

LANDLORD-TENANT 101

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I. Introduction

Bill Miner works with his clients to resolve their legal problems through pre-litigation counseling, litigation, and mediation. Bill tries cases in state and federal courts and through private arbitration. His experience includes defending and prosecuting business torts; breach of contract claims; disputes between and among members of limited liability companies; residential and commercial real estate matters, including landlord-tenant, title, lien, and timber trespass disputes; and probate and trust cases. This presentation is an overview of Oregon landlord-tenant law as applied to manufactured home park owners, managers and floating home marina owners and managers.

II. ORS Chapter 90 – Knowing Where to Find the Answers – Applies to everybody.

- A. Governs the relationship between landlords and tenants.
- B. ORS 90.100-90.493 deals with all landlord-tenant relationships. 90.100 is the definition section.
- C. Exclusions from ORS 90.110.
- D. Duties of Good Faith and Fair Dealing ORS 90.130.
- E. Types of payments a landlord may require. 90.140.
- F. Attorney Fees 90.255.
- G. Retaliatory Conduct ORS 90.385.
- H. How to give notices ORS 90.150-90.160.
- I. Terminating rental agreements 90.392 (with cause).
- J. 24 hour notices 90.396.
- K. 72 hour notices for failure to pay rent 90.394.

- L. Unauthorized possessor 90.403.
- M. Waiver 90.412.
- N. Not waiver 90.414.
- O. Partial rent 90.417.
- P. Landlord liens 90.420.
- Q. What to do with abandoned personal property 90.425.

Notes:

III. ORS Chapter 90 – if you own a manufactured home park or a floating home marina, you're special.

- A. 90.505 and beyond.
- B. Statements of Policy 90.510.
- C. Written rental agreements 90.510(4).
- D. Fixed term tenancies. 90.545. Must have a duration of at least 2 years. 90.550.
- E. Subleasing 90.555.
- F. Increases in rent 90.600.
- G. Rule Changes 90.610.
- H. Disputes – how to terminate the tenancy.
 - 1. 72 hour notices to pay rent. 90.394.
 - a. No sooner than the 8th day of the rental period.
 - b. Only rent.
 - c. Must specify the date and time that the rent must be paid.

- d. Payment is timely if mailed to the landlord within the period of the notice unless it is served personally or nail and mail.
2. 30 day notices 90.630.
3. 24 hour notices – 90.396.
4. 3 strike notices.90.630(8).
5. Unauthorized possessor ORS 90.403 – 24 hour notice.
6. How to deliver your notice.
7. Common problems.
8. Your *lawful* notice terminates the tenancy. Once the tenancy is terminated then you have go through the eviction process.

Notes:

IV. The Eviction Process

A. Forcible Entry and Detainer

1. Common law vs. statute.
2. Statute is quicker but because it is a statute you have to follow it very closely.
3. It is a lawsuit.
4. First Appearance – fork in the road (6 options)
 - a. You don't show up, they show up. Case is dismissed. They win.
 - b. You show up, they don't show up, you win. Judgment of Restitution.
 - c. Neither of you show up. Case dismisses. The Court wins.

- d. You both show up.
 - a. You talk and you set it over to give some time to talk some more.
 - b. You talk and things break down, you go to trial.
 - c. You talk and you work things out – happens in 98% of cases.
5. Keys to the mediated agreement.
6. Affidavit of Non-compliance.
7. Trials.
8. Notice of Restitution.
9. Writ of Execution.

Notes:

V. The Abandonment Process

A. ORS 90.675 vs. 90.425

1. Both deal with the abandonment of personal property.
2. 90.675 – confusion because many don't view manufactured or floating homes as "personal property" but the Legislature does. ORS 90.675(1)(e).
3. 90.425 – is reserved for all other property.

B. The Legislature has mandated that a landlord may not store, sell or dispose of an abandoned home except as set forth in ORS 90.675. (90.675(2)).

C. Common Scenarios.

D. Effect of ORS 90.675 and failure to follow the rules.

E. The initial notice 90.675(4)-(5).

1. Landlord must give a written notice to the tenant that must be personally delivered, sent by first class mail and mailed to the tenant at the premises, any post-office box held by the tenant and actually known to the landlord, and the most recent forwarding address if provided by the tenant or actually known to the landlord.
2. Must also give a copy to any lienholder, the tax collector and the assessor of the county. First class mail and certified mail with return receipt requested to a lienholder.
3. Lienholders – actually known to the landlord, “of record”, and provided to the landlord by certified mail with return receipt requested within the preceding five years. 90.675(4).
4. The notice must include:
 - a. The personal property is considered abandoned;
 - b. The tenant or any lienholder must contact the landlord by a specified date to arrange for removal;
 - c. The personal property is stored on the rented space;
 - d. The tenant or any lienholder may arrange for removal;
 - e. The landlord shall make the personal property available for removal by the tenant or any lienholder;
 - f. If the personal property is considered to be abandoned pursuant to subsection 2(a) or 2(b) (tenancy ended by termination or expiration of rental agreement, or tenant has been absent from the premises continuously for seven days after a court order), may require payment of storage charges;
 - g. If by 2(c) (ended based on a writ) no storage charges;
 - h. If you don't remove the personal property within 30 days after contact, the landlord may sell or dispose of the personal property. If \$8k or less, the landlord intends to dispose of the property;
 - i. If there is a lienholder, it has a right to claim the personal property.
5. After notifying the tenant, the landlord shall store the abandoned personal property on the rented space (Marinas – can't move it) and shall exercise reasonable care for the personal property.
6. They have 45 days to respond. If they don't respond: Abandoned.

7. 30 days after contact, if they don't remove it (or otherwise enter into a storage agreement): Abandoned.

F. Storage Agreements

1. What they are intended for.
2. Storage Agreements with Owners.
3. Storage agreements entitle the owner, personal representative, or lienholder to store the home, but does not allow them to occupy the home.
4. Lienholders.
5. Anatomy of a Storage Agreement.

I. Death of a Tenant.

J. Abandonment Sale.

Notes:

VII. Questions?