**SB 608 FAQs**

**By**

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*Caveat: Some of the questions below raise issues that are not directly addressed in SB 608 (the Bill”). In such instances, I will offer my opinion only. The answers should not be construed as legal advice, as your specific facts and circumstances may differ. In all instances, readers should consult with their own legal counsel.*

1. **Are long-term leases exempt from rent control under the laws of Oregon?  Does general contract/constitutional law in Oregon exempt a long-term lease from rent control.  The argument would be that a law should not be able to impair a contract.**

*Answer: It is my opinion that in fixed term leases for manufactured housing communities the rent cap formula[[1]](#footnote-1) (i.e.) does not apply.[[2]](#footnote-2) This is because under the Bill, on the manufactured housing side of ORS Chapter 90[[3]](#footnote-3)only* [*ORS 90.600*](https://www.oregonlaws.org/ors/90.600) *was amended by the rent increase provisions of the Bill; that statute is limited to rent increases for month-to-month tenancies. Nothing is said in ORS 90.600 about rent increases for fixed term tenancies.*

*Note that under* [*ORS 90.545*](https://www.oregonlaws.org/ors/90.545)*, not less than 60-days prior to the end of the term, a landlord may send out new park documents (consistent with those being offered to new tenants) and the existing tenant has the right to accept or reject them within 30 days. Questions have arisen whether the Bill applies to this protocol, thus imposing the Cap on the amount of rent in the new lease. It is my opinion that since the Bill did not address rent increases in fixed term tenancies (And why would it? Rents in leases are governed by their internal formula, and not 90-day notices under ORS 90.600 which, by its terms, is expressly limited to periodic tenancies, such as month-to-month.)*

*However, there appears to be a division of opinion on this issue. In checking with Bill Miner and Mark Busch, both excellent park landlord attorneys, they agree with my analysis. But there is some respectable opinion to the contrary. Accordingly, before proceeding, please check with your own attorney.*

*Remember, this issue really only arises where the rent in the second or subsequent new lease is higher than the applicable rent cap.*

***Caveat****: The above discussion ignores the City of Portland. Parks in the city should strive to keep their rent increase below 10% or risk paying a relocation fees. See discussion below.*

*As for the constitutional questions, I can only say that rent control is primarily a state issue, not federal. In the other rent control states, New York and California, their laws appear to have survived challenges, and where they didn’t, I assume those laws were amended to comply. I do not know if simply having long term leases is sufficient to insulate a landlord against rent control ordinances – but I’m no expert on the laws of other states.*

**2.**  **Would long-term leases provide some protection from rent control? Perhaps we should consider offering long-term leases to residents with terms that are slightly more advantageous than those under the statewide rent control formula (max of CPI + 7%).  For example, you could offer a CPI-based lease with a minimum of 5% and a max of 10% (or a minimum of 3% and maximum of 7%).  That might look pretty good to residents who now face a possible minimum of 7%.  If we offer a long-term lease we would not have to worry as much about the state legislature whittling down the minimum allowed year after year.**

*Answer: I underscored the above sentence since your question seems to assume that the 7% figure in the rent cap represents the minimum amount of increase, not counting CPI. Not so. SB608 only limits the upper end of a rent increase, i.e. the ceiling. Rent increases may always be less than 7%.*

*The Bill does not affect park leases in Oregon, long term or short term (2-years is the minimum). Two-year leases give the greatest flexibility, since a 25-year lease only triggers the requirement to give tenants the current park documents during the last 60 days in the 24th year. I would not want to keep a tenant under the same lease agreement for 25 years. In my opinion, park landlords should get all of their tenants on 2-year fixed term leases under* [*ORS 90.545*](https://www.oregonlaws.org/ors/90.545)*.*

1. **Can you require that new residents accept a lease as opposed to a month-to-month tenancy?**

*Answer: I don’t know why not. Tenants can terminate their leases with 30 days’ notice, just the same as if it was a month-to-month tenancy. Substantively, there is very little difference between the MHCO fixed term tenancy and the month-to-month tenancy. The major differences are the following:*

* *Rent increases in the lease are governed by a lease formula or other terms agreed upon between landlord and tenant; they do not require 90-days’ advance written notice, although some do provide for the rent increase to be preceded with a 90-day written notice just so tenants have a heads-up.*
* *Rent increases for month-to-month tenancies can be instituted with 90-days’ advance written notice. Those increases would be subject to the rent cap (i.e. 7% over the current rent + the change in CPI[[4]](#footnote-4) for September 2018 which was 3.4% = 10.4%).*
* *Leases must address the issuance of new park documents when the 60-day letter goes out before the end of the term. See,* [*ORS 90.545*](https://www.oregonlaws.org/ors/90.545)*.*
1. **How does this new law impact the renewal of a long-term leases in Oregon?  Is the process the same or has it changed the 60-day notification of new lease documents?**

*Answer: See Answer to Question No. 1, above. There is no change to 60-day notifications at the end of the lease term in manufactured housing communities.*

1. **In a long-term lease can the landlord include a provision for capital pass-throughs of unexpected expenses such as sewer replacement?**

*Answer: While there is an argument that as long as the recoupment is not characterized as a “rent increase” but more in the nature of a “special assessment” akin to what the statute permits for capital costs for submeter installation, I believe it could be rejected by the court; there simply is no comparable statute in ORS Chapter 90 to recover capital costs for unexpected major expenses. So, I would not recommend doing so without first obtaining competent legal advice.*

*This was my primary objection to SB608 as applied to manufactured housing. It’s one thing for the plumbing to go out in a rental home, but in a manufactured housing community, the failure could be park-wide, and cost thousands of dollars. For that reason, I believe SB 608 should have included a methodology to do so.*

*However, I believe this issue becomes a closer question if the rent formula in a fixed-term lease allowed for unanticipated capital improvements. As noted above, the Bill did not address or limit landlord rights under fixed term tenancies. However, again, this issue should not be pursued without competent legal advice.*

1. **I sent out a rent increase notice in January effective date of June 1st.  If it is more than the 7+3.4% is it valid?  Does this now count toward my yearly rent increase or can I raise rent again within the year?**

*Answer: My reading of the Bill is that it applies to rent increases mailed or delivered on or after the Effective Date of the new law, which was February 28, 2019, the date the Governor signed it. Note that the Bill does not limit the frequency of rent increases after the first year.*

1. **Are RVs in RV parks exempt under the new law, or am I limited to issuing ‘for cause’ notices for violators in my RV park who have been there over a year?**

*Answer: RVs are not treated the same as manufactured homes. They are subject to the general landlord-tenant law (as opposed to the manufactured housing side of that law). This means that if an RV tenant is renting the space on a month-to-month basis, you cannot increase the rent during the first year, and after that only with the issuance of a 90-day written notice. Also, after the first year, you cannot terminate without cause.*

1. **Under the new law, what notice do I give for a rent increase? Can I give a rent increase to a new resident who has been in the park for less than a year?**

*Answer: Park landlords continue to give the same type of 90-day rent increase notices as before under ORS 90.600. But now, as amended, the amount of the rent increase cannot exceed more than the rent cap, (i.e. 7% over the current rent + the change in CPI from September 2018 which was 3.4% = 10.4%)*

1. **If a new tenant is added to an existing rental agreement with residents who have been in the park for three years does that “reset” the rental agreement so that I cannot give them a rent increase in the first year of the new tenant’s occupancy?**

*Answer: This isn’t directly addressed in the Bill, but since it is the space that is being rented, and the home with tenants have been there three years, I don’t view this as a new tenancy. As I see it, rent increases going forward are for a home that has been on the space to the same residents for three-years; bringing in an additional tenant who has been there less than one year is not a factor, since the base rent is for the home on the space, and is not measured on a per tenant basis. But this could be subject to differing interpretations.*

*By the way, I do not view the first-year freeze on rent increases as particularly harsh, since the landlord can negotiate the first year’s rent before allowing the tenant to come in. For example, if current residents are paying $400/month for space rent, but you are planning a rent increase – or have already issued one, for $40 dollars, you would presumably accept the new tenant at $440 – thus making the first-year freeze irrelevant.*

*There is no “cap” on the amount of the first year’s rent, only the rent increases assessed thereafter, assuming a month-to-month tenancy.*

1. **Now that we are in a rent control regulatory environment would you recommend leases over month-to-month rental agreements?**

*Answer: Yes, as discussed above.*

***Comment on Portland’s Landlord-Tenant Ordinances***

## **The Portland City Council has an ordinance providing that rent increases of 10 percent or higher over a 12-month period trigger a landlord duty to pay “relocation assistance”.**

## **Curiously, the assistance amounts are only based upon size of a dwelling unit and do not address park spaces. They are staggered, depending on whether the rental is a studio/single room ($2,900); one-bedroom ($3,300); two bedroom ($4,200) or three bedroom or larger ($4,500). Additionally, if the duty to pay relocation assistance is triggered, tenants must receive a written notice at least 90 days prior to the effective date, including: (a) A description of their rights and obligations, and (b) The amount of Relocation Assistance they are eligible to receive.**

**SB608 imposes a rent cap of 7% over the current rent + the change in CPI from September 2018 (which was 3.4%) totaling 10.4%. Accordingly, landlords with parks in the City of Portland should keep their rent increase under 10%, since the SB608 rent cap is currently higher than 10%. It is currently unclear how relocation assistance charges would be interpreted for parks in the City of Portland that violate the 10% or higher cap.**

**For more information:** [**https://www.portlandoregon.gov/phb/74544**](https://www.portlandoregon.gov/phb/74544)

1. *7% over the current rent + the change in CPI for September 2018 which was 3.4% = 10.4%* [↑](#footnote-ref-1)
2. This is not to say that I suggest pushing the envelope by instituting large rent increases, as doing so will only be noticed by the legislature who will come back and amend SB608 the following legislative year. [↑](#footnote-ref-2)
3. ORS 90.505-90.875. [↑](#footnote-ref-3)
4. #  Per the Bill, the term “CPI” or “consumer price index” refers to “…the annual 12-month average change in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor in September of the prior calendar year.”

 [↑](#footnote-ref-4)