

## **PANEL ON COVID-19 AND RENTERS**

Senate Interim Committee on Housing and Development, June 5, 2020

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### **A. Current provisions relating to residential tenancy evictions during the pandemic:**

**1. Governor Brown's Executive Order 20-13**, effective April 1; ends June 30, 2020, unless the Governor extends it or ends it earlier.

a. Imposes a moratorium on residential evictions. Prohibits terminating a tenancy (giving a termination notice, filing an eviction lawsuit ("FED"), interfering in any way with a tenant's possession of the dwelling unit) for nonpayment of rent, utility charges, or fees. Includes prohibition on terminations without cause under ORS 90.427.

b. Also prohibits late charges for nonpayment during the moratorium.

c. Tenant is required to make partial rent payments to the extent the tenant is "financially able to do so." Tenant still owes any rent not paid during the moratorium, which will be due at the end of the moratorium.

d. Violations of the order are punishable as a Class C Misdemeanor (up to 30 days in jail and up to \$1,250 fine).

*NOTE: On May 18, Baker County Circuit Judge Matthew Shirtcliff found that Gov. Brown had relied in part on a state statute with a time limit to issue her executive order declaring a state of emergency and because that time limit had now been exceeded, that initial executive order and*

*all subsequent orders are “null and void.” The judge then granted an injunction against enforcement of the Governor’s orders, which includes EO 20-13. The State appealed, and that evening the Oregon Supreme Court issued a stay of Judge Shirtcliff’s injunction while the Supreme Court considers his decisions. Both sides, as of June 2, have filed briefs with the Court.*

**2. Multnomah County:** On March 11 Multnomah County Commission Chair Kafoury issued an Executive Rule declaring an emergency related to the spread of COVID-19. On March 19, the county commission adopted an ordinance creating a county-wide moratorium on residential evictions. The City of Portland did the same. On April 16, Multnomah County suspended enforcement of its March 19 ordinance “to align with” Governor Brown’s April 1 Executive Order 20-13. To supplement that, the county adopted an additional ordinance, “Eviction Moratorium Six-Month Repayment Grace Period.” Of note, this ordinance adds two important elements that are not in the Governor’s EO:

a. A six-month grace period, to begin immediately after the eviction moratorium ends, during which tenants may pay any rents that accrued during the moratorium without penalty. During the grace period, a landlord may not terminate the tenancy or take other adverse action because of the rents that accrued. Rents that come due after the moratorium are to be treated as usual.

b. Unlike the Governor’s EO and its criminal penalty for violations, landlords who violate the Multnomah County ordinance are subject to injunctive relief and a penalty in an amount up to three times the rent plus actual damages, and attorney fees.

NOTE that several other jurisdictions have also adopted eviction moratoria: Beaverton, Hillsboro, Tualatin, and West Linn. There may be others.

**3. Chief Justice Order:** On March 27, Oregon Supreme Court Chief Justice Martha Walters issued Order No. 20-006 which essentially postponed most hearings and trials – including FEDs – in order to protect court staff and judges and parties to cases and the public from COVID-19. On May 15, the Chief Justice issued CJO 20-016, effective June 1, which loosens her restrictions on court operations, allowing more trials and hearings so long as social distancing requirements can be met and there are sufficient court staff. FEDs are still postponed, now until July 1. The presiding judge of each circuit court can grant exceptions, depending on safety and staffing capacity.

**4. Federal CARES Act eviction moratorium:** The third federal stimulus bill from Congress, the CARES Act, includes a moratorium on evictions for nonpayment from covered dwellings, starting on March 27 and continuing until July 25 (120 days). “Covered dwellings” include – roughly speaking – subsidized housing and properties with a federally backed mortgage loan. Few tenants – and maybe even some landlords or managers – will know whether their dwelling units have a federally backed mortgage loan.

**B. Legislation requested by tenant advocates** to address the effects of the pandemic:

**1. A statewide moratorium on residential evictions,** if the trial court decision invalidating the Governor’s Executive Order 20-13 is upheld by the Oregon Supreme Court. Design it to be like the Governor’s EO, with changes noted in #2 below. Effective until the

Governor (or the Court) ends the state of emergency or October 1, 2020, whichever occurs last.

**2. Additional statewide provisions related to a moratorium,** whether the Governor's or the legislature's.

a. A **six-month grace period** after the moratorium ends, to allow tenants to catch up on rent arrears, as in the Multnomah County ordinance.

i. This would provide time for current efforts to identify funding for a rent assistance program and to provide that rent assistance to landlords. Most of this funding is likely to come from federal stimulus bills, but it is taking time to get the money and figure out how to use it. It would be a shame to finally get and make available rent assistance money, after the moratorium ends, only to have tenants already evicted for nonpayment. You will hear more about the rent assistance efforts from this panel.

ii. In addition, making this provision available statewide, not just in Multnomah County, is beneficial to both landlords and tenants, who prefer uniformity. Many landlords have properties in more than one place, and trying to track different provisions in those places is confusing and expensive.

b. **Replace the Class C Misdemeanor penalty** in the Governor's EO with the Multnomah County penalty of money damages.

i. No one wants to see landlords arrested and – after being read their Miranda warnings – put into jail, where there is a greater risk of COVID-19 infection. Local law enforcement agencies don't want to do this. And tenants

feel that a money penalty would be more effective in getting landlord compliance.

ii. There have been instances of noncompliance – landlords giving termination notices for nonpayment in hopes of scaring tenants into leaving without court action and landlords claiming that tenants who don't pay are liable for late charges. The money penalty described above should be an effective deterrent. And there are some extreme examples of landlords locking out tenants or shutting off their utilities, but Oregon law has adequate remedies for those actions.

**c. Clarify that the eviction moratorium applies to all terminations covered by ORS 90.427**, including “landlord causes,” meaning that landlords can terminate only for “tenant causes” (other than nonpayment), such as causing property damage or threatening another tenant.

i. The language in the Governor's EO is not clear on this point, and lawyers have differing interpretations.

**d. Prohibit landlords from filing negative credit reports** with credit reporting companies over unpaid rent during the moratorium, as a means of punishing tenants or threatening them to force them to pay rent during the moratorium.

**e. Clarify the conditions in which a landlord or a landlord's Realtor may enter a rental unit to show it to a potential purchaser.**

i. For example, limit the number of entrances, use video “visits,” limit the number of people who can enter at one time. Tenants fear that traditional Realtor open houses create a health risk.

**3. Waive certain existing statutes – during the moratorium or any grace period – that are unfair to landlords:**

a. ORS 90.427 (1) (from SB 608 (2019)) allows a landlord to use a no-cause termination notice during the first year of occupancy. Amend this law to extend that “trial period” to 30 days beyond the moratorium for occupancies that reach one year during the moratorium.

b. Waive ORS 90.323’s rent cap (also from SB 608) for those landlords who voluntarily reduce rents for tenants during the moratorium and any grace period, to allow them to restore their rent levels to the pre-pandemic level without violating the cap or losing their ability to raise rents by the allowable amount.

c. Extend the periods provided in several statutes for stipulated agreements in FEDs (ORS 105. 146; also allow the agreement to include payment of past due utility charges) and for enforcement of FED judgments (ORS 105.159, 105.161)

d. Waive the waiver statutes for landlords who accept partial rent payments during the moratorium and any grace period. ORS 90.412.

4. Adopt a uniform, **statewide rent assistance program**, using federal CARES Act or similar funding, describing the criteria and process.

*NOTE: The changes suggested in #3-c and -d may possibly be done by the Chief Justice, if the legislature approves her request for authority to revise litigation timelines during an emergency such as this pandemic.*