

2014
MHCO ANNUAL CONVENTION
Valley River Inn
Eugene, Oregon

Recreational Vehicle
Landlord-Tenant Issues

Presented By

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NOTICE

The information contained in this outline is provided for the general information and benefit of MHCO members. This information should not be construed as legal advice or a legal opinion concerning any specific facts or circumstances. Always consult an attorney with regard to specific cases.

I. Short Term Rentals

A. Importance of Defining the Rental Term

1. The Oregon Residential Landlord and Tenant Act (ORLTA) is limited in scope.
 - a. “Tenants” have numerous rights under ORLTA, as opposed to “guests,” whose rights are limited.
2. It is much more difficult and expensive to evict “tenants” than “guests.”
 - a. Eviction notices required.
 - b. Proceeding for Forcible Entry and Unlawful Detainer (“FED”).
3. Tenants also have various statutory defenses and counterclaims available to them.
 - a. Habitability counterclaims.
 - b. Retaliation.
 - c. Discrimination.
 - d. RV qualifying as "mobile home".
 - e. Failure to provide RV rental agreement (ORS 90.230 (2)).

B. Avoiding Creation of a Tenancy

1. “Vacation Occupancy” is excluded from coverage by the ORLTA (ORS 90.110 (6)).

2. Creating a “Vacation Occupancy” Relationship (ORS 90.100 (50)).
 - a. Occupant rents RV space for vacation purposes only, not as a principal residence.
 - i. Difficult to verify. Only real proof is occupant’s verification that they are using the RV space for vacation purposes.
 - b. Occupant has a principal residence other than at the R.V. park.
 - c. The period of authorized occupancy does not exceed 45 days.
 - i. Not advisable to allow occupant to vacate for just a few days, then return to begin a new 45-day period over again. Judges would likely view this as creating a tenancy relationship (although length of time before returning might affect that decision).
3. RV Registration Agreement. (See Accompanying Form)
 - a. Use it to avoid liability for wrongful eviction.
 - b. Check (and make a copy of) driver’s license for permanent address/principal residence.
 - i. Best way to verify that occupant has a permanent address elsewhere.
 - c. Completely fill out the form.
 - d. Attach park rules and/or have occupant sign them.
 - i. Particularly important with regard to pet rules, noise disturbances, etc.

C. Terminating Short Term Rentals

1. Request or Demand.
2. Sheriff’s Department.

3. FED.
 - a. File eviction action complaint at county courthouse for occupant “holding contrary to any condition or covenant” of the RV Registration Agreement (i.e., the 45-day occupancy limit) (ORS 105.115 (1)(b)).
 - i. Written notice not technically required, but a good idea to put request to vacate in writing and hand-deliver to occupant.
 - ii. Eviction is not covered by the ORLTA, so be sure to use the eviction form for “Tenancy not Covered by ORS Chapter 90.”
 - iii. Filing fees will be more expensive than for ORLTA case (\$252 vs. \$79, plus service of process fees).
4. “Midnight Move-In” Eviction.
 - a. ORS 105.115 (1)(c) allows for an eviction action when an RV pulls into the park without the owner’s prior consent. No notice is required before filing an eviction action. (Similar to FED eviction action described above in § C.3.)
 - i. First try demanding that the RV vacate and/or request the sheriff’s assistance before resorting to FED.

II. Long Term Rentals

A. The ORLTA Applies

1. Application Process
 - a. Prior Evictions, Arrest or Crimes (ORS 90.303)
 - i. Eviction cases more than 5 years old cannot be considered.
 - ii. Can’t use eviction cases if dismissed or judgment entered in tenant’s favor.
 - iii. 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.

iv. Can’t use arrests if no conviction unless pending at time of application.

b. Screening Charge (ORS 90.295)

i. Average actual cost to landlord.

ii. Must give written application document that lists admission criteria, amount of screening charge, usual screening procedures, right to dispute accuracy of information, estimate of available spaces, required rents and deposits, and whether renter’s liability insurance is required.

iii. Must give name/address of screening or credit company.

iv. Don’t need to give applicant a copy of the report, but you may if you choose.

c. Statement of reasons for denial (ORS 90.304)

i. Must “promptly” provide written statement of denial.

ii. Can use check the box form listing permissible reasons for denial.

2. Section 8 Housing Subsidies

a. Unlawful to refuse to rent to Section 8 tenants for that reason alone.

3. Liability Insurance for Tenants (ORS 90.222)

a. Must advise applicant in writing before entering tenancy and the amount required. May also require applicant to provide proof of coverage before tenancy begins.

b. Can require current tenants to obtain insurance on 30 days’ written notice.

- c. Maximum of \$100,000 liability coverage.
 - d. Landlord must maintain comparable insurance.
 - e. Can cover damages tenant is responsible for excluding ordinary wear and tear, acts of God, or landlord's acts.
 - f. Not required for low-income tenants or those receiving certain government subsidies.
4. Space Rental Agreement for RV (See **accompanying form and MHCO Form 80**)
- a. You must have a written rental agreement (ORS 90.230).
 - b. Required RV rental agreement terms (ORS 90.230 (1)):
 - i. Must state that tenancy can be terminated by the landlord under ORS 90.427 without cause on 30 days' written notice for a month to month tenancy (during first year of tenancy), 60 days' written notice (after first year of tenancy), or on 10 days' written notice for a week to week tenancy.
 - ii. Must state that any accessory building or structure paid for or provided by tenant belongs to the tenant and is subject to a demand by landlord that the items be removed upon tenancy termination.
 - iii. Must state that a state agency or local government may not prohibit the placement or occupancy of an RV, or impose any limit on the length of occupancy, if the RV is: (1) Located in a manufactured dwelling park, mobile home park or recreational vehicle park; (2) occupied as a residential dwelling; and, (3) lawfully connected to water and electrical supply systems and a sewage disposal system.
 - c. Tenant can recover damages (actual damages or twice the periodic rent) if landlord failed to provide the required rental agreement before the beginning of the tenancy (ORS 90.230 (2)).
 - d. Make sure you provide lawful water, sewer, and electrical connections, or the tenant can sue for damages (ORS 90.230 (3)).

5. Rules and Regulations
 - a. Parks should have comprehensive rules.
 - b. Preferable to have as exhibit to rental agreement.
6. Statement of Policy
 - a. This is for manufactured dwelling tenants only.

B. Length of Tenancy

1. Fixed Term Tenancy (ORS 90.100 (18)).
 - a. Will have a definite termination date.
 - b. Must give at least 30 days' written notice before end of term to terminate and avoid creation of month to month tenancy.
 - c. The law is different from manufactured dwelling tenancies as to lease renewal (you do not need to offer RV tenants another agreement).
2. Week to Week Tenancy (ORS 90.100 (52)).
 - a. Occupancy is charged on a weekly basis and is payable no less frequently than every seven days.
 - b. There is a written rental agreement that defines the landlord's and the tenant's rights and responsibilities under the ORLTA.
 - c. There are no fees or security deposits, although the landlord may require the payment of applicant screening charge. Be careful not to charge a security deposit, late fee, NSF fee or other fee (making payment of rent by cash/certified funds preferable).
 - d. May terminate with a 10 day "no cause" notice (ORS 90.427 (2)).
3. Month to Month Tenancy.

- a. Monthly rental payments.
- b. If rental agreement does not create fixed term or week to week tenancy, or if the rental agreement does not specify the nature of the tenancy, by law it is considered a month to month tenancy. (ORS 90.220 (7)(b)).
- c. Terminable with 30-day “no cause” notice (ORS 90.427 (3)(b)) for tenancies of one year or less. Requires 60-day notice for tenancies after the first year of occupancy (ORS 90.427 (3)(c)).

C. Terminating Long Term Tenancies

- 1. Nonpayment of Rent (72 hour notice) (ORS 90.394).
 - a. Week to week tenancy. Can be given no earlier than the fifth (5th) day of the rental period for which rent is due.
 - b. Month to month or fixed term tenancy. Can be given no sooner than the eighth (8th) day of the month for which rent is due.
 - c. General considerations. Remember that if more than one year worth of rent is owing, you can only go back one year as to the amount sought in the 72-hour notice based on the one year statute of limitations (ORS 12.125). Also, a certificate of mailing should always be used.
 - d. 144 Hour Notice. Can be given no earlier than the fifth (5th) day of the month for which rent is owing.
 - e. A warning about “rent redemption,” which is available to RV Park tenants.
- 2. For Cause Termination Notices. As a general matter, a “for cause” termination notice must be given for manufactured dwelling tenancies in a mobile home (manufactured dwelling) facility or Park. The operative law is ORS 90.630, which relates to a material breach of the rules & regulations, rental agreement or applicable law.

A “for cause” termination notice may be given to an RV tenant for a “material violation” of the rental agreement or laws applicable to the tenancy (ORS 90.392). This can include the failure to pay rent, a late charge (or other charges owed under the rental agreement), disturbances or

bad conduct, unauthorized occupants, and disrepair/failure to maintain the RV or space. It can also include a material violation of the Park rules, so long as the rental agreement incorporates the rules into the agreement.

- a. Week to week tenancy. This notice is a seven day notice with four days to remedy.
- b. Month to month or fixed term tenancy. This is a 30 day notice with 14 days within which to remedy.
 - i. But: Immediate remedy date if violation is conduct that is not ongoing, but is a “separate and distinct act or omission” (i.e., one-time violation of park rule).
- c. If the violation is curable, the notice must state at least one possible remedy and the date by which a remedy must take place.
- d. Six month “probationary period.” If there is a recurrence of the same or similar violation within six months of the date of the original notice, tenancy can be terminated on 10 days’ notice, with no right to cure. (But does not apply to the nonpayment of rent.)

3. Waiver. Always keep an eye out for waiver. ORS 90.412 (2) specifies that waiver can arise by accepting performance that varies from the terms of the rental agreement, or by accepting three or more months of rent (used to be two) with knowledge of the default. Cause to terminate will be extinguished if the landlord has waived the right to terminate.

- a. Post conduct agreement (ORS 90.412 (4)(a)). A landlord will not waive the right to terminate if the landlord and tenant agree otherwise after the breach has occurred. However, landlords should not rely on this as the tenant cannot be forced to enter into such an agreement. Any such agreement should always be in writing, signed and dated by both the landlord and tenant.
- b. Partial rent acceptance (ORS 90.417 (4)(a)). Accepting partial rent before giving a notice to terminate will only avoid waiver if it is based on the tenant’s agreement to pay the balance by a time certain. As the tenant may not agree to this, landlords should not rely on this.
- c. Partial rent acceptance after giving notice (ORS 90.417 (4)(b)). This is very technical and should only be done after consulting

with an attorney. Requires written agreement stating that rent acceptance does not constitute waiver and state that landlord may file FED if rent fails to pay remaining rent by a time certain.

- d. Accepting rent after giving a “for cause” termination notice (ORS 90.414 (1)(a)). Other than for nonpayment of rent, a landlord will not waive the right to terminate if (1) the rent is accepted prorated to the termination date in the notice; or (2) within ten (10) days after receiving the payment, the excess is refunded to the tenant.
 - e. The Ten (10) Day Rule (ORS 90.412 (3)(a)). A landlord can always avoid waiver by returning a rent tender within ten (10) days of receipt. This is always the safest way to go, and the landlord should always use a letter to return the rent acknowledging the date of receipt of the rent (don’t forget the certificate of mailing!).
 - f. NSF Check Payment (ORS 90.412 (3)(b)). A rent check that bounces because of insufficient funds does not count as rent that has been “accepted.”
 - g. Waiver Not Applicable to Certain Violations. Waiver does not apply to certain types of violations specified under ORS 90.412(4). These include (1) 24 hour notices; (2) disrepair or deterioration of a manufactured home (manufactured homes only); and (3) a failure to maintain the premises, per ORS 90.740 (2), (4)(b) and (4)(h) and (i) (manufactured homes only).
 - h. Written Warning to Avoid Waiver Issues (ORS 90.412 (4)(b)). A landlord can avoid the waiver statute if the violation concerns the tenant’s conduct, and before accepting the third month’s rent, the landlord gives a written notice to the tenant stating: (1) the specific conduct constituting the violation, (2) that the tenant must discontinue the conduct, and (3) that a recurrence of the conduct may result in termination of the tenancy under ORS 90.392, 90.398, 90.405 or 90.630.
4. Termination for acts subject to ORS 90.396, including acts which are “outrageous in the extreme” (24 hour eviction notice).
- a. Examples given in the statute (prostitution; burglary; drug dealing/manufacture [but excluding medical marijuana]; or activity sufficiently offensive so as to warrant a 24 hour notice).

- b. Conduct must occur on the premises or in the immediate vicinity of the premises.
 - c. If conduct is by someone who is not a named tenant, the circumstances must satisfy the “control test” under ORS 90.396 (3). This usually applies to guests, visitors and occupants not named on the rental agreement. “Control” means allowing someone to enter or remain on the premises when tenant knows or should know of the likelihood to commit an outrageous act.
 - d. Conduct does not have to violate a criminal statute in order to be actionable.
5. “No cause” termination notices. Always attempt to minimize a claim that a “no cause” termination notice is retaliatory. This means that, if possible, you should always attempt to have a viable reason for the termination.
- a. Week to week tenancy. This is a 10 day notice.
 - b. Month to month tenancy. This is a 30 day notice, unless the tenancy is more than a year old, then 60-day notice required.
 - c. Acceptance of rent. Do not accept rent beyond the expiration date given in the notice and to comply with the 10 day rent return rule, as noted above.

D. Forcible Entry and Detainer (FED) Eviction Action.

- 1. Due Diligence before serving notice and filing FED.
- 2. Procedures for filing, first appearance and trial setting.
- 3. Discovery, include document requests and depositions, issuance of trial subpoena.
- 4. Procedures for trial and/or stipulated mediation agreements, Affidavits of Noncompliance as to same.
- 5. Post trial procedures (Notice of Restitution, Writ of Execution).
- 6. Fees to be paid and filing/service companies who will file and serve your paperwork for you.

E. Other Issues.

1. Rent increases. For manufactured home tenancies, 90 days (plus mailing, if used), with requisite notice. Otherwise, based on term (periodic tenancies) or as specified in fixed term lease (although landlord cannot unilaterally raise the rent in a fixed term tenancy unless the rental agreement allows for some method of rent increase).
2. Abandoned property.
 - a. Personal property (8 day notice, which can be extended for extra 15 days).
 - i. Disposal of property worth \$1,000 or less.
 - b. Manufactured dwelling and recreational/resident vehicles (45 day notice, which can be extended for extra 30 days).
 - c. Need for notice to be given: obligates lender to pay storage fee; covers Park from liability as to disposition of property. Also, cannot obtain title without proof of compliance.
3. Noncompliance Fees. (ORS 90.302)
 - a. Can charge fees for late rent, NSF checks, smoke alarm tampering, pet agreement violation by mobile home tenants, and lease-break fee.
 - i. Late fees (ORS 90.260): Reasonable flat amount is best.
 - ii. NSF checks: \$35 maximum plus any assessed bank fee charged to landlord. (ORS 30.701 (5))
 - iii. Smoke alarm: Up to \$250
 - iv. Mobile home park tenant pet agreement violation: \$50 (ORS 90.530)
 - v. Lease-break: One and one-half times monthly rent.
 - b. Can also charge noncompliance fees 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.

- c. 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.
 - i. 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.
 - ii. Must give written notice when fee is assessed.
 - iii. Must give notice within 30 days of the violation.
 - iv. Can evict or charge fee, not both.
 - v. Cannot deduct fee from rent payment made by tenant.

4. Restroom facilities for RV tenants.

- a. Administrative rules.
 - (i) OAR 333-031-0066 (1)(a) states: “Toilets shall be provided **in all recreation parks * * ***.” “Recreation parks” are defined as any area designated for **“picnicking or overnight camping,”** but excluding sites “that have units for human occupancy permanently affixed thereto.” OAR 333-031-0002 (12). “Permanently affixed thereto” includes but is not limited to affixation as evidenced by: permanent water, sewer and electrical connections. OAR 333-031-0002 (10).
 - (ii) “Overnight camping” means a “camping space” used for overnight accommodations. OAR 333-031-0002 (9). “Camping space” means an area in a recreation park for a “recreational vehicle” to be used “on a **temporary basis.**” OAR 333-031-0002 (3). A “recreational vehicle”

means a “camping vehicle.” OAR 333-031-0002 (13). A “camping vehicle” means a vacation trailer or self-propelled vehicle or structure “being used for vacation and recreational purposes, **but not for residential purposes.**” OAR 333-031-0002 (4). (Similar language in OAR 918-650-0005 thru 918-650-0050.)

- (iii) End result is that under the OARs, the restroom requirement only applies to RV parks that are available as temporary overnight camping for vacation and recreational purposes. The restroom requirement does not apply to RV parks that are used **only** for residential purposes on a long-term basis.

b. Oregon statutes.

- (i) A “dwelling unit” within the meaning of the Oregon Residential Landlord and Tenant Act (ORLTA) can include a recreational vehicle rental space. ORS 90.100 (12). The ORLTA regulates and determines all rights, obligations and remedies for landlords and tenants in Oregon. ORS 90.115.
- (ii) The ORLTA does not require landlords to provide restroom facilities for RV tenants. Under ORS 90.230 and ORS 197.493, must simply have RV (a) located in a mobile home or RV park, (b) occupied as a residential dwelling, and (c) lawfully connected to water, electrical and sewage disposal systems.

c. Other considerations. Include local ordinances, building permit conditions, and/or licensing conditions. Must check specific requirements and/or work with local officials.

d. Recommendations for potentially avoiding restroom requirements.

- (i) All RVs located in the park are long-term, residential tenants.
- (ii) Every RV tenant has either a month-to-month or fixed-term tenancy.
- (iii) Each tenant has a signed, MHCO Recreational Vehicle Space Rental Agreement meeting the requirements of ORS

90.230 described above.

- (iv) Each RV space has water, sewer and electrical connections equipped for long-term use.
- (v) Do not rent to short-term vacation RV occupants.