A) For nonpayment of facility space rent; or

(B) For any conduct by the dwelling or home renter that would be a violation of the rental agreement under ORS 90.396 or 90.398 if committed by the facility tenant.

(5) Upon termination of a subleasing agreement by the facility landlord, whether with or without cause, the dwelling or home renter and the facility tenant are excused from continued performance under any agreement for the renter's occupancy of the manufactured dwelling or floating home owned by the facility tenant.

(6)(a) If, during the term of a subleasing agreement, the facility landlord gives notice to the facility tenant of a rental agreement violation, of a law or ordinance violation or of the facility's closure, conversion or sale, the landlord shall also promptly give a copy of the notice to the dwelling or home renter. The giving of notice to the dwelling or home renter does not constitute notice to the facility tenant unless the tenant has expressly appointed the renter as the tenant's agent for purposes of receiving notice.

(b) If the facility landlord gives notice to the dwelling or home renter that the landlord is terminating the subleasing agreement, the landlord shall also promptly give a copy of the notice to the facility tenant. The landlord shall give the notice to the facility tenant in the same manner as for giving notice of a rental agreement violation.

(c) If, during the term of a subleasing agreement, the facility tenant gives notice to the facility landlord of a rental agreement violation, termination of tenancy or sale of the manufactured dwelling or floating home, the tenant shall also promptly give a copy of the notice to the dwelling or home renter.

(d) If the dwelling or home renter gives notice to the facility landlord of a violation of ORS 90.730, the renter shall also promptly give a copy of the notice to the facility tenant.

**SECTION 13.** ORS 90.634 is amended to read:

90.634. (1) A landlord may not assert a lien under ORS 87.162 for dwelling unit rent against a manufactured dwelling or floating home located in a facility. Notwithstanding ORS 90.100 [(43)] 45 and 90.675 and regardless of whether the owner of a manufactured dwelling or floating home occupies the dwelling or home as a residence, a facility landlord that is entitled to unpaid rent and receives possession of the facility space from the sheriff following restitution pursuant to ORS 105.161 may sell or dispose of the dwelling or home as provided in ORS 90.675.

(2) If a manufactured dwelling or floating home was occupied immediately prior to abandonment by a person other than the facility tenant, and the name and address of the person are known to the landlord, a landlord selling or disposing of the dwelling or home under subsection (1) of this section shall promptly send the person a copy of the notice sent to the facility tenant under ORS 90.675 (3). Notwithstanding ORS 90.425, the facility landlord may sell or dispose of goods left in the dwelling or home or upon the dwelling unit by the person in the same manner as if the goods were left by the facility tenant. If the name and address of the person are known to the facility landlord, the landlord shall promptly send the person a copy of the written notice sent to the facility tenant under ORS 90.425 (3) and allow the person the time described in the notice to arrange for removal of the goods.

**SECTION 14.** ORS 90.427 is amended to read:

90.427. (1) As used in this section, “first year of occupancy” includes all periods in which any of the tenants has resided in the dwelling unit for one year or less.

(2) If a tenancy is a week-to-week tenancy, the landlord or the tenant may terminate the tenancy by a written notice given to the other at least 10 days before the termination date specified in the notice.

(3) If a tenancy is a month-to-month tenancy:

(a) At any time during the tenancy, the tenant may terminate the tenancy by giving the landlord notice in writing not less than 30 days prior to the date designated in the notice for the termination of the tenancy.

(b) At any time during the first year of occupancy, the landlord may terminate the tenancy by giving the tenant notice in writing not less than 30 days prior to the date designated in the notice for the termination of the tenancy.

(c) At any time after the first year of occupancy, the landlord may terminate the tenancy by giving the tenant notice in writing not less than 60 days prior to the date designated in the notice for the termination of the tenancy.

(4) If the tenancy is for a fixed term of at least one year and by its terms becomes a month-to-month tenancy after the fixed term:

(a) At any time during the fixed term, notwithstanding subsection (3) of this section, the landlord or the tenant may terminate the tenancy without cause by giving the other notice in writing not less than 30 days prior to the specified ending date for the fixed term or not less than 30 days prior to the date designated in the notice for the termination of the tenancy, whichever is later.

(b) After the specified ending date for the fixed term, at any time during the month-to-month tenancy, the landlord may terminate the tenancy without cause only by giving the tenant notice in writing not less than 60 days prior to the date designated in the notice for the termination of the tenancy.

(5) Notwithstanding subsections (3)(c) and (4)(b) of this section, the landlord may terminate a month-to-month tenancy at any time by giving the tenant notice in writing not less than 30 days prior to the date designated in the notice for the termination of the tenancy if:

(a) The dwelling unit is purchased separately from any other dwelling unit;

(b) The landlord has accepted an offer to purchase the dwelling unit from a person who intends in good faith to occupy the dwelling unit as the person’s primary residence; and

(c) The landlord has provided the notice, and written evidence of the offer to purchase the dwelling unit, to the tenant not more than 120 days after accepting the offer to purchase.

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

(7) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. In addition, the landlord may recover from the tenant any actual damages resulting from the tenant holding over, including the value of any rent accruing from the expiration or termination of the rental agreement until the landlord knows or should know that the tenant has relinquished possession to the landlord. If the landlord consents to the tenant's continued occupancy, ORS 90.220 [(8)] (7) applies.

(8)(a) A notice given to terminate a tenancy under subsection (2) or (3) of this section need not state a reason for the termination.

(b) Notwithstanding paragraph (a) of this subsection, a landlord or tenant may include in a notice of termination given under subsection (2) or (3) of this section an explanation of the reason for the termination without having to prove the reason. An explanation does not give the person receiving the notice of termination a right to cure the reason if the notice states that:

(A) The notice is given without stated cause;

(B) The recipient of the notice does not have a right to cure the reason for the termination; and

(C) The person giving the notice need not prove the reason for the termination in a court action.

(9) Subsections (2) to (5) of this section do not apply to a month-to-month tenancy subject to ORS 90.429 or other tenancy created by a rental agreement subject to ORS 90.505 to 90.840.

**SECTION 15.** ORS 90.472 is amended to read:

90.472. (1) As used in this section, "state service member" means a member of the organized militia who is called into active service of the state by the Governor under ORS 399.065 (1) for 90 or more consecutive days.

(2) A tenant may terminate a rental agreement upon written notice if the tenant provides the landlord with proof of official orders showing that the tenant is a state service member.

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

(a) Thirty days after the date the next rental payment is due; or

(b) On the last day of the month after the month in which written notice is given.

(4) Notwithstanding ORS 90.300 [(6)(a)(A)] (7)(a)(A) and 90.430, a tenant who terminates a lease under subsection (2) of this section is not:

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

(b) Liable for any rent beyond the effective date of the termination as determined under subsection (3) of this section.

**SECTION 16.** ORS 90.475 is amended to read:

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

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

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

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

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

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

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

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

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

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

- (b) The later of:
  - (A) 30 days after delivery of the notice;
  - (B) 30 days before the earliest reporting date on orders for active service;
  - (C) A date specified in the notice; or
  - (D) 90 days before the effective date of the orders if terminating duty described under subsection (1)(d)(B) of this section or terminating any active service described in this section.

(4) Notwithstanding ORS 90.300 [(6)(a)(A)] (7)(a)(A) and 90.430, a tenant who terminates a lease under subsection (1) of this section is not:

- (a) Subject to a penalty, fee, charge or loss of deposit because of the termination; or
- (b) Liable for any rent beyond the effective date of the termination as determined under subsection (3) of this section.

**SECTION 17.** ORS 105.836 is amended to read:

105.836. As used in ORS [90.317,] 105.836 to 105.842 and 476.725, unless the context requires otherwise:

- (1) "Carbon monoxide alarm" means a device that:
  - (a) Detects carbon monoxide;
  - (b) Produces a distinctive audible alert when carbon monoxide is detected;
  - (c) Conforms to State Fire Marshal rules;
  - (d) Is listed by Underwriters Laboratories or any other nationally recognized testing laboratory or an equivalent organization; and
  - (e) Operates as a distinct unit or as two or more single station units wired to operate in conjunction with each other.
- (2) "Carbon monoxide source" means:
  - (a) A heater, fireplace, appliance or cooking source that uses coal, kerosene, petroleum products, wood or other fuels that emit carbon monoxide as a by-product of combustion; or
  - (b) An attached garage with an opening that communicates directly with a living space.
- (3) "Multifamily housing" means a building in which three or more residential units each have space for eating, living and sleeping and permanent provisions for cooking and sanitation.
- (4) "One and two family dwelling" means a residential building that is regulated under the state building code as a one and two family dwelling.

**SECTION 18.** The amendments to ORS 86.755, 90.100, 90.220, 90.230, 90.295, 90.297, 90.300, 90.316, 90.317, 90.367, 90.385, 90.417, 90.425, 90.427, 90.449, 90.453, 90.456, 90.472, 90.475, 90.555, 90.634 and 105.836 by sections 1 to 5, 7 to 9b and 10 to 17 of this 2011 Act apply to rental agreements under ORS chapter 90 that are entered into on or after the effective date of this 2011 Act.

**Passed by Senate March 17, 2011**

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House May 5, 2011**

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

**Received by Governor:**

.....M,....., 2011

**Approved:**

.....M,....., 2011

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2011

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Kate Brown, Secretary of State