

*2014*  
**MHCO ANNUAL CONVENTION**  
*Valley River Inn*  
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# *Landlord-Tenant Law Overview*

**Presented By**

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## TABLE OF CONTENTS

<b>I.</b>	<b>Rental Application Process</b>	<b>1</b>
<b>A.</b>	<b>What You May Ask on the Rental Application</b>	<b>1</b>
<b>1.</b>	<b>Generally</b>	<b>1</b>
<b>2.</b>	<b>Prohibited Questions</b>	<b>2</b>
<b>3.</b>	<b>Number of Occupants</b>	<b>2</b>
<b>B.</b>	<b>Additional Tenancy Application Issues</b>	<b>2</b>
<b>1.</b>	<b>Application Charges</b>	<b>3</b>
<b>2.</b>	<b>Denying An Application</b>	<b>4</b>
<b>3.</b>	<b>Fair Credit Reporting Act</b>	<b>4</b>
<b>4.</b>	<b>Section 8 Housing Subsidies</b>	<b>5</b>
<b>5.</b>	<b>Liability Insurance for Tenants</b>	<b>6</b>
<b>II.</b>	<b>The Rental Agreement and Starting the Tenancy</b>	<b>7</b>
<b>A.</b>	<b>Statement of Policy</b>	<b>7</b>
<b>1.</b>	<b>Required Information</b>	<b>7</b>
<b>2.</b>	<b>Required Recipients</b>	<b>8</b>
<b>3.</b>	<b>Forms</b>	<b>8</b>
<b>B.</b>	<b>The Rental Agreement</b>	<b>8</b>
<b>1.</b>	<b>Requirements</b>	<b>8</b>
<b>2.</b>	<b>Fixed Term Rental Agreement</b>	<b>9</b>
<b>3.</b>	<b>Month to Month Rental Agreement</b>	<b>9</b>
<b>4.</b>	<b>Rental Agreement when Landlord Owns Mobile Home &amp; Space</b>	<b>10</b>
<b>5.</b>	<b>Terms That Should be Included in Every Rental Agreement</b>	<b>10</b>
<b>a.</b>	<b>Noncompliance Fees</b>	<b>10</b>
<b>b.</b>	<b>Security Deposit</b>	<b>12</b>
<b>c.</b>	<b>Pet Policy</b>	<b>12</b>
<b>d.</b>	<b>Authorized Occupants</b>	<b>12</b>
<b>e.</b>	<b>Utility Services</b>	<b>13</b>
<b>f.</b>	<b>Termination Provisions</b>	<b>13</b>
<b>g.</b>	<b>Delivery of Notices</b>	<b>13</b>
<b>h.</b>	<b>Other Provisions</b>	<b>14</b>
<b>6.</b>	<b>Rental Agreement Addenda</b>	<b>14</b>
<b>a.</b>	<b>Dispute Resolution Addendum</b>	<b>14</b>

b.	Flood Plain Notice	15
c.	RV or Extra Vehicle Storage	15
d.	Park Rules	15
e.	55 or Older Facility Addenda	16
<b>III.</b>	<b>Landlord and Tenant Rights and Responsibilities</b>	<b>18</b>
<b>A.</b>	<b>Landlord Rights and Responsibilities</b>	<b>18</b>
1.	General Maintenance Responsibilities (ORS 90.730)	18
a.	Habitability on Tenant's Space	18
b.	Vacant Spaces	19
c.	Common Areas	19
2.	Tree Maintenance	19
a.	Landlord Responsibility (ORS 90.727)	19
b.	Tenant Responsibility	19
3.	Access to Tenant's Space (ORS 90.725)	20
<b>B.</b>	<b>Tenant Rights and Responsibilities</b>	<b>20</b>
1.	General Maintenance Responsibilities (ORS 90.740)	20
2.	Sale of Tenant's Home (ORS 90.680)	21
<b>IV.</b>	<b>Eviction Notices</b>	<b>21</b>
<b>A.</b>	<b>Nonpayment of Rent Notices</b>	<b>21</b>
<b>B.</b>	<b>30-Day 3-Strikes Notice (ORS 90.630 (8))</b>	<b>22</b>
<b>C.</b>	<b>30-Day Notice to Vacate with Cause (ORS 90.630 (1))</b>	<b>22</b>
<b>D.</b>	<b>20-Day Notice to Vacate with Cause (ORS 90.630 (4) and (5))</b>	<b>22</b>
<b>E.</b>	<b>30-Day Notice for Physical Condition of Home (ORS 90.632)</b>	<b>22</b>
<b>F.</b>	<b>24-Hour Notice to Vacate with Cause (ORS 90.396)</b>	<b>23</b>
<b>V.</b>	<b>The FED Process</b>	<b>23</b>
<b>A.</b>	<b>Are There Grounds for Eviction?</b>	<b>23</b>
1.	Generally	23
2.	Choosing the Proper Notice	24
3.	Proving Your Case	24
<b>B.</b>	<b>What Jurisdiction has Authority Over the Case?</b>	<b>24</b>

<b>C.</b>	<b>Service Issues</b>	<b>24</b>
<b>1.</b>	<b>Introduction</b>	<b>24</b>
<b>2.</b>	<b>Service of the Eviction Notice</b>	<b>25</b>
<b>3.</b>	<b>Service of the Eviction Summons and Complaint</b>	<b>25</b>
<b>D.</b>	<b>Obtaining Judgment</b>	<b>25</b>
<b>1.</b>	<b>Damages vs. Possession</b>	<b>25</b>
<b>2.</b>	<b>Stipulated Agreements</b>	<b>26</b>
<b>3.</b>	<b>Case Dismissal</b>	<b>26</b>
<b>E.</b>	<b>Make Sure Your Judgment is Enforced</b>	<b>26</b>
<b>1.</b>	<b>Notice of Restitution</b>	<b>26</b>
<b>2.</b>	<b>Service of the Notice</b>	<b>27</b>
<b>3.</b>	<b>Noncompliance Hearings</b>	<b>27</b>
<b>4.</b>	<b>Writ of Execution</b>	<b>28</b>
<b>VI.</b>	<b>Other Issues</b>	<b>28</b>
<b>A.</b>	<b>Abandonment Notices</b>	<b>28</b>
<b>1.</b>	<b>Generally</b>	<b>28</b>
<b>2.</b>	<b>Types of Notices</b>	<b>29</b>
<b>3.</b>	<b>Recipients of Abandonment Notices</b>	<b>29</b>
<b>4.</b>	<b>Storage Agreements</b>	<b>29</b>
<b>5.</b>	<b>Unclaimed Homes</b>	<b>29</b>
<b>B.</b>	<b>Companion Animal Requests</b>	<b>30</b>
<b>C.</b>	<b>Other Reasonable Accommodation Requests</b>	<b>30</b>
<b>1.</b>	<b>Generally</b>	<b>30</b>
<b>2.</b>	<b>Caregiver Requests</b>	<b>31</b>

## **I. Rental Application Process**

### **A. What You May Ask on the Rental Application**

#### **1. Generally**

- Credit history, eviction records, criminal records, employment, landlord references, number of occupants, and pets. *See* ORS 90.295(3)(b)(C).
- Prior Evictions, Arrest or Crimes (ORS 90.303)
  - Eviction cases more than 5 years old cannot be considered.
  - Can't use eviction cases if dismissed or judgment entered in tenant's favor.
  - Can only evaluate certain crimes: (1) Drug related crimes, (2) crimes against another person, (3) sex offenses, (4) financial fraud, and (5) a "catchall" provision that includes any crime that might affect the landlord's or other tenants' property or safety.
  - Can't use arrests if no conviction unless pending at time of application.
  - MHCO Form 03: Criminal Check Authorization
- The application should also include a clause stating that the applicant vouches for the truthfulness of all information provided, that the landlord is substantially relying on the information provided, and that intentionally providing false information will be grounds for eviction, as allowed by law.
  - The Oregon Residential Landlord and Tenant Act ("Act") specifically allows a landlord to evict a tenant on 24 hours' written notice if the tenant intentionally provided

substantially false information on an application for tenancy within the past year, the false information was with regard to a criminal conviction that would have been material to the landlord's acceptance of the application, and the landlord terminates the rental agreement within 30 days after discovering the falsity of the information. ORS 90.396 (1)(e).

- MHCO Form 01: Rental Application

## **2. Prohibited Questions**

- Federal, state and some local laws prohibit discrimination in rental housing. The Federal Fair Housing Act (42 U.S.C. 3601, et seq.) prohibits discrimination based upon race, color, national origin, religion, sex, familial status, and disability. State fair housing statutes protect against discrimination based upon race, color, sex, marital status, source of income (now including Section 8), familial status, religion, national origin, and disability. ORS 659.033; ORS 659.430. Some local ordinances (e.g., Portland and Eugene) protect against discrimination based upon age and sexual orientation.
- Landlords should avoid asking any questions on rental applications related to these prohibited areas. The sole exception may be the age of a potential applicant if the rental housing qualifies as a "55 or older" facility under the Federal Fair Housing Act. The qualifications for "55 or older" housing are very strict and you should always check with your attorney before asking age-related questions on your rental application.

## **3. Number of Occupants**

- While you are certainly entitled to ask on your rental application who will be occupying the rental unit, care should be exercised in framing the question. Under Oregon law, a landlord may adopt an occupancy guideline as long as the guideline is not more restrictive than two people per bedroom and is otherwise "reasonable." ORS 90.262 (3) and 90.510(7).
- Reasonableness is determined on a case-by-case basis and may

include consideration of the size of the bedrooms, the overall size of the dwelling unit, and any discriminatory impact the occupancy limit may have. ORS 90.262(3) and 90.510(7).

- Even though state law allows reasonable occupancy limits, there is no guarantee that federal HUD investigators would defer to state law. While HUD may take Oregon law into consideration when evaluating a discrimination complaint, it is not bound by state law.

## **B. Additional Tenancy Application Issues**

### **1. Application Charges**

- Landlords may require payment of an application charge to cover the costs of obtaining a credit report or tenant screening report. ORS 90.295 (1).
- The amount of the charge cannot be greater than the landlord's average actual cost of screening applicants. ORS 90.295 (2). In any case, the charge cannot be more than the customary amount charged by credit reporting services or tenant screening services. ORS 90.295 (2).
- The landlord must provide the applicant with a receipt for any screening charge. ORS 90.295 (1).
- A landlord may not require payment of an applicant screening charge unless, prior to accepting the payment, the landlord adopts written screening or admission criteria. ORS 90.295 (3)(a).
- The criteria must give written notice to the applicant of: (1) the amount of the applicant screening charge; (2) the landlord's screening or admission criteria; (3) the process that the landlord typically will follow in screening the applicant, including whether the landlord uses a tenant screening company, credit reports, public records or criminal records or contacts employers, landlords or other references; and (4) the applicant's rights to dispute the accuracy of any information provided to the landlord by a screening company or credit reporting agency. ORS 90.295 (3)(b).

- Before accepting payment of any screening charge, the landlord must also give actual notice to the applicant of an estimate, made to the best of the landlord's ability at that time, of the approximate number of rental units of the type, and in the area, sought by the applicant that are, or within a reasonable future time will be, available to rent from that landlord. ORS 90.295 (3)(c). The estimate must include the approximate number of applications previously accepted and remaining under consideration for those units. A landlord must make this estimate in good faith, and cannot be held liable for errors made in good faith. ORS 90.295 (3)(c).
- MHCO Form 09: Applicant Screening Charge Notice & Receipt

## **2. Denying An Application**

- Landlord must provide a written statement of the reasons for denying a tenancy application. If the tenant's application is denied on the basis of a credit report, the landlord must also inform the tenant of that fact and provide written notice of the name and address of the screening service or credit reporting agency that provided the report. ORS 90.295 (4).
- The landlord may, but is not required to, give the applicant a copy of his or her credit report. ORS 90.295 (5).
- MHCO Form 10: Application Denial
- MHCO Form 10A: Application Denial Letter

## **3. Fair Credit Reporting Act**

- Landlords must adhere to the federal Fair Credit Reporting Act. *See generally* 15 USC §§1681-1681u. Under this law, the landlord must have the applicant's written consent to obtain a credit report.
- If an application is denied based on a credit report, the landlord must notify the applicant of the following: (1) the name, address and telephone number of the credit reporting agency that provided the report; (2) a statement that the credit reporting agency did not make the adverse decision and is not able to explain why the decision was made; (3) a statement setting forth the applicant's right to obtain a free disclosure of



the applicant's file from the credit reporting agency if requested within 60 days; and, (4) a statement setting forth the applicant's right to dispute directly with the credit reporting agency the accuracy or completeness of any information provided.

- MHCO Form 10: Application Denial - Complies with these requirements.

#### **4. Section 8 Housing Subsidies**

- On July 1, 2014, the Section 8 housing assistance program changed with the "Housing Choice Act of 2013."
- Under Section 8, the landlord receives a subsidy payment from the government, with the tenant paying the difference between the subsidy and the total amount of rent.
  - In the past, many landlords (legally) refused to rent to Section 8 tenants since the program requires landlords to adhere to certain government regulations. Many landlords didn't want the hassle of dealing with the oversight and the paperwork. Other landlords were wary of the potential difficulty in recovering money from the tenants for unpaid rent or damaged rental units.
- Now, the new law prohibits landlords from refusing to rent to tenants simply because they use Section 8 or other forms of housing assistance.
  - The rationale is to give low income tenants the opportunity to rent anywhere regardless of how they make their income.
- Landlords can still assess the tenant's ability to pay rent after taking the subsidy into account, such as when a tenant is trying to rent an apartment or house that is simply beyond the tenant's means even with the housing subsidy.

- Landlords can still evaluate a tenant's prior conduct (i.e., criminal convictions or past evictions) in deciding whether to rent to a particular person.
- The law also establishes a state-run guarantee fund to reimburse landlords for damages caused by a tenant using housing assistance.
  - Landlord must first obtain a money judgment against the tenant in small claims or circuit court.
  - The landlord can then be reimbursed for amounts related to property damage, unpaid rent and other damages (1) caused by the tenant's occupancy, (2) that exceed normal wear and tear, and (3) are in excess of \$500 but not more than \$5,000 per tenancy.
  - The landlord must file the reimbursement claim within one year of obtaining the court judgment.

## **5. Liability Insurance for Tenants (ORS 90.222)**

- Must advise applicant in writing before entering tenancy and the amount required. May also require applicant to provide proof of coverage before tenancy begins.
- Can require current tenants to obtain insurance on 30 days' written notice.
- Maximum of \$100,000 liability coverage.
- Landlord must maintain comparable insurance.
- Can cover damages tenant is responsible for excluding ordinary wear and tear, acts of God, or landlord's acts.
- Not required for low-income tenants or those receiving certain government subsidies.

## II. The Rental Agreement and Starting the Tenancy

### A. Statement of Policy (ORS 90.510 (1))

#### 1. Required Information

- Must provide a written statement of policy to prospective and existing tenants. Discloses landlord's policies to prospective tenants and to existing tenants who have not previously received a statement of policy. The statement of policy is not a part of the rental agreement. The statement of policy must provide:
  - The location and approximate size of the space to be rented.
  - The federal fair-housing age classification and present zoning that affect the use of the rented space.
  - The facility policy regarding rent adjustment and a rent history for the space to be rented. The rent history must show the rent amounts on January 1 of each of the five preceding calendar years or during the length of the landlord's ownership, leasing or subleasing of the facility.
  - The personal property, services and facilities that are provided.
  - The installation charges that are imposed by the landlord and the installation fees that are imposed by government agencies.
  - Facility policy regarding rental agreement termination including, but not limited to, closure of the facility.
  - Facility policy regarding facility sale.
  - Facility policy regarding informal dispute resolution.
  - Utilities and services that are available, the name of the person furnishing them and the name of the person responsible for payment.
  - If a tenants' association exists for the facility, a one-page summary about the tenants' association. The tenants' association must provide the summary to the landlord.
  - Facility policy regarding the removal of a manufactured dwelling, including a statement that "removal requirements may impact the market value of a dwelling."
  - Facility policy regarding the planting of trees on the rented space for a manufactured dwelling.

- The rental agreement and the facility rules and regulations must be attached as an exhibit to the statement of policy.

## **2. Required Recipients**

- Prospective tenants a copy of the statement of policy before the prospective tenants sign rental agreements.
- Existing tenants who have not previously received a copy of the statement of policy and who are on month-to-month rental agreements a copy of the statement of policy at the time a 90-day notice of a rent increase is issued; and
- All other existing tenants who have not previously received a copy of the statement of policy a copy of the statement of policy upon the expiration of their rental agreements and before the tenants sign new agreements.

## **3. Forms**

- MHCO Form 07 - Statement of Policy
- MHCO Form 07A - Rent History Exhibit Statement of Policy
- MHCO Form 08 - Straight Talk About Manufactured Home Park Living
  - “Straight Talk” form not required by law, but a good idea.

## **B. The Rental Agreement**

### **1. Requirements**

- Every manufactured home rental agreement must state:
  - The location and approximate size of the rented space;
  - The federal fair-housing age classification;
  - The rent per month;
  - All personal property, services and facilities to be provided by the landlord;
  - All security deposits, fees and installation charges imposed by the landlord;
  - Any facility policy regarding the planting of trees on the rented space for a manufactured dwelling;
  - Improvements that the tenant may or must make to the rental space, including plant materials and landscaping;
  - Provisions for dealing with improvements to the rental space at the termination of the tenancy;

- Any conditions the landlord applies in approving a purchaser of a manufactured dwelling or floating home as a tenant in the event the tenant elects to sell the home. Those conditions must be in conformance with state and federal law and may include, but are not limited to, conditions as to pets, number of occupants and screening or admission criteria;
- That the tenant may not sell the tenant's manufactured dwelling or floating home to a person who intends to leave the manufactured dwelling or floating home on the rental space until the landlord has accepted the person as a tenant;
- The term of the tenancy;
- The process by which the rental agreement or rules and regulations may be changed, which must identify that the rules and regulations may be changed with 60 days' notice unless tenants of at least 51 percent of the eligible spaces file an objection within 30 days; and
- The process by which the landlord or tenant must give notices.

## **2. Fixed Term Rental Agreement**

- Every manufactured home rental agreement must be either fixed term or month to month.
- Minimum term for a fixed term is 2 years.
- Converts to month to month unless landlord presents new rental agreement not less than 60 days before end of lease term.
- New rental agreement may include new or revised terms if reasonable and meet statutory standards in ORS 90.545.
- Tenant must accept or reject the new rental agreement at least 30 days before lease expiration.
- If tenant fails to accept or "unreasonably rejects" the new rental agreement, the lease automatically expires.
- Landlord can file FED eviction action without further notice.
- MHCO Form 5B - Fixed Term Lease Agreement

## **3. Month to Month Rental Agreement**

- Should specifically identify the premises being rented.
- The term of the agreement must be listed, specifying that it is a month-to-month tenancy.
  - **Note:** If a rental agreement does not create a week-to-week tenancy

or a fixed term tenancy, the law automatically considers the tenancy month-to-month. ORS 90.220 (7)(b).

- The rental rate must be listed, along with the due date for rent payments each month.
- All sections should be filled in on the rental agreement form.
- MHCO Form 5B - Month to Month Rental Agreement

#### **4. Rental Agreement when Landlord Owns Mobile Home and Space**

- Never use regular mobile home tenancy rental agreement.
  - Would give the tenant a tenancy unlimited in length so long as rent is paid and park rules are followed.
- Retain the right to evict on 30 or 60 day's no-cause notice.
- MHCO Form 5C - Rental Agreement When Landlord Owns Home and Space

#### **5. Terms That Should be Included in Every Rental Agreement**

##### **a. Noncompliance Fees (ORS 90.302)**

- Can charge fees for late rent, NSF checks, smoke alarm tampering, pet agreement violation by mobile home tenants, and lease-break fee.
- Late fees (ORS 90.260)
  - If a landlord intends to impose a late charge for late rent payments, the rental agreement must specify this fact.
  - The rental agreement must state the tenant's obligation to pay a late charge on delinquent rent payments, the type and amount of the late charge, the date on which rent payments are due, and the date or day on which late charges become due. ORS 90.260 (1)(b).
  - A late charge cannot be imposed any sooner than the 4<sup>th</sup> day of the rental period for which rent is payable (i.e., on the 5<sup>th</sup> of the month if rent is due on the 1<sup>st</sup>). ORS 90.260 (1)(a).

- There are several statutory formulas for calculating the maximum amount of late charge. *See* ORS 90.260 (2). In essence, the late charge must be a reasonable amount customarily charged by landlords in the particular rental market.
- NSF checks: \$35 maximum plus any assessed bank fee charged to landlord. (ORS 30.701 (5))
- Smoke alarm: Up to \$250
  - Does not apply to tenants who own their homes.
  - Only applies to tenants who rent home and space.
- Pet agreement violation: \$50 (ORS 90.530)
- Lease-break: One and one-half times monthly rent.
  - Would apply if tenant with fixed-term lease gave his/her 30-day no-cause notice during lease term. (ORS 90.20)
  - Would also apply to any tenant who rented both home and space and vacated without cause before end of lease term.
- Second noncompliance fees can be charged for violation of written rules and policies for: (i) late payment of utility charges, (ii) failure to clean up pet waste, (iii) failure to clean up garbage, (iv) parking violations, (v) improper use of vehicles on premises, (vi) smoking in non-smoking area, and (vii) keeping unauthorized pet capable of causing damage to persons or property.
  - Must first give written warning stating: (i) specific act of noncompliance, (ii) that will result in a fee on a second or subsequent noncompliance, and (iii) amount of fee that will be assessed.
    - Fee is \$50 on second violation, \$50 plus five percent of current rent on subsequent violations occurring within one year of from the written warning.

**b. Security Deposit**

- A landlord may require a security deposit from month-to-month or fixed term tenants. ORS 90.300 (2).
- The rental agreement should list deposits held by the landlord and the purpose for which the landlord may claim the security deposit.
  - Generally, the rental agreement should specify that the landlord may claim all or part of the security deposit necessary to repair any damages to the premises caused by the tenant, or to remedy any other defaults under the agreement, including the failure to pay rent. ORS 90.300 (7).
  - The rental agreement should further state that the deposit will not be considered as a last month's rent deposit (unless that is the parties' intent).

**c. Pet Policy**

- If pets are allowed, the rental agreement should list the name and description of the specific pets allowed.
- The agreement should list or incorporate rules of conduct for pets or, alternatively, a separate pet agreement should be signed by the tenant.
- Parks may additionally require the tenant to provide proof of liability insurance and make the landlord a co-insured for the purpose of receiving notice in the case of cancellation of the insurance. ORS 90.530 (2)(b).
- Cannot charge "pet rent" or fees.
- MHCO Form 21 - Pet Agreement

**d. Authorized Occupants**

- The rental agreement should have a space listing all authorized occupants of the rental unit. All authorized occupants (including minor children) should be listed in the rental agreement. This is an important provision in case the landlord ever needs to take action against unauthorized occupants.



**e. Utility Services**

- The rental agreement must disclose payment responsibilities between the landlord and tenant for utility services. The rules governing submetered utilities and charging tenants for common area utilities are specified by statute. ORS 90.315 and 90.531 through 90.543.

**f. Termination Provisions**

- The agreement should also specify how the agreement may be terminated by either party.
- Fixed term leases should list an automatic termination date.
- Month-to-month agreements should be terminable on 30 days' written notice.
- **Practice Tip:** All rental agreements should include additional language specifying that the agreement may also be terminated "as otherwise allowed by law."

**g. Delivery of Notices**

- The rental agreement should specify that written notices may be delivered by either party by:
  - Personal delivery means putting it in the actual tenant's hand.
  - First class mail: Use certificate of mailing (not certified mail).
  - Mail and attachment. The language allowing "mail and attachment" service is very specific and must be included in the rental agreement (MHCO agreements comply):
    - A landlord may serve an eviction notice by mail and attachment ("nail and mail") only if the parties' written rental agreement allows such service. ORS 90.155 (1)(c).
    - The rental agreement must also allow the tenant to "nail and mail" notices to the landlord by first class

mail at a designated address, with the second notice copy attached in a secure manner at a designated location reasonably located to the tenant and available at all hours (i.e., the park office). ORS 90.155(1)(c)(B).

- **Practice Tip:** Avoid this type of service in favor of service by mail. Too many rental agreements either don't have the requisite language (especially old rental agreements), or the service address information is outdated.
- Many eviction cases are lost on this technicality alone. Tenant lawyers easily spot any service defects.

#### **h. Other Provisions**

- There are many other provisions that can or should be included in the rental agreement.
- **Practice Tip:** A well-written rental agreement will certainly include additional "boiler plate" provisions to help protect landlords from liability. Include an attorney fee provision, integration clause, non-waiver clause, non-assignment clause, severability provision, "time is of the essence" clause, etc.
- **Practice Tip:** Rental agreements for recreational vehicle tenants must include several specific terms. *See* ORS 90.230.
- Don't use mobile home agreements for RVs.
- MHCO Form 80 - RV Space Rental Agreement

### **6. Rental Agreement Addenda**

#### **a. Dispute Resolution Addendum**

- Required as part of every manufactured home space rental agreement. ORS 90.610 (2).
- Can be as simple as an informal meeting between tenant and management.

- Mediation can also be used.
- Arbitration is also acceptable.
- MHCO Form 05A - Dispute Resolution Addendum

**b. Flood Plain Notice**

- Required if rental space is in 100-year flood plain.
- MHCO Form 06 - Flood Plain Notice

**c. RV or Extra Vehicle Storage**

- MHCO Form 22 - RV and Extra Vehicle Storage Agreement

**d. Park Rules**

- By statute, rules in a manufactured housing facility are enforceable against the tenant only if the rule or regulation:
  - Promotes the convenience, safety or welfare of the tenants;
  - Preserves the landlord's property from abuse of use;
  - Makes a fair distribution of services and facilities held out for the general use of the tenants;
  - Is reasonably related to the purpose for which it is adopted and is reasonably applied;
  - Is sufficient in its prohibition, direction or limitation of the tenant's conduct to fairly inform the tenant of what the tenant shall or shall or shall not do to comply; and
  - Is not for the purpose of evading the obligations of the landlord. ORS 90.510 (6).
- **Amending Park Rules**
  - The landlord must give written notice of the proposed rule change to all tenants, using a statutory form of notice. ORS 90.610 (7)(b).
  - The new rules will go into effect unless tenants of at least

51 % of the eligible rented spaces object in writing within 30 days. ORS 90.610 (3).

- “Eligible” means the tenant is a mobile home space rental tenant and isn’t already subject to the proposed new rule. ORS 90.610 (1).
- One vote per eligible rental space.
- Unless the new rules are vetoed by a tenant vote, they will become effective 60 days after the landlord served the proposed rule changes on the tenants. ORS 90.610 (3).

**e. 55 or Older Facility Addenda**

- MHCO Form 71B - 55 & Older Community Occupancy Determination and Age Verification
  - Verifies on move-in that at least one resident is 55 or older.
- MHCO Form 71B - Addendum to the Rental/Lease Agreement for Age 55 & Older Communities
  - Acknowledges conversion to 55+ facility.
- To qualify as a “55 or older” facility under the Fair Housing Act, the park must meet the following requirements:
  - 80% or more of occupied spaces must be occupied by at least one person who is at least 55 years old.
    - I recommend that parks keep this number closer to 90% or higher as a “cushion” against any vacancies. Sometimes homes pass by inheritance or otherwise to persons under 55. This cushion would help a park maintain its 55 or older status.
  - Intent to operate as 55 + housing by publishing and adhering to policies and procedures that demonstrate intent to operate as housing for persons 55 or older. The HUD regulations list the following factors as relevant in determining whether the housing facility complies with this requirement:

- The manner in which the park is described to prospective residents;
  - Park documents prominently state “55 or Older Facility.”
- Advertising designed to attract prospective residents;
  - Provide local realty company with park documents describing the park as 55+.
- Lease provisions;
  - Emphasize 55+.
- Written rules, regulations, covenants, deeds or other restrictions;
- The maintenance and consistent application of relevant procedures;
  - Check ID’s on move-in for age.
- Actual practices of the park; and,
  - Enforce 55+ regulations.
- Public posting in common areas of statements describing the facility or community as housing for persons 55 years or older.
  - “55 or Older” sign at park entrance.
- Verification that the park meets the 80% requirement through reliable surveys and affidavits and update this information at least once every two years.
  - MHCO Form 71C - HUD Verification of Occupancy Survey

### **III. Landlord and Tenant Rights and Responsibilities**

#### **A. Landlord Rights and Responsibilities**

##### **1. General Maintenance Responsibilities (ORS 90.730)**

###### **a. Habitability on Tenant's Space**

- A sewage disposal system and a connection to the space approved under applicable law at the time of installation and maintained in good working order to the extent that the sewage disposal system can be controlled by the landlord;
- If required by applicable law, a drainage system reasonably capable of disposing of storm water, ground water and subsurface water, approved under applicable law at the time of installation and maintained in good working order;
- A water supply and a connection to the space approved under applicable law at the time of installation and maintained so as to provide safe drinking water and to be in good working order to the extent that the water supply system can be controlled by the landlord;
- An electrical supply and a connection to the space approved under applicable law at the time of installation and maintained in good working order to the extent that the electrical supply system can be controlled by the landlord;
- At the time of commencement of the rental agreement, buildings, grounds and appurtenances that are kept in every part safe for normal and reasonably foreseeable uses, clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin;
- Except as otherwise provided by local ordinance or by written agreement between the landlord and the tenant, an adequate number of appropriate receptacles for garbage and rubbish in clean condition and good repair at the time of commencement of the rental agreement, and for which the landlord shall provide and maintain appropriate serviceable receptacles thereafter and arrange for their removal; and
- Completion of any landlord-provided space improvements, including but not limited to installation of carports, garages,

driveways and sidewalks, approved under applicable law at the time of installation.

**b. Vacant Spaces**

- A vacant space in a facility is considered uninhabitable if the space substantially lacks safety from the hazards of fire or injury.

**c. Common Areas**

- Buildings, grounds and appurtenances that are kept in every part safe for normal and reasonably foreseeable uses, clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin;
- Safety from the hazards of fire;
- Trees, shrubbery and grass maintained in a safe manner; and
- If supplied or required to be supplied by the landlord to a common area, a water supply system, sewage disposal system or system for disposing of storm water, ground water and subsurface water approved under applicable law at the time of installation and maintained in good working order to the extent that the system can be controlled by the landlord.

**2. Tree Maintenance**

**a. Landlord Responsibility (ORS 90.727)**

- Must trim, remove, or otherwise maintain a tree that the current tenant did not plant if it is hazardous or in danger of becoming hazardous in the near future.
- Has option of maintaining tree that is not the landlord's responsibility if tenant fails or refuses after written notice and opportunity to maintain tree.
- Has discretion to decide whether trimming or removal is appropriate.
- Doesn't have to maintain trees unless they are hazardous.
- Must give 24 hour notice to enter tenant's space.
- Must hire professional to maintain or remove trees eight inches or larger.

**b. Tenant Responsibility**

- Must maintain any tree that tenant planted.
- Must maintain any tree for aesthetic purposes that isn't a hazard.

- Can hire arborist at tenant's expense to determine if a tree is hazardous.
- If tree is hazardous, require landlord to maintain or remove it if it is the landlord's responsibility.
- If tree is hazardous and tenant's responsibility, maintain it after written notice to landlord and copy of arborist's report.
- Must hire professional to maintain or remove trees eight inches or larger.
- Can remove any tree preventing home removal after reasonable written notice to landlord.

### **3. Access to Tenant's Space (ORS 90.725)**

- Must give 24 hours' notice to enter tenant's space unless:
  - Service of notices is required.
  - Emergencies (but must give after the fact notice within 24 hours).
  - If tenant request repairs or maintenance in writing, landlord may enter for up to 7 days to do the work (longer if repairs are underway and efforts being made to complete them).
  - Written agreement requires landlord to do yard work or other maintenance.
- MHCO Form 51 - 24-Hour Notice of Entry
- Even after 24 hour notice, tenant can deny entry.
  - Only recourse is to get a court order.
- If landlord needs to hire an arborist to maintain or remove a hazardous tree and tenant refuses access, landlord is not responsible for damage or injury.

## **B. Tenant Rights and Responsibilities**

### **1. General Maintenance Responsibilities (ORS 90.740)**

- Install the tenant's manufactured dwelling or floating home and any accessory building or structure on a rented space in compliance with applicable laws and the rental agreement.
- Dispose from the dwelling or home and the rented space all ashes, garbage, rubbish and other waste in a clean, safe and legal manner.
- Keep the dwelling or home, and the rented space, safe from the hazards of fire.
- Keep the home and space safe from the hazards of fire.
- Install and maintain smoke alarms.



- Install and maintain storm water drainage.
- Use all utilities and utility connections in a reasonable manner.
- Refrain from damaging any part of the park.
- Maintain the space.
- Behave in a manner (including tenant's guests and other occupants) that doesn't disturb the peaceful enjoyment of the premises by neighbors.

## 2. Sale of Tenant's Home (ORS 90.680)

- Must give landlord 10 days' notice before sale.
- Prospective purchaser must provide a complete rental application, after which landlord must accept or reject within 7 days.
  - If landlord fails to accept or reject within the 7 days, purchase becomes new tenant on same terms as previous tenant.
- MHCO Form 53 - Re-Sale Compliance Notice
  - Not mandatory under Oregon law, but tenants often agree anyway.
- If sale is not by a lienholder, park can demand payment of all past due amounts before approving new tenant.

## IV. Eviction Notices

### A. Nonpayment of Rent Notices

- Nonpayment of rent notices are the most common notices issued by landlords. A 72-hour nonpayment notice can be issued on the 8<sup>th</sup> day of the rental period, or a 144-hour nonpayment notice can be issued on the 5<sup>th</sup> day of the rental period. ORS 90.394 (2).
- The nonpayment notice must specify that the rent is past-due and that the landlord intends to terminate the rental agreement if the rent is not paid within the specified period. ORS 90.394 (2)(a). The notice must also state the date and time by which the tenant must pay the rent to cure the nonpayment of rent. ORS 90.394 (3).
- **Practice Tip:** The most common reason landlords lose eviction lawsuits is because of a technical deficiency in a nonpayment notice. Make sure the notice is properly filled out and properly served.
- MHCO Form 42 - 72-Hour Notice to Vacate for Nonpayment of Rent

**B. 30-Day 3-Strikes Notice (ORS 90.630 (8))**

- Can be issued if tenant has 3 or more nonpayment notices in the previous 12 months.
- No right to cure.
- MHCO Form 43A - 30-Day 3-Strikes Notice to Vacate

**C. 30-Day Notice to Vacate with Cause (ORS 90.630 (1))**

- Issue if tenant:
  - Violates rule or rental agreement provision related to the tenant's conduct and imposed as condition of occupancy.
  - Violates law or ordinance related to tenant's conduct as a tenant.
  - Fails to pay a late charge, fee, or utility charge.
  - Is a level three sex offender or is determined to be predatory.
    - Non-curable, must vacate.
    - MHCO Form 43B - 30-Day Non-Curable Notice to Vacate for Cause (Predatory Sex Offender)
- MHCO Form 43 - 30-Day Notice to Vacate for Cause
- If cured by deadline, tenancy continues.

**D. 20-Day Notice to Vacate with Cause (ORS 90.630 (4) and (5))**

- Issue when repeat violation of 30-day notice within 6 months from date of that notice.
- Non-curable.
- MHCO Form 44 - 20-Day Notice to Vacate: Repeat Violation(s) within Six Months

**E. 30-Day Notice for Physical Condition of Home (ORS 90.632)**

- Gives 30 days to repair home if it is in disrepair.

- Tenant can get 60-day extension if repairs are extensive or weather prevents repairs.
  - An additional 6 months if condition existed more than the previous 12 months with landlord's knowledge.

## F. 24-Hour Notice to Vacate with Cause (ORS 90.396)

- Oregon law allows landlords to terminate residential tenancies on 24 hours' written notice for certain acts:
  - Inflicting or seriously threatening to inflict substantial personal injury.
  - Recklessly endangering another person on the premises.
  - Intentionally inflicting substantial damage to the premises.
  - Intentionally providing substantial false information on a rental application concerning criminal convictions.
  - Illegal subletting (ORS 90.403).
  - Acts "outrageous in the extreme."
- MHCO Form 41 - 24-Hour Notice to Vacate
- **Practice Tip:** A 24-hour notice is usually viewed as an extreme remedy by most judges, so the landlord must take care to ensure that he or she has a strong case before issuing the notice. It is always wise to have an attorney review the 24-hour notice before it is issued to make sure that it is legally adequate and that there are facts to support the notice.

## V. The FED Process

### A. Are There Grounds for Eviction?

#### 1. Generally

- In almost every case, the landlord will need start the eviction process by serving a tenancy termination notice on the tenant.

## **2. Choosing the Proper Notice**

- The type of notice issued to the tenant will obviously depend on the facts involved in each case. Nonpayment of rent will require a 72-hour notice (or 144-hour notice). Violent threats made by a tenant may call for a 24-hour notice. Garbage or unsightly debris being stored outside a manufactured home may call for a 30-day, for-cause notice.

## **3. Proving Your Case**

- Before filing an eviction action, the landlord should make sure that he or she can prove the case.
  - For example, a nonpayment case may be relatively straightforward. The landlord can testify as to the amount of the monthly rent and whether the tenant paid it. The rental agreement should be introduced as evidence, along with the 72-hour (or 144-hour) nonpayment notice. The tenant's monthly payment ledger can also be introduced as proof of nonpayment.
  - The difficult cases usually involve tenant conduct. Cases arising from 24-hour notices are typically the most difficult, since they will usually depend on cooperative witnesses. For instance, if a tenant is accused of assaulting another tenant, the victim or witnesses to the assault will need to testify in order to prove the landlord's case. While it is possible to issue subpoenas to compel witnesses to testify, uncooperative witnesses can often hurt a case more than help it.
  - When it is possible to document a tenant's violations with photographs, the landlord should always do so.

## **B. What Jurisdiction has Authority Over the Case?**

- Eviction cases must be filed in the county where the property is situated. ORS 105.110. Typically, the case will be filed in circuit court. However, ORS 105.110 also authorizes a landlord to file an eviction action before "any justice of the peace of the county."

## **C. Service Issues**

### **1. Introduction**

- There are two forms of service involved in an eviction action. The first is

service of the eviction notice. The second is service of the eviction summons and complaint. Both must be executed properly to succeed in an eviction action.

## **2. Service of the Eviction Notice**

- Oregon law contemplates three service methods for eviction notices: (1) personal delivery, (2) first class mail, or (3) first class mail and attachment. ORS 90.155(1).

## **3. Service of the Eviction Summons and Complaint**

- Forms are available for the eviction summons and complaint from your county's court clerk. The form language for the summons is found in ORS 105.113. The residential eviction complaint is in ORS 105.124.
- The complaint must be signed by the landlord or an attorney representing the landlord. ORS 105.124(2). However, the complaint can also be verified by an agent or employee of the landlord (i.e., the park manager). ORS 105.124(2). A copy of the eviction notice must be attached to the complaint. ORS 105.124(3).
- The landlord is responsible for arranging service of the summons and complaint. However, the landlord cannot serve the summons and complaint. Instead, the county sheriff or an authorized process server must serve the summons and complaint. *See* ORS 105.135(3)(b).

## **D. Obtaining Judgment**

### **1. Damages vs. Possession**

- By statute, in an eviction action the court is only empowered to award possession of the rental premises to the landlord. ORS 105.110. Thus, the remedies in an eviction action are limited to possession, court costs and attorney fees.
- While it is possible for a landlord to also bring a claim for damages or unpaid rent in an eviction action, by doing so the landlord gives up the summary FED procedures.

## **2. Stipulated Agreements**

- It is common for many eviction actions to be settled by stipulated agreement. This settlement method is specifically contemplated by statute and the agreements may include:
  - Future performance or conduct as described in the stipulated order for a period of not more than six months following entry of the stipulation;
  - Payment of past-due rent and other past-due amounts pursuant to a schedule provided in the stipulation for a period of not more than six months following entry of the stipulated order;
  - Payment of rent due for future rental periods that follow entry of the stipulated order pursuant to a schedule provided in the order for not more than the first three monthly rental periods following entry of the stipulated order; and
  - Payment of any costs, disbursements or attorney fees pursuant to a schedule provided in the stipulated order. ORS 105.146 (2).
- Breach of the court agreement will allow the landlord to obtain a judgment by upon filing an affidavit of noncompliance if the tenant fails to make any required payment or otherwise fails to comply with the stipulated agreement. ORS 105.146 (4)

## **3. Case Dismissal**

- If a tenant is represented and the case is settled before trial, the landlord should make sure that the notice of dismissal specifies that the dismissal is without costs, disbursements, or attorney fees to any party.

## **E. Make Sure Your Judgment is Enforced**

### **1. Notice of Restitution**

- Once a landlord receives a judgment of restitution, obtain a notice of restitution from the court clerk.
- The clerk will issue the notice at the landlord's request immediately following entry of the judgment for restitution, or on the date for possession specified in the judgment, whichever is later. ORS 105.151 (2).

- The notice of restitution informs the tenant that he or she has four days to move out of the premises, including the removal of all personal property. The notice further states that if the tenant has not moved out, the sheriff will physically remove the tenant. The notice explains that any personal property left behind will be stored or disposed of as allowed by law. ORS 105.153.

## **2. Service of the Notice**

- The notice of restitution must be served by either the sheriff or a process server. ORS 105.158(2).
- A landlord has only a limited amount of time to enforce a judgment of restitution. Unless the judgment provides otherwise, the court clerk is prohibited from issuing a notice of restitution more than 60 days after the judgment is entered or more than 60 days after the date for possession specified in the judgment, whichever is later. ORS 105.159 (3).

## **3. Noncompliance Hearings**

- If the landlord reached a stipulated agreement and the tenant breaches the agreement, the landlord must file an affidavit of noncompliance with the court. ORS 105.146(4). The clerk will then issue a notice of restitution for service on the tenant which includes both a move-out date and a date by which the tenant can request a “noncompliance hearing.”
- If the tenant requests a noncompliance hearing, the court will set the hearing in short order (i.e., usually within a week).
- At the hearing, the court may only consider the following issues:
  - Whether the tenant complied with the order.
  - Whether the landlord complied with any requirement of the order that is a predicate to compliance by the tenant.
  - Whether the parties agreed to modify the order and complied with the modified order.
  - Whether one party unfairly prevented compliance by the other party.
  - Whether the stipulated agreement was entered into in good faith or was unconscionable.

- Whether, for a tenant whose noncompliance concerns performance or conduct, the noncompliance constitutes good cause for purposes of an applicable law or contract that requires the landlord to have good cause for terminating the tenancy. ORS 105.149 (2).
- If the court finds in favor of the landlord after the hearing, the landlord will receive a judgment of restitution and may obtain the writ of execution no sooner than 24 hours after the court's ruling. ORS 105.149 (3).
- If the tenant fails to appear at the hearing, the landlord receives a judgment of restitution and may immediately obtain the writ of execution. ORS 105.149 (3).

#### **4. Writ of Execution**

- After the notice of restitution has been properly served, the next step in removing a tenant is the writ of execution. Subject to the 60-day expiration date in ORS 105.159 (3), the landlord may request the court clerk to issue a writ anytime after the notice of restitution's four-day period expires. ORS 105.159 (2).
- The writ is a statutorily-prescribed form which directs the sheriff to enforce the judgment of restitution by returning possession of the premises to the landlord. *See* ORS 105.156.
- Only the sheriff can serve a writ of execution.
- Most landlords will want to change the locks after evicting a tenant. It is best to do this while the sheriff is present. Have a locksmith ready when the sheriff arrives. The sheriff will not have the time to wait around if the locksmith is not there.
- To avoid creating a new tenancy, a landlord should never accept payment from an evicted tenant unless there is a signed agreement specifying that the payment is being received for some purpose other than rent, such as back-rent accrued before the judgment of restitution was entered.

## **VI. Other Issues**

### **A. Abandonment Notices**

#### **1. Generally**

- Landlords are required to issue abandonment notices for abandoned



mobile homes (ORS 90.675) and for any other personal property (ORS 90.425).

## **2. Types of Notices**

- Abandonment notices will vary depending on the circumstances.
  - Tenant walks away from home.
  - Tenant is evicted.
  - Judgment executed by sheriff.
  - Judgment not executed.
  - Tenant is deceased.
  - Home has lienholder.

## **3. Recipients of Abandonment Notices**

- Tenant at premises and any known forwarding address.
- Lienholder(s) at any address of record with the state and any address known to landlord.
- County tax assessor and tax collector.
- Registered owners of record.
- Heirs of deceased tenants.
  - Estate Administrator, State of Oregon.

## **4. Storage Agreements**

- Lienholder agreements.
- Deceased tenants heirs.
- Registered owners.

## **5. Unclaimed Homes**

- Abandonment auction procedures.

- SAFE Act exemption for park owners with limited dealer’s license is 5 times or less during any 12-month period. ORS 86A.203 (2)(g).
- Disposal of homes.
- Tax payment issues.

## **B. Companion Animal Requests**

- HUD interprets the Fair Housing Act to include “companion animals” as falling within the types of animals that landlords must allow if necessary to “reasonably accommodate” a tenant with a disability.
  - While authoritative, HUD’s interpretations are not binding on courts and the legal cases on this issue vary. However, the safer practice is to allow “companion animals” to avoid a HUD complaint filed by a tenant.
  - The tenant must have both (1) a physical or mental impairment that substantially limits one or more major life activities, and (2) a need for an assistance animal to provide assistance or emotional support that alleviates the symptoms of the person’s disability.
  - Do not need to allow an animal that constitutes a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.
  - MHCO Form 21A - Companion Animal Agreement

## **C. Other Reasonable Accommodation Requests**

### **1. Generally**

- The Fair Housing Act (“FHA”) prohibits acts that “discriminate against any person... in the provision of services or facilities in connection with [his] dwelling, because of a handicap of that person or any person associated with that person.” 42 U.S.C. § 3604 (f)(2).
  - The FHA defines discrimination as “a refusal to make reasonable accommodation in its rules, policies, practices, or services, when such accommodations may be necessary to afford a [disabled] person equal opportunity to use and enjoy a dwelling.” 42 U.S.C. § 3604 (f)(3)(B); 24 C.F.R. § 100.204 (emphasis added).

- In *Bryant Woods Inn, Inc. v. Howard County, Maryland*, 124 F3d 597, 604 (4<sup>th</sup> Cir. 1997), the court held that the “necessary” element of the FHA requires a demonstration of a direct linkage between the proposed accommodation and the “equal opportunity” to be provided to the handicapped person. If the proposed accommodation provides no direct amelioration of a disability’s effect, it cannot be said to be “necessary.” *Id.*
- If accommodation is not “necessary,” it can be denied.
  - Must be weighed against risk and burden of HUD investigation.
- MHCO Form 15 - Reasonable Accommodation Request

## **2. Caregiver Requests**

- Usually unnecessary to question need for a caregiver.
- Can and should do background check of proposed caregiver.
  - Can screen only for conduct and criminal record.
- MHCO Form 25 - Temporary Occupancy Agreement