

D R A F T

SUMMARY

Requires eviction judgment and writ of restitution to authorize sheriff's use of force in enforcing judgment.

Authorizes court to enter order or judgment during first appearance for residential eviction proceeding at stipulation of parties. Amends provisions in order by stipulation.

A BILL FOR AN ACT

1
2 Relating to evictions; amending ORS 105.137, 105.145, 105.146, 105.148 and
3 105.161.

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

5 **SECTION 1.** ORS 105.145 is amended to read:

6 105.145. (1) If an action is tried [*by the court without a jury, and after*
7 *hearing the evidence the court concludes that the complaint is not true,*] **and**
8 **the verdict is for the defendant**, the court shall enter judgment against
9 the plaintiff for costs and disbursements.

10 (2) If the [*court finds the complaint true*] **verdict is for the plaintiff** or
11 if judgment is rendered **against the defendant** by default, the court shall
12 render a general judgment against the defendant and in favor of the plaintiff,
13 for restitution of the premises and the costs and disbursements of the action.
14 If the court finds the complaint true in part, the court shall render judgment
15 for the restitution of such part only, and the costs and disbursements shall
16 be taxed as the court deems just and equitable.

17 (3) **A general judgment rendered for restitution of the premises**
18 **under ORS 105.105 to 105.168 shall identify the premises and order the**
19 **sheriff to use all reasonable force that may be necessary to enter the**

1 **premises and to remove from the premises the persons in possession**
2 **of the premises that are subject to the judgment.**

3 [(2)] (4) If, as a result of a court-sponsored or other mediation or other-
4 wise, the plaintiff and defendant agree, in the manner provided by ORCP 67
5 F for judgment by stipulation, that the [*defendant*] **parties** shall perform in
6 a certain manner, **including the payment of moneys**, [*or that the plaintiff*
7 *shall be paid moneys agreed to be owing by the defendant*] and that as a result
8 of that performance or payment the defendant shall retain possession of the
9 premises, including retention of possession contingent upon that performance
10 or payment of moneys by the defendant by a certain date, the court shall
11 enter an order or judgment to that effect. **An order under this subsection**
12 **must provide that 12 months following the entry of the order, the**
13 **court shall automatically dismiss plaintiff's action in favor of the de-**
14 **fendant without an assessment of costs, disbursements, prevailing**
15 **party fee or attorney fees against either party except as provided in**
16 **the order and without further notice to either party.** [*In addition, if the*
17 *plaintiff and defendant agree that the plaintiff shall perform in a certain*
18 *manner or pay moneys to the defendant by a certain date, the court shall enter*
19 *an order or judgment to that effect.*]

20 [(3) *If, as provided by subsection (2) of this section, the parties enter an*
21 *order or judgment by stipulation that requires the defendant to perform in a*
22 *certain manner or make a payment by a certain date and the defendant later*
23 *demonstrates compliance with the stipulation, the court shall enter a judgment*
24 *of dismissal in favor of the defendant.*]

25 **SECTION 2.** ORS 105.161 is amended to read:

26 105.161. (1) Following issuance of the writ of execution of judgment of
27 restitution and payment of any fees required by the sheriff, the sheriff shall
28 immediately enforce and serve the writ upon the defendant, along with the
29 eviction trespass notice, as follows:

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

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

6 (c) Immediately following the service of the writ and the eviction trespass
7 notice, the sheriff shall **use all reasonable force that may be necessary**
8 **to enter the premises and to remove from the premises the persons in**
9 **possession of the premises that are subject to the judgment and** return
10 possession of the premises to the plaintiff [*by removing the defendant or any*
11 *other person subject to the judgment*]; and

12 (d) Following the sheriff's removal of the defendant and return of pos-
13 session of the premises to the plaintiff, the plaintiff shall be responsible for
14 removing, storing and disposing of any personal property left by the defend-
15 ant on the premises, as provided by ORS 105.165.

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

18 (3) Any writ not enforced and served within 30 days following issuance
19 expires and becomes unenforceable unless the court extends the operation
20 of the writ before the writ expires based on a showing of good cause by the
21 sheriff. If the court extends the operation of a writ under this subsection, the
22 sheriff shall promptly notify the plaintiff of the extension.

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

26 **SECTION 3.** ORS 105.137 is amended to read:

27 105.137. In the case of a dwelling unit to which ORS chapter 90 applies:

28 (1) If the plaintiff appears and the defendant fails to appear at the first
29 appearance, a default judgment shall be entered in favor of the plaintiff [*for*
30 *possession of the premises and costs and disbursements*] **in the manner**
31 **provided under ORS 105.145 (3) except as provided under subsection (3)**

1 **of this section.**

2 (2) If the defendant appears and the plaintiff fails to appear at the first
3 appearance, a default judgment shall be entered in favor of the defendant
4 dismissing the plaintiff's complaint and awarding costs and disbursements.

5 (3) An attorney at law shall be entitled to appear on behalf of any party,
6 but attorney fees may not be awarded to the plaintiff if the defendant does
7 not contest the action.

8 (4) If the plaintiff dismisses the action before the first appearance, a
9 judgment of dismissal shall be entered in favor of the defendant dismissing
10 the plaintiff's complaint and awarding costs and disbursements. The defend-
11 ant may not recover attorney fees for prejudgment legal services provided
12 after the delivery of written notice of the dismissal by the plaintiff to the
13 defendant, or to an attorney for the defendant, in the manner provided under
14 ORS 90.155.

15 (5) The plaintiff or an agent of the plaintiff may obtain a continuance of
16 the action for as long as the plaintiff or the agent of the plaintiff deems
17 necessary to obtain the services of an attorney at law.

18 (6) If both parties appear in court on the date contained in the summons,
19 the court shall set the matter for trial as soon as practicable, unless the
20 court is advised by the parties that the matter has been settled. The trial
21 shall be scheduled no later than 15 days from the date of such appearance.
22 If the matter is not tried within the 15-day period, and the delay in trial is
23 not attributable to the landlord, the court shall order the defendant to pay
24 rent that is accruing into court, provided the court finds after hearing that
25 entry of such an order is just and equitable.

26 (7)(a) The court shall permit an unrepresented defendant to proceed to
27 trial by directing the defendant to file an answer in writing on a form which
28 shall be available from the court clerk, and to serve a copy upon the plaintiff
29 on the same day as first appearance.

30 (b) The answer shall be in substantially the following form:

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IN THE _____ COURT FOR
THE COUNTY OF _____

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

ANSWER

I (we) deny that the plaintiff(s) is (are) entitled to possession because:

— The landlord did not make repairs.

List any repair problems: _____

— The landlord is attempting to evict me (us) because of my (our) complaints
(or the eviction is otherwise retaliatory).

— The landlord is attempting to evict me because of my status as a victim
of domestic violence, sexual assault or stalking.

— The eviction notice is wrong.

— List any other defenses: _____

I (we) may be entitled as the prevailing party to recover attorney fees
from plaintiff(s) if I (we) obtain legal services to defend this action pursuant

1 to ORS 90.255.

2 I (we) ask that the plaintiff(s) not be awarded possession of the premises
3 and that I (we) be awarded my (our) costs and disbursements and attorney
4 fees, if applicable, or a prevailing party fee.

5

6 _____

7 Date

Signature of defendant(s)

8

9 (8) If an unrepresented defendant files an answer as provided in sub-
10 section (7) of this section, the answer may not limit the defenses available
11 to the defendant at trial under ORS chapter 90. If such a defendant seeks
12 to assert at trial a defense not fairly raised by the answer, the plaintiff shall
13 be entitled to a reasonable continuance for the purposes of preparing to meet
14 the defense.

15 **(9) If the parties inform the court that the matter has settled, the**
16 **court may enter an order or judgment in the manner provided by ORS**
17 **105.145 (4).**

18 **SECTION 4.** ORS 105.146 is amended to read:

19 105.146. (1) In an action to recover possession of the premises, if the court
20 has entered an order by stipulation that provides for the defendant to retain
21 possession of the premises contingent upon the defendant's performance or
22 payment of moneys by a certain date as provided under ORS 105.145 [(2)]
23 (4), and the defendant fails to comply with the order, the plaintiff may obtain
24 and enforce a judgment of restitution of the premises pursuant to this section
25 and ORS 105.148 and 105.149.

26 (2) A plaintiff may obtain and enforce a judgment of restitution based
27 upon an order entered as provided under ORS 105.145 [(2)] (4), provided the
28 order includes only:

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

31 (b) Payment of past due rent and other past due amounts pursuant to a

1 schedule provided in the order for a period of not more than six months
2 following entry of the order;

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

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

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

11 [(4)] (3) If the defendant fails to comply with the order, the plaintiff may
12 file with the clerk of the court an affidavit or declaration of noncompliance
13 describing how the defendant has failed to comply. The plaintiff shall attach
14 a copy of the order to the affidavit or declaration. The affidavit or declara-
15 tion, or the order, must include the terms of the underlying settlement
16 agreement or stipulation or have a copy of the agreement attached.

17 [(5)] (4) Upon receipt of a plaintiff's affidavit or declaration:

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

19 (b) The clerk shall issue a notice of restitution as provided by ORS
20 105.151 and attach to the notice a copy of the plaintiff's affidavit or decla-
21 ration of noncompliance and any attachments for service.

22 [(6)] (5) The court shall establish a procedure that allows the defendant
23 to request a hearing on the plaintiff's affidavit or declaration of noncompli-
24 ance and delay expiration of the notice of restitution period or execution
25 upon a judgment of restitution pending the hearing.

26 [(7)] (6) The court shall enter a judgment dismissing the plaintiff's action
27 in favor of the defendant without assessment of costs, disbursements, pre-
28 vailing party fee or attorney fees against either party except as provided in
29 the order and without further notice to either party:

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

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

4 **SECTION 5.** ORS 105.148 is amended to read:

5 105.148. (1)(a) To contest a plaintiff's affidavit or declaration of noncom-
6 pliance under ORS 105.146 and delay expiration of the notice of restitution
7 period or execution upon the judgment of restitution, a defendant shall file
8 a request for hearing with the clerk of the court. The request must be filed
9 prior to issuance by the clerk of a writ of execution of judgment of
10 restitution and must include a statement by the defendant describing how the
11 defendant complied with the order or describing why the defendant should
12 not be required to comply.

13 (b) A court may, as part of the procedure authorized by ORS 105.146
14 [(6)] (5), require that a defendant submit a hearing request to the court for
15 ex parte review prior to the defendant's filing the request with the clerk. If
16 the court provides for ex parte review, the ex parte review must be available
17 every judicial day for appearance by the defendant before the court within
18 the time period between service of the notice of restitution and the date of
19 expiration of the notice of restitution. The notice of restitution must include
20 or have attached to it a description of the requirements for appearing before
21 the court for ex parte review and a copy of the hearing request form. The
22 court may not require that the defendant notify the plaintiff of the
23 defendant's intention to appear before the court. If, after hearing the de-
24 fendant at the ex parte review, the court finds that the reasons given by the
25 defendant for opposing the plaintiff's affidavit or declaration of noncompli-
26 ance do not relate to the issues listed in ORS 105.149 (2), the court shall deny
27 the request for a hearing.

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

IN THE CIRCUIT COURT
FOR THE COUNTY OF

Defendant’s Request for Hearing to
Contest an Affidavit or Declaration
of Noncompliance
Case No. _____

Landlord or agent (Plaintiff):

vs.

Tenant/Occupant (Defendant):

Address of Property:

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

2. I deny the landlord is entitled to possession of the property because (The reason must be one of the following. You must check one or more of these responses and you must explain in section 3.):

1 _____ a. The landlord is wrong. As explained below, I did comply with
2 the agreement.

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

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

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

9 _____ e. The agreement was not made in good faith as required by ORS
10 90.130. The lack of good faith is explained below.

11 _____ f. The portion of the agreement described below was
12 unconscionable as described in ORS 90.135.

13 _____ g. The landlord is required by law or contract to have good cause
14 to force me to move out and my alleged conduct or performance does not
15 meet the standard of good cause, as explained below.

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

22 3. Here is my explanation for the reason or reasons checked above:

23

24 _____

25

26 _____

27

28 _____

29 4. I understand that if I lose in court, I may be responsible for the
30 landlord's costs, disbursements, any attorney fees and a prevailing party fee.

31 I hereby declare that the above statement is true to the best of my

1 knowledge and belief, and that I understand it is made for use as evidence
2 in court and is subject to penalty for perjury.

3

4 _____

5 (Signature of tenant)

6 Date: _____

7

8 _____

9 (3) As an alternative to the document described in subsection (2) of this
10 section, a defendant may request a hearing by use of a notarized affidavit.

11
