

Enrolled House Bill 4401

Sponsored by Representative KOTEK; Representatives FAHEY, KENY-GUYER, MARSH (at the request of Joint Committee on the Third Special Session of 2020)

CHAPTER

AN ACT

Relating to residential tenancies; creating new provisions; amending ORS 90.160, 90.385, 90.394, 90.417, 105.113, 105.115 and 105.124 and sections 1, 3, 4 and 7, chapter 13, Oregon Laws 2020 (first special session) (Enrolled House Bill 4213); and declaring an emergency.

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

LEGISLATIVE FINDINGS

SECTION 1. Section 1, chapter 13, Oregon Laws 2020 (first special session) (Enrolled House Bill 4213), is amended to read:

Sec. 1. The Legislative Assembly finds and declares that:

(1) The provisions of section 3 or 5, **chapter 13, Oregon Laws 2020 (first special session) (Enrolled House Bill 4213), or section 7 of this 2020 third special session Act** [of this 2020 special session Act] might affect the terms and conditions of certain contracts entered into in this state.

(2) The effects of the provisions of section 3 or 5, **chapter 13, Oregon Laws 2020 (first special session) (Enrolled House Bill 4213), or section 7 of this 2020 third special session Act** [of this 2020 special session Act] are not substantial because the provisions have a limited scope and duration and are necessary to protect the public health, safety and welfare. For these reasons the provisions do not undermine a contractual bargain, interfere with a party's reasonable expectations or prevent a party from safeguarding or reinstating the party's rights.

(3) Even if a provision of section 3 or 5, **chapter 13, Oregon Laws 2020 (first special session) (Enrolled House Bill 4213), or section 7 of this 2020 third special session Act** [of this 2020 special session Act] has the effect of undermining a contractual bargain, interfering with a party's reasonable expectations or preventing a party from safeguarding or reinstating the party's rights, the provision is appropriate and reasonable to carry out the significant and legitimate public purpose of responding to the declaration of a state of emergency issued by the Governor on March 8, 2020, **for the COVID-19 pandemic or the state of emergency issued by the Governor on September 8, 2020, for the wildfires.**

LANDLORD DISTRIBUTIONS FOR UNPAID RENT

SECTION 2. (1) **The Housing and Community Services Department shall make distributions to compensate residential landlords for 80 percent of the past-due rent of qualified**

tenants that the landlord has not collected after April 1, 2020, if the landlord or the landlord's designee:

(a) Submits an application to the department for all of the landlord's tenants who have not paid rent and have delivered to the landlord a signed declaration under section 7 (1)(b) of this 2020 third special session Act;

(b) Includes in the application a copy of the tenants' declarations;

(c) Provides the department with a description of the unpaid rent for all current tenants;

(d) Agrees to forgive the remaining 20 percent of the unpaid rent due from qualified tenants that has accrued between April 1, 2020, and the date of the application, upon receiving a distribution under this subsection;

(e) Agrees to repay to the department any amount that was forgiven by the landlord or that was paid to the landlord under this section and the landlord later receives from the qualified tenant or on the tenant's behalf, within the period requested by the department;

(f) Is not a member of the tenant's immediate family, as defined in ORS 90.427;

(g) During the pendency of the distribution application, agrees to not give a termination notice without cause or for nonpayment, as those terms are defined in section 3, chapter 13, Oregon Laws 2020 (first special session) (Enrolled House Bill 4213); and

(h) Provides any other information or materials required by the department.

(2)(a) The department shall develop an online application for landlords to apply for distributions under this section.

(b) The application must be made available in languages other than English.

(c) The application period must be open more than once to allow for greater outreach and participation.

(3) The department may establish any qualifications, priorities, restrictions or limits on the distributions made under this section, to prioritize landlords with fewer units and landlords with a higher percentage of unpaid rents. Restrictions or limits may include:

(a) Limits per tenant, per landlord or per time period;

(b) The number of units a landlord must own; or

(c) The percentage or amount of total rent unpaid.

(4) The department may coordinate with local housing authorities to administer this section, including through making distributions to landlords.

(5) The department or local housing authority shall mail to tenants copies of a notice of distribution to their landlords and the amount of rent forgiveness agreed to by their landlords.

(6) The department may conduct outreach to landlords and tenants, including outreach to non-English speakers.

(7) Notwithstanding ORS 276A.300, 279A.025, 279A.050 (6)(g), 279A.205 and 456.571, the department shall expedite the implementation of the landlord compensation fund.

(8) As used in this section, "landlord" includes a manufactured dwelling park nonprofit cooperative as defined in ORS 62.803.

SECTION 3. The Housing and Community Services Department shall directly distribute rent assistance to recipients of a distribution from the department through the Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136) Emergency Solutions Grants program, as authorized under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 et seq.), including community action agencies and culturally specific providers. Community action agencies may receive distributions through the department's master grant agreement. Rental assistance must serve financially distressed households, and payments must be made directly to the landlord.

SECTION 4. No later than September 15, 2021, the Housing and Community Services Department shall provide a report to an appropriate interim committee of the Legislative Assembly in the manner provided by ORS 192.245 on the distributions provided under sections 2 and 3 of this 2020 third special session Act.

SECTION 5. Sections 2 to 4 of this 2020 third special session Act are repealed on January 2, 2023.

EVICTION MORATORIUM EXTENSION

SECTION 6. Section 7 of this 2020 third special session Act is added to and made a part of ORS chapter 90.

SECTION 7. (1) The emergency period and the end of the grace period under this section and section 3, chapter 13, Oregon Laws 2020 (first special session) (Enrolled House Bill 4312), are extended until June 30, 2021, if:

(a) A landlord does not deliver to the tenant in writing a copy of both the notice and declaration form under subsection (2) of this section along with:

(A) Any notice given under section 3 (5)(c), chapter 13, Oregon Laws 2020 (first special session) (Enrolled House Bill 4213);

(B) Every termination notice for nonpayment delivered before June 30, 2021; and

(C) Any summons for eviction based on a termination notice for nonpayment delivered before June 30, 2021; or

(b) The tenant has, at any time, signed a copy of the declaration under subsection (3)(b) of this section, including any translation under subsection (4) of this section, and has delivered the declaration to the landlord in writing or by any other method reasonably calculated to achieve receipt of the declaration by the landlord, including by sending a copy or photograph of the declaration by electronic mail or text message.

(2) After a tenant delivers a copy of the declaration under subsection (1)(b) of this section, the emergency period and end of the grace period are extended and a landlord may not take or attempt to take any action to interfere with a tenant's possession described in section 3 (2), chapter 13, Oregon Laws 2020 (first special session) (Enrolled House Bill 4213), until June 30, 2021.

(3)(a) The notice that must be delivered by the landlord under subsection (1) of this section must be in substantially the following form:

Notice of Eviction Protection

THIS IS AN IMPORTANT NOTICE ABOUT YOUR RIGHTS TO PROTECTION AGAINST EVICTION FOR NONPAYMENT.

For information in Spanish, Korean, Russian, Vietnamese or Chinese, go to the Judicial Department website at www.courts.oregon.gov.

Until June 30, 2021, you may be protected from eviction for non-payment of rent.

IF YOU ARE UNABLE TO PAY YOUR RENT BECAUSE OF A FINANCIAL HARDSHIP THAT OCCURRED ON OR AFTER MARCH 16, 2020, GIVE THE ATTACHED FORM TO YOUR LANDLORD TO QUALIFY FOR PROTECTION.

To be protected, you must provide your landlord with a signed declaration, stating that you have experienced financial hardship because of one or more of these conditions on or after March 16, 2020:

- Loss of household income;
- Increased medical expenses;
- Loss of work or wages;

- Increased child care responsibilities or responsibilities to care for a person with a disability or a person who is elderly, injured or sick;
- Increased costs for child care or caring for a person with a disability or a person who is elderly, injured or sick; or
- Other circumstances that have reduced income or increased expenses.

ONCE YOU HAVE PROVIDED THIS FORM TO YOUR LANDLORD, THE LANDLORD CANNOT FILE, THREATEN TO FILE OR COMPLETE AN EVICTION AGAINST YOU FOR NONPAYMENT UNTIL JULY 1, 2021.

The declaration form is attached to this notice. The form can also be found translated into multiple other languages at www.courts.oregon.gov. You may give this form to your landlord in person, by first class mail or, if available, by sending a copy or photograph of this form by e-mail or text message. Tenants are advised to keep a copy of the form and a record of providing it to the landlord.

Please note:

- You still owe rent, as required by your rental agreement. Any unpaid rent must be paid by July 1, 2021. You may qualify for help paying your rent. See this notice for resources.
- Your landlord cannot charge late fees for any portion of unpaid rent from April 1, 2020, through June 30, 2021.
- If you are unable to pay your rent, give the attached declaration form to your landlord as soon as possible. You can submit this form to your landlord at any time. You do not have to wait until you have a nonpayment notice. If you have experienced financial hardship, fill out and submit the form immediately.
- You can still be evicted for violations of the rental agreement, other than nonpayment of rent.
- You cannot be evicted without cause before July 1, 2021, except for circumstances under ORS 90.427 (5) involving the demolition or conversion of the dwelling unit, major repairs or renovations when the dwelling unit is or will be unsafe to occupy or the occupancy of your dwelling unit by your landlord, the landlord’s family member or someone who purchases the dwelling unit.

TENANT RESOURCES

For help paying your rent and for referrals to other support services such as food stamps, health benefits, unemployment insurance and other public benefits, dial 211 or go to www.211.org. To find free legal assistance for low-income Oregonians, go to www.oregonlawhelp.org.

(b) The declaration that must be delivered by the landlord and may be completed by a tenant under subsection (1)(b) of this section must be in substantially the following form:

DECLARATION OF FINANCIAL HARDSHIP FOR EVICTION PROTECTION

This form may be given to the landlord in person, by first class mail or, if available, by sending a copy or photograph by e-mail or text message.

I, _____ (tenant’s name), am a tenant at _____ (tenant’s address). I am unable to pay

my obligations under the rental agreement because of one or more of the reasons below that have impacted me since March 16, 2020:

- Loss of household income;
- Increased medical expenses;
- Loss of work or wages;
- Increased child care responsibilities or responsibilities to care for a person with a disability or a person who is elderly, injured or sick;
 - Increased costs for child care or caring for a person with a disability or a person who is elderly, injured or sick; or
 - Other circumstances that have reduced my income or increased my expenses.

Any public assistance, including unemployment insurance, pandemic unemployment assistance and other public assistance that I have received on or after March 16, 2020, does not fully make up for my loss of income or increased expenses. I understand that I still owe my rent, which must be paid by July 1, 2021. I understand that I must comply with other obligations that I may have under my rental agreement.

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

_____ (tenant's signature)

_____ (date)

(4)(a) The Judicial Department shall translate the notice and declaration form under subsection (3) of this section into the Spanish, Korean, Russian, Vietnamese and Chinese languages and shall display the English and translated forms prominently from the main webpage at www.courts.oregon.gov.

(b) Each form on the Judicial Department website must include a statement in English, Spanish, Korean, Russian, Vietnamese and Chinese indicating that the form and translations can be found on the Judicial Department website and include the web address where the forms may be found.

(5) A landlord who files a complaint for possession under ORS 105.105 to 105.168 based on a notice for nonpayment under ORS 90.392, 90.394 or 90.630 shall file with the complaint a declaration under penalty of perjury stating that the landlord has complied with subsection (1)(a) of this section and that the landlord is not aware of any declaration signed or delivered by the tenant under subsection (1)(b) of this section.

(6) The court shall enter a judgment dismissing a complaint for possession filed under ORS 105.105 to 105.168 before the end of the grace period based solely on a nonpayment balance if the court determines that:

(a) The landlord failed to give the notice and form as required by subsection (1)(a) of this section; or

(b) At any time during or prior to the first appearance, the tenant has signed and delivered to the landlord a copy of the declaration described in subsection (3)(b) of this section.

(7) A landlord may not:

(a) Challenge the accuracy of a tenant's declaration under this section in a proceeding under ORS 105.105 to 105.168;

(b) Require additional information from a tenant in the declaration under subsection (3)(b) of this section;

(c) Require the delivery of more than one declaration under subsection (1)(b) of this section per household or tenancy;

(d) Prohibit the tenant from submitting the declaration in a language other than English if the tenant uses a form available under subsection (4) of this section; or

(e) Prohibit the tenant from delivering the declaration under subsection (1)(b) of this section in any manner, format or means available to the tenant, including by sending a copy or photograph of this form by electronic mail or text message.

(8)(a) If a landlord violates this section or section 3, chapter 13, Oregon Laws 2020 (first special session) (Enrolled House Bill 4213):

(A) A tenant may obtain injunctive relief to recover possession or address any other violation and may recover from the landlord an amount equal to three months' periodic rent plus any actual damages; and

(B) The tenant has a defense to an action for possession by the landlord.

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

(A) Had delivered to the tenant the notice and form described in subsection (3) of this section as required and did not know, and did not have reasonable cause to know, at the time of commencing the action that the tenant had submitted a completed form; and

(B) Promptly dismissed the action upon becoming aware of the completed form.

SECTION 8. Section 3, chapter 13, Oregon Laws 2020 (first special session) (Enrolled House Bill 4213), is amended to read:

Sec. 3. (1) As used in this section and in section 7 of this 2020 third special session Act:

(a) "Emergency period" means the period beginning on April 1, 2020, and ending on [September 30] **December 31, 2020, except as the period may be extended through June 30, 2021, under section 7 (1) of this 2020 third special session Act.**

(b) "**End of the grace period**" means **March 31, 2021, unless the period is extended through June 30, 2021, under section 7 (1) of this 2020 third special session Act.**

[(b)] (c) "Nonpayment" means the nonpayment of a payment that becomes due during the emergency period to a landlord, including a payment of rent, late charges, utility or service charges or any other charge or fee as described in the rental agreement or ORS 90.140, 90.302, 90.315, 90.392, 90.394, 90.560 to 90.584 or 90.630.

[(c)] (d) "Nonpayment balance" includes all or a part of the net total amount of all items of nonpayment by a tenant **during the emergency period.**

[(d)] (e) "Termination notice without cause" means a notice delivered by a landlord under ORS 90.427 (3)(b), (4)(b) or (c), [(5)(a) to (c),] or (8)(a)(B) or (b)(B).

(2) [During and after the emergency period and] **Before the end of the grace period,** notwithstanding this chapter or ORS 105.105 to 105.168, a landlord may not, and may not threaten to:

(a) Deliver a notice of termination of a rental agreement based on a tenant's nonpayment balance;

(b) Initiate or continue an action under ORS 105.110 to take possession of a dwelling unit based on a notice of termination for nonpayment delivered [on or after April 1, 2020] **during the emergency period;**

(c) Take any action that would interfere with a tenant's possession or use of a dwelling unit based on a tenant's nonpayment balance;

(d) Assess a late fee or any other penalty on a tenant's nonpayment; [or]

(e) Report a tenant's nonpayment balance as delinquent to any consumer credit reporting agency[.]; **or**

(f) **File an action to recover the nonpayment balance.**

(3) Notwithstanding ORS 90.220 (9), before applying payments received from a tenant or on behalf of a tenant to a tenant's nonpayment balance, a landlord shall first apply the payments, in the following order, to:

(a) Rent for the current rental period;

- (b) Utility or service charges;
- (c) Late rent payment charges; and
- (d) Fees or charges owed by the tenant under ORS 90.302 or other fees or charges related to damage claims or other claims against the tenant.

[(4) During the emergency period, a landlord may provide a written notice to a tenant stating that the tenant continues to owe any rent due. The notice must also include a statement that eviction for nonpayment is not allowed before September 30, 2020.]

[(5)(a)] **(4)(a)** *[During the emergency period]* **Before June 30, 2021**, a landlord may not deliver a termination notice without cause and may not file an action under ORS 105.110 based on a termination notice without cause.

(b) If the first year of occupancy would end *[during the emergency period]* **after April 1, 2020, and before August 31, 2021**, for the purposes of a termination notice without cause, the “first year of occupancy” is extended to mean a period lasting until *[30 days following the emergency period.]* **August 31, 2021.**

(5)(a) A landlord may deliver a written notice to a tenant before the end of the grace period stating that the tenant continues to owe any rent due.

(b) If the emergency period is extended under section 7 (1) of this 2020 third special session Act, the notice must also include a statement that eviction for nonpayment of rent, charges and fees accrued from April 1, 2020, to June 30, 2021, is not allowed before June 30, 2021.

(c) If the emergency period is not extended under section 7 (1) of this 2020 third special session Act, the notice must also include:

(A) A statement that eviction for nonpayment of rent, charges and fees accrued from April 1, 2020, to December 31, 2020, is not allowed before March 31, 2021; and

(B) A copy of both the notice and declaration form described in section 7 (3) of this 2020 third special session Act.

(d) The notice may also include information regarding tenant resources and may offer a voluntary payment plan for the nonpayment balance. If the notice offers a voluntary payment plan, the notice must state that the payment plan is voluntary. The notice may include a request that the tenant contact the landlord to discuss the voluntary payment plan.

(6)(a) If a tenancy terminates before the end of the grace period, a landlord may claim from the security deposit or last month’s rent deposit to repay the unpaid rent balance that accrued during the emergency period under ORS 90.300 (7) or (9).

(b) Prior to the end of the grace period, a tenant with an unpaid rent balance that accrued during the emergency period is not considered to be in default in rent under ORS 90.385 (4)(c) or 90.390 (2).

(c) A landlord’s acceptance of a partial payment of rent before the end of the grace period does not constitute a waiver of a landlord’s right to terminate the tenancy for:

(A) A violation of the rental agreement, notwithstanding ORS 90.412 (2); or

(B) Nonpayment of the rent balance owed under ORS 90.394 after the end of the grace period, notwithstanding ORS 90.417 (4).

[(6) Following the emergency period, a tenant with an outstanding nonpayment balance has a six-month grace period that ends on March 31, 2021, to pay the outstanding nonpayment balance.]

[(7) Following the emergency period, a landlord may deliver a written notice to a tenant that substantially states:]

[(a) The date that the emergency period ended;]

[(b) That if rents and other payments that come due after the emergency period are not timely paid, the landlord may terminate the tenancy;]

[(c) That the nonpayment balance that accrued during the emergency period is still due and must be paid;]

[(d) That the tenant will not owe a late charge for the nonpayment balance;]

[(e) That the tenant is entitled to a six-month grace period to repay the nonpayment balance that ends on March 31, 2021;]

[(f) That within a specified date stated in the notice given under this subsection that is no earlier than 14 days following the delivery of the notice, the tenant must pay the nonpayment balance or notify the landlord that the tenant intends to pay the nonpayment balance by the end of the six-month grace period described in subsection (6) of this section;]

[(g) That failure of a tenant to give notice to the landlord of utilization of the grace period described in subsection (6) of this section may result in a penalty described in subsection (10) of this section; and]

[(h) That rents and other charges or fees that come due after the emergency period must be paid as usual or the landlord may terminate the tenancy under ORS 90.392, 90.394 or 90.630.]

[(8)(a) If a landlord gives a notice as described in subsection (7) of this section, a tenant who has an outstanding nonpayment balance as of the date listed on the landlord's notice as described in subsection (7)(f) of this section must notify the landlord of the tenant's intention to use the grace period described in subsection (6) of this section to pay the nonpayment balance.]

[(b) The tenant's notice under this subsection must be actual notice described in ORS 90.150 or notice given by electronic means, and must be given to the landlord by the date given in the landlord's notice as described in subsection (7)(f) of this section.]

[(9) The landlord's notice described in subsection (7) of this section may offer an alternate voluntary payment plan for payment of the nonpayment balance, but the notice must state that the alternate payment plan is voluntary.]

[(10) A tenant's failure to give the notice required by subsection (8) of this section to a landlord entitles the landlord to recover damages equal to 50 percent of one month's rent following the grace period.]

[(11) If a landlord violates this section, a tenant may obtain injunctive relief to recover possession or address any other violation of this section and may recover from the landlord an amount up to three months' periodic rent plus any actual damages.]

[(12) ORS 90.412 does not apply to a landlord that accepts a partial rent payment.]

SECTION 9. 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]* **recover an amount equal to up to three months’ periodic rent or three times the actual damages sustained by the tenant** 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 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 10. ORS 90.394 is amended to read:

90.394. The landlord may terminate the rental agreement for nonpayment of rent and take possession as provided in ORS 105.105 to 105.168, as follows:

(1) When the tenancy is a week-to-week tenancy, by delivering to the tenant at least 72 hours’ written notice of nonpayment and the landlord’s intention to terminate the rental agreement if the rent is not paid within that period. The landlord shall give this notice no sooner than on the fifth day of the rental period, including the first day the rent is due.

(2) For all tenancies other than week-to-week tenancies, by delivering to the tenant:

(a) At least [72 hours’] **10 days’** written notice of nonpayment and the landlord’s intention to terminate the rental agreement if the rent is not paid within that period. The landlord shall give this notice no sooner than on the eighth day of the rental period, including the first day the rent is due; or

(b) At least [144 hours’] **13 days’** written notice of nonpayment and the landlord’s intention to terminate the rental agreement if the rent is not paid within that period. The landlord shall give this notice no sooner than on the fifth day of the rental period, including the first day the rent is due.

(3) The notice described in this section must also specify the amount of rent that must be paid and the date and time by which the tenant must pay the rent to cure the nonpayment of rent.

(4) Payment by a tenant who has received a notice under this section is timely if mailed to the landlord within the period of the notice unless:

(a) The notice is served on the tenant:

(A) By personal delivery as provided in ORS 90.155 (1)(a); or

(B) By first class mail and attachment as provided in ORS 90.155 (1)(c);

(b) A written rental agreement and the notice expressly state that payment is to be made at a specified location that is either on the premises or at a place where the tenant has made all previous rent payments in person; and

(c) The place so specified is available to the tenant for payment throughout the period of the notice.

SECTION 11. ORS 90.160 is amended to read:

90.160. (1) Notwithstanding ORCP 10 and not including the seven-day and four-day waiting periods provided in ORS 90.394, where there are references in this chapter to periods and notices based on a number of days, those days shall be calculated by consecutive calendar days, not including the initial day of service, but including the last day until 11:59 p.m. Where there are references in this chapter to periods or notices based on a number of hours, those hours shall be calculated in consecutive clock hours, beginning immediately upon service.

(2) Notwithstanding subsection (1) of this section, for [72-hour or 144-hour] nonpayment notices **whose periods are based on a number of hours** under ORS 90.394 that are served pursuant to ORS 90.155 (1)(c), the time period described in subsection (1) of this section begins at 11:59 p.m. the day the notice is both mailed and attached to the premises. [*The time period shall end 72 hours or 144 hours, as the case may be, after the time started to run at 11:59 p.m.*]

SECTION 12. 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 (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,] **the time period allowed under ORS 90.394** 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.

(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 13. ORS 105.113 is amended to read:

105.113. (1) Notwithstanding ORCP 7, for premises to which ORS chapter 90 or ORS 91.120 applies, the summons must be in substantially the following form and be available from the court clerk:

IN THE CIRCUIT COURT
FOR THE COUNTY OF

No. _____

SUMMONS
RESIDENTIAL EVICTION

PLAINTIFF (Landlord or agent):

vs.

DEFENDANT (Tenants/Occupants):

TO: _____ (Street address and city of property occupied by defendant)
_____ (Mailing address if different)

NOTICE TO TENANTS:
READ THESE PAPERS CAREFULLY
YOUR LANDLORD WANTS TO
EVICT YOU

ON _____, 2_____ AT _____ A.M./P.M., you must come to the County Court House located at _____. You do not have to pay any fees to the court for this first hearing.

- If you do not appear in court and your landlord does, your landlord will win automatically and can have the Sheriff physically remove you.

- If you do show up in court and your landlord does not, this eviction action will be dropped.

- If both of you show up:

- The judge may ask you to try to reach an agreement with your landlord, but this is voluntary. Trained mediators may be available free of charge to help resolve disputes.

- The court will schedule a trial if you and your landlord do not reach an agreement or if you do not agree to move out.

IF YOU WANT A TRIAL, YOU MUST:

- Show up in court at the time scheduled above;

- On the same day, file an Answer with the Court giving a legal reason why you should not be evicted (the Court can give you a form);
- Give a copy of the Answer to your landlord (or your landlord's agent or attorney); and
- Pay a filing fee of \$_____ (the judge may allow payment to be deferred in certain circumstances).

IF YOU HAVE QUESTIONS, YOU SHOULD SEE AN ATTORNEY IMMEDIATELY. If you need help finding an attorney, you can contact the Oregon State Bar's Lawyer Referral Service online at [www.oregonstatebar.org] _____ (**current website**) or by calling [*503-684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at 800-452-7636*] _____ (**current phone numbers**).

If you are being evicted for nonpayment of rent or other charges or fees, the enclosed notice and declaration form have additional information on protection from eviction for nonpayment.

Signature of Plaintiff (landlord or agent)

Plaintiff's address:

Plaintiff's telephone number: _____

(2) Except as provided in ORS 408.515 (3), the information required under ORS 408.515 must be included with the summons.

(3) A copy of the notice and declaration form under section 7 (3) of this 2020 third special session Act must be attached to each copy of the summons.

SECTION 14. ORS 105.115 is amended to read:

105.115. (1) Except as provided by subsections (2) and (3) of this section, the following are causes of unlawful holding by force within the meaning of ORS 105.110, 105.123 and 105.126:

(a) When the tenant or person in possession of any premises fails or refuses to pay rent within 10 days after the rent is due under the lease or agreement under which the tenant or person in possession holds, or to deliver possession of the premises after being in default on payment of rent for 10 days.

(b) When the lease by its terms has expired and has not been renewed, or when the tenant or person in possession is holding from month to month, or year to year, and remains in possession after notice to quit as provided in ORS 105.120, or is holding contrary to any condition or covenant of the lease or is holding possession without any written lease or agreement.

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

(d) When the person in possession of a premises remains in possession after the time when a purchaser of the premises is entitled to possession in accordance with the provisions of ORS 18.946 or 86.782.

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

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

(g) When the person in possession of a premises remains in possession after the expiration of a valid notice terminating the person's right to occupy the premises pursuant to ORS 91.120, 91.122 or 91.130.

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

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

(A) When the tenant or person in possession of any premises fails or refuses to pay rent within [72 hours or 144 hours, as the case may be, of the notice] **the time period** required by a notice under ORS 90.394.

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

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

(3) In an action under subsection (2) of this section, ORS chapter 90 shall be applied to determine the rights of the parties, including:

(a) Whether and in what amount rent is due;

(b) Whether a tenancy or rental agreement has been validly terminated; and

(c) Whether the tenant is entitled to remedies for retaliatory conduct by the landlord as provided by ORS 90.385 and 90.765.

SECTION 15. ORS 105.124 is amended to read:

105.124. For a complaint described in ORS 105.123, if ORS chapter 90 applies to the dwelling unit:

(1) The complaint must be in substantially the following form and be available from the clerk of the court:

IN THE CIRCUIT COURT
FOR THE COUNTY OF

No. _____

RESIDENTIAL EVICTION COMPLAINT

PLAINTIFF (Landlord or agent):

Address: _____

City: _____

State: _____ Zip: _____
Telephone: _____

vs.

DEFENDANT (Tenants/Occupants):

MAILING ADDRESS: _____
City: _____
State: _____ Zip: _____
Telephone: _____

1.

Tenants are in possession of the dwelling unit, premises or rental property described above or located at:

2.

Landlord is entitled to possession of the property because of:

- _____ 24-hour notice for personal injury, substantial damage, extremely outrageous act or unlawful occupant. ORS 90.396 or 90.403.
- _____ 24-hour or 48-hour notice for violation of a drug or alcohol program. ORS 90.398.
- _____ 24-hour notice for perpetrating domestic violence, sexual assault or stalking. ORS 90.445.
- [_____ 72-hour or 144-hour notice for]
- [nonpayment of rent. ORS 90.394.]
- _____ 7-day notice with stated cause in a week-to-week tenancy. ORS 90.392 (6).
- _____ 10-day notice for a pet violation, a repeat violation in a month-to-month tenancy or without stated cause in a week-to-week tenancy. ORS 90.392 (5), 90.405 or 90.427 (2).
- _____ **10-day or 13-day notice for nonpayment of rent. ORS 90.394.***
- _____ 20-day notice for a repeat violation. ORS 90.630 (5).
- _____ 30-day, 60-day or 180-day notice without stated cause in a month-to-month tenancy. ORS 90.427 (3)(b) or (8)(a)(B) or (C) or 90.429.
- _____ 30-day notice with stated cause. ORS 90.392, 90.630 or 90.632.*
- _____ 60-day notice with stated cause.

- _____ ORS 90.632.
- _____ 90-day notice with stated cause.
ORS 90.427 (5) or (7).
- _____ Notice to bona fide tenants after
foreclosure sale or termination of
fixed term tenancy after foreclosure
sale. ORS 86.782 (6)(c).
- _____ Other notice _____
- _____ No notice (explain) _____

A COPY OF THE NOTICE RELIED UPON, IF ANY, IS ATTACHED

***If the notice is for nonpayment of rent or other charges or fees and was given on or before June 30, 2021, the landlord must attach a copy of the declaration of compliance required under section 7 (5) of this 2020 third special session Act to this complaint.**

3.

If the landlord uses an attorney, the case goes to trial and the landlord wins in court, the landlord can collect attorney fees from the defendant pursuant to ORS 90.255 and 105.137 (3).

Landlord requests judgment for possession of the premises, court costs, disbursements and attorney fees.

I certify that the allegations and factual assertions in this complaint are true to the best of my knowledge.

Signature of landlord or agent.

(2) The complaint must be signed by the plaintiff, or an attorney representing the plaintiff as provided by ORCP 17, or verified by an agent or employee of the plaintiff or an agent or employee of an agent of the plaintiff.

(3) A copy of the notice relied upon, if any, must be attached to the complaint.

SECTION 16. Section 7 of this 2020 third special session Act and the amendments to ORS 90.160, 90.385, 90.394, 90.417, 105.113, 105.115 and 105.124 and section 3, chapter 13, Oregon Laws 2020 (first special session) (Enrolled House Bill 4213), by sections 8 to 15 of this 2020 third special session Act become operative on January 1, 2021.

SECTION 17. Section 7, chapter 13, Oregon Laws 2020 (first special session) (Enrolled House Bill 4213), is amended to read:

Sec. 7. Notwithstanding ORS 12.125, the period of limitation is tolled until [March 31] **July 1, 2021**, for claims by a landlord based on a tenant's nonpayment or nonpayment balance, both as defined in section 3, **chapter 13, Oregon Laws 2020 (first special session) (Enrolled House Bill 4213)** [of this 2020 special session Act].

EVICTION MORATORIUM SUNSET

SECTION 18. ORS 90.385, as amended by section 9 of this 2020 third special session Act, 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 *[recover an amount equal to up to three months' periodic rent or three times the actual damages sustained by the tenant]* **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 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 19. ORS 90.394, as amended by section 10 of this 2020 third special session Act, is amended to read:

90.394. The landlord may terminate the rental agreement for nonpayment of rent and take possession as provided in ORS 105.105 to 105.168, as follows:

(1) When the tenancy is a week-to-week tenancy, by delivering to the tenant at least 72 hours' written notice of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period. The landlord shall give this notice no sooner than on the fifth day of the rental period, including the first day the rent is due.

(2) For all tenancies other than week-to-week tenancies, by delivering to the tenant:

(a) At least [10 days'] **72 hours'** written notice of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period. The landlord shall give this notice no sooner than on the eighth day of the rental period, including the first day the rent is due; or

(b) At least [13 days'] **144 hours'** written notice of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period. The landlord shall give this notice no sooner than on the fifth day of the rental period, including the first day the rent is due.

(3) The notice described in this section must also specify the amount of rent that must be paid and the date and time by which the tenant must pay the rent to cure the nonpayment of rent.

(4) Payment by a tenant who has received a notice under this section is timely if mailed to the landlord within the period of the notice unless:

(a) The notice is served on the tenant:

(A) By personal delivery as provided in ORS 90.155 (1)(a); or

(B) By first class mail and attachment as provided in ORS 90.155 (1)(c);

(b) A written rental agreement and the notice expressly state that payment is to be made at a specified location that is either on the premises or at a place where the tenant has made all previous rent payments in person; and

(c) The place so specified is available to the tenant for payment throughout the period of the notice.

SECTION 20. ORS 105.113, as amended by section 13 of this 2020 third special session Act, is amended to read:

105.113. (1) Notwithstanding ORCP 7, for premises to which ORS chapter 90 or ORS 91.120 applies, the summons must be in substantially the following form and be available from the court clerk:

IN THE CIRCUIT COURT
FOR THE COUNTY OF

No. _____

SUMMONS
RESIDENTIAL EVICTION

PLAINTIFF (Landlord or agent):

vs.

DEFENDANT (Tenants/Occupants):

TO: _____ (Street address and city of property occupied by defendant)
_____ (Mailing address if different)

NOTICE TO TENANTS:
READ THESE PAPERS CAREFULLY
YOUR LANDLORD WANTS TO
EVICT YOU

ON _____, 2_____ AT _____ A.M./P.M., you must come to the County Court House located at _____. You do not have to pay any fees to the court for this first hearing.

- If you do not appear in court and your landlord does, your landlord will win automatically and can have the Sheriff physically remove you.

- If you do show up in court and your landlord does not, this eviction action will be dropped.

- If both of you show up:

- The judge may ask you to try to reach an agreement with your landlord, but this is voluntary. Trained mediators may be available free of charge to help resolve disputes.

- The court will schedule a trial if you and your landlord do not reach an agreement or if you do not agree to move out.

IF YOU WANT A TRIAL, YOU MUST:

- Show up in court at the time scheduled above;

- On the same day, file an Answer with the Court giving a legal reason why you should not be evicted (the Court can give you a form);

- Give a copy of the Answer to your landlord (or your landlord's agent or attorney); and

- Pay a filing fee of \$_____ (the judge may allow payment to be deferred in certain circumstances).

IF YOU HAVE QUESTIONS, YOU SHOULD SEE AN ATTORNEY IMMEDIATELY. If you need help finding an attorney, you can contact the Oregon State Bar's Lawyer Referral Service online at _____ (current website) or by calling _____ (current phone numbers).

[If you are being evicted for nonpayment of rent or other charges or fees, the enclosed notice and declaration form have additional information on protection from eviction for nonpayment.]

Signature of Plaintiff (landlord or agent)

Plaintiff's address:

Plaintiff's telephone number: _____

(2) Except as provided in ORS 408.515 (3), the information required under ORS 408.515 must be included with the summons.

[(3) A copy of the notice and declaration form under section 7 (3) of this 2020 third special session Act must be attached to each copy of the summons.]

SECTION 21. ORS 105.124, as amended by section 15 of this 2020 third special session Act, is amended to read:

105.124. For a complaint described in ORS 105.123, if ORS chapter 90 applies to the dwelling unit:

(1) The complaint must be in substantially the following form and be available from the clerk of the court:

IN THE CIRCUIT COURT
FOR THE COUNTY OF

No. _____

RESIDENTIAL EVICTION COMPLAINT

PLAINTIFF (Landlord or agent):

Address: _____

City: _____

State: _____ Zip: _____

Telephone: _____

vs.

DEFENDANT (Tenants/Occupants):

MAILING ADDRESS: _____

City: _____

State: _____ Zip: _____

Telephone: _____

1.

Tenants are in possession of the dwelling unit, premises or rental property described above or located at:

2.

Landlord is entitled to possession of the property because of:

- _____ 24-hour notice for personal injury, substantial damage, extremely outrageous act or unlawful occupant. ORS 90.396 or 90.403.
- _____ 24-hour or 48-hour notice for violation of a drug or alcohol program. ORS 90.398.
- _____ 24-hour notice for perpetrating domestic violence, sexual assault or stalking. ORS 90.445.
- _____ **72-hour or 144-hour notice for nonpayment of rent. ORS 90.394.**
- _____ 7-day notice with stated cause in a week-to-week tenancy. ORS 90.392 (6).
- _____ 10-day notice for a pet violation, a repeat violation in a month-to-month tenancy or without stated cause in a week-to-week tenancy. ORS 90.392 (5), 90.405 or 90.427 (2).
- [_____ *10-day or 13-day notice for nonpayment of rent. ORS 90.394.**]
- _____ 20-day notice for a repeat violation. ORS 90.630 (5).
- _____ 30-day, 60-day or 180-day notice without stated cause in a month-to-month tenancy. ORS 90.427 (3)(b) or (8)(a)(B) or (C) or 90.429.
- _____ 30-day notice with stated cause. ORS 90.392, 90.630 or 90.632.[*]
- _____ 60-day notice with stated cause. ORS 90.632.
- _____ 90-day notice with stated cause. ORS 90.427 (5) or (7).
- _____ Notice to bona fide tenants after foreclosure sale or termination of fixed term tenancy after foreclosure sale. ORS 86.782 (6)(c).
- _____ Other notice _____
- _____ No notice (explain) _____

A COPY OF THE NOTICE RELIED UPON, IF ANY, IS ATTACHED

[If the notice is for nonpayment of rent or other charges or fees and was given on or before June 30, 2021, the landlord must attach a copy of the declaration of compliance required under section 7 (5) of this 2020 third special session Act to this complaint.]*

3.

If the landlord uses an attorney, the case goes to trial and the landlord wins in court, the landlord can collect attorney fees from the defendant pursuant to ORS 90.255 and 105.137 (3).

Landlord requests judgment for possession of the premises, court costs, disbursements and attorney fees.

I certify that the allegations and factual assertions in this complaint are true to the best of my knowledge.

Signature of landlord or agent.

(2) The complaint must be signed by the plaintiff, or an attorney representing the plaintiff as provided by ORCP 17, or verified by an agent or employee of the plaintiff or an agent or employee of an agent of the plaintiff.

(3) A copy of the notice relied upon, if any, must be attached to the complaint.

SECTION 22. The amendments to ORS 90.385, 90.394, 105.113 and 105.124 by sections 18 to 21 of this 2020 third special session Act become operative on July 1, 2021.

SECTION 23. Section 7 of this 2020 third special session Act is repealed on July 1, 2021.

SECTION 24. Section 4, chapter 13, Oregon Laws 2020 (first special session) (Enrolled House Bill 4213), is amended to read:

Sec. 4. Section 3, chapter 13, Oregon Laws 2020 (first special session) (Enrolled House Bill 4213), as amended by section 8 of this 2020 third special session Act [of this 2020 special session Act] is repealed on [March 31,] September 1, 2021.

UNIT CAPTIONS

SECTION 25. The unit captions used in this 2020 third special session Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2020 third special session Act.

EMERGENCY CLAUSE

SECTION 26. This 2020 third special session Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2020 third special session Act takes effect on its passage.

Passed by House December 21, 2020

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate December 21, 2020

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2020

Approved:

.....M.,....., 2020

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2020

.....
Bev Clarno, Secretary of State