THE LANDLORD TRAINING PROGRAM

KEEPING ILLEGAL ACTIVITY OUT OF RENTAL PROPERTY

A PRACTICAL GUIDE FOR LANDLORDS AND PROPERTY MANAGERS

CITY OF PORTLAND, BUREAU OF POLICE

Developed by Campbell Resources, Inc.

4th Edition

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A Community Policing project, sponsored by the City of Portland

J.E. Bud Clark, Mayor

Tom Potter, Chief of Police

Dick Bogle, Commissioner of Public Safety

George Monogue, Chief of the Bureau of Fire, Rescue, and Emergency Services

Developed for the City of Portland by:

John H. Campbell, Campbell Resources, Inc.

This fourth edition was printed in February of 1991. It includes adjustments on the title pages, minor wording changes, format adjustments, and *Appendix* updates. This edition includes the revised chapter on the Section 8 Program, introduced in the October 1990 printing.

Various parts of this document provide descriptions of legal process. Those descriptions are intended only as general summaries to foster understanding. **No part of this manual should be regarded as legal advice or considered a replacement of a landlord's responsibility to be familiar with the law. This manual is distributed with the expressed understanding that neither the publisher nor the author is engaged in rendering legal services.** If legal assistance is required, the services of a competent attorney should be sought. We particularly urge that an experienced attorney be brought into the process in any situation that has the potential to become adversarial.

This manual is intended to address aspects of property management that may be important to the control and prevention of illegal activity on rental property. While we touch on a variety of management issues, we have left out many (prepaid rent, waiting list criteria, and abandoned property disposal, to name three) with which responsible managers should be familiar. We strongly recommend that landlords and managers ensure they have a process to keep informed of changes in the law and the evolution of techniques. In most areas of the country there are local property management associations that play this role.

We request that any errors or significant omissions be noted and forwarded so that corrections in future versions can be made. Send comments to:

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CONTENTS

For a quick overview, refer to the SUMMARY, *page IV.*

FOREWORD

Chronic drug dealing and other illegal activity can reduce a neighborhood to a mere shell of the healthy community it once was. In our frustration, we often look only to the police or "the system" for solutions and forget that neighbors and landlords have tremendous power over the basic health of a community.

To be sure, both city government and police have a critical responsibility, but we as citizens - landlords, tenants, and homeowners - remain the foundation that makes it all work.

Citizens decide which problems require action - typically, a city responds only after citizens recognize and report illegal activity. When a problem arises, one of the first and most important decisions is made by the affected homeowners, tenants, and landlords: ignore it, run from it, or do something about it. Each of us plays a different role. Each bears a responsibility to keep a community strong.

The most effective way to deal with drug activity on rental property is through a coordinated effort with police, landlords, and neighbors. Efforts are underway that encourage neighbors to take on more of their responsibility for preventing crime on their blocks. Efforts are underway to improve the way police address drug house activity. What *you* can do is learn how to keep illegal activity off your property and make a commitment to removing or stopping it the moment it occurs.

The intention of this manual is to help you do just that - to help honest tenants rent from responsible landlords, while preventing those involved in illegal activity from abusing rental housing and the neighborhoods in which they stand.

We know that, in the past, abuses of the system have come from both sides. We also know that most landlords want to be fair and that most tenants are respectable people. Responsible property management and ownership begins with the idea that it will benefit all of us. If the information given herein is used responsibly, all of us - tenants, landlords, and owner occupants - will enjoy safer, more stable neighborhoods.

POINTS TO CONSIDER

COSTS OF DRUG HOUSE RENTALS:

When drug criminals operate out of rental property, neighborhoods suffer and landlords pay a high price. That price may include:

1. Radical declines in property values - particularly when chronic activity leads to neighborhood owner/occupant flight.

2. Severe property damage arising from abuse, retaliation, or neglect.

3. Toxic contamination and/or fire resulting from manufacturing or grow operations.

4. Severe civil penalties including loss of property use for up to one year.

5. Damages to the property resulting from police raids.

6. Loss of rent during eviction and repair process.

7. The fear and frustration of dealing with dangerous tenants and a system that holds you accountable.

8. Problems associated with growing animosity between neighbors and property managers.

BENEFITS OF ACTIVE MANAGEMENT:

Active management prevents much of the rental-based drug crimes occurring today. Developing an active management style requires a commitment to change old habits and establish new ones. Landlords and managers interviewed for this program, who have made the switch to more active management, consistently report these rewards:

1. A stable, more satisfied tenant base.

2. Increased demand for rental units - particularly for multifamily units that have developed a reputation for active management.

3. Lower maintenance and repair costs.

4. Improved property values.

5. Improved personal safety for tenants.

6. The peace of mind that comes from spending more time on routine management and less on crisis control.

7. Appreciative neighbors.

DID YOU KNOW?

Statewide in Oregon, if you have property being used for prostitution, gambling, drug dealing or manufacturing, you risk both financial judgments and the possibility of having the property closed for up to a year. The action may be brought by state or local attorneys, *or* by any person living or doing business in the same county.

In the City of Portland, the Specified Crime Ordinance goes further: if your property is used for prostitution, gambling, drug dealing, or drug manufacturing, you may also face civil penalties of up to $500 a day from the first day you *should* have known but took no action.

If you intend to rent or sell property that has been used for methamphetamine manufacturing, you must first meet State decontamination requirements. Until you do, you may not rent the property and you must provide prospective buyers with written documentation stating that the unit is a contaminated lab site.

Unless you have proof the property was in good condition when the tenant moved in, a dishonest tenant could damage the property, have the structure cited for the resulting habitability violations, and then refuse to pay rent until *you* make repairs. And, should you try to evict under this circumstance, your proceeding could be considered retaliatory and therefore not succeed.

In Portland, if your tenant stops paying for water, heat, or electricity resulting in one of those utilities being shut off, and you know of the problem but take no action to fix it, the Bureau of Buildings may pursue a combination of options depending on the severity of the health hazard, including requiring the utilities to be turned back on, requiring you to vacate the property, causing you to face financial penalties, or even relocating the tenants and charging you with resulting costs.

If you *knowingly* accept rent from someone occupying the house who is not on the lease, that person is now your tenant, protected by all the rights typically accorded a tenant with a signed rental agreement.

If you accept rent from a tenant whom you know to be in noncompliance, unless you specify differently on the receipt, you may have waived the right to evict the tenant for that particular breach.

If you violate the Fair Housing Laws that prohibit discrimination against certain classes, in addition to other penalties, you can be fined $10,000 for your first violation, $25,000 for the second, and $50,000 for the third.

Any damage the police do to your property while serving a warrant is your responsibility to repair - in general, you can't recover these costs from the police.

SUMMARY

The following gives an overview of the methods for fighting drug activity on rental property described in this manual. For a more in-depth understanding, refer to the full text.

I. PREPARING THE PROPERTY - *PAGE 1*

A. Make sure it meets habitability standards - if applicants can tell it isn't legal, they already know you may look the other way. They may also know you have surrendered most of your eviction rights.

B. Keep the property visible - cut back shrubs and trees, make sure entrances are well lit, use fencing that can be seen through.

II. APPLICANT SCREENING - *PAGE 3*

A. At every step reinforce the message that you are an active manager, committed to providing honest tenants with good housing and keeping dishonest tenants out.

B. Establish written criteria. Communicate those criteria to the applicant. Communicate your commitment to complete applicant screening.

C. Thoroughly screen each applicant. Most landlords don't. At minimum: check photo I.D. & social security card, run a credit check, *independently* identify previous landlords, verify income.

D. *Do it.* Don't cut corners. Don't believe it won't happen to you. Don't trust an innocent-looking face, and don't accept applicants just because your gut says they're okay.

E. Apply your rules and procedure *equally to every applicant.*

F. Learn the warning signs of dishonest applicants.

III. RENTAL AGREEMENTS - *PAGE 21*

A. Use a contract consistent with current law or you will lose options.

B. Point out key provisions that address "loopholes" and assure the tenant knows you take them seriously.

C. Get signature on property condition, smoke detectors, and other issues to protect against later false accusations.

IV. ONGOING MANAGEMENT - *PAGE 27*

A. Don't bend your rules. By the time most drug houses are identified, they have a history of evictable behavior which the landlord ignored.

- Don't accept rent after you are aware of a breach, without noting the circumstances in writing and serving the appropriate notices.
- Serve the appropriate notices quickly to reinforce your commitment.

B. Know your responsibilities as a landlord.

C. Conduct periodic inspections. It's your responsibility; it's a deterrent; it protects your legal options.

D. Watch for utility problems and keep a paper trail of all activity.

E. Open communication channels, so you hear of problems early.

- Trade phone numbers with neighbors.
- In multi-family properties, start apartment watches.

V. WARNING SIGNS OF DRUG ACTIVITY - *PAGE 33*

A. Dealing, distribution, labs and grow operations all have different characteristics - indicators are listed in the text.

B. The most common illegal drugs sold today are cocaine (including "crack"), heroin, methamphetamine, and marijuana. They are described in the text.

VI. IF YOU DISCOVER A CLANDESTINE LAB... - *PAGE 41*

A. Leave *immediately*, wash your face and hands, check your health, call the Drugs and Vice unit of your local law enforcement agency. Learn the process involved in cleaning up.

VII. EVICTION - *PAGE 47*

A. Don't wait. Act. If a tenant is not in compliance, address the situation immediately.

B. Know *how* to evict. Get a copy of landlord tenant law and *read it*. If you're not sure, don't guess - get an attorney experienced in landlord/tenant relations. Cases are often lost on technicalities. You should:

- Know the type of eviction notices available to you.
- Know the process for serving notices and don't be afraid to use it.
- Understand the eviction process *including* the difference between the potential full-length process and the typical, more rapid outcome.

C. If a neighbor calls with a complaint, know how to respond.

VIII. THE ROLE OF THE POLICE - *PAGE 57*

A. Know how to work with the police, but don't expect cooperation when your (civil) concerns and their (criminal) concerns conflict.

B. In Portland, don't treat a letter from the Drugs & Vice Division as an early warning - treat it as a *final* warning. Take action immediately.

C. The Portland Police Bureau sends out four types of letters to landlords. Know how to react to each.

IX. THE SECTION 8 PROGRAM - *PAGE 61*

A. Before renting through Section 8, learn about the program's benefits and drawbacks.

B. Recognize that publicly subsidized renters tend to have broader rights and, for compelling reasons, are more likely to fight eviction.

C. Read your contracts carefully - there are differences from private rental contracts. For example:

- The lease is permanent - "no-cause" notices are never allowed.
- Other eviction options may have limitations not typically found privately.

D. Assure that applicable lease provisions, noted in the section on *Rental Agreements*, are spelled out in an addendum.

E. Know the unique steps involved in screening Section 8 applicants.

PREPARING THE PROPERTY

ADVICE WE WERE GIVEN:

"Drug people don't like to be seen. They can set up anywhere, but the farther they are from the manager's office, or the more hidden the house is from view, the better they like it." — Police Officer.

PREPARING THE PROPERTY

Make the environment part of the solution.

THE BASICS

1. Make sure the aesthetic and physical nature of the property is attractive to honest renters and unattractive to dishonest ones.

KEEP THE PROPERTY UP TO HABITABILITY STANDARDS

The last thing you want to do is announce to potential tenants that you are an irresponsible landlord. Drug criminals *love* landlords who tell them "The rent is $450 a month, but if you never call, I'll only charge $425." And the more habitability violations in a house, the better - when you show a drug criminal a substandard house, you might as well tell them outright: "Our operation is illegal too. If you will look the other way, so will we."

Maintaining housing standards is important to the public welfare and it is a protection against neighborhood decay. In addition, with a substandard house you are more likely to attract drug criminals. Also, you should know that eviction of a knowledgeable tenant from such a house will be a long and expensive process. If you are renting property that isn't maintained, you have given up most of your eviction rights.

Before you rent your property, make sure it meets applicable local maintenance code and the habitability requirements of landlord/tenant law. For a discussion of basic requirements, see the section on *Ongoing Management* and review the Oregon landlord/tenant law, reprinted in the *Appendix*.

KEEP THE PROPERTY VISIBLE

Crime prevention through environmental design, or "CPTED," is most often noted as a technique for reducing crime *to* a property, but it can also help reduce crime *from* a property. However, it only works if you apply it.

The key lies in assuring that the structure and the surrounding land is visible to neighbors. Taken alone, few of the following elements will have a significant impact. Taken together, they will deter some operators from wanting to move into

the property and make it easier for neighbors (or surveillance teams) to observe and document illegal activity should it start up. Steps include:

- **Install photosensitive lighting over all entrances.** Sellers, buyers, and manufacturers of illegal drugs don't like to be seen. At minimum, the front door, back door, and other outside entrance points should be equipped with energy-efficient flood lighting that is either motion or light sensitive - made to go on for a few minutes when a person approaches or to go on at sunset and stay on till dawn. Backyards and other areas should also be illuminated as appropriate. While lights should illuminate the entrances and surrounding grounds, they should not shine harshly into house windows - either yours or the next-door neighbor's. Be sure applicants understand that the lighting is part of the cost of renting - that it must be left on.

- **Make sure fences can be seen through.** If you install fencing, "Cyclone" types are best. If you choose to build wood fencing, leave wide gaps between the boards. Consider replacing, or modifying, wood fences that have minimal gaps between boards. You might also consider shorter fencing - four feet in the back yard instead of six. Keep hedges trimmed low.

- **Keep bushes around windows and doorways well trimmed.** Bushes should not impair the view of entrances and windows. They should also be cut up from the ground so as to discourage the possibility of a person hiding.

- **Post the address clearly.** Only the drug house operator will benefit if the address is difficult to read from the street. When address numbers are faded, hidden by shrubs, not illuminated at night, or simply falling off, neighbors will have one more hurdle to cross before reporting activity and police will have more difficulty finding the house when called.

APPLICANT SCREENING

Unless noted, quotes are from landlords or professional property managers.

COMPLAINTS WE HAVE HEARD:

"People say you should screen your tenants. You can't. The applicant lies about their previous landlord - they give you some bogus address and the phone number of their brother. You call up the brother, he plays along and you never discover that they were FED'ed [evicted] at the last two houses they rented."

"I thought I was calling the previous landlord and it was the girl's parents - and the parents played along. It ended up in eviction, some months later."

"Legally, we can't screen tenants worth anything. The government says you have to take the 'first qualified tenant.' If you don't, you could be sued for discrimination. So you check to see if they have income and that's it."

ADVICE WE WERE GIVEN:

"I went to a meeting for landlords about these issues. I was surprised - most people in the room couldn't understand why they were getting bad tenants. They just couldn't see that there are ways to keep that from happening."

"Most landlords, even some 'pros' with a lot of properties, are still practicing the old way of doing things - they take a social security number, make one phone call, and rent to the person. Then they wonder where all these problems are coming from. Well the old methods don't work anymore. Times have changed and we have to change our process to meet it."

"When I started out, I was hungry to get renters in. My hunger for tenants cost me over $10,000 - that's how much it cost to deal with one unit with a meth lab in it. Now I've just quit relying on character judgement. For managing rental property, it doesn't work. I have a set application process, written down. The applicant must meet all the criteria. If they do, I rent to them. If they don't, I don't. It is simple, legal, and fair. I've been doing it for a year and a half now. At this point, out of 18 properties, every one has good people in it."

"Many landlords are frightened of the Fair Housing Laws. Some believe they can't screen at all. Actually, the primary thing you are not permitted to do is selectively screen on the basis of race, sex, religion or one of the other protected criteria. If landlords establish a screening procedure and follow it equally for each applicant, they will have a very strong case against discrimination lawsuits." — A City Attorney.

"When I call previous landlords to verify an applicant's record, most are surprised to get a screening call from another landlord - apparently it happens too rarely."

APPLICANT SCREENING

"An ounce of prevention..."

THE BASICS

Objectives: Attract honest tenants, while encouraging dishonest tenants to choose not to apply. Have a back up system to help discover if a dishonest person has applied. Use a process that is legal, simple, and fair.

1. At every step reinforce the message that you are an active manager, committed to providing honest tenants with good housing and keeping dishonest tenants out.

2. Establish *written* criteria. Communicate those criteria to the applicant. Communicate your commitment to complete applicant screening.

3. Thoroughly screen each applicant. Most landlords don't. At minimum: check photo I.D. & social security card, run a credit check, *independently* identify previous landlords, verify income.

4. *Do it.* Don't cut corners. Don't believe it won't happen to you. Don't trust an innocent-looking face, and don't accept someone just because your gut says they're okay.

5. Apply your rules and procedure *equally to every applicant.*

6. Learn the warning signs of dishonest applicants.

OVERVIEW

There are two ways to screen out potentially troublesome tenants:

1. **Encourage self screening.** Set up situations that discourage those who are dishonest from applying. Every drug dealer who chooses not to apply is one more you *don't* have to investigate.

2. **Uncover past behavior.** More often than not, a thorough background check will reveal poor references, an inconsistent credit rating, or falsehoods recorded on the application.

The goal is to weed out applicants planning illegal behavior *as early as possible.* It will save you time, money, and all the entanglements of getting into a legal contract with people who may damage your property and erode neighborhood property values.

For the following steps to be most effective, it is just as important that *applicants actually read and understand the rules and the process* as it is that you implement the process in the first place. Implementing elements of the following suggestions may help protect yourself legally. Assuring that an applicant knows your commitment to the process may help prevent problems before they have a chance to grow.

Also, a word of caution: If you are looking for a one-step solution, you won't find it here. There are no "magic" phone numbers you can call to get perfect information about applicants and their backgrounds. Effective property management requires adopting an approach and attitude that will discourage illegal behavior, while encouraging the stabilization, and then growth, of your honest tenant base. What makes the following process so effective is not any one step, but the cumulative value of the approach.

A NOTE ABOUT FEES

Many of the more successful landlords we have spoken with charge application fees. We typically hear mentions of $20 to $30, although considerably higher amounts are being charged by some. Fees should not be used as a money maker, but only as a means to cover processing costs. We suggest you determine your real cost of screening and charge that amount. If your costs are higher than the market will bear, select a lower fee that will cover as much as possible. Here's what you should know:

1. **Fees can save you time.** If there is a fee involved, applicants are less likely to apply to multiple apartments. So you are less likely to waste time screening someone who then decides to rent elsewhere. Also, with money on the line, an applicant may take an extra few minutes to make sure every block in the application form is filled in completely and accurately - making your verification process easier.

2. **Fees provide some weeding ability.** Taking the time to screen an applicant costs real money. People who are planning illegal activity may recognize your charging a fee as further indication of your commitment to screen carefully.

3. **Fees pay for better screening.** It costs money to run credit reports. It takes time, and sometimes mileage or long distance costs, to verify the identity of previous landlords and conduct other reference checks. If you find you "can't afford" to screen applicants effectively, charge a fee to defray the cost. (Regardless, you can't afford *not* to screen - meth labs have cost landlords the

equivalent of three *years'* rent, and almost any drug house will cost you at least a few months' rent over what typical turnover would cost. The cost of screening, by comparison, is cheap.)

4. **Fees should not be abused.** If four applicants apply for the same rental, it is best to consider them in order of application. If you discover the first person provided false information, you reject the applicant and keep the fee. If the second applicant is accepted, you also keep that fee. *But you return the fees to applicants three and four* - because you accepted an earlier applicant. Return those fees even if, in the name of efficiency, you already incurred some screening costs on those applicants. You can't expect applicants to pay a fee if they didn't get a chance at renting the apartment.

   Of course, if you are running a multi-family unit and have a waiting list policy, you may give applicants three and four the option of being placed on your waiting list. (Note that, because of Fair Housing regulations, it will be in your interest to develop a written waiting list policy. For details contact a local rental housing association or an attorney who specializes in landlord/tenant law - see *Appendix.*)

   Because there is a possibility for abuse, some recommend refunding *all* applicants except the final tenant. This approach can work, but you will need to charge a higher fee to cover the cost of checking the backgrounds of rejected applicants.

Note also, if fees make you uncomfortable, some deterrence can be achieved by requiring a deposit on rent or security, with the understanding that, if the applicant is accepted but chooses not to rent the apartment, those monies would be forfeited. This step may discourage people who fill out multiple applications, waiting to set up a drug operation with whichever landlord accepts them first. The best way to assure proper wording of such an agreement is to use an applicant deposit receipt form available through local property management associations.

ASSURE "SELF SCREENING ENCOURAGEMENT" IS DONE FAIRLY

Fair Housing laws are designed to protect the way applicants are screened and to assure that all qualified applicants feel equally invited to apply. The key lies in making sure your process is a fair one and that it does not discriminate against people on the basis of race, color, religion, sex, handicap, national origin, or familial status (i.e. the presence of children.) To comply, you should design a fair process *and* apply it equally to all applicants. If you give an applicant a piece of paper that warns against selling drugs on the property, be sure you give that same piece of paper to *all* applicants. (You will also want to assure the language does not discourage a protected class of applicants from applying.)

Most of the attorneys and legislative authorities we have interviewed recommend development of written rental criteria and posting a copy of those criteria in your rental office. If you do not have a rental office to which all applicants appear, consider stapling the criteria to *every* application you give out.

Again, remember to have applicants read the information when they apply. Posting information alone is of limited prevention value unless the applicants actually read it.

WHAT TO POST

The following is intended as a "generic" example of information a manager might post and direct each applicant to read. The intent is to encourage every honest tenant to apply, while providing dishonest applicants with an early incentive to pursue housing elsewhere. Every drug dealer who doesn't apply is one more you don't have to deal with.

By itself this information will scare off only a few drug people. Many have heard tough talk before. Most expect landlords to be too interested in collecting rent to care about real applicant screening. The important thing is to begin with this baseline of information and follow through in word and action - continue reinforcing the point that you enjoy helping honest tenants find good housing by carefully screening every applicant, and *then actually screen them.*

While we have attempted to assure the following section adheres to the goals of Fair Housing, this is not intended to replace your responsibility to understand the law and to follow it. Applying Fair Housing practices involves much more than the language used in the applicant screening process. If you are not familiar with your responsibilities under Fair Housing, you are encouraged to seek information from your local rental housing associations or from an attorney who specializes in the subject.

Also, the following is only an example. You should adjust the criteria as appropriate (such as changing the debt to income percentage) or add different conditions (such as payment of additional deposits for borderline cases, instead of co-signer arrangements). Whatever criteria you set, have them reviewed by an attorney familiar with current landlord/tenant issues before you post them.

Our Application Process

We are working with neighbors and other landlords in this area to maintain the quality of the neighborhood. We want to assure that people do not use rental units for illegal activity. To that end, we have a thorough screening process.

Because it costs us time and money to do a thorough check of your application, there is a non-refundable processing fee of $___. We will accept the first *qualified* applicant. If we do not process your application due to accepting an earlier applicant, your fee will be refunded.

If you meet the application criteria and are accepted, you will have the peace of mind of knowing that other renters in this area [apartment complex] are being screened with equal care, and that the risk of illegal activity occurring in the area is reduced.

Please review our list of criteria. If you feel you meet the criteria, please apply - because we'd be happy to rent to you. Also, if you have any questions or concerns, feel free to ask.

Applicant Screening Criteria

- **A complete application.** One for each person not related by blood or marriage. If a line isn't filled in (or the omission explained satisfactorily), we will return it to you.

- **Rental history verifiable from unbiased sources.** If you are related by blood or marriage to one of the previous landlords listed, or your rental history does not include at least two previous landlords, we will require a qualified co-signer on your lease (qualified co-signers must meet all applicant screening criteria).

  It is your responsibility to provide us with the information necessary to allow us to contact your past landlords. We reserve the right to deny your application if, after making a good faith effort, we are unable to verify your rental history.

  If you owned - rather than rented - your previous home, you will need to furnish mortgage company references and proof of title ownership or transfer.

- **Sufficient income/resources.** If the combination of your monthly personal debt, utility costs, and rent payments will exceed [50%] of your monthly income, before taxes, we will require a qualified co-signer on your rental agreement. If the combination exceeds [65%] of your monthly income, your application will be denied.

  Income must be verifiable through pay stubs, employer contact, or tax records. All other income, including self employment, must be verifiable through tax records. For Section 8 applicants, the amount of assistance will be considered part of your monthly income for purposes of figuring the proportion.

[NOTE: See "What To Post" discussion on page 6 prior to using.]

- **Section 8 information access.** All Section 8 applicants must sign a consent form allowing the Housing Authority to release information from your file regarding your rental history.

- **You will be denied rental if:**

  -- You misrepresent any information on the application. If misrepresentations are found after a rental agreement is signed, your rental agreement will be terminated.

  -- In the last five years you have ever been convicted of the manufacture or distribution of a controlled substance.

  -- In the last five years you have a conviction for any type of crime that would be considered a threat to real property or to other residents' peaceful enjoyment of the premises, *including* the manufacture or distribution of controlled substances.

  -- Your credit check shows any accounts that are not current. Occasional credit records showing payments within 30 to 59 days past due will be acceptable, provided you can justify the circumstances. Records showing payments past 60 days are not acceptable.

  -- In the last five years you have had unpaid collections, an FED (court ordered eviction), or any judgement against you for financial delinquency.

  -- Previous landlords report significant complaint levels of noncompliance activity including but not limited to:
  - Repeated disturbance of the neighbors' peaceful enjoyment of the area.
  - Reports of gambling, prostitution, drug dealing or drug manufacturing.
  - Damage to the property beyond normal wear.
  - Reports of violence or threats to landlords or neighbors.
  - Allowing persons not on the lease to reside on the premises.
  - Failure to give proper notice when vacating the property.

  -- Previous landlords would be disinclined to rent to you again for any other reason pertaining to the behavior of yourself, your pets, or others allowed on the property during your tenancy.

- **There is a $__ application fee.** This fee is non-refundable unless we do not process your application due to the acceptance of an earlier applicant. We will process applications in the order they are received.

- **Two pieces of I.D. must be shown.** We require a photo I.D. (a driver's license if possible) and either a social security card or a non-resident alien card. Present with completed application.

- **We will require up to (__) business days to process an application.**

- **We will accept the first qualified applicant.**

[NOTE: See "What To Post" discussion on page 6 prior to using.]

Rental Agreement

If you are accepted, you will be required to sign a rental agreement in which you will agree to abide by the rules of the rental unit or complex. A complete copy of our rental agreement is available for anyone who would like to review it.

Please read your rental agreement carefully, as we take each provision of the agreement quite seriously. The agreement and the attached provisions have been written specifically to assure that those who are contemplating illegal activity will find little room to maneuver.

Our intention in providing such an agreement is to assure that our honest tenants are given the best housing we can provide, and that dishonest tenants are given little room to pursue illegal activity.

Other Forms and Process

At this point, you may want to post information, as applicable, about security deposits, prepaid rent, pet deposits, check in/check out forms, and smoke detector compliance.

[NOTE: See "What To Post" discussion on page 6 prior to using.]

APPLICATION INFORMATION - WHAT TO INCLUDE

The best approach is to avoid reinvention of the wheel - contact a local rental housing association for copies of appropriate forms (see *Appendix*).

1. These questions, and others, will be on many standard forms:

   - Full name, including middle.
   - Birth date.
   - Driver's license number, and state.
   - Social security number (you'll need it for the credit check).
   - Names, date of birth, and relation to all people who are going to occupy the premises.
   - Name, address, and phone number of past two landlords.
   - Employment history for the past year. Salary, supervisor's name, phone number, address. If self-employed, ask for copies of tax returns and client references.
   - Additional income - it is only necessary to list income that the applicant wants to be included for qualification.
   - Credit and loan references. Auto payments, department stores, credit cards, other loans.
   - Bank references. Bank name, account number, address, phone.
   - AS APPROPRIATE: Name and phone of nearest relative to call in case of emergency; information about pets and deposit rules; information about use of a water bed or other particularly heavy furniture.

2. The following question is *not* typically on standard forms, but may be added. *If you are going to use it, make sure you attach it to all application forms and not just some of them.*

   - "Have you, or any other person named on this application, ever been convicted for dealing or manufacturing illegal drugs?"

   Of course, if they do have a conviction, they may well lie about it. However, if you discover they have lied, you have appropriate grounds to deny the application or, with the right provision in your lease, terminate the tenancy. Also, it is one more warning to dishonest tenants that you are serious in your resolve.

HOW TO VERIFY INFORMATION

Did you know many landlords are *surprised* to receive calls from other landlords inquiring about the quality of a past tenant? Apparently it doesn't happen often. As one landlord put it, "you can spend $100 in time and money up front or be stuck with thousands later." As another put it, "90% of these problems can be avoided through effective screening. There is no better investment you can make."

As you review the following list, keep in mind that you will not have to do every step for each applicant, but the basics, written in **bold** letters, should be done every time. *If you implement no other recommendations in this manual, implement these:*

1. **Compare the I.D. to the information given.** Assure that the person's I.D. matches their face and their application information. If the picture, address, and numbers don't match the application information, find out why - you may have cause to turn down the application. Unless obvious inconsistencies can be explained and verified to your satisfaction, you don't have to rent to them.

2. **Have a credit report run and analyzed.** A credit report will provide independent verification of much of the application material. You can find out about past addresses, court ordered evictions (FEDs), credit worthiness, past due bills, and other information. The reports are not foolproof, but they provide a good start. Here are your options:

   - **Join a credit bureau directly.** If you are managing a number of units and are likely to be screening multiple applicants every month, you may find it cost-effective to join a credit bureau directly and spend the time to learn how to interpret their reports. While this is an option, note that even some very large management companies go through associations or contract with applicant screening firms to gain the benefit of their outside expertise.

   Or:

   - **Have a third party pull the report and offer interpretation.** If you are not screening a sufficient volume of applicants, or would like assistance in interpreting the reports, consider joining a local rental housing association or contracting with an applicant screening firm. Services vary from organization to organization and you should shop for the organization that best meets your needs. At one end of the spectrum are organizations that handle the entire applicant screening process, including offering a warranty on the results. At the other end of the spectrum are organizations that simply pull the reports and mail you a copy. There are many variations in between.

3. **Independently identify previous landlords.** The most important calls you make are to the previous landlords. The best indicator of a tenant's future behavior is a reliable picture of past behavior. To begin, verify that the applicant has given you accurate information.

   - **Verify the past address through the credit check.** If the addresses on the credit report and the application don't match, find out why. If they do match, you have verification that the tenant *actually lived there.*

   - **Verify ownership of the property through the tax rolls.** A call to the county tax assessor will give you the name and address of the owner of the property the applicant previously rented. If the name matches the one provided by the applicant, you have the *actual landlord.*

     If the name on the application doesn't match with tax rolls it could still be legitimate - sometimes tax rolls are not up to date, property has changed hands, the owner is buying the property on a contract, or a management company has been hired to handle landlord responsibilities. But most of these possibilities can be verified. If nothing else, a landlord who is not listed as an owner on the tax rolls, certainly ought to be familiar with the name of person who *is* on the tax rolls - so ask when you call.

   - **If possible, cross check the ex-landlords' phone numbers out of the phone book.** This will uncover the possibility of an applicant giving the right name, but a different phone number (i.e. of a friend who will pretend to be the ex-landlord and vouch for the applicant). If a phone number is unlisted, you still have options:

     -- The local phone company may be willing to give you the name of the person who uses the number the applicant provided, although in most cases they won't. If the name you get is consistent with your other information, you are in good shape. If not, the applicant may have provided false information.

     -- If the applicant's information is not lining up, you may wish to *drive* to the address listed for the property owner and speak with the owner face to face (if out of town, consider an overnight letter). Obviously you won't do this in every instance, but don't fail to do it if your suspicions are strong.

   ...Now you have verified the landlord's name, address and perhaps even phone number. (Now you also know why you started charging an application fee.) If the applicant gave you information that was intentionally false, deny the application. If the information matches, call the ex-landlords.

   Remember, if the applicant is currently renting somewhere else, the present landlord may have an interest in moving the tenant out and may be less inclined to speak honestly. In such an instance, your best ally is the landlord before that - the one who is no longer involved with the tenant.

   If you do nothing else, locate and talk to a past landlord with no current interest in the applicant.

4. **Have a prepared list of questions that you ask each previous landlord.** Applicant verification forms, available through rental housing associations, give a good indication of the basic questions to ask. You may wish to add other questions that pertain to your screening criteria. *If you ask no other question, ask: "If given the opportunity, would you rent to this person again?"*

   Also, if you suspect the person is not a real landlord, ask about various facts listed on the application that a landlord should know - the address or unit number previously rented, the zip code of the property, the amount of rent paid. If the person is unsure, discourage requests to call you back - offer to stay on the line while they look up the information.

5. **Get co-signers if necessary.** If the applicant is related to a previous landlord and you have posted the appropriate criterion, require that a co-signer apply with the applicant. Verify the credit and background of the co-signer just as you would a rental applicant. This makes it harder for a dishonest applicant to avoid the consequences of past illegal behavior - while loyal relatives may *say* a relation is reliable, they might think twice about co-signing if they know that isn't true.

6. **For Section 8 renters, hand deliver a written request for information to the Housing Authority.** (While this process is allowable in Portland, it may not be available in all areas.) Read and follow the procedure described in the chapter on the Section 8 program. In a nutshell, once you have a signed release from the applicant, you will need to submit specific questions, in writing, to the Housing Authority and then wait for a written response. So start the process immediately.

7. **Verify income sources.** Call employers using phone numbers from the directory. If they are self-employed, get copies of bank statements and tax returns, and consider asking for a client list. *Don't cut corners here:* many drug distributors wear pagers, have cellular phones, and generally appear quite successful, but they don't typically pay taxes on their earnings.

8. **Consider checking to see if the applicant has a criminal conviction record.** Obtain criminal background checks through the Oregon State Police, Bureau of Criminal Identification (3772 Portland Road NE, Salem, OR 97303, (503) 378-3070). Requests must be in writing and include the applicant's name, date of birth, social security number, and current address, as well as a $10 processing fee. Processing time varies, depending on whether or not the person *has* a record. If the person has a record, the State Police will add 14 days to allow time for the applicant to correct errors.

   This is not fast enough for the typical application process. However, for housing that has a history of criminal usage, it may be appropriate as a

check against the honesty of each applicant. Assuming you have the right provision in your rental agreements, if you gain proof a tenant has lied on the application, you have cause for eviction.

Note that the rules surrounding use of the Law Enforcement Data System prohibits release of information outside of a jurisdiction - so, at most, city police could reveal information about convictions within the city, while State Police can release statewide information. That's why you go to the State Police. Also, resist the urge to rely too heavily on this screening technique - there are many drug criminals who have not yet been convicted of a crime.

Note that you can also get information on criminal background by doing a search of court records (or locating an applicant screening firm that will do the search for you). However, if you choose to rely on court records, be careful - you may use convictions, but not arrest records, as a basis for rejecting an applicant. Patterns of arrest have proven to be discriminatory against protected classes, and as such, could be inappropriate to use as a screening criterion.

9. **Verify all other information as per your screening criteria.** Remember, before you call employers, banks, or other numbers listed on the application, verify the numbers through your local phone book or long distance directory assistance.

HOW TO TURN DOWN AN APPLICANT

In general, if you have posted fair rental criteria and you screen all applicants against those criteria, you may safely reject an applicant who does not meet your guidelines. When you reject an applicant, keep in mind the value of shielding personal references from unnecessary trouble - for example, don't volunteer the information that a past landlord gave a poor reference. Give out that information only if the applicant follows the legal disclosure procedure described below.

Suggestions for how to turn down an applicant include:

- **If you accepted an earlier applicant:** "We're sorry, we have accepted an earlier applicant."

- **If from a credit report, screening company or other organization which you pay to provide screening information:** "Based on information received from your credit report (or other paid source) you do not meet our posted rental criteria. If you have any questions, you may contact (source). If you find their information is in error, you may work with them to correct the problem and resubmit an application."

  Note that you are *required* to reveal the name and address of consumer reporting agencies that you use and inform the applicant of their ability to address errors and resubmit.

- **For rejections based on information from non-paid sources** (the word of a previous landlord, for example): "Based on a check of information you provided in your application, you do not meet our posted rental criteria. If you have questions about this decision, you may submit a request in writing to (your name and address) within 60 days, and we will explain the basis for the decision."

  While you are not required to *volunteer* your basis for rejecting an applicant, you *are* required to advise applicants of their right to submit, within 60 days, a written request for that information and their right to a response in a reasonable time after submitting the request.

In the interests of proving you have met disclosure requirements, you may want to hand out an information sheet with the disclosure process described and appropriate addresses provided. Contact a local property management association for more details.

OTHER SCREENING TIPS AND WARNING SIGNS

The following are additional tips to help you screen applicants. You should also be familiar with the warning signs described in the section titled *Warning Signs of Drug Activity.*

- **Consider using an "application interview."** Some landlords have started asking the applicant all questions in person. Keep the application in front of you and ask the appropriate questions as you fill in the blanks. Have the applicant review the completed application and sign it. Landlords who use this approach find it has these advantages:

  -- Applicants don't know which questions are coming, so it is harder to fabricate a story - something that shouldn't bother an honest applicant, but may uncover a dishonest one.

  -- The landlord has the opportunity to watch responses and take mental notes of answers that seem suspicious.

  -- Because the application is in the landlord's own handwriting, he/she has little trouble reading it.

  As with all policies you set, if you decide to do application interviews, you should include a commitment to making reasonable accommodations for those who cannot comply due to status in a protected class - e.g. a handicap that causes a speech problem, or (possibly) language skills associated with a particular national origin.

  If you choose not to use an interview approach, at minimum, observe the way the application is filled out. Applicants may not remember the address of the apartment they were in two years ago, but they *should* know where they live now, or just came from. Applicants who can't remember their last address, the name of their current landlord or other typically "top-of-mind" facts about their life should raise an eyebrow.

- **Consider a policy requiring applications to be filled in on site.** Some property managers require all application forms to be filled in on the premises - they may not be taken off site. Applicants who are unsure of some information should fill in what they can, and come back to fill in the rest. Such a policy does not add significant hurdles for honest applicants - in most cases, they would have to return to bring back the signed application anyway. However, the policy can dampen the ability of dishonest applicants to work up a story. Also, *assuming* you have communicated your commitment to keeping illegal activity off your property, such a rule may allow dishonest or dangerous applicants to exit with minimal confrontation - without an application in hand they are less likely to pursue making up a story and, once off the premises, they may simply choose not to return.

  Again, if you use such a policy, make sure it includes making reasonable accommodations for people whose particular handicap, or other protected characteristic, would otherwise result in the policy being a barrier to application.

- **Watch for gross inconsistencies.** When an applicant arrives in a brand new BMW and fills out an application that indicates income of $600 a month, something isn't right. There are no prohibitions against asking about the inconsistency or even choosing to deny the applicant because their style of living is grossly inconsistent with their stated income. You may also deny the applicant for other reasons that common sense would dictate are clearly suspicious (credit reports can also reveal such oddities - for example a Section 8 applicant with a number of department store credit cards, all current, all showing high monthly balances, should raise an eyebrow). Many don't realize it, but unless such a decision would cause a disproportionate rejection of a protected class (e.g. race, color, religion, and others) the law allows room to make such judgement calls.

  While you may not discriminate on the basis of race, color, religion, sex, handicap, national origin, familial status (e.g. the presence of children), or (in Oregon) marital status, you *may* discriminate on the basis of many other factors, *provided the effect is not a disproportionate denial of a protected class.* If you deny the applicant for such a reason, record your evidence and the reason for your decision. Be careful when making decisions in this area, but don't assume your hands are tied. The law is written to prevent discrimination against protected classes. You are not required to look the other way when gross inconsistencies are apparent.

- **Watch out for Friday afternoon applicants who say they must move in that very weekend.** Drug house operators know you can't check references until Monday, by which point they will already be in the house. Tell the applicant to find a hotel or a friend to stay with until you can do a reference check. Could it cost you some rent in the short run? Yes. Will it save you money in the long run? *Absolutely.* Ask any landlord who has dealt with a drug house. It is worth avoiding. (Some landlords allow weekend applicants to move in if they can independently verify their story. But you are better off waiting until you can verify the entire application. The times have passed when you can do business by trusting an honest-looking face.)

- **Observe the way the applicant looks at the house.** Do they check out each room? Do they ask about other costs, such as heating, garbage service or others? Do they mentally visualize where the furniture will go, which room the little ones will sleep in, how the sun lies on the backyard? ...Or did they barely walk in the front door before asking to rent, showing a surprising lack of interest in the details? People who are planning a decent living care about their home and often show it in the way they look at the property. Some who rent for illegal operations forget to feign the same interest.

  Also, if the applicant shows little interest in any of the property *except* the electrical service, take note - both methamphetamine labs and marijuana grow operations can include rewiring efforts.

- **Be aware that drug houses are often rented by people other than the ones who will do the illegal activity.** In some cases it is single women, perhaps with a few children and no record of illegal activity; their boyfriends then follow them into the house, deal the drugs and generate the violence and the crimes. In other cases it can even be elderly couples supplementing retirement checks by getting houses rented for others. Most leases specify that only the people whose names are recorded on the lease are allowed to use the home as their residence. In the past, few landlords have enforced this stipulation, and in all but a few cases, the violations of it were quite innocent. Unfortunately, that is no longer the situation.

  Make sure such a stipulation is in your lease, and point it out to the renter, emphasizing that the process of having another person move in only requires submitting that person's application and allowing you to check references before permission is granted. If you make it clear you are enforcing the rule *only* to prevent illegal activity, you may scare away potential drug dealers, but keep good renters feeling more protected. You may further calm concerns of good renters if you assure them that you will not raise the rent because an additional person moves it.

- **When you call the current landlord, ask if they are aware the tenant is moving.** If the landlord doesn't know they were planning to move, maybe they aren't. They may be trying to "front" for someone else to move into the house.

- **Consider alternate advertising methods for your property.** Houses that are within a few miles (yes, *miles*) of colleges or business parks may be desirable housing for students or professionals. Some landlords have found success in posting advertising at such locations, thus targeting a population of people who already have a credible connection with the community.

  However, note this important caution: *Fair Housing forbids you from advertising your property to exclusive markets without also advertising it to the general population.* Advertising only through community colleges may be acceptable, because such colleges typically have enrollment from a good cross-section of the community. But if you are thinking of advertising only through a country club newsletter, think again - such an approach could set up a pattern of inappropriate discrimination. Either expand your media selection or change it altogether to assure you are reaching a fair cross-section of the public.

- **Consider driving by the tenant's current residence.** Some property managers consider this step a required part of *every* application they verify. A visual inspection of the applicant's current residence may tell you a lot about what kind of tenant they will be. Be sure you are familiar with drug house warning signs before you look at the previous residence.

- **Verify addresses through the state motor vehicles division.** Note the applicant's license plate and contact your motor vehicles division. In Oregon, if you show up in person and pay a nominal charge, the Department of Motor Vehicles will give out the name and address of the licensee.

- **Announce your approach in your advertising.** Some landlords have found it useful to add a line in their ads announcing that they do careful tenant screening. The result can be fewer dishonest applicants choosing to apply in the first place. Select your wording with care - you don't want to use phrasing that in your community might be interpreted as "code" for telling a protected class that they need not apply. Again, it is important to assure that the opportunity to apply for your units - and to rent them if qualified - is open to all people regardless of race, color, religion, sex, handicap, national origin, or familial status.

NOTES

RENTAL AGREEMENTS

Unless noted, quotes are from landlords or professional property managers.

COMPLAINTS WE HAVE HEARD:

"I rented the house to a young woman with two kids. Two weeks later, her boyfriend moves in and starts dealing crack. She says it isn't her fault and I can't evict her because she hasn't done anything wrong."

"The tenants did over $2,000 in damage to the property, and then reported it to the Bureau of Buildings as a preexisting condition. The Bureau of Buildings went after me for having code violations. Figure that out."

ADVICE WE WERE GIVEN:

"We've solved a lot of problems by using the right paperwork at the beginning of the rental term - it improves our legal position and it lets the tenant know we are serious from the start."

RENTAL AGREEMENTS

THE BASICS

Objective: Minimize misunderstandings between you and your tenant, thus building a basis for clean and fair problem resolution down the road.

1. Use a contract consistent with current law or you will lose options.

2. Point out key provisions that address "loopholes" and assure the tenant knows you take them seriously.

3. Get signature on property condition, smoke detectors, and other issues to protect against later false accusations.

USE A CURRENT RENTAL AGREEMENT

Many property managers continue to use the same rental agreements they started with years ago. Federal and State law can change yearly, and case law is in constant evolution. In Oregon, generally speaking, you will want new forms every two years, following the closure of the biennial legislative session. With an outdated rental agreement, you may give up many of your options for legal eviction. If a smart tenant chooses to fight, an outdated rental agreement may cost you the case.

Various rental housing associations provide rental agreement forms (as well as other management forms) and consider it their job to assure their forms are consistent with current law. Unless you are planning to work with your own attorney to develop rental agreement provisions, purchasing updated forms from one of these associations (see *Appendix*) will be your best bet.

ELEMENTS TO EMPHASIZE

Inspect the rental agreement you use and assure that it has language stating the following provisions. If they are not in the rental agreement, add them. To gain the most prevention value, you will need to *point out the provisions to your tenant and communicate that you take your rental agreement seriously.* Note that this list is not at all comprehensive - it only represents elements that are occasionally overlooked, and are particularly important for preventing and/or terminating drug house tenancies.

1. **The period of the rental agreement is month-to-month.** In some parts of the country, year-long leases are standard. If you offer a month-to-month rental agreement, you retain the option of serving a 30 day no-cause notice to terminate. If you lock a tenant in for a year, you will need to serve a for-cause eviction notice should they become involved in drug activity.

2. **Subleasing is *not* permitted.** Make it clear that the tenant cannot assign or transfer the rental agreement, and may not sublet the dwelling. If you like, add this exception: unless the sublease candidate submits to the landlord a complete application and fee and passes all screening criteria.

   You must maintain control over your property - too often the people who run the drug house are not the people who rented it. This provision will not stop all efforts to sublease, but it may prevent some and it will put you in a stronger legal position if you have to evict an illegal sublessee.

3. **Only those people listed on the rental agreement are permitted to occupy the premises.** If the tenant wants another person to move in, that person *must* submit a completed application and pass the screening criteria for rental history.

   To make this provision work, you will need to define the difference between a "guest" and a "resident" - typically this is done by stating the number of days a guest may stay before permission for a longer stay is required from the property manager. Currently, there is some controversy over how limiting the number of days can be. At press time, 14 days in a calendar year was the most commonly accepted limit. Check with a local property management association or your own legal advisor to confirm current approach before setting this criterion.

   Again, you must maintain control of your property. Assuring your tenant that you will take this clause seriously may curb illegal behavior by others. Having the stipulation spelled out in the rental agreement will put you in a better legal position should that become necessary.

4. **No drug activity.** Make it clear that the tenant will allow no distribution, manufacture, or usage of controlled substances on the premises. You may also

wish to add that the other "specified crimes" - gambling and prostitution - are not allowed.

It's already illegal, but spelling it out never hurts. Except in the case of a no-cause eviction, it is unlikely that you will be able to evict a tenant merely for *usage*, but there is nothing to keep you from putting it in writing in the rental agreement.

5. **The tenants are responsible for conduct on the property.** Tenants should understand that they will be held responsible for the conduct of themselves, their children, and of all others on the premises under their control. You might also encourage your tenants to contact you should dangerous or illegal activity occur that is *out* of their control.

   For people who plan to "front" for illegal activity, this underscores the point that they will be given as little room as possible to protect themselves by complaining, after months of reported drug dealing, that while it happened on the premises, they weren't involved or that people out of their control performed all the activity.

   Note that wording on this provision should be done with care - the law won't allow you to hold a victim responsible for the behavior of a person who abused or intimidated him/her into silence.

6. **The tenant will not unduly disturb the neighbors.** Make it clear that the tenant will be responsible for assuring that all persons on the premises conduct themselves in a manner that will not interfere with the neighbors' peaceful enjoyment of the premises.

   If your evidence of disturbances is a minor complaint from a single neighbor, you have a weak case. However, if you receive substantial complaints, particularly if they are from more than one neighbor, a for-cause notice is appropriate, requiring the tenant to remedy the situation within 14 days or move out within 30. If similar, significant disturbances recur during the following 6 months, you have cause to serve an eviction notice with *no* provision for tenant remedy. (Of course, if you have a month-to-month rental agreement, you might instead exercise the option of a *no-cause* eviction notice as soon as you are convinced of the seriousness of the complaints.)

   What does disturbing the neighbors have to do with drug crimes? It doesn't necessarily. But we know that managers who attend to their own obligations and require tenants to meet theirs are far more effective in preventing drug activity than those who look the other way as complaints of noncompliance roll in. It is almost *never* the case that a drug criminal's first observed, evictable offense is the dealing or manufacturing of narcotics.

7. **Notices for nonpayment of rent, 24-hour inspection, and 24-hour eviction are considered served on the day they are "posted and mailed."** In Oregon, hand-delivered notices are timed from the day of service, while mailed notices

require three additional days for delivery time. For some types of notices there is a third option, *but it only applies if you have the proper rental agreement provisions:* with the right provision in your rental agreement, notices for nonpayment of rent, 24-hour inspection, and certain conditions of a 24-hour eviction may be considered served on the day they are fixed securely to the tenant's front door and postmarked 1st class mail. Most rental agreements that are up to date with current law cover this provision. Again, if your rental agreement is not consistent with current law, start using one that is.

PROPERTY CONDITION INSPECTION

Unless you can prove the tenant received the property in satisfactory condition, you will have a difficult time of it if a tenant damages the property and claims it was a preexisting condition. Once a tenant has your property cited for habitability violations, your ability to evict is almost nonexistent - the courts will see such action as retaliatory. *It happens.*

Prior to signing the rental agreement, walk through the property with the tenant, and make a visual inspection together. Agree on what repairs need to be done. Write it down and sign it. Give a copy to your tenant and keep a signed and dated copy in your files. Now, should the tenant damage the property, you can prove it happened after they took possession.

Again, while you can develop such forms yourself, we suggest you contact a property management association for Check in/Check out inspection forms.

SMOKE DETECTOR CONTRACT

It is your responsibility to assure the tenant knows how to test the smoke detector and is aware of his/her obligation to do so. The best way to do that is to develop or purchase a form that describes how to test the detector, when to test, and includes a space for the tenant to sign off - indicating their acceptance of the responsibility. Most importantly, this provides some assurance that if there is a fire, your tenants will have early warning. In addition, it can also reduce the motivation of particularly dishonest tenants to seek retribution through fire, or to fabricate a suit against you, claiming the detector failed to work.

CONSIDER A "RESIDENT'S HANDBOOK"

Many apartment managers, as well as some single family housing managers, provide a "resident's handbook" that spells out rules specific to the property being rented. Landlord/tenant law places various restrictions on what type of rules can be added by landlords, but generally property managers have found success with development of guidelines that restrict excessive noise levels, define behavior for common areas of the premises, and spell out rules for use of unique facilities such as pools or common laundry areas.

For details, refer to rental housing associations, screening companies or other sources that may advise on or teach general property management techniques.

KEY PICK UP

As a final prevention step, some landlords require that only a person listed on the written rental agreement may pick up the keys. This is one more step in assuring that you are giving possession of the property to the people on the agreement and not to someone else.

NOTES

ONGOING MANAGEMENT

Unless noted, quotes are from landlords or professional property managers.

COMPLAINTS WE HAVE HEARD:

"The tenant moved out and someone else moved in without us knowing it. Now we have drug dealers on the property and the courts insist they are legal tenants - even though they never signed a lease."

"People say you should inspect your property. Forget it. The tenants cry harassment and then you are shut out of your own units."

ADVICE WE WERE GIVEN:

"You need to follow one basic rule - you have to actively manage your property. The only landlords who go to court are the ones who don't actively manage their property."

"For most property managers the experience is one of putting out brush fires all day long. If the property manager can take a more proactive approach to the process, they can build an ever improving set of renters, avoid a lot of legal hassles, and have fewer brush fires during the day."

"If your training teaches landlords nothing else, teach them that the neighbors in an area are not their enemies."

ONGOING MANAGEMENT

What to do to keep the relationship working

THE BASICS

Objective: Maintain the integrity of a good tenant/landlord relationship.

1. Don't bend your rules. By the time most drug houses are identified, they have a history of evictable behavior which the landlord ignored.
   - Don't accept rent after you are aware of a breach, without noting the circumstances in writing and serving the appropriate notices.
   - Serve the appropriate notices quickly to reinforce your commitment.
2. Know your responsibilities as a landlord.
3. Conduct periodic inspections.
4. Watch for utility problems and keep a paper trail of all activity.
5. Open communication channels, so you hear of problems early.
   - Trade phone numbers with neighbors.
   - In multi-family properties, start apartment watches.

DON'T BEND YOUR RULES

A key to ongoing management of your property is demonstrating your commitment to your rental provisions and to landlord/tenant law compliance. Once you set your rules, don't change them. Make sure you meet *your* responsibilities, and make sure you hold your tenants accountable for meeting theirs. By the time most drug houses are positively identified, they have a long history of evictable behavior which the landlord ignored. Examples:

- If you are aware of a serious breach, don't accept the rent without noting the violation on the receipt and serving any applicable notices. Otherwise, you may lose your right to serve notice for the behavior.

- If someone else tries to pay the rent who is not the tenant, get an explanation - by depositing the money you may be accepting new tenants or new rental agreement terms.

- If you have reason to believe that a person not on the lease is living in the house, pursue the issue immediately - don't let it fester.

- If you have habitability or code violations at your property, fix them.

- If your tenant doesn't pay the rent within 7 days of when it is due, don't renegotiate endless compromises - address the problem immediately.

- If neighbors call to complain of problems, pursue the issues - don't ignore them.

Bottom line: If you respect the integrity of your own rules, the tenant will too. If you let things slide, the situation can muddy fast. It may mean more work up front, but once the tenant is used to your management style, you will be less likely to be caught by surprises.

RESPONSIBILITIES DEFINED

Oregon law calls it maintaining the premises in a "habitable" condition. The Section 8 program calls it "decent, safe, and sanitary" housing. For a legal description, see landlord/tenant law (*Appendix*) and your Section 8 contract. In brief, a landlord must keep the property up to code and provide:

- Water and weatherproofing of roofs, exterior walls, doors, and windows.
- Supply and maintenance of an adequate heating system, electrical lighting and wiring, plumbing facilities, as well as a water supply that is under the tenant's control, provides safe drinking water, and is connected to a maintained sewer system.
- At the time of rental, a clean, sanitary premise free of rubbish, vermin, rodents, and garbage.
- An adequate number of garbage receptacles and assurance that garbage will be removed on a regular basis.
- Floors, ceilings, and walls in good repair.
- Maintenance of ventilating, air conditioning and other facilities or appliances, if supplied.
- Safety from fire hazard.
- A safe premise for normal and foreseeable uses.
- Working locks for all dwelling entrances and keys for the locks.

The tenant, in addition to rental agreement provisions, is required to:

- Use the various parts of the premises in a reasonable manner considering their intended purpose and design (e.g. fires belong in fireplaces).
- Keep the premises clean, sanitary, and free from accumulations of debris, rubbish, filth, and garbage.
- Dispose of garbage, ashes, rubbish and other waste cleanly and safely.
- Keep plumbing fixtures clean.
- Use in a reasonable manner the various systems and appliances in the house - electrical, plumbing, sanitary, heating, ventilating, etc.
- Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit another person to do so.
- Assure that they and others permitted on the premises conduct themselves in a way that does not disturb the neighbors' peaceful enjoyment of the premises.

PROPERTY INSPECTION

A cornerstone of active management is the regular inspection.

Unless you inspect, you can't be sure you are meeting your responsibility to provide decent housing. In addition, maintaining habitable property protects your ability to pursue eviction, should you need to do that. The last thing you need is a tenant claiming *you* are guilty of a breach of your responsibility. If a tenant can prove that breach, you'll stand little chance in court. Conversely, if it is clear you make every effort to meet your responsibilities (and document it) a tenant will be less inclined to fight an honest eviction effort.

Further, if your rental becomes a drug house and it is a situation that regular inspections would have uncovered, you can be held responsible for that situation from the date you *should* have known and took no action. In Portland you can face penalties of up to $500 a day.

The key to successful property inspection is avoiding the adversarial position sometimes associated with landlord/tenant situations. An inspection program done properly should be *welcomed* by your honest tenants. Steps include:

1. **Serve a 24-hour notice for inspection of the property.** With such a notice, the tenant must not "unreasonably" withhold consent to your entry onto the property. If the inspection is routine, *keep the approach friendly* - perhaps call the tenant in advance and then mail the notice first class, allowing the required extra three days for delivery time. If you have serious concerns, hand the notice directly to the tenant allowing you to skip the mandatory three extra days for mail delivery. Also, *if your rental agreement allows for it,* you can attach the notice to the tenant's front door *and* mail a copy first class, also allowing you to skip the three days for delivery. While you can develop the form yourself, we suggest you use forms already developed by a property management association.

2. **Find and address code and habitability problems.** When you inspect the property, check for maintenance issues and discuss with the tenants any concerns they have. Make agreements to remedy problem areas. Then repair what needs to be fixed.

   NOTE: If a tenant is going to handle repairs or minor remodeling, make sure you specify the terms and conditions in writing - including spelling out the tenant's compensation for the work to be done. Don't pressure a tenant to handle repairs for you, or ask them to do it for free. Courts don't like landlords who avoid their obligations.

3. **Set an inspection schedule and follow it.** Every quarter or, at minimum, every six months. Inspections won't stop all activity, but will stop some of it. For example, marijuana growing needs 90 to 180 days - renters aren't going to start if they know you actively manage your property.

UTILITIES

You may stipulate in a lease that the tenant is responsible for utility bills, but if the tenant is so negligent that water, heat, or electricity is cut off, the property is no longer legally habitable (in Portland, for example, it is a violation of building maintenance code to live in a dwelling without these basic services). And *you* have a responsibility to rent habitable housing. In Portland, the Bureau of Buildings may vacate the property or require you to do so. Also, in cases where your negligence has contributed to the problem, you could be fined and/or be liable for the tenant's cost of relocating.

You have grounds for eviction if the tenants are not in compliance with a lease that stipulates they will pay their own utilities, and you may face penalties if you continue renting a unit that lacks these basic services. If the utilities are shut off, address the situation as soon as you discover it.

Note that there are some instances when the shutting down of utilities is a symptom of drug activity - as dealers or heavy users get more involved in their drugs, paying bills can become less important.

KEEP A PAPER TRAIL

Verbal agreements carry little weight in court. The type of tenant who is involved in illegal activity *and* would choose to fight you in court will know that. So keep a record of your agreements and provide copies to the tenant. Just having the tenant know that you keep records may be enough to motivate them to stay out of court. You will need to retain documentation that shows your good-faith efforts to keep the property habitable and shows any changing agreements with a tenant - dated and signed by both parties.

TRADE PHONE NUMBERS WITH NEIGHBORS

Landlords of single family residential housing sometimes don't hear of dangerous or damaging activity on their property until neighbors have written to City Hall, or the police are already planning an undercover drug buy. Quite often the situation could have been prevented if the landlord had established a better communications link with neighbors.

Find neighbors who seem responsible, concerned, and reliable. Trade phone numbers and ask them to advise you of serious concerns. You'll know you have found the right neighbors when you find people who seem relieved to meet you and happy to discover you are willing to work on problems. Conversely, if neighbors seek you out, work with them and solicit their help in the same way.

Note that landlords and neighbors tend to assume their relationship will be adversarial. Disarm any such assumptions and get on with cooperating. If you both want the neighborhood to remain healthy and thriving, you *are* on the same side and have nothing to gain by fighting each other.

PROMOTE APARTMENT WATCHES

In multi-family units, unless your tenants report suspicious behavior, you may not find out about drug activity until the problem becomes extreme. Some people - tenants and homeowners alike - are frightened to report illegal activity until they discover the "strength in numbers" of joining a community watch organization - in this case an Apartment Watch.

Apartments organized into watches often have more stable tenancies and lower crime problems than comparable complexes that are not organized. The key to building an effective *cooperative* watch is to have the property manager set it up (working in conjunction with apartment residents and a neighborhood crime prevention office). If management waits until the tenants are so fed up that they organize themselves, the relationship may be soured from the start. If management takes a proactive role in helping tenants pull together for mutual benefit, the opportunity for a positive working relationship is great.

Managers who have started Apartment Watches note these benefits:

- Lower turnover, leading to considerable savings.
- Less damage to property and lower repair bills.
- Reduced crime.
- A safer, more relaxed atmosphere for the tenants.
- A positive reputation for the complex leading to higher quality applicants and, over time, increased property values.

Tips include:

- Clean house - address serious tenant problems before calling a building-wide meeting. Until then, rely on informal communications with good tenants to help identify and address concerns.
- Budget community activities into the expense of each property and consider promotion of such activity a criterion for management evaluation.
- Hold a meeting at least quarterly. Hold "community days" or "know your neighbor days" in the summertime.
- Involve children and teenagers as well as adults.
- Invite emergency response people to a meeting - police, fire, or medical - to foster cooperation. Invite local merchants to participate as appropriate.
- Nurture a sense of "shared responsibility," rather than dependency on any one person to make the watch a success.
- Purchase a property engraver for each complex.
- Encourage nearby neighbors and apartment complexes to get involved.

WARNING SIGNS OF DRUG ACTIVITY

Unless noted, quotes are from landlords or professional property managers.

COMPLAINTS WE HAVE HEARD:

"The neighbors tell me my tenants are dealing drugs. But I drove by three different times and didn't see a thing."

ADVICE WE WERE GIVEN:

"You've got to give up being naive. We could stop a lot more of it if more people knew what to look for."
— A Drugs & Vice Detective

No part of this manual should be regarded as legal advice or considered a replacement of a landlord's responsibility to be familiar with the law. If legal assistance is required, the services of a competent attorney should be sought.

THE WARNING SIGNS OF DRUG ACTIVITY

The following list describes signs of drug activity that either you or neighbors may observe. As the list will show, many indicators are visible at times when the landlord is not present. This is one reason why a solid partnership with trusted neighbors is important.

Note also, while some of the indicators are reasonably conclusive in and of themselves, others should be considered significant only if multiple factors are present.

This list is primarily targeted to tenant activity. For information on signs of dishonest *applicants*, see the section on *Applicant Screening*.

DEALING

Dealers sell to the end user - so they typically sell small quantities to many purchasers. Dealing locations are like convenience stores - there is a high customer traffic with each customer buying a small amount.

Neighbors may observe:

- High traffic - cars and pedestrians stopping at a home for only brief periods. Traffic may be cyclical - increasing on weekends or late at night. Or minimal for a few weeks and then intense for a period of a few days - particularly pay days.
- Visitors appear to be acquaintances rather than friends.
- People bringing "valuables" into the home - televisions, bikes, VCRs, cameras - and leaving empty-handed.
- Visitors may sit in the car for a while after leaving the residence or may leave one person in the car while the other visits.
- "Lookouts," frequently younger people, tend to hang around the property during heavy traffic hours.
- Various obvious signs such as people exchanging small packets for cash, people using drugs while sitting in their cars, syringes on the lawn, or other paraphernalia lying about.

- Weeknight activity at extremely late hours - frequent commotion between midnight and 4:00 in the morning on a weeknight is an indicator that drugs may be involved. (Both cocaine and methamphetamine are stimulants - users tend to stay up at night.)

Landlords may observe:

- Failure to pay utility bills or rent, failure to maintain the house in appropriate condition, general damage to the property. Some dealers smoke or inject much of their profits - as they get more involved in the drugs, they are more likely to ignore bills, maintenance, housekeeping, and yard work.

DISTRIBUTION

"Distributors" are those who sell larger quantities of drugs to individual dealers or other, smaller distributors. They are the "wholesale" component, while dealers are the "retail" component. If the distributors are not taking the drugs themselves, they can be difficult to identify. A combination of the following indicators may be significant:

- Expensive vehicles owned by people otherwise associated with a lower standard of living. Some distributors make it a practice to spend their money on items that are easily moved - so they might drive a $50,000 car while renting a $20,000 house.

- Regular car switching, especially at odd hours - the people arrive in one car, leave it at the premises, and use keys already in their possession to get into another car and drive off.

- Pagers and cellular phones used by people who have no visible means of support.

- A tendency to make frequent late-night trips.

MARIJUANA GROW OPERATIONS

Grow operations are hard to identify from the street. In addition to the general signs of excessive fortifications or overly paranoid behavior, other signs are listed below.

Neighbors may observe:

- Evidence of residents tampering with wiring and hooking directly into power lines.

- Powerful lights on all night in the attic or basement.

Landlords may observe:

- A surprisingly high humidity level in the house. Grow operations require a lot of moisture. In addition to feeling the humidity, landlords may observe pealing paint or mildewed wallboard or carpet.

- A sudden jump in utility bills. Grow operations require strong lighting.

- Rewiring efforts or bypassed circuitry. Again, grow operations require a lot of electricity - some use 1000-watt bulbs that require 220-volt circuits. The extra circuitry generally exceeds the power rating for the house and can burn out the wiring - resulting in fires in some cases, or often, the need to rewire before you can rent the property again.

- Obvious signs such as basements or attics filled with plants, lights, and highly reflective material (e.g. tin foil) to speed growing.

CLANDESTINE LABS

Nationwide, Oregon ranks second to California in methamphetamine production. Many of our labs are located in the Portland area. Once the operator has collected the chemicals and set up the equipment, it doesn't take long to cook the drugs - about 12 hours for one batch. Clandestine labs have been set up in all manner of living quarters, from hotel rooms and RVs, to single-family rentals or apartment units. Lab operators favor units that are secluded. In rural settings it's barns or houses well away from other residences. In urban settings it might be houses with plenty of trees and shrubs blocking the views, or apartment or hotel units that are well away from the easy view of management. However, while seclusion is preferred, clandestine labs have been found in virtually all types of rental units.

Neighbors may observe:

- *Strong* ammonia smell - very similar to cat box odor (amalgam process of methamphetamine production).

- The smell of other chemicals or solvents not typically associated with residential housing.

- Chemical drums or other chemical containers with their labels painted over.

- Individuals leaving the premises just long enough to smoke a cigarette, particularly if other suspicious signs are present. Ether is used in meth production. Ether is highly explosive. Methamphetamine "cooks" get away from it before lighting up.

Landlords may observe:

- A particularly strong cat-box/ammonia smell within the house. May indicate usage of the amalgam process for methamphetamine production.

- The odor of ether, chloroform, or other solvents.

- A maroon colored residue on aluminum sashes or other aluminum materials in the house. The ephedrine process of methamphetamine production is a more expensive process, but it does not give off the telltale ammonia/cat box odor. However the hydroiodic acid involved *does* eat metals and, in particular, leaves a maroon residue on aluminum.

- The presence of flasks, beakers, and rubber tubing consistent with high school chemistry classes. Very few people practice chemistry as a hobby - if you see such articles, bells should go off.

- The presence of bottles or jugs used extensively for secondary purposes - milk jugs and screw-top beer bottles full of mysterious liquids.

- Garbage containing broken flasks, beakers, tubing or other chemical paraphernalia.

Note: *if you have reason to believe there is a meth lab in your property, leave immediately, wash your face and hands, and call Police Drugs & Vice to report what you know. If you have reason to believe your exposure has been extensive, contact your doctor - some of the chemicals involved are highly toxic. For more information about meth labs, see the following section, "If You Discover a Clandestine Lab," and refer to the* Appendix *for resource materials.*

GENERAL

The following may apply to dealing, distribution, or manufacturing.

Neighbors may observe:

- Regular visits by people in extremely expensive cars (BMW, Jaguar, Rolls, Cadillac) to renters who appear to be significantly impoverished.

- A dramatic drop-off of suspected activity within minutes after police have been called, but before they arrive (may indicate usage of a radio scanner, monitoring police bands).

- Unusually strong fortification of the house - blacked-out windows, window bars, extra deadbolts, surprising amounts spent on alarm systems. Note that meth "cooks," in particular, often emphasize fortifications - extra locks and thorough window coverings are typical.

- Motorcycle & bicycle riders making *frequent* late-night trips to and from a premise where other indicators of drug activity are being observed.

Landlords may observe:

- A willingness to pay rent months in advance, particularly in cash. If an applicant offers you six months' rent in advance, resist the urge to accept and require them to go through the application process. You might have more money in the short run, but your rental will likely suffer damage, and you will certainly be damaging the livability of the neighborhood and your long-term investment. And if they run a meth lab out of your property, you may lose every penny paid and much more.

- A tendency to pay in cash combined with a lack of visible means of support. Some perfectly honest people don't like writing checks. Most perfectly honest people, however, have perfectly honest jobs. If there is no job visible, but a lot of cash on hand, get suspicious.

- Unusual fortification of individual rooms - deadbolts and alarms on interior doors, for example.

- Requests/willingness to pay surprisingly high dollar amounts to install window bars and other fortifications.

- Presence of any obvious evidence - bags of white powder, syringes, marijuana plants, etc. Also note that very small plastic bags - the type that jewelry or beads are sometimes kept in - are not generally used in quantities by most people - the presence of such bags, combined with other factors, should cause suspicion.

- Unusually sophisticated weigh scales. The average homeowner might have a grocery scale or a letter scale - perhaps accurate to an ounce or so. The scales typically used by drug dealers, distributors, and manufacturers are noticeably more sophisticated - accurate to gram weights and smaller.

- Large amounts of tin foil, baking soda, or electrical cords. Tin foil is used in grow operations and meth production. Baking soda is used in meth production and in the process of converting cocaine to crack. Electrical cords are used in meth labs and grow operations.

THE DRUGS

While many illegal drugs are sold on the street today, the following are most common:

1. Cocaine & Crack.

Cocaine is a stimulant. Nicknames include Coke, Nose Candy, Blow, Snow and a variety of others. At one time cocaine was quite expensive and generally out of reach for people of low incomes. Today, the price has dropped to the point that it can be purchased by all economic levels. Cocaine in its powder form is usually snorted. Less frequently, it is injected.

"Crack," a smokable derivative of cocaine, produces a more intense but shorter high. Among other nicknames, it is also known as "rock." Crack is manufactured from cocaine and baking soda. The process requires no toxic chemicals, nor does it produce any of the waste problems associated with methamphetamine production. Because crack delivers a high using less cocaine, it costs less per dose, making it particularly attractive to drug users with low incomes.

Powdered cocaine has about the look and consistency of baking soda and is often sold in small, folded paper packets. Crack has the look of a small piece of old, dried soap. Crack is often sold in tiny "Ziplock" bags, little glass vials, balloons, or even as is - with no container at all. Crack is typically smoked in small glass pipes.

In general, signs of cocaine usage are not necessarily apparent to observers. A combination of the following are possible: Regular late-night activity (e.g. after midnight on week nights), highly talkative behavior, paranoid behavior, constant sniffing or bloody noses (for intense users of powdered cocaine).

Powdered cocaine usage crosses all social and economic levels. Crack usage is so far associated with lower income levels. While Los Angeles area gangs (Bloods and Crips) have made crack popular, other groups and individuals have begun manufacturing and selling the drug as well.

2. Methamphetamine.

Methamphetamine is a stimulant. Nicknames include: Meth, Crank, Speed, Crystal, STP, and others. Until the price of cocaine began dropping, meth was known as "the poor man's cocaine." Meth is usually ingested, snorted, or injected. A new, more dangerous form of methamphetamine, "crystal meth" or "ice," can be smoked. So far, the expected rise in ice usage has not been observed.

"Pharmaceutical" grade meth is a dry, white crystalline powder. While some methamphetamine sold on the street is white, much of it is yellowish, or even brown, and is sometimes of the consistency of damp powdered sugar. The drug

has a strong medicinal smell to it. It is often sold in tiny, sealable plastic bags.

Hard-core meth addicts get very little sleep and they look it. Chronic users and "cooks" - those that manufacture the drug - may have open sores on their skin, bad teeth, and generally appear unclean. Paranoid behavior combined with regular late-night activity are potential indicators. Occasional users may not show obvious signs.

Cooks tend to be lower income and may have an unpleasant urine smell about them. While many types of individuals are involved in meth production, the activity is particularly common among some motorcycle gangs.

Because of the toxic waste dangers associated with methamphetamine production, we have included an additional chapter on what to do if you discover a clandestine drug lab, as well as resource information in the Appendix. *For more information about meth, refer to those sections.*

3. Tar Heroin.

Fundamentally, heroin is an extremely powerful pain killer - both emotionally and physically. Nicknames include Brown Sugar, Mexican Tar, Chiva, Horse, Smack, "H" and various others. Heroin is typically injected.

Tar heroin has the look of creosote off a telephone pole, or instant coffee melted with only a few drops of water. The drug has a strong vinegar smell to it. It is typically sold in small amounts, wrapped in tinfoil or plastic. Paraphernalia that might be observed includes hypodermic needles with a brown liquid residue, spoons that are blackened on the bottom, and blackened cotton balls.

When heroin addicts are on the drug, they appear disconnected and sleepy. They can fade out, or even fall asleep, while having a conversation. While heroin began as a drug of the wealthy, it has become a drug for those who have little income or are unemployed. Heroin addicts don't care about very much but their next fix - and their clothes and demeanor reflect it. When they are not high, addicts can become quite aggressive. As with most needle users, you will rarely see a heroin user wearing a short-sleeved shirt.

4. Marijuana.

Marijuana is also known as Grass, Weed, Reefer, Joint, "J," Mary Jane, Cannabis and many others. Marijuana is smoked from a pipe or a rolled cigarette, and typically produces a "mellow" high. However, the type and power of the high varies significantly with the strength and strain of the drug.

The marijuana grown today is far more powerful than the drug that became popular in the late 60s and early 70s. Growers have developed more

sophisticated ways to control growth of the plants and assure high output of the resin that contains THC - the ingredient that gives marijuana its potency. Today's marijuana is often grown indoors to assure greater control over the crop and to prevent detection - by competitors, animals, or law enforcement. It takes 90 to 180 days to bring the crops from seed to harvest.

Users generally appear disconnected and non-aggressive. The user's eyes may also appear bloodshot or dilated. Usage of marijuana crosses all social and economic levels.

Marijuana is generally sold in plastic bags, or rolled in cigarette paper. The smell of the smoke has been described as a "musky" cigarette smoke.

IF YOU DISCOVER A CLANDESTINE LAB ...

Unless noted, quotes are from landlords or professional property managers.

COMPLAINTS WE HAVE HEARD:

"There was a time when I didn't even know what a 'precursor chemical' was. Now I know all about methamphetamine labs. So far it has cost me more than $10,000 to deal with one property with a meth lab on it. And we're still not done."

ADVICE WE WERE GIVEN:

"Some of the acids used in meth production don't have any "long term" effects - it's all immediate - they damage your lungs if you breathe the vapors and they'll burn your skin on contact." — A Drugs & Vice Detective

IF YOU DISCOVER A CLANDESTINE LAB...

Because methamphetamine labs represent a potential health hazard far greater than other types of drug activity, we have included this section to advise you on how to deal with the problem. This information is intended to help you through the initial period, immediately after discovering a meth lab on your property. For information about warning signs of methamphetamine labs and other drug activity, see the previous section on The Warning Signs of Drug Activity.

THE DANGER: TOXIC CHEMICALS IN UNPREDICTABLE SITUATIONS

There is very little that is consistent, standard, or predictable about the safety level of a methamphetamine lab. The only thing we can say for sure is that you will be better off if you leave the premises immediately. Consider:

- **Cleanliness is usually a low priority.** "Cooks" rarely pay attention to keeping the site clean or keeping dangerous chemicals away from household items. The chemicals are rarely stored in original containers - often you will see plastic milk jugs, or screw-top beer bottles, containing unknown liquids. It is all too common to find bottles of lethal chemicals sitting open on the same table with the cook's bowl of breakfast cereal, or even next to a baby's bottle or play toys.

- **Toxic dump sites are common.** As the glass cooking vessels become brittle with usage, they must be discarded. It is common to find small dump sites of contaminated broken glass, needles and other paraphernalia on the grounds surrounding a meth lab, or even in a spare room.

- **The chemicals present vary from lab to lab.** While some chemicals can be found in any meth lab, others will vary. "Recipes" for cooking meth get handed around and each one has variations. So we cannot say with any certainty which combination of chemicals you will find in a lab you run across.

- **"Booby traps" are a possibility.** Other meth users and dealers may have an interest in stealing the product from a cook. Also, as drug usage increases, so does paranoia. Some cooks set booby traps to protect their product. A trap could be as benign as a trip wire that sounds an alarm, or as lethal as a wire that pulls the trigger of a shotgun or a door rigged to knock two chemicals together which react to release hydrogen cyanide gas.

- **Health effects are unpredictable.** Before the law enforcement community learned of the dangers of meth labs, they walked into them without protective clothing and breathing apparatus. The results varied - in some cases officers experienced no ill effects, while in others they developed "mild" symptoms such as intense headaches, and in still others they experienced the burning of lung tissue from breathing toxic vapors, burns on the skin from coming into contact with various chemicals, and other more severe reactions. By far the most dangerous threat is that of explosion and fire. Ethyl ether, commonly used in drug labs, is highly explosive. Meth lab fires generally begin when ether vapors are sparked - the result can be instant destruction of the room, with the remainder of the house in flames.

- **Many toxic chemicals are involved.** The list of chemicals that have been found in methamphetamine labs is a long one. Some are standard household items, like baking soda. Others are extremely toxic or volatile like hydroiotic acid (it eats through metals), benzene (carcinogenic), ether (highly explosive), or even hydrogen cyanide (also used in gas chambers). For still others, like phenylacetic acid and phenyl-2-propanone, while some adverse health effects have been observed, little is known about the long-term consequences of exposure. If you desire more information about the chemicals found in methamphetamine labs and their health risks, the *Appendix* includes a list of resources you may wish to contact and documents about the chemical hazards which you may purchase.

WHAT TO DO IF YOU FIND A LAB

1. **Leave.** Because you will not know which chemicals are present, whether or not the place is booby trapped, or how clean the operation is, *don't stay around to figure it out.* Do not open any containers. Do not turn on, turn off, or unplug anything. Do not touch anything, much less put your hand where you cannot see what it is touching - among other hazards, by groping inside a drawer or a box, you could be stabbed by the sharp end of a hypodermic needle.

   Also, if you are not sure you have discovered a clandestine lab, but think you may have, don't stay to investigate. Make a mental note of what has made you suspicious and get out.

2. **Check your health and wash up.** As soon as possible after leaving the premises, wash your face and hands and check your physical symptoms. If you have concerns about symptoms you are experiencing, call your doctor, contact an emergency room, or call a poison control center for advice. (In Portland, the Oregon Poison Center is 494-8968. Outside Portland call 1-800-452-7165.)

   Even if you feel no adverse effects, as soon as is reasonably possible, change your clothes and shower. Whether or not you can smell them, the chemical dusts and vapors of an active meth lab can cling to your clothing the same way that cigarette smoke does. (In most cases, normal laundry cleaning will decontaminate your clothes.)

3. **Alert your local police.** Contact the Drugs and Vice unit of your local law enforcement. (After hours, call 911 and ask for Police.) If you are unsure of whom to call, contact your police services through their non-emergency numbers listed in your phone book. Because of the dangers associated with clandestine lab activity, such reports often receive priority and are investigated quickly. Typically, law enforcement will coordinate with the local Fire Department's Hazardous Materials team. (Once law enforcement secures the premises, they may bring in the "Haz Mat" team to assist.)

4. **Stay on top of the situation.** The guidelines governing the control and clean up of methamphetamine labs are evolving as more is understood about the hazards of the materials involved and long-term health effects of exposure. Before you can rent the property again, you will need to comply with various clean up procedures and adhere to applicable laws and ordinances.

   Begin by getting appropriate information from the law enforcement officials who deal with your unit. Also, if there are remaining issues to be addressed with your tenants, do so. (Note that, typically, the premises will be declared unfit for use, and your tenants removed. So while there may be other issues to resolve, physical removal is usually not one of them.) Basically, from this point on, you should learn about the law, your expected responsibility, and get on with fulfilling it.

LAB CLEAN UP AND THE LAW

In Oregon, changes in State and local law are placing restrictions on property contaminated by clandestine drug labs. The following is intended as a very general summary. For more detail on the law, please review the statutes directly.

- **Statewide.** Recent changes in State law make it more difficult to sell or rent property that has been used as a meth lab - essentially, until the property is cleaned to State specifications you may not sell it without first disclosing that the premise is a contaminated lab site and you may not rent the property at all. Should you fail to follow the procedure, new laws allow buyers to take necessary steps to void contracts and renters to terminate with recovery of security deposits, deposits on last month's rent and any rent prepaid for the current month. In addition, if you rent contaminated property (or sell it without disclosure) you risk substantial legal action from inhabitants who suffer adverse health effects.

  In order to rerent the structure (or sell it without disclosure) you will need to have it decontaminated in accordance with guidelines established by the Oregon Department of Human Resources, Health Division - contact the Health Division for details. Depending on the level of contamination present, clean up may be as simple as a thorough cleaning of all surfaces, or as complex as replacing drywall or even demolition of the entire structure. Whether the process is simple or complex, you will be required to use a contractor licensed by the Health Division.

  After you decontaminate the structure, you and your contractor will need to have necessary paperwork signed showing that you have met State requirements. Once you do that, barring the existence of other problems or penalties, you may rerent the property. Your best approach is to be aggressive in learning the steps you must follow and get on with returning your property to a habitable condition. Because of the range of chemicals involved, and the differing levels of contamination possible, we cannot accurately predict the length of time involve to get a contaminated property back into use.

- **Local.** Across Oregon, local governments are also adding laws that address the dangers of contamination from manufacturing methamphetamine and other drugs involving toxic chemicals during processing. In general those laws allow a governing agency to seek court orders for closure of the property until it is appropriately cleaned up.

  Here's how the Specified Crime Ordinance applies to drug labs in the City of Portland (a copy may be found in the *Appendix*): In general, the ordinance allows the City to use a court order to close the structure for a period of at least 60 days, including forbidding all entry into the building - even by the owner - for the first 20 days. The initial 20-day prohibition is intended to allow time for toxic dusts to settle and vapors to dissipate. (Note that there is some leeway in the definition of "structure" - while the City *could* close an entire multi-family

unit, unless contamination is widespread the typical approach is to close only that unit in which the activity occurred.) After the 20-day period the owner (and hired contractors) may enter the structure to clean and decontaminate it as per the State's specifications.

Bottom line: The City and the State want you to clean up contaminated drug lab sites, and they want it done *before* the property is inhabited again.

The *Appendix* includes references if you would like more information about the chemicals involved, clean up requirements, or other information pertaining to clandestine drug labs.

"YES, BUT..."

"If lab sites are so toxic, how can meth lab "cooks" live there?"

The short answer is: *because they are willing to accept the risks of the toxic effects of the chemicals around them.* Meth cooks are frequently recognizable by such signs as rotting teeth, open sores on the skin, and a variety of other health problems. Some of the chemicals may cause cancer - what often isn't known is how much exposure it takes, and how long after exposure the cancer may begin. Essentially, meth cooks have volunteered for an uncontrolled experiment on the long-term health effects of the chemicals involved. So, unless you want to be another test subject, you will have to clean up your property before you use it again.

Also, there are occasions when meth cooks are forced to leave as well. For example, reports of explosions and fires are among the more common ways for local police and fire officials to discover the presence of a lab - while fighting the fire, they discover the evidence of drug lab activity.

Finally, *you* face a different set of risks in a meth lab than does the cook. At least the cooks know something about which compounds are in which unmarked containers. They know, for example, where the dangerous chemicals are, which drawer contains hypodermic needles, and whether or not a bottle of ether is open in the house (the vapor of ethyl ether can be ignited by something as simple as the spark of a light switch and, under the right conditions, a bottle of ether could explode just by jarring it). When you enter the premises, you have none of this information, and without it, you face a much greater risk.

NOTES

EVICTION

Unless noted, quotes are from landlords or professional property managers.

COMPLAINTS WE HAVE HEARD:

"The problem is these landlord/tenant laws don't give us any room. The tenants have all the rights and we have hardly any. Our hands are tied."

"The system works primarily for the tenant - 30-day for cause is very difficult to do. The judges bend over backward to help a tenant in an FED."

"I had a case where the tenant not only dealt drugs, he also kicked down the doors of other apartments in the complex and he admitted it to the judge. The judge threw it out of court because he felt I should have filed a 72-hour notice for nonpayment, instead of a 24-hour notice for outrageous behavior. If dealing and kicking down doors isn't 'outrageous in the extreme,' I don't know what is."

ADVICE WE WERE GIVEN:

"Serving eviction papers on drug house tenants is not the time to cut costs. Unless you already know the process, you are better off paying for a little legal advice before you serve the papers, than a lot of it afterwards."

"Tell them to read a current copy of the landlord/tenant law. Too many landlords haven't looked at it in years."

"The only thing necessary for the triumph of evil is for good people to do nothing." — Edmund Burke

EVICTION

THE BASICS

Objectives: Resolve problems quickly and fairly. If eviction is required, do it efficiently. Minimize court time.

1. Don't wait. Act. If a tenant is not in compliance, address the situation immediately. **Don't let it fester.**

2. Know *how* to evict. Get a copy of landlord tenant law and *read it.* If you're not sure, don't guess - get an attorney experienced in landlord/tenant relations. Cases are often lost on technicalities. You should:

   - Know the type of eviction notices available to you.
   - Know the process for serving notices and don't be afraid to use it.
   - Understand the eviction process *including* the difference between the potential full-length process and the typical, more rapid outcome.

3. If a neighbor calls with a complaint, know how to respond.

DON'T WAIT - ACT IMMEDIATELY

Effective property management includes early recognition of noncompliance and immediate response. Don't wait for rumors of drug activity and certainly don't wait for official action against you (e.g. in Portland, the Bureau of Buildings may close the property for health violations or Drugs & Vice could mail you a warning letter about criminal activity). *Prevention* is the most effective way to deal with drug houses. Many drug house tenants have histories of noncompliant behavior that the landlord ignored. If you give the consistent message that you are committed to keeping the property up to code and appropriately used, dishonest tenants will stop believing they won't pay penalties.

- **Use the process or lose it.** Many landlords don't take swift action because they are intimidated by the twists and turns of the legal process. However, the

penalty for indecision can be high - if you accept rent after *knowing* that a tenant is in noncompliance, you may lose your legal ability to evict for that cause. You will be in your best shape if you consistently apply the law whenever a tenant is not in compliance or not meeting their responsibility under landlord/tenant law. Your position is weakened whenever you look the other way.

- **Swallow your medicine and get on with it.** Some landlords don't act for fear the tenant will damage the rental. If you do that, the situation may only get worse - you will lose what control you have over the renter's noncompliant behavior; you will lose options to evict while allowing a renter to abuse your rights; and you will likely get a damaged rental anyway - if they are the type who would damage a rental, sooner or later they will.

- **Listen to all the stories you want, but don't bend the process.** While developing this manual, we heard this story with considerable frequency: "The person *renting* the property is a nice young woman. We haven't had any problems with her. The drug dealers are friends of her boyfriend and she says she can't control them. So what do we do? *She* isn't making trouble - it's these other people." ...Ask yourself: did these "innocent" tenants contact you or the police when the drug activity first occurred? Or did they acknowledge the truth only *after* you received phone calls from upset neighbors or a warning from the Police Bureau?

  Unless the tenant contacted you, and the police, the first time drug activity occurred, pursue your eviction options. The sooner tenants who "front" for others realize they will be held responsible, the sooner they may choose to stop being accomplices to the crime.

CHOICES FOR EVICTION

What follows are general descriptions of the options available to a landlord in Oregon. Each option has a specific legal process which you must follow. For a complete definition of eviction options and serving process, review the latest version of landlord/tenant law (in Oregon, landlord/tenant law is reviewed and revised every two years with the biennial legislative session). The following descriptions generally follow the 1989 statutes:

- **30-day notice for *no* cause.** Not an option under Section 8. For month-to-month tenancies, this is your most powerful option. You may evict tenants for no cause with a month's notice, advising the tenant that you wish to free up use of the property and they therefore need to move out within 30 days. If after 30 days they have not moved out, start the court (FED) process. In general, if you have the option to serve a no-cause notice, use it - because you are not accusing the tenant of any wrongdoing, there is less to argue about if you go to court.

- **30-day notice for cause.** Requires the tenant to move out in 30 days unless, within 14, they demonstrate they have remedied the breach. If the breach can't be remedied - for example you discover the tenant lied on their application - you may serve the notice without option to remedy. Examples of breaches under this notice include material noncompliance with the rental agreement, as well as actions by the tenant or those on the premises with the tenant's permission that cause damage to the premises, health or code violations, or disturb the neighbors' peace. *Drug dealing and drug manufacturing are legitimate reasons to serve a for-cause eviction notice.*

  Note this proceeding can allow the tenant to remedy the problem, if possible, and stay on. As such, it is appropriate to use the notice to correct seriously noncompliant behavior. Don't use it for minor disagreements, but do when significant breaches or noncompliant activity occurs.

- **Section 8 - 30-day notice for cause.** Includes the kind of breaches typically associated with a 30-day notice for cause, and *after the first year*, is expanded to include such reasons as a desire to use the property for personal, family, or nonresidential rental use; or a business reason such as property sale, renovation of the unit, or desire to raise the rent. Note that these additional causes still require proof - if the tenant takes you to court, you may have to demonstrate the legitimacy of your intentions. So don't try to evict because you plan to renovate, unless you really do.

- **Ten days for pet violation.** If the renter has a dog, cat, or other animal capable of damaging people or property *and the rental agreement forbids it*, you may serve a notice to vacate in 10 days unless the pet is removed.

- **Ten days for repeat violation.** If you have already served a tenant with a 30-day for-cause notice or a 10-day pet violation notice which the tenant remedied at the time and, within six months, the tenant commits substantially the same breach again, you may serve a 10-day eviction notice with *no* option for remedying the breach. Note that in some Section 8 rentals, this second notice must be for 30-day termination instead of 10.

- **72-hour notice for nonpayment of rent.** If the tenant has not paid rent (or if Section 8, *their share of the rent*) you may serve a 72-hour notice when the rent is seven days delinquent (i.e. on the eighth day). If the tenant pays within 72 hours, they may stay in the property. If they neither pay rent nor move out, then you begin the FED process to regain the property. Be careful of accepting partial payments during the 72 hours - unless you and your tenant agree differently in writing, receipt of any portion of the rent may suspend the notice. For this reason, many landlords who serve 72-hour notices do not accept payments unless it is for the full amount.

  Note that in Oregon you may serve a 72-hour notice on a Section 8 tenant even if you have deposited the government-subsidized portion of the rent.

- **24-hour notice to vacate the property.** Applies when the tenant, someone in the tenant's control, or the tenant's pet threatens or inflicts immediate physical harm on you or other tenants; the tenant vacates the premises and people not on the rental agreement are in possession (but you haven't knowingly accepted rent from them); the tenant or someone in their control intentionally inflicts substantial damage to the premises; or any other act which is "outrageous in the extreme," *including* actions which have resulted in the landlord receiving a written notice about drug activity sent under local ordinances or state statutes.

  Note that in most private rental cases, if the tenants are involved in illegal activity, they will move out quickly, rather than fight the eviction - it won't help their drug operation to appear in court. The exception is Section 8 renters who may be inclined to fight (as described in a later section).

  24-hour notices were designed to address only the most extreme infractions. Don't use 24-hour notices lightly. But know your options if you do.

- **Mutual agreement to dissolve the lease.** A frequently overlooked method, especially useful for leases that don't allow 30-day no-cause options. Write the tenant a letter discussing the problem and offering whatever supporting or circumstantial evidence seems appropriate. Recommend dissolving the terms of the lease, allowing the tenant to search for other housing without going through the confrontation of the eviction process. Let Section 8 renters know that mutual agreement to dissolve the lease is permissible under the program and does not threaten eligibility.

  Make sure the letter is evenhanded - present evidence, not accusations. Make no claims that you cannot support. Have the letter reviewed by an attorney familiar with landlord/tenant law. Done properly, this can be a useful way to dissolve a problem to both your tenant's and your own satisfaction without getting tied up in a lengthy court process. Done improperly this will cause more problems than it will solve. Don't try this option without doing your homework first.

  Again, if illegal activity is going on, most tenants will take the opportunity to move on without making more waves.

HOW TO SERVE NOTICE

When an eviction notice is served, quite often the tenant moves out and the procedure is complete. However, in those cases where a tenant requests a trial, the details of the eviction process will be analyzed. As one landlord put it: "90% of the cases lost are not lost on the bottom-line issues, but on technicalities." A translation: *even if you have police testimony that the tenants are dealing drugs, you still have to serve the notice correctly.*

Each of the eviction options includes a legal process which you must follow. In addition, the process may also be affected by the provisions of your rental agreement or Section 8 contract (if applicable). Begin by reading and rereading your rental contracts and landlord/tenant law - one of the best tools you can develop is a comfortable, working knowledge of the law. In any eviction, you should take the following steps:

1. **Start with the right form.** When available, use forms already developed for each eviction option. Forms that have been written and reviewed for consistency with state law are available through the organizations noted in the *Appendix.*

2. **Fill it in correctly.** If it is a for-cause notice, you must cite the specific breach of landlord/tenant law or section of the rental agreement which the tenant has violated. In addition, briefly describe the tenant's noncompliant behavior. You will need to have the correct timing of the notice recorded. There will be other elements to include. For example, if it is a Section 8 rental, you may need to note that a copy of the notice is being delivered to the local Housing Authority.

3. **Time it accurately.** Many cases are lost because a landlord did not extend the notice period to allow for delivery time, did not wait the correct number of days to serve a nonpayment notice, or did not accurately note the timing of the process on the notice itself. Check landlord/tenant law, your rental agreement, and your Section 8 contract (if applicable) to assure you are timing the notice properly.

4. **Serve it properly.** Again, check the law and your contracts to assure the process is correct. Here are the basic options in Oregon:

   - **Hand delivery.** If you place the notice directly into the tenant's hands, timing begins immediately.

   - **First class mail.** If you don't want to go onto the property, you can mail the notice via first class mail. Mark the outside of the envelope with a return address and "please forward." *Don't use certified mail* - recent changes in landlord/tenant law require you to mail first class only. You may, however, want to get a *certificate of mailing* as evidence a letter was sent.

     Note also that you must add three mailing days for delivery, even if it is a 24-hour notice. In addition, you may need to add *another* three days if a mailed response is required - e.g. a 72-hour notice requiring payment sent to a P.O. Box. You will shorten the length of notices considerably if you hand deliver.

- **Post and mail.** Depending on the type of notice and wording of your rental agreement, some "post and mail" notices can be timed the same as hand delivery. If the tenant is not available, mail a copy first class and secure a second copy to the tenant's front door - have the same person do both on the same day. Make sure you get a same-day postmark and that the envelope is marked as noted above. If your rental agreement allows it, post-and-mail may be used on notices for 72-hour nonpayment, 24-hour inspection, and some types of 24-hour eviction. They may not be used for any other type of notice.

5. **Don't guess - get help.** Unless you are comfortable with the process, consult with an attorney *who is well experienced in landlord/tenant law* before you serve an eviction notice. If you have drug activity on your property, you already have a major problem. Now is not the time to cut corners in order to save money. Using the correct legal process could save you thousands in damages, penalties, and legal fees down the road.

THE EVICTION (FED) PROCESS

Pronounced *"F.E.D."* the letters stand for "Forcible Entry and Wrongful Detainer" (the *W*, apparently, is silent). Technically you are suing for recovery of your property because the tenant has *wrongfully detained* it. The following is intended as a "layman's" overview of the process. It is only an introduction - read landlord/tenant and FED laws for detail and, until you are familiar with the process, consult an attorney who specializes in the subject.

1. Begin by serving the notice in the manner described earlier. Make sure you do it correctly. Then wait for the tenant's response.

2. If the tenant remedies the problem (if allowable) or moves out, you are done. If not, after 24 hours, 72 hours, 10 days, or 30 days (depending on the type of notice) you go to step 3. *However, most eviction notices are resolved at this stage.*

3. File FED papers with the county clerk on forms they provide, noting your reason for eviction and attaching a copy of the notice you served. Pay a filing fee and a fee for service of summons - generally totalling just over $50.

4. The clerk sets a court appearance date that is generally eight to ten days in the future and mails a summons to your tenant. In addition, a "process server" delivers the summons and complaint - handing it to the tenant (if in) or fixing it securely to the tenant's front door (if not in).

5. On the appearance date, the judge gives the parties the chance to resolve the issue through private discussion and through mediation. If a resolution is not reached, the judge may give the tenant a two day continuance to get an attorney and reappear. After either the first or second appearance, depending on the circumstances, if no resolution is reached, the judge sets a trial date, no more that 15 days after the appearance date. If you, or your legal representative, should fail to show for your appearance date, you lose by default. If the tenant, or a legal representative, doesn't show, you win by default.

   Of the cases that make it to the first appearance in FED court, most are resolved without a trial - either by default or by mutual agreement of the two parties. Quite often these agreements define a date for vacating the premises and determine which party will cover the court fees. The court then issues a "Judgment of Restitution" consistent with that agreement.

6. The trial is held. *Few cases make it this far.* The most frequent tenant defenses are: the landlord didn't comply with his/her responsibilities; the eviction is retaliatory for some legitimate action taken by the tenant; the eviction notice was not served legally.

   If the decision is in your favor, a "Judgment of Restitution" is issued which orders the tenant to move out and directs repayment of various court costs. If the tenant *still* doesn't move out, you can take your judgment to the county sheriff, fill out the necessary papers, pay another fee, and direct the sheriff to remove the tenants. The sheriff will then serve your tenant with a three day notice (longer if weekends or holidays are involved) and allowing another day for delivery. If the tenant doesn't move out at the end of the sheriff's three days, then the sheriff may forcibly remove them.

   If you lose, you will likely pay the tenant's legal costs and you will not be permitted to file a no-cause eviction notice against the tenant for at least six months. Unless the tenant doesn't pay the rent or commits a major violation of landlord/tenant law, evictions attempted within six months after a failed FED attempt will automatically be considered retaliatory.

If you add it all up, it can take a month or more *after* the end of the notice period to remove tenants who choose to fight your eviction - assuming you win the case. But again, very few evictions make it all the way to a trial. If you meet your responsibilities as a landlord and serve your notices correctly, defense attorneys will be unlikely to advise their clients to fight. Again, if you serve the notice correctly, you may save considerable expense in the long run.

IF A NEIGHBOR CALLS WITH A COMPLAINT

1. A neighbor calls to say they suspect drug activity at your rental. Take this action:

   - Don't be defensive and, equally, don't jump to conclusions. Your goal is to get as much information as you can from the neighbor about what they have observed. You also want to avoid setting up an adversarial relationship - if it *is* drug activity, you need to know about it.

   - Promise that you will not reveal their name to the tenant without prior permission, unless subpoenaed. *Keep this promise.*

   - Ask for:

     -- A detailed description of what they have observed.

     -- A letter documenting what has been observed, sent both to you and to Drugs & Vice.

     -- Names of other citizens you can call who could support what they are seeing. Also ask that they encourage other neighbors to contact you immediately - explain that if you can hear from others, then you can tell the tenant that neighbors (*plural*) have contacted you. Emphasize that this is for their protection, as well as the importance of collecting enough information to be able to support action.

     -- Name, address, and phone number.

   A single call from one neighbor doesn't necessarily mean your tenants are doing anything illegal. However, a single call *is* justification to pursue the matter further. You need to find out: Do you have drug activity or don't you? And you need to find out quickly. From this point on, if you have a drug house, your inaction could lead to fines or closure of the property.

2. Get in touch with other involved neighbors and find out what their perceptions are. It is likely, even if your tenant is running a high volume dealing operation, that some neighbors will not suspect illegal activity - many citizens are unobservant or give their neighbors a wide benefit of the doubt. However, it is equally unlikely that no other neighbors will know what is going on.

3. Collect data through other channels as seems appropriate - contact a district officer for your area and contact the Drugs & Vice division of the Police Bureau. Determine what if anything they have on record that can be revealed (see separate section on *The Role of the Police* for details). Consider a 24-hour notice to inspect the property for maintenance.

4. If you discover that your tenant is clearly innocent, recontact the neighbor who called and discuss it with them. If you discover no drug activity but strong examples of disturbing the neighbors' peace or other violations, don't let the problem fester - serve the appropriate notices. Likewise, if you become confident your property is being used for drug activity, don't wait for someone else to force the issue. Pursue it yourself. Here are some options:

   - Advise Police Drugs & Vice of your findings and your plan of action.

   - If you have the option, deliver a 30-day no-cause notice. It is a legal, clean, and non-adversarial approach. The tenant has little to fight over because you are not claiming any noncompliant action.

   - If it is not a month-to-month rental, pursue one of the following:

     -- 24-hour eviction notice. If conditions allow, serve it.

     -- 30-day notice for cause. "Cause" in this case may be drug activity if you have neighbors or police willing to testify, or it could be disturbance of the right of neighbors to peaceful enjoyment of the premises, or any other significant issue of noncompliance *which you have discovered since cashing the last rent check* - if you have drug activity, an inspection will likely reveal a failure to maintain the property as provided in the rental agreement, additional people living in the house, or some other noncompliant behavior.

     -- Mutual agreement to dissolve the lease.

   Of course, if the tenant isn't paying rent, you should have already served a 72-hour notice for nonpayment of rent on the eighth day after the rent was due.

...Finally, if you evict someone for drug activity, *share the information.* Landlords who are screening tenants down the road may not find out about it unless the information is documented. If it is a Section 8 renter, make sure the Housing Authority has a letter from you on file. Also contact the credit reporting service you use to advise them of the circumstances.

NOTES

THE ROLE OF THE POLICE

Unless noted, quotes are from landlords or professional property managers.

COMPLAINTS WE HAVE HEARD:

"The problem is the police won't get rid of these people when we call. We've had dealers operating in one unit for four months. The other tenants are constantly kept up by the activity - even as late as 2:00 or 3:00 in the morning on weeknights."

"I called Drugs & Vice about one of my properties. They wouldn't even confirm that anyone suspected activity at the place. A month later they raided the house. Now I'm stuck with repair bills from the raid and can't recover a penny from the police. If they had just told me what they knew, I could have done something."

ADVICE WE WERE GIVEN:

"In almost every case, when the police raid a drug house, there is a history of compliance violations a mile long for which any active landlord would have evicted the tenant." — Drugs & Vice Detective

THE ROLE OF THE POLICE

THE BASICS

Objectives: Have a working knowledge of how the Drugs & Vice Division deals with drug houses. Know how to work with the system to assure rapid problem resolution.

1. Know how to work with the police, but don't expect cooperation when your (civil) concerns and their (criminal) concerns conflict.

2. In Portland, don't treat a letter from the Drugs & Vice Division as an early warning - treat it as a *final* warning. Take action immediately.

3. The Portland Police send out four types of letters to landlords. Know how to react to each.

DEFINING THE ROLES - LANDLORDS & POLICE

It is a common misperception that the police are able to evict tenants involved in illegal activity. In fact, only the landlord has the authority to evict; the police don't. The police may arrest people for *criminal* activity. But arrest, by itself, has no bearing on a tenant's right to possess your property.

Eviction, on the other hand, is a *civil* process - you are suing a tenant for possession of the property. Note the differences in level of proof required: victory in civil court requires "a preponderance of evidence" - the scales must tip, even slightly, in your favor. Criminal conviction requires proof "beyond a reasonable doubt" - a much tougher standard. Therefore, you may find yourself in a position where you have enough evidence to *evict* your tenants, but the police do not have enough evidence to *arrest* them. Further, even if the police arrest your tenants, and a court convicts them, you still must evict them through a separate process - or, upon release, they have the right to return and live in your property.

Many landlords are surprised to discover the degree of power they have in preventing and closing down drug houses, thus eliminating their threat to the health of a neighborhood. As one police captain put it, "Even our ultimate action

against a drug house - the raid and arrest of the people inside - will not solve a landlord's problem, because the tenants retain a legal right to occupy the property. *It's still their home* until they move out or the landlord evicts them. And, as is often the case, those people do not go to jail, or do not stay in jail long. It's surprising, but the person in our community with the most power to end an individual drug house problem is the property owner - the landlord. Ultimately *he* can make the people not be there anymore. The police can't do that."

The only time law enforcement may get involved in eviction is to enforce the *outcome* of your civil proceeding. For example, when a court issues a judgment requiring a tenant to move out and the tenant refuses, the landlord can go to the sheriff (or other appropriate law enforcement agency) and request that the tenants be physically removed. But until that point, law enforcement cannot get directly involved in your eviction process. However, the police *may* be able to provide information or other support appropriate to the situation - e.g. testify at the trial, provide records of search warrant results, or stand by while you serve notice.

Again, criminal arrest and civil eviction are unrelated - the only connection being the possibility of using arrest or conviction records as evidence in an eviction trial. No matter how serious a crime your tenants have committed, eviction remains your responsibility.

WHAT TO EXPECT

If district officers or officers at the Drugs & Vice Division don't know you, they are unlikely to give you information about suspected activity at your rental. And, if your rental is under investigation, they may not give out any information at all. Whatever information can be shared will be done after the person you speak with is satisfied you are an honest landlord. You may need to go to the Drugs & Vice Division in person; or you might get a referral from a district officer.

Keep in mind: the Drugs & Vice Division exists to fight drug activity and not necessarily to help landlords out of a tight spot. For example, if the police are planning a major raid on your unit, they aren't going to provide you with evidence for eviction beforehand - even though you are going to pay the cost of any damage done during the raid. (Technically, you can require your tenants to pay for the damages, but collecting payment may be difficult.)

However, in many instances you *can* get assistance - from advice about what to look for on your property, to documentation and testimony in your eviction proceeding. But it is not the obligation of the police to collect information necessary for you to evict problem tenants. Again, eviction is your responsibility, while criminal arrest is the responsibility of law enforcement. If neighbors are shouting that you have drug activity or other dangerous situations in your rental, investigate and take action. Don't wait for the police to rip out your front door while serving a search warrant. Don't wait for a letter threatening to fine you $500 a day and close you down for a year. Take action.

Bottom line: If you aren't finding out about drug activity until the Drugs & Vice Division tells you, it is unlikely you are actively managing the property. For the police to be sending you a letter, they have likely received a number of complaints - complaints you should have received as well.

THE LETTERS

When the Portland Police Bureau's Drugs & Vice Division decides to take action on a property, they make a choice: to pursue it criminally, civilly (through the landlord), or both. If part of the process includes finding a civil solution (i.e. removing the menace from the neighborhood by encouraging the landlord to evict the tenants) they will contact the landlord. When the Drugs & Vice Division chooses to send out letters, they typically send out one of the following four. Keep in mind, however, a letter is not sent out for every drug house situation.

When each of the following letters is sent, it is sent to you *and* to the tenant. Here's what the letters are, and what you should do about them:

1. **Certified Letter.** This letter will inform you that you have 10 days to remedy the problem in your rental or you will be subject to closure of your property for up to one year and fines of up to $500 a day from the first day you were aware there could be a problem and took no action.

   What to do: Serve a 24-hour eviction notice. The fastest option is to hand deliver it, or if your rental agreement allows for it, mail a copy and attach another to the tenant's front door. If you are frightened to go onto your property under these circumstances, find out if a police officer can "stand by" while you do it. An alternate choice is to mail the notice, but you will need to add three additional days (required by law) to account for mail delivery. If the tenants don't move out, pursue the full FED process with all possible speed. Oregon landlord/tenant law now recognizes a certified letter sent to you under the Specified Crime Ordinance as solid proof of drug activity - a tenant has very little defense. And if you don't act, you could find yourself in trouble fast.

2. **A "Hot Pop" letter.** Lets you know the police have arrested a person on your premises for drug activity (selling or manufacturing). (The letter won't *say* "hot pop." "Hot pop" is police jargon for going into a drug house, making a single buy and then arresting the dealer on the spot.)

   What to do: If the person arrested is one of your tenants, you may have grounds for filing a 24-hour eviction notice. You have evidence presented by the Police Bureau of drug activity by your tenant - if it goes to trial, a 24-hour eviction for "outrageous behavior in the extreme" can be reasonably argued. However, practically speaking, if your tenants are dealing, they're probably going to move out rather than ask to see you in court.

If the person arrested is not one of your tenants, explore your options, then act. Serving a 24-hour notice may well result in the tenant moving out, but should he chose to fight, a good lawyer may put up an effective defense. If you have the option, you may also serve a 30-day no-cause eviction. If you don't have that option, serve a 30-day for-cause notice that allows the tenant to remedy the behavior instead of moving out - it is the best you can do.

3. **A notice that a search warrant for drug activity has been served.** This letter advises you that police have served a search warrant for drug activity. It will hold in court with roughly equal strength to a "hot pop" letter - and stronger if a considerable amount of drugs were seized or arrests were made on particularly serious charges.

   What to do: Again, quickly consider your options and then act. You may be in a position to serve a 24-hour eviction notice. If not, serve a 30-day no-cause notice or a 30-day for-cause eviction.

4. **A warning letter.** The letter will state that the police have received information suggesting there is drug activity on the property, and will advise you that, if further investigation reveals that drug activity is occurring, civil proceedings (Specified Crime Ordinance) will be pursued.

   What to do: Again, move quickly - you need to determine in a hurry whether or not your tenants are involved in drug activity and act accordingly. Down the line you may need to prove that you began efforts to remedy the situation from the moment you received the letter, if not *before*. Inspect your property. If you find significant damage to the property, or other grounds for a 24-hour eviction, serve it immediately - you may use the letter as *supporting* evidence in court. (Generally, this letter is submissable as supporting evidence, but is not sufficient grounds for eviction by itself.) You may also use the letter in combination with the testimony of neighbors to support your case for a 24-hour notice or a 30-day for-cause eviction, depending on the circumstances.

   If you have the option, consider a 30-day no-cause notice. If you don't have that option, explore others. Send a copy of the letter to the Housing Authority, if the renters are on Section 8. Ask neighbors to describe the kind of activity they have seen. Ask neighbors to watch. Call and speak with your tenant about the activity mentioned in the letter - consider using a recording device on the phone (legal in Oregon provided at least one end of the conversation is aware of the recording). Keep a constant lookout for significant breaches of compliance and begin an eviction proceeding if basis is found. (In most cases, by the time the police send out a letter, the tenants have already committed noticeable violations of their rental agreement or landlord/tenant law.) Note that significant disturbance of the right of neighbors to peaceful enjoyment of their property is basis for a 30-day for-cause proceeding.

THE SECTION 8 PROGRAM

Unless noted, quotes are from landlords or professional property managers.

COMPLAINTS WE HAVE HEARD:

"A big problem is Section 8 [government subsidized rent]. You'd think the Federal Government would keep drug dealers out of their program. Have you ever tried to evict people from a drug house rented under Section 8? You just can't do it."

ADVICE WE WERE GIVEN:

"Few landlords realize it, but you can screen a Section 8 renter the same way you screen any other tenant. Most don't screen them for rental history - either because they don't know they can, or because they are too excited about the guaranteed rent check."

"For landlords the message is simple - bottom line, if you screen your tenants, Section 8 is a very good program." — Section 8 Program Director, Housing Authority of Portland

THE SECTION 8 PROGRAM

The term "Section 8" describes a number of Federal subsidy programs that allow people of limited means to rent housing. The tenant pays a portion of the rent, while the Federal Government pays the rest. The Section 8 program is under the control of the U.S. Department of Housing and Urban Development (HUD) and administered locally by Public Housing Authorities.

THE BASICS

Objectives: Make an informed decision about whether you want to rent through Section 8. Understand the legal and practical differences between publicly subsidized and private renting. Have the same success rate as can be expected with private rentals.

1. Before renting through Section 8, learn about the program's benefits and drawbacks.

2. Recognize that publicly subsidized renters tend to have broader rights and, for compelling reasons, are more likely to fight eviction.

3. Read your contracts carefully - there are significant differences from private rental contracts.

4. Assure that applicable lease provisions, noted in the chapter on *Rental Agreements*, are added to the local Housing Authority's model lease.

5. Pursue the additional steps suggested for screening Section 8 applicants.

SOME BENEFITS

1. **Reliable rent.** A large portion of the rent, and sometimes all of it, is guaranteed by the Federal Government. So, once the paperwork is processed, you'll get the subsidy portion on time, every month. Also, assuming you screen your applicants responsibly, your tenants should be able to pay *their* portion on time since the amount is predetermined to be within their means.

2. **"Fair Market Rent."** HUD and local Housing Authorities work to assure that subsidized rents do not exceed comparable private rentals in the area. For landlords who are not aware that higher rents are more typical, it may be a pleasant surprise to discover the room to raise your rates. Those who are

charging rates comparable to other nearby rentals will receive similar amounts under Section 8. Those who attempt to "lead" the market in price may suffer somewhat.

3. **Vacancy loss and damage protection.** If your tenant moves out without notice, or moves out as a result of a for-cause eviction, you may be eligible to receive compensation for lost rent. Under the "certificate" program, you will receive the full amount of the rent left unpaid in the first month, and 80% of the second month's rent. Under the "voucher" program, only the portion left unpaid in the first month will be reimbursed.

   Also, if a tenant harms your rental and you are unable to recover damages directly, you may file a claim with the Housing Authority for partial reimbursement.

4. **Assistance in addressing illegal activity.** When neighbors call to complain of illegal activity, take careful notes yourself *and* encourage them to report the information to the Housing Authority as well, preferably in writing. If callers are nervous about writing down the complaint, encourage them to find the "safety in numbers" of having multiple neighbors sign the letter. You should also report the call to the Housing Authority yourself.

   If the Housing Authority of Portland (HAP) receives credible complaints, they will contact Police Drugs and Vice, inspect the property, and schedule a conference with the tenant. If the tenant does not allow the inspection or is unwilling to attend the conference, or if clear evidence of dangerous criminal activity is discovered, HAP has the authority to terminate the tenant's assistance. Such termination should give you ample cause for eviction. (Approaches may vary somewhat at different Housing Authorities; nevertheless, you should be able to get similar assistance in other jurisdictions.) The process is not immediate, and it includes a careful review procedure. But be assured that HAP is committed to moving those involved in illegal activity off the program and opening space for honest people who need assistance.

   While you may receive support in this area, remember that the Housing Authority can't do your work - *even if payments are terminated, evicting the tenant remains your responsibility.* The method of eviction will depend on the circumstances, but generally, if subsidy payments are stopped, a landlord will be able to evict for either nonpayment of rent or a violation of the lease.

   Also, while the Housing Authority can help, don't treat the assistance as a crutch. If you have cause to serve an eviction notice (e.g. significant damage to the unit, failure to pay their portion of the rent, disturbance of the neighbors' right to peace, or sufficient evidence of drug activity), don't wait for HAP to terminate payments. Take action on the evidence you have.

5. **Social service referrals.** The Housing Authority can provide referrals for tenants who experience a period of personal crisis. For example, should an otherwise reliable tenant develop problems making payments on time, the Housing Authority may be able to connect the tenant with an agency which can help solve the problem and get the person back on more stable footing.

6. **Landlord support trainings.** The Housing Authority of Portland provides trainings on a quarterly basis for participating landlords. Examples of topics include: program procedures, housing quality standards, review of available property improvement programs (such as weatherization loans), and the Section 8 claims procedures. Topics are, in part, selected by requests from participating landlords, so you are encouraged to call in your recommendations.

   In addition, HAP provides a newsletter for participating landlords, providing updates on the program and tips on property management.

7. **Serving the public good.** Those landlords who meet their responsibilities *and* require Section 8 tenants to do the same provide a valuable service to the community - by renting decent housing to good citizens who otherwise could not afford it.

SOME CAUTIONS

1. **Extra screening time is required.** Proper screening of the tenant's background will require extra days to allow for the processing of written requests (from you to the Housing Authority) about a tenant's rental history. And, in general, there is additional paperwork involved.

2. **The "model leases" provided by the Housing Authority may lack some safeguards.** The model leases are written to match HUD's requirements and won't necessarily include all provisions you consider important. For example, in Oregon, without the necessary lease provision, you may not "post and mail" 72-hour and 24-hour notices (see *Eviction*). Many landlords don't realize they are entitled to attach additional conditions to a Section 8 model lease. The chapter of this manual on *Rental Agreements* includes valuable lease provisions, most of which you may incorporate to address these issues.

3. **Tenants may face a financial cost for revealing additional roommates.** Section 8 renters are required to tell the Housing Authority of any new roommates *and* reveal those people's income. This could result in a lowering of subsidy. For those renters who are not honest, this can be a disincentive to admit the presence of other people in the house.

4. **The lease is permanent - 30-day no-cause evictions are not allowed.** Under Section 8, all evictions must be for cause. During the first year landlords must use one of the for-cause notices outlined in landlord/tenant law to terminate the lease (see *Eviction*). After 12 months, the landlord has additional "good cause" eviction options such as personal, family, or nonresidential rental use; or a business reason such as property sale, renovation of the unit, or desire to raise the rent. But at no time may you evict without cause. Note that the tenant is bound by the same type of for-cause termination in the first year, but is allowed to submit a 30-day no-cause notice any time after one year.

5. **Evictions are likely to be more complicated.** ...because the tenant is more likely to fight. The technical differences result in the following practical results:

   - **Section 8 renters tend to be better informed of their rights.** While the Housing Authority cannot act as advocates for tenants, they do assure that renters are aware of their basic legal options and recommend that they seek the advice of an attorney. For reasons noted below, many do.

   - **If evicted, Section 8 tenants may have more to lose.** ...because eviction could cost their eligibility for subsidized rent. Section 8 renters facing for-cause eviction may fear the possibility of losing the only reliable source of shelter they have. In reality, the grounds for eviction are often not sufficient to remove the tenant from the program as well; but *fear* of that action may exist nevertheless. To private renters, the financial impact of eviction is minimal - they will gain a blot on their rental records, but the monetary price is small. So they may be more willing to vacate the property rather than stay to fight the landlord. In contrast, given the possible stakes, Section 8 renters may be more likely to fight.

   - **Section 8 renters may have less motivation to mitigate court costs.** Like most citizens with limited income, Section 8 renters typically qualify for free legal counsel in some form. So while you and private renters of greater means may share a motivation to keep legal costs low, Section 8 renters may not.

SOME MISCONCEPTIONS

The Housing Authority prescreens their applicants along the same guidelines that a landlord should use.

False. The Housing Authority screens only for program eligibility (primarily income level). It is up to the landlord to screen the tenant - assure they can pay the remainder of the rent, check their rental record through previous landlords, and run all other checks the same way you would with a private renter. You are not only legally permitted to, you are *expected to.* Screening applicants, subsidized or not, is both your right and your responsibility: you are entitled to turn down Section 8 applicants who do not meet your screening criteria and accept those who do. Even guaranteed rent is not worth it, if drug dealing tenants move in.

72-hour nonpayment notices cannot be served on a Section 8 renter.

False. In Oregon, if tenants do not pay their share of the rent, you may serve a 72-hour nonpayment notice, *even though you have received and deposited the subsidy check.* In the past, you had to arrange separate checks from the Housing Authority and then not cash the tenant's subsidy check as well. Recent legislation now allows a landlord to keep the subsidized portion of the rent and serve the 72-hour notice on the tenants for their portion of the rent.

The Housing Authority will not testify in court.

False. If you are going to court, the Housing Authority will not volunteer to testify - they are required to stay neutral in court actions between landlords and tenants. However, while the Housing Authority cannot act as advocates for landlords, they have no desire to protect tenants involved in drugs or other dangerous illegal activities.

If you want support from the Housing Authority in a court case, you will likely need to subpoena them, at which point they will share pertinent information.

If you evict tenants for drug activity, the Housing Authority will simply let the same people rent again elsewhere.

False. New HUD guidelines allow local Housing Authorities to terminate assistance to tenants involved in felony-level manufacture, sale, distribution, possession, or use of illegal drugs. The same guidelines also apply to tenants involved in violent criminal activity.

SCREENING SECTION 8 APPLICANTS

In addition to following the screening steps described earlier, you should check a Section 8 applicant's background with the local Housing Authority. Here's how it works in Portland:

First, require the applicant to sign a waiver allowing the Housing Authority to provide you information from the applicant's file. (A copy of the form may be found in the *Appendix*.) Send the signed waiver to the Housing Authority along with a letter listing *specific* questions regarding the applicant's rental history. *If you ask for "all the information in the file," the Housing Authority will provide nothing.* But if you ask specific questions, the Housing Authority will respond in writing. (In addition to listing other specific questions, some landlords send a copy of the applicant's rental application and ask that all information be verified.) Suggested questions include:

1. Verification of names, addresses, and phone numbers of previous landlords listed on your application.

2. Previous addresses and length of occupancy for all properties the applicant has resided in since beginning with the Section 8 program.

3. Whether a claim has been paid on behalf of the applicant for unpaid rent or excessive move-out charges.

4. Whether the tenant has ever violated the conditions of a prior lease or rental agreements.

5. Whether there are recorded complaints alleging the applicant, any other person in the household, or visitors have been involved in manufacturing, distributing, or using a controlled substance while on rented property.

6. Whether the tenant has been through a successful FED (court ordered eviction) in the last five years, and if so, the basis for the action.

7. Other names the participant may have used with Section 8.

8. The number and type of complaints, if any, dealing with noncompliant activity, including but not limited to: disturbance of the right of neighbors to enjoy the premises; drug use, dealing, or manufacturing; damage to the property beyond normal wear; gambling or prostitution; violence or threats to landlords or neighbors; allowing persons not on the lease to reside on the premises; failure to give proper notice when vacating the property.

These questions should sound familiar. Ask any question that deals with a condition of your screening criteria. Ask it in writing and wait for the response before renting. This is why you may need to allow extra days for screening Section 8 applicants. Combining these steps with the other screening techniques discussed earlier should significantly increase the odds of your selecting a responsible tenant.

APPENDIX

No part of this manual should be regarded as legal advice or considered a replacement of a landlord's responsibility to be familiar with the law. If legal assistance is required, the services of a competent attorney should be sought.

APPENDIX

The following are resource tools that you may wish to use as you pursue your property management goals. Please note that we have not attempted to verify the nature, scope, or quality of every resource listed. Also, in developing this list we have made no effort to assure that it is inclusive. Future versions of this manual may include an expanded resource list.

RENTAL HOUSING/PROPERTY MANAGEMENT ASSOCIATIONS

There are two in the Portland area that provide various services to landlords - they sell forms, provide continuing education, lobby the legislature, offer credit checks, and provide various other services. The level of service and ability to advise varies.

- **Multi Family Housing Council of Oregon**
  15555 SW Bangy Road, Suite 207
  Lake Oswego, OR 97035
  (503) 684-2717
  Executive Director: Emily Cedarleaf

  For general questions about landlord/tenant law, call MFHC's landlord/tenant hotline at: 299-5739. For any other inquires, or for additional assistance in more serious situations, contact MFHC's main office. The MFHC serves the entire state.

- **Oregon Apartment Association**
  4300 NE Broadway, Suite 5
  Portland, OR 97213
  (503) 249-1728
  1991 President: Barbara Adler

  The OAA is the Portland area chapter of the Affiliated Rental Housing Association network - there are other ARHA organizations around the state.

- A third organization, the Resident Managers Association, was formed in 1989. Contact T.J. Bailey, 1990 Chair, for details.

  Resident Managers Association
  6164 SW Lombard
  Beaverton, OR 97005
  (503) 643-5225

SCREENING SERVICES

There is no section in the phone book for "Tenant Screening Companies." You will find them under different headings, depending on the scope of services and the preferred heading of the business, including:

- **Real Estate Rental Services.** Some of these will be services to renters, rather than landlords.

- **Property Management.** In addition to tenant screening firms, this category includes everything from commercial real estate management firms to residential management companies.

- **Credit Reporting Agencies.** Some specialize in tenant verification, some concentrate on the credit reporting needs of other types of businesses.

APARTMENT WATCH

For guidance in setting up an apartment watch in your complex, contact the Neighborhood Crime Prevention office for your geographic area:

North Portland	823-4098
Inner Northeast Portland	823-4763
Central Northeast Portland	823-3156
Southeast Uplift	232-0010
Southwest Portland	823-4592
Northwest Portland	223-3331
Downtown Portland	295-0912
East Portland	256-0014
Neighborhood Crime Prevention, Program Coordinator	823-3048

FORMS TO PICK UP

The following list shows the kind of forms you should be using to manage your property. We recommend that you don't leave this up to chance, but instead purchase forms developed by those who have been involved in landlord/tenant law development.

Starter Pack: You may want to purchase all of these forms and have them on hand to use them as needed:

- Rental Application
- Applicant screening/verification checklist
- Rental agreement
- Deposit receipt
- Check in/check out and final accounting
- Notice of termination of tenancy (30-day no-cause)
- 72-hour nonpayment of rent
- Maintenance & repair request
- Pet agreement
- 24-hour notice of entry
- Smoke detector testing verification
- Late payment and partial payment notice

Other forms: If you don't want to buy these in advance, purchase them as needed - if necessary, in the same day go to the supplier during business hours, pick up the form and use it.

- Emergency entry notice
- Abandoned property notice
- 24-hour eviction
- 30-day for-cause eviction
- Notice of rent increase
- Pet violation notice and pet violation termination
- Notice of disturbance
- Partial payment receipt
- Tenant's 30-day notice
- Confirmation of 30-day notice

DRUG LAB CLEAN UP

The first thing to do when you suspect the existence of a methamphetamine lab on your property is to call local law enforcement. A list of resources you may need is included below. On the following page is an order form for additional information about drug labs. Both the list and the forms are courtesy of the Oregon Health Division.

OREGON AGENCIES TO CALL FOR ADVICE AND ASSISTANCE:

EMERGENCY: ..... USE 911 WHEREVER AVAILABLE

Local Police or Sheriff's office ..... see local phone directory
Local Fire Department ..... see local phone directory

Oregon Poison Center:
- In Portland 494-8968
- Outside Portland 1-800-452-7165

Oregon Emergency Response System (OERS) 378-4124

OTHER ASSISTANCE OR ADVICE:

Local County Health Department ..... see local phone directory
Environmental Services ..... see local phone directory
Private chemical testing laboratories ..... see local phone directory

State of Oregon Agencies:

Accident Prevention Division 378-3272
Board of Pharmacy 229-5849
Board of Police Standards & Training 378-2100
Building Codes Agency 378-8319
Criminal Justice Services Division 378-4123
Department of Environmental Quality 229-5372
Department of Insurance & Finance 378-4636
Fire Marshal's Office 378-2885
Health Division 229-5821
Public Utility Commission 378-2962
State Police Narcotics Unit 373-7082
State Police Crime Laboratories:
- Portland 229-5017
- Springfield 726-2590
- Medford 776-6118
- Pendleton 276-1816
- Coos Bay 269-2967
- Ontario 889-3831
- Bend 388-6150

Oregon State University (Toxicologist) 737-3791
U.S. Bureau of Land Management (Law Enforcement) 231-6875
U.S. Coast Guard 240-9300
U.S. Drug Enforcement Administration 326-3371
U.S. Forest Service (USDA) 326-3970

DO NOT WRITE IN THIS BLOCK

478.80109

ORDER FORM

OREGON STATE HEALTH DIVISION

HAZARDOUS CHEMICAL GUIDELINES FOR LOCAL LAW ENFORCEMENT PERSONNEL
(Fourth Edition, June 1988)

HAZARDOUS CHEMICAL GUIDELINES FOR LOCAL LAW ENFORCEMENT PERSONNEL is an 86-page paperbound field handbook discussing the characteristics and hazards of the 34 most common chemicals used in manufacturing methamphetamine.

The Fourth Edition also includes a section on human health effects and a section on reduction of contamination in buildings formerly used for manufacture of methamphetamines.

The handbook is a valuable resource to anyone who is exposed to methamphetamine laboratories or who deals with people who are exposed.

To order copies of the manual, complete the form below and mail it with your check or money order to: Oregon State Health Division, Cashier's Office, P.O. Box 231, Portland OR 97207.

NUMBER OF COPIES DESIRED:

_____ 1 - 5 copies .....$4.00 each $ _____

_____ 6 - 10 copies .....$3.50 each $ _____

_____ 11 copies or more.....$3.00 each $ _____

Sub-Total $ _____

Also available are:

1. CLANDESTINE DRUG LAB COMMITTEE:
   AN INTERIM GUIDE FOR LOCAL HEALTH DEPARTMENTS
   (A six-page manual for county health department personnel @ $.75 per copy)

   _____ $ _____
   No. Desired

2. CLANDESTINE DRUG LABORATORIES:
   A GUIDE FOR OREGON CITIZENS
   (A 3-fold brochure for building owners, service professionals and other citizens @ $.10 per copy or 15 for $1.00)

   _____ $ _____
   No. Desired

TOTAL AMOUNT ENCLOSED $ _____

Your mailing address must be entered below:

NAME _____

ADDRESS _____

_____

CITY/STATE/ZIP CODE _____

OSHD USE ONLY:

Order Filled Date_____ Initials _____

(Return to OHSM)

The following information is provided courtesy of the Housing Authority of Portland:

PRE-RENTAL REFERENCE FROM THE HOUSING AUTHORITY ON CURRENT PARTICIPANTS

*The Housing Authority of Portland is able to help landlords by **verifying** factual references on prospective renters who are current participants in our Section 8 program.*

To receive a pre-rental reference, an owner needs to:

1. **Provide HAP with original signature of prospective tenant on a release (SAMPLE release below) AND printed FULL name;**
2. **Give last address your prospective tenant rented in our program;**
3. **Give a listing of specific information you need verified;**
4. **Give Owner's name, complete mailing address and telephone number; and**
5. **Bring items or mail items 1-4 to our office at 135 SE Ash St., Suite 200, Portland, OR 97204**

You will be mailed a written response verifying the information you requested. Every effort to promptly mail the information will be made.

SAMPLE RELEASE:

"I authorize the Housing Authority of Portland to release any information about my prior rental history that is documented in HAP's records. I understand that an owner may choose not to rent a unit to me if the information is not acceptable to the owner."

_____ _____

Section 8 Participant's Signature Date

_____ _____

Print FULL Name-Participant Telephone Number

Last Section 8 Address:_____

If you are interested in requesting a tenant reference, please contact Edwina Moaning, Section 8 Program Director (273-4570) or Barbara Martin, Assistant Program Director (273-4571) for more details.

Many landlords have found this service helpful. We know from experience that landlords benefit from good tenant selection systems.

LAWS AND ORDINANCES

The attached laws are current at time of printing. Every two years the legislature reviews Oregon's statutes and may make changes. Updated versions of the law are available from your local library or from a property management association. You may also order State laws directly from the Legislative Council in Salem - call 378-8148 for details. The following are enclosed:

- **Residential Landlord and Tenant (Oregon Revised Statutes, Chapter 90)**

  The most important law for any property manager to know. The law covers a range of issues including defining landlord and tenant rights, responsibilities, and recourse. The law describes both eviction options and steps tenants may take to address problems generated by noncompliant landlords. The most recent version - that passed by the 1989 legislature - is enclosed. Immediately preceding the law is an overview of some of the more significant changes incorporated into the 1989 law.

- **Forcible Entry and Wrongful Detainer (ORS 105.105 to 105.165)**

  Describes the FED/court process - the steps involved if a tenant stays on past the end of an eviction notice. Read it before you start the process.

- **Abatement of Unlawful Gambling, Prostitution, or Controlled Substance Activities (ORS 105.550 to 105.600)**

  Gives citizens and governments within the state important new powers to bring legal action against property owners who allow specified crimes to occur on their property. Among other provisions, note that the prevailing party is entitled to recover attorneys' fees, and that general reputation of the premises is permissible as evidence.

- **Cleanup of Toxic Contamination from Illegal Drug Manufacturing (ORS 453.855 to 453.992)**

  Prohibits rental of property contaminated from illegal drug manufacturing and forbids sale of the property unless the contamination is appropriately disclosed. Sets down guidelines for decontamination and the process for having the property certified "fit for use."

- **Specified Crime Ordinance - City of Portland**

  Allows the Chief of Police to begin action to close property for up to a year and to impose penalties of up to $500 a day on landlords who do not take sufficient action to halt gambling, prostitution, or drug dealing or drug manufacturing on their property. In addition, the ordinance describes emergency shutdown measures for property used as a clandestine lab. If you own property elsewhere in Oregon, check with your local governments to determine whether similar laws are on the books in your area.

RESIDENTIAL LANDLORD AND TENANT LAW

Enclosed is the 1989 version of the Oregon Residential Landlord and Tenant Act, which is the most current version as of February 1991. *Note that this version includes significant changes from the 1987 version.* The following is a brief summary of the types of changes included in the 1989 law:

- Stipulates that mailed notices are to be served via first class mail and *not* via certified, registered, or any other type of mail.

- Modifies rights/responsibilities associated with entering a premise in emergencies and for the purpose of showing the property for sale.

- Allows a landlord to serve a 72-hour notice for nonpayment of rent when a Section 8 renter does not pay his/her portion of the rent, *even if the landlord has received the government subsidized portion.*

- Clarifies the impact of receiving partial payment of rent after notices have been served.

- Allows a tenant to terminate the rental agreement immediately if conditions on the premises, not caused by the tenant, are discovered to be an immediate and serious threat to the health or safety of the occupants. Allows for recovery of various deposits and prepayments if the conditions existed at the outset of the tenancy. (This modification rose out of concerns over tenant obligations when renting a unit that was used as a meth lab and not properly cleaned up.)

- Clarifies various aspects of the procedure for serving notice.

- Forbids 72-hour nonpayment notices when the only money still owed is a late fee.

- Specifies that a 24-hour eviction for an act that is "outrageous in the extreme" encompasses acts by the tenant, or those in the tenant's control, that result in a written notice to the landlord under a state or local ordinance (such as the Specified Crime Ordinance) for drug manufacturing or delivery, gambling, or prostitution. Also allows for such a notice with any judgement against the property under ORS 465 (State version of Specified Crime Ordinance).

- Expands "post-and-mail" ability, *if provided for in the rental agreement,* to include notices for 24-hour inspection and most cases of 24-hour eviction, as well as 72-hour nonpayment.

- Limits a landlord's ability to evict for no cause during the first six months after a tenant has successfully defended an eviction proceeding.

- Clarifies role of unused and prepaid rent in a landlord's ability to serve an eviction notice.

- Makes various modifications in other areas including habitability definitions, disposal of livestock and rotting food, and others.

TITLE 10

PROPERTY RIGHTS AND TRANSACTIONS

Chapter 90

1989 EDITION

Residential Landlord and Tenant

LANDLORD REMEDIES

MANUFACTURED DWELLING, RESIDENTIAL VEHICLE AND FLOATING HOME SPACES

(General Provisions)

(Landlord and Tenant Relations)

(Ownership Change)

(Actions)

(Tenant Rights)

(Park Purchase by Tenants)

(Miscellaneous)

CROSS REFERENCES

Challenge of juror for implied bias on ground of landlord-tenant relationship, 136.220

Discrimination in selling, leasing or renting real property prohibited, 659.033

Farm-worker housing, Ch. 658

Methods of creating and transferring estate or an interest in realty, 93.020

Property tax refund for "net rent" paid for homestead, 310.630 to 310.712

Recordation of certain instruments, effect, 93.710

Subdivision and Series Partition Control Law, 92.305 to 92.495, 92.990

Time for bringing actions on rental agreements, 12.125

Writing essential for certain leases, 41.580

90.100 to 90.775

Mobile Home Parks Purchase Account, 456.579, 456.581

90.100 to 90.940

Complaint, 105.125

How action conducted, 105.130 to 105.137

90.930

Penalty for discriminating in rental housing because of assistance animal, 346.690

Penalty for violation of 90.930, 346.991

GENERAL PROVISIONS

90.100 General definitions. Subject to additional definitions contained in ORS 90.100 to 90.940 which apply to specific sections or parts thereof, and unless the context otherwise requires, in ORS 90.100 to 90.940:

(1) "Action" includes recoupment, counterclaim, setoff, suit in equity and any other proceeding in which rights are determined, including an action for possession.

(2) "Building and housing codes" include any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit.

(3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. "Dwelling unit" regarding a person who rents a space for a manufactured dwelling, as defined in ORS 90.505 or residential vehicle as defined in ORS 90.500, or who rents moorage space for a floating home, as defined in ORS 830.700, but does not rent the home, means the space rented and not the manufactured dwelling, residential vehicle or floating home itself.

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(5) "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by ORS 90.305.

(6) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(7) "Owner" includes a mortgagee in possession and means one or more persons, jointly or severally, in whom is vested:

(a) All or part of the legal title to property; or

(b) All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

(8) "Person" includes an individual or organization.

(9) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

(10) "Rent" means all payments to be made to the landlord under the rental agreement.

(11) "Rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under ORS 90.330 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(12) "Roomer" means a person occupying a dwelling unit that does not include a toilet and either a bathtub or a shower and a refrigerator, stove and kitchen, all provided by the landlord, and where one or more of these facilities are used in common by occupants in the structure.

(13) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others, including a dwelling unit owned, operated or controlled by a public housing authority. As used in ORS 90.500 to 90.940, "tenant" includes only a person who owns and occupies as a residence a manufactured dwelling in a manufactured dwelling or mobile home park or an individual lot as defined in ORS 446.003 and persons residing with that tenant under the terms of the rental agreement.

(14) "Transient lodging" means a room or a suite of rooms.

(15) "Transient occupancy" means occupancy in transient lodging which has all of the following characteristics:

(a) Occupancy is charged on a daily basis and is payable no less frequently than every two weeks;

(b) The lodging operator provides maid and linen service daily or every two days;

(c) The period of occupancy does not exceed 30 days; and

(d) If the occupancy exceeds five days, the occupant has a business address or a residence other than at the transient lodging. [Formerly 91.705]

90.105 Short title. ORS 90.100 to 90.940 shall be known and may be cited as the "Residential Landlord and Tenant Act." [Formerly 91.700]

90.110 Exclusions from application of ORS 90.100 to 90.940. Unless created to avoid the application of ORS 90.100 to 90.940, the following arrangements are not governed by ORS 90.100 to 90.940:

(1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar service, but not including residence in off-campus nondormitory housing.

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to the interest of the purchaser.

(3) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization.

(4) Transient occupancy in a hotel or motel.

(5) Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises.

(6) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative.

(7) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes. [Formerly 91.710]

90.115 Territorial application. ORS 90.100 to 90.940 apply to, regulate and determine rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit located within this state. [Formerly 91.715]

90.120 Applicability of other statutory lien, tenancy and rent provisions. The provisions of ORS 87.162 to 87.212, 91.010 to 91.110, 91.210 and 91.220 do not apply to the rights and obligations of landlords and tenants governed by ORS 90.100 to 90.940. Any provisions of ORS 90.100 to 90.940 which reasonably apply only to the structure that is used as a home, residence or sleeping place shall not apply to dwelling units in mobile home or manufactured dwelling parks where space is rented but the manufactured dwelling or residential vehicle is not rented. [Formerly 91.720]

90.125 Administration of remedies; enforcement. (1) The remedies provided by ORS 90.100 to 90.940 shall be so administered that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(2) Any right or obligation declared by ORS 90.100 to 90.940 is enforceable by action unless the provision declaring it specifies a different and limited effect. [Formerly 91.725]

90.130 Obligation of good faith. Every duty under ORS 90.100 to 90.940 and every act which must be performed as a condition precedent to the exercise of a right or remedy under ORS 90.100 to 90.940 imposes an obligation of good faith in its performance or enforcement. [Formerly 91.730]

90.135 Unconscionability. (1) If the court, as a matter of law, finds:

(a) A rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result; or

(b) A settlement in which a party waives or agrees to forego a claim or right under ORS 90.100 to 90.940 or under a rental agreement was unconscionable when made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) If unconscionability is put into issue by a party or by the court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose and effect of the rental agreement or settlement to aid the court in making the determination. [Formerly 91.735]

CONTENT OF AGREEMENTS

90.240 Terms and conditions of rental agreement. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by ORS 90.100 to 90.940 or other rule of law including rent, term of the agreement and other provisions governing the rights and obligations of the parties.

(2) The landlord shall provide the tenant with a copy of any written rental agreement and all amendments and additions thereto.

(3) In absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

(4) Except as otherwise provided by ORS 90.100 to 90.940:

(a) Rent is payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit, periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly instalments at the beginning of each month, and rent may not be increased without a 30-day written notice thereof.

(b) Unless the rental agreement fixes a definite term, the tenancy is week to week in case of a roomer who pays weekly rent regardless of length of stay or amount of prepaid rent, and in all other cases month to month. [Formerly 91.740]

90.245 Prohibited provisions in rental agreements. (1) A rental agreement may not provide that the tenant:

(a) Agrees to waive or forego rights or remedies under ORS 90.100 to 90.940;

(b) Authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(c) Agrees to the exculpation or limitation of any liability arising as a result of the other party's wilful misconduct or negligence or to indemnify the other party for that liability or costs connected therewith.

(2) A provision prohibited by subsection (1) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by the landlord to be prohibited and attempts to enforce such provisions, the tenant may recover in addition to the actual damages of the tenant an amount up to three months' periodic rent. [Formerly 91.745]

90.250 Separation of rents and obligations to maintain premises prohibited. A rental agreement, assignment, conveyance, trust deed or security instrument may not permit the receipt of rent free of the obligation to comply with ORS 90.320 (1). [Formerly 91.750]

90.255 Attorney fees. In any action on a rental agreement or arising under ORS 90.100 to 90.940, reasonable attorney fees at trial and on appeal may be awarded to the prevailing party together with costs and necessary disbursements, notwithstanding any agreement to the contrary. As used in this section, "prevailing party" means the party in whose favor final judgment is rendered. [Formerly 91.755]

90.260 Late payment charge; restrictions. (1) No landlord may impose a late charge:

(a) With respect to any rental payment received by 5 p.m. on the fourth day after commencement of the rental period for which rent is payable.

(b) Unless the rental agreement provides for payment of a late charge on delinquent rent payments and the rental agreement or a monthly coupon, billing or notice provided by the landlord discloses the date on which payments are due and the time at which a late charge becomes due.

(c) More than once on any single instalment.

(2) Nonpayment of a late fee alone shall not constitute grounds for eviction for nonpayment of rent. [1989 c.506 §15]

Note: 90.260 was added to and made a part of 90.100 to 90.940 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

90.265 Interest in alternative energy device installed by tenant. (1) An alternative energy device installed in a dwelling unit by a tenant with the landlord's written permission is not a fixture in which the landlord has a legal interest, except as otherwise expressly provided in a written agreement between the landlord and tenant.

(2) As a condition to a grant of written permission referred to in subsection (1) of this section, a landlord may require a tenant to do one or more of the following:

(a) Provide a waiver of the landlord's liability for any injury to the tenant or other installer resulting from the tenant's or installer's negligence in the installation of the alternative energy device;

(b) Secure a waiver of the right to a lien against the property of the landlord from each contractor, subcontractor, laborer and material supplier who would obtain the right to a lien when the tenant installs or causes the installation of the alternative energy device; or

(c) Post a bond or pay a deposit in an amount not to exceed the cost of restoring the premises to its condition at the time of installation of the alternative energy device.

(3) Nothing in this section:

(a) Authorizes the installation of an alternative energy device in a dwelling unit without the landlord's written permission; or

(b) Limits a landlord's right to recover damages and obtain injunctive relief as provided in ORS 90.400 (5).

(4) As used in this section, "alternative energy device" has the meaning given that term in ORS 469.160. [Formerly 91.757]

LANDLORD OBLIGATIONS

90.300 Security deposits. (1) For the purposes of this section, "security deposit" means any payment or deposit of money, however designated, the primary function of which is to secure the performance of a rental agreement or any part of a rental agreement, but does not mean a payment or deposit, including an advance payment of rent, made to secure the execution of a rental agreement. "Security deposit" shall not include a fee if such fee is clearly designated as nonrefundable.

(2) A security deposit shall be held by the landlord for the tenant who is a party to the rental agreement. The claim of a tenant to the security deposit shall be prior to the claim of any creditor of the landlord, including a trustee in bankruptcy.

(3) The landlord may claim all or part of the security deposit only if the deposit was

made for any or all of the purposes provided by subsection (4) of this section.

(4) The landlord may claim from the security deposit only the amount reasonably necessary:

(a) To remedy the tenant's defaults in the performance of the rental agreement; and

(b) To repair damages to the premises caused by the tenant, not including ordinary wear and tear.

(5) A security deposit shall not be required or forfeited to the landlord upon the failure of the tenant to maintain a tenancy for a specified term.

(6) In order to claim all or part of the security deposit, within 30 days after the termination of the tenancy and delivery of possession the landlord shall give to the tenant a written accounting which states specifically the basis or bases of the claim.

(7) The security deposit or portion of the deposit not claimed in the manner provided by subsection (6) of this section shall be returned to the tenant not later than 30 days after the termination of the tenancy and delivery of possession to the landlord.

(8) If the landlord fails to comply with subsection (7) of this section or if the landlord in bad faith fails to return all or any portion of any prepaid rent or deposit due to the tenant under ORS 90.100 to 90.940 or the rental agreement, the tenant may recover the property and money due in an amount equal to twice the amount:

(a) Withheld without a written accounting under subsection (6) of this section; or

(b) Withheld in bad faith.

(9) This section does not preclude the landlord or tenant from recovering other damages under ORS 90.100 to 90.940.

(10) The holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this section. [Formerly 91.760]

90.305 Disclosure of certain matters; retention of rental agreement; inspection of agreement. (1) The landlord or any person authorized to enter into a rental agreement on behalf of the landlord shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) The person authorized to manage the premises; and

(b) An owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and receiving and receipting for notices and demands.

(2) The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord, owner or manager.

(3) A person who fails to comply with subsection (1) of this section becomes an agent of each person who is a landlord for:

(a) Service of process and receiving and receipting for notices and demands; and

(b) Performing the obligations of the landlord under ORS 90.100 to 90.940 and under the rental agreement and expending or making available for that purpose all rent collected from the premises.

(4)(a) A landlord shall retain a copy of each rental agreement at the resident manager's office or at the address provided to the tenant under paragraph (a) of subsection (1) of this section.

(b) A tenant may request to see the rental agreement and, within a reasonable time, the landlord shall make the agreement available for inspection. At the request of the tenant and upon payment of a reasonable charge, not to exceed the lessor of 25 cents per page or the actual copying costs, the landlord shall provide the tenant with a copy of the rental agreement. This subsection shall not diminish the landlord's obligation to furnish the tenant an initial copy of the rental agreement and any amendments under ORS 90.240 (2). [Formerly 91.765]

90.310 Disclosure of legal proceedings; tenant remedies for failure to disclose; liability of manager. (1) If at the time of the execution of a rental agreement for a dwelling unit in premises containing no more than four dwelling units the premises are subject to:

(a) Any outstanding notice of default under a trust deed, mortgage or contract of sale, or notice of trustee's sale under a trust deed;

(b) Any pending suit to foreclose a mortgage, trust deed or vendor's lien under a contract of sale;

(c) Any pending declaration of forfeiture or suit for specific performance of a contract of sale; or

(d) Any pending proceeding to foreclose a tax lien;

the landlord shall disclose that circumstance to the tenant in writing before the execution of the rental agreement.

(2) If the tenant moves as a result of a circumstance which the landlord failed to disclose as required by subsection (1) of this section, the tenant may recover twice the actual damages or twice the monthly rent,

whichever is greater, and all prepaid rent, in addition to any other remedy which the law may provide.

(3) This section shall not apply to premises managed by a court appointed receiver.

(4) A manager who has complied with ORS 90.305 shall not be liable for damages under this section if the manager had no knowledge of the circumstances which gave rise to a duty of disclosure under subsection (1) of this section. [Formerly 91.766]

90.315 Disclosure of utility or service payments benefiting other tenants or landlord. (1) The landlord shall disclose to the tenant in writing at or before the commencement of the tenancy any utility or service which the tenant pays directly to a utility or service provider which benefits, directly, the landlord or other tenants. A tenant's payment for a given utility or service benefits the landlord or other tenants if the utility or service is delivered to any area other than the tenant's dwelling unit.

(2) For the purpose of this section, "utility or service" includes electricity, natural gas, oil, water, hot water, heat, air conditioning, and garbage collection and disposal.

(3) If the landlord knowingly fails to disclose those matters required under this section, the tenant may recover twice the actual damages sustained or one month's rent, whichever is greater. [Formerly 91.767]

90.320 Landlord to maintain premises in habitable condition; agreement with tenant to maintain premises. (1) A landlord shall at all times during the tenancy maintain the dwelling unit in a habitable condition. For purposes of this section, a dwelling unit shall be considered unhabitable if it substantially lacks:

(a) Effective waterproofing and weather protection of roof and exterior walls, including windows and doors;

(b) Plumbing facilities which conform to applicable law in effect at the time of installation, and maintained in good working order;

(c) A water supply approved under applicable law, which is:

(A) Under the control of the tenant or landlord and is capable of producing hot and cold running water;

(B) Furnished to appropriate fixtures;

(C) Connected to a sewage disposal system approved under applicable law; and

(D) Maintained so as to provide safe drinking water and to be in good working order to the extent that the system can be controlled by the landlord;

(d) Adequate heating facilities which conform to applicable law at the time of installation and maintained in good working order;

(e) Electrical lighting with wiring and electrical equipment which conform to applicable law at the time of installation and maintained in good working order;

(f) Building, grounds and appurtenances at the time of the commencement of the rental agreement 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, and all areas under control of the landlord 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;

(g)(A) An adequate number of appropriate receptacles for garbage and rubbish in clean condition and good repair at the time of the commencement of the lease or rental agreement, and the landlord shall provide and maintain appropriate serviceable receptacles thereafter and arrange for their removal unless the parties by written agreement provide otherwise; and

(B) In addition to the provisions of subparagraph (A) of this paragraph, in a city with a population of over 250,000 people, garbage removal service at least once a week for containers that allow for 30 gallons accumulation a week;

(h) Floors, walls, ceilings, stairways and railings maintained in good repair;

(i) Ventilating, air conditioning and other facilities and appliances, including elevators, maintained in good repair if supplied or required to be supplied by the landlord;

(j) Safety from the hazards of fire; or

(k) Working locks for all dwelling entrance doors, and, unless contrary to applicable law, latches for all windows, by which access may be had to that portion of the premises which the tenant is entitled under the rental agreement to occupy to the exclusion of others and keys for such locks which require keys.

(2) The landlord and tenant may agree in writing that the tenant is to perform specified repairs, maintenance tasks and minor remodeling only if:

(a) The agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord;

(b) The agreement does not diminish the obligations of the landlord to other tenants in the premises; and

(c) The terms and conditions of the agreement are clearly and fairly disclosed and adequate consideration for the agreement is specifically stated. [Formerly 91.770]

TENANT OBLIGATIONS

90.325 Tenant to maintain premises. The tenant shall:

(1) Use the parts of the premises including the living room, bedroom, kitchen, bathroom and dining room in a reasonable manner considering the purposes for which they were designed and intended;

(2) Keep all areas of the premises under control of the tenant in every part as clean, sanitary and free from all accumulations of debris, filth, rubbish and garbage, as the condition of the premises permits;

(3) Dispose from the dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner;

(4) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(5) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances including elevators in the premises;

(6) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so; and

(7) Conduct the tenant and require other persons on the premises with the consent of the tenant to conduct themselves in a manner that will not disturb the neighbors' peaceful enjoyment of the premises. [Formerly 91.775]

90.330 Use and occupancy rules and regulations; adoption; enforceability. (1) A landlord, from time to time, may adopt a rule or regulation, however described, concerning the tenant's use and occupancy of the premises. It is enforceable against the tenant only if:

(a) Its purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) It is reasonably related to the purpose for which it is adopted;

(c) It applies to all tenants in the premises in a fair manner;

(d) It is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply;

(e) It is not for the purpose of evading the obligations of the landlord; and

(f) The tenant has notice of it at the time the tenant enters into the rental agreement, or when it is adopted.

(2) If a rule or regulation adopted after the tenant enters into the rental agreement works a substantial modification of the bargain, it is not valid unless the tenant consents to it in writing. [Formerly 91.780]

90.335 Landlord's access to premises; manner of entry. (1) A tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit or any portion of premises under the tenant's exclusive control in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers or contractors.

(2)(a) A landlord may enter the dwelling unit or any portion of premises under a tenant's exclusive control without consent of the tenant in case of emergency.

(b) A landlord may enter upon premises under the tenant's exclusive control not including the dwelling unit without consent of the tenant for the purpose of serving notices required or permitted under ORS 90.100 to 90.940, the rental agreement or any provision of applicable law.

(c) A landlord and tenant may agree that the landlord or the landlord's agent may enter the dwelling unit and the premises without notice at reasonable times for the purpose of showing the premises to a prospective buyer, provided that the agreement:

(A) Is executed at a time when the landlord is actively engaged in attempts to sell the premises;

(B) Is reflected in a writing separate from the rental agreement and signed by both parties; and

(C) Is supported by separate consideration recited in the agreement.

(3)(a) A landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency, agreement to the contrary or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of the intent of the landlord to enter and may enter only at reasonable times.

(b) If repairs or maintenance are requested by the tenant, or entry of the tenant's dwelling unit or portions of the premises under the tenant's exclusive control is necessary to perform repairs or maintenance required for other portions of the

premises, except in the case of an emergency or an agreement to the contrary or unless it is impracticable to do so, the landlord or persons acting on behalf of the landlord may enter upon demand or in the tenant's absence until completing the repairs or maintenance, provided:

(A) The landlord has given at least 24 hours' notice in writing, specifying the purposes of the entry and the persons who will perform the repairs or maintenance, and stating that those persons are authorized by the landlord to enter upon demand or in the tenant's absence;

(B) The entry is for the purposes stated in the notice and by the persons specified in the notice or persons acting under their supervision; and

(C) The entry occurs at reasonable times.

(4) In the case of a mobile home or manufactured dwelling park, as defined in ORS 446.003, the landlord may, upon less than 24 hours' notice to the tenant and during reasonable hours of the day, enter onto the rented space for the purpose of normal maintenance only.

(5) A landlord has no other right of access except:

(a) Pursuant to court order;

(b) As permitted by ORS 90.410 (2); or

(c) When the tenant has abandoned or surrendered the premises. [Formerly 91.785]

90.340 Occupancy of premises as dwelling unit only; notice of tenant's absence. Unless otherwise agreed, the tenant shall occupy the dwelling unit only as a dwelling unit. The rental agreement may require that the tenant notify the landlord of any anticipated extended absence from the premises in excess of seven days no later than the first day of the extended absence. [Formerly 91.790]

TENANT REMEDIES

90.360 Effect of landlord noncompliance with rental agreement or obligation to maintain premises; generally. (1)(a) Except as provided in ORS 90.100 to 90.940, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with ORS 90.320, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in seven days in the case of an essential service or 30 days in all other cases, and the rental agreement shall terminate as provided in the notice subject to paragraphs (b) to (d) of this subsection.

(b) If the breach is remediable by repairs, the payment of damages or otherwise and if the landlord adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate by reason of the breach.

(c) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement.

(d) The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of the family of the tenant or other person on the premises with the consent of the tenant.

(2) Except as provided in ORS 90.100 to 90.940, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or ORS 90.320.

(3) The remedy provided in subsection (2) of this section is in addition to any right of the tenant arising under subsection (1) of this section.

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant under ORS 90.300 and all prepaid rent. [Formerly 91.800]

90.365 Effect of deliberate refusal or negligent failure of landlord to supply heat, water, electricity or other essential services. (1) If contrary to the rental agreement or ORS 90.320 the landlord deliberately refuses or is grossly negligent in failing to supply any essential service, the tenant may give written notice to the landlord specifying the breach and may:

(a) Procure reasonable amounts of the essential service during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) Recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(c) Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) In addition to the remedy provided in paragraph (c) of subsection (1) of this section the tenant may recover the actual and reasonable cost or fair and reasonable value of reasonably comparable substitute housing.

(3) If contrary to the rental agreement or ORS 90.320 the landlord negligently fails to repair any cooking appliance or refrigerator

supplied or required to be supplied by the landlord, or to supply any other essential service, the tenant may give written notice to the landlord specifying the breach and may cause the necessary work to be done in a workmanlike manner and, after submitting to the landlord receipts or an agreed upon itemized statement, deduct from the rent the actual and reasonable cost or the fair and reasonable value of the work not exceeding $200:

(a) The landlord and tenant may agree, at any time, to allow the tenant to exceed the monetary limits of this subsection when making reasonable repairs.

(b) Notwithstanding paragraph (a) of subsection (5) of this section, in case of emergency, written notice required by this subsection, or attempted oral notice followed by written notice, may be given as promptly as the conditions permit.

(c) In the case of a faulty cooking appliance or refrigerator, "reasonable notice" under paragraph (a) of subsection (5) of this section shall be determined in light of the degree to which the tenant has been deprived of cooking or refrigeration facilities.

(d) This subsection shall not be construed to require a landlord to supply a cooking appliance or a refrigerator if the landlord did not supply or agree to supply a cooking appliance or refrigerator to the tenant.

(4) If the tenant proceeds under this section, the tenant may not proceed under ORS 90.360 as to that breach.

(5) Rights of the tenant under this section do not arise:

(a) Until the tenant has given reasonable notice under the circumstances, in writing, to the landlord to enable the landlord to provide the essential service; or

(b) If the condition was caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family or other person on the premises with the tenant's consent.

(6) Notice required under this section shall be delivered personally or sent by first class mail. For purposes of this section, "first class mail" does not include certified or registered mail, or any other form of mail which may delay or hinder actual delivery of mail to the recipient.

(7) The landlord may specify people to do all work under this section as long as the tenant's rights under this section are not diminished. [Formerly 91.805]

90.370 Tenant counterclaims in action by landlord for possession or rent. (1) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount, not in excess of the jurisdictional limits of the court in which the action is brought, that the tenant may recover under the rental agreement or ORS 90.100 to 90.940. In the event the tenant counterclaims, the court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court, and shall be paid the balance by the other party. The court may at any time release money paid into court to either party if the parties agree or if the court finds such party to be entitled to the sum so released. If no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession.

(2) In an action for rent when the tenant is not in possession, the tenant may counterclaim as provided in subsection (1) of this section but is not required to pay any rent into court.

(3) If the tenant does not comply with an order to pay rent into the court as provided in subsection (1) of this section, the tenant shall not be permitted to assert a counterclaim in the action for possession.

(4) If the total amount found due to the tenant on any counterclaims is less than any rent found due to the landlord, and the tenant retains possession solely because the tenant paid rent into court under subsection (1) of this section, no attorney fees shall be awarded to the tenant unless the tenant paid at least the balance found due to the landlord into court no later than the commencement of the trial.

(5) When a tenant is granted a continuance for a longer period than two days, and has not been ordered to pay rent into court under subsection (1) of this section, the tenant shall be ordered to pay rent into court under ORS 105.140 (2). [Formerly 91.810]

90.375 Effect of unlawful ouster or exclusion; wilful diminution of services. If a landlord unlawfully removes or excludes the tenant from the premises, seriously attempts or threatens unlawfully to remove or exclude the tenant from the premises or wilfully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric or other essential service, the tenant may obtain injunctive relief to recover possession or may terminate the rental agreement and recover an amount up to two months' periodic rent or twice the actual damages sustained by the tenant, whichever is greater.

If the rental agreement is terminated the landlord shall return all security recoverable under ORS 90.300 and all prepaid rent. The tenant need not terminate the rental agreement, obtain injunctive relief or recover possession to recover damages under this section. [Formerly 91.815]

90.380 Effect of rental of dwelling in violation of building or housing codes. (1) If a governmental agency has posted a dwelling as unlawful to occupy due to the existence of conditions that violate state or local law and materially affect health or safety, a landlord shall not enter into a rental agreement for the dwelling unit until the conditions leading to the posting are corrected.

(2) If a landlord knowingly violates subsection (1) of this section, the tenant may recover either two months' periodic rent or up to twice the actual damages sustained as a result of the violation, whichever is greater. If the tenant elects to terminate the tenancy as a result of the conditions leading to the posting, or if the agency charged with code enforcement requires that the tenant vacate the premises, the tenant also may recover:

(a) All of the security deposit owed to the tenant under ORS 90.300; and

(b) All prepaid rent.

(3) If conditions at premises which were not caused by the tenant pose an imminent and serious threat to the health or safety of occupants of the premises within one year from the beginning of the tenancy, the tenant may immediately terminate the rental agreement by giving the landlord actual notice of the termination and the reason for the termination. If the conditions existed at the outset of the tenancy, the tenant may recover from the landlord within 72 hours:

(a) All of any security deposit paid to the landlord including any last month's rent; and

(b) All rent prepaid for the month in which the termination occurs. [Formerly 91.817]

Note: 91.817 [renumbered 90.380 in 1989] was enacted into law by the Legislative Assembly but was not added to or made a part of the Residential Landlord and Tenant Act by legislative action. See Preface to Oregon Revised Statutes for further explanation.

90.385 Retaliatory conduct by landlord prohibited; tenant remedies and defenses; action for possession in certain cases. (1) Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services, by serving a notice to terminate the tenancy or by bringing or threatening to bring an action for possession after:

(a) The tenant has complained to, or expressed to the landlord in writing an intention to complain to, a governmental agency charged with responsibility for enforcement of any of the following concerning a violation applicable to the tenancy:

(A) A building, health or housing code materially affecting health or safety;

(B) Laws or regulations concerning the delivery of mail; or

(C) Laws or regulations prohibiting discrimination in rental housing;

(b) The tenant has complained to the landlord of a violation of:

(A) ORS 90.305, 90.315, 90.320, 90.335 or 90.435;

(B) A written rental agreement; or

(C) If there is no written rental agreement, an oral rental agreement;

(c) The tenant has organized or become a member of a tenants' union or similar organization;

(d) The tenant has complained to the landlord of a failure to comply with the notice requirements of ORS 90.240 (4);

(e) The tenant has testified against the landlord in any judicial, administrative or legislative proceeding; or

(f) The tenant successfully defended an action for possession brought by the landlord within the previous six months.

(2) If the landlord acts in violation of subsection (1) of this section the tenant is entitled to the remedies provided in ORS 90.375 and has a defense in any retaliatory action against the tenant for possession.

(3) Notwithstanding subsections (1) and (2) of this section, a landlord may bring an action for possession if:

(a) The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in the household of the tenant or upon the premises with the consent of the tenant;

(b) The tenant is in default in rent; or

(c) Compliance with the applicable building or housing code requires alteration, remodeling or demolition which would effectively deprive the tenant of use of the dwelling unit.

(4) The maintenance of an action under subsection (3) of this section does not release the landlord from liability under ORS 90.360 (2). [Formerly 91.865]

LANDLORD REMEDIES

90.400 Effect of tenant noncompliance with rental agreement or failure to maintain premises; failure to pay rent;

damage to persons or property. (1)(a) Except as provided in ORS 90.100 to 90.940, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with ORS 90.325 materially affecting health and safety, the landlord may deliver a written notice to the tenant terminating the tenancy for cause as provided in this subsection. The notice shall specify the acts and omissions constituting the breach and shall state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice. If the breach is remedial by repairs or the payment of damages or otherwise, the notice shall also state that the tenant can avoid termination by remedying the breach within 14 days.

(b) If the breach is not remedied in 14 days, the rental agreement shall terminate as provided in the notice subject to paragraphs (c) and (d) of this subsection.

(c) If the breach is remedial by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate.

(d) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least 10 days' written notice specifying the breach and the date of termination of the rental agreement.

(2) If rent is unpaid when due and the tenant fails to pay rent within seven days, including the first day rent is due, the landlord, after 72 hours' written notice of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period, may immediately terminate the rental agreement and take possession in the manner provided in ORS 105.105 to 105.165. This subsection may not be used to terminate a tenancy for nonpayment of rent when the only moneys owing represent a late charge.

(3) The landlord, after 24 hours' written notice specifying the causes, may immediately terminate the rental agreement and take possession in the manner provided in ORS 105.105 to 105.165, if:

(a) The tenant, someone in the tenant's control or the tenant's pet seriously threatens immediately to inflict personal injury, or inflicts any substantial personal injury, upon the landlord or other tenants;

(b) The tenant or someone in the tenant's control intentionally inflicts any substantial damage to the premises;

(c) The tenant has vacated the premises, the person in possession is holding contrary to a written rental agreement that prohibits subleasing the premises to another or allowing another person to occupy the premises without the written permission of the landlord, and the landlord has not knowingly accepted rent from the person in possession; or

(d) The tenant or someone in the tenant's control commits any act which is outrageous in the extreme. An "act outrageous in the extreme" includes, but is not limited to, an act which the tenant or person in the tenant's control has in fact committed and which has resulted in:

(A) Service of written notice to the landlord, under any state statute or local ordinance, of drug manufacturing or delivery, gambling or prostitution activity at the premises occupied by the tenant; or

(B) A judgment against the property under ORS chapter 465.

(4) The landlord's 24 hours' written notice given under paragraph (c) of subsection (3) of this section shall not be construed as an admission by the landlord that the individual occupying the premises is a lessee or sublessee of the landlord.

(5) Except as provided in ORS 90.100 to 90.940, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or ORS 90.325. [Formerly 91.820]

90.405 Effect of tenant keeping unpermitted pet. (1) If the tenant, in violation of the rental agreement, keeps on the premises a dog, cat or other pet capable of causing damage to persons or property, the landlord may deliver a written notice specifying the violation and stating that the tenancy will terminate upon a date not less than 10 days after the receipt of the notice unless the tenant removes the pet from the premises prior to the termination date specified in the notice. If the pet is not removed by the date specified, the tenancy shall terminate and the landlord may take possession in the manner provided in ORS 105.105 to 105.165.

(2) If substantially the same act which constituted a prior noncompliance of which notice was given under subsection (1) of this section recurs within six months, the landlord may terminate the rental agreement upon at least 10 days' written notice specifying the breach and the date of termination of the rental agreement.

(3) This section shall not apply to any tenancy governed by ORS 90.505 to 90.760 and 90.770 to 90.940. [Formerly 91.822]

90.410 Effect of tenant's failure to give notice of absence; absence; abandonment. (1) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of seven

days as permitted by ORS 90.340 and the tenant wilfully fails to do so, the landlord may recover actual damages from the tenant.

(2) During any absence of the tenant in excess of seven days, the landlord may enter the dwelling unit at times reasonably necessary.

(3) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it for a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, the rental agreement terminates as of the date of the new tenancy. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month to month or week to week, the term of the rental agreement for this purpose is deemed to be a month or a week, as the case may be. [Formerly 91.825]

90.415 Waiver; exceptions of right of landlord to terminate tenancy. (1) Except as otherwise provided in this section, a landlord waives the right to terminate a rental agreement for a particular breach if the landlord:

(a) Accepts rent with knowledge of the default by the tenant; or

(b) Accepts performance by a tenant that varies from the terms of the rental agreement.

(2) A landlord does not waive the right to terminate as described in subsection (1) of this section if the landlord and tenant agree otherwise after the breach has occurred.

(3) A landlord's acceptance of partial rent for a rental period is not a waiver under subsection (1) of this section of the right to terminate the rental agreement during the rental period for nonpayment if:

(a) The landlord accepted the partial rent before the landlord gave any notice of intent to terminate under ORS 90.400 (2) based on the tenant's agreement to pay the balance by a time certain; and

(b) The tenant does not pay the balance of the rent as agreed.

(4) A landlord who accepts partial rent under subsection (3) of this section may proceed to serve a notice under ORS 90.400 (2) to terminate the tenancy if the balance of the rent is not paid, provided:

(a) The notice is served no earlier than it would have been permitted under ORS 90.400 (2) had no rent been accepted; and

(b) The notice permits the tenant to avoid termination of the tenancy for nonpayment of rent by paying the balance within 72 hours or by any date to which the parties agreed, whichever is later.

(5) Unless a landlord and tenant agree otherwise in writing, a landlord waives the right to terminate a rental agreement for nonpayment during a rental period by accepting partial rent for the period if the landlord accepts the partial rent after the landlord has served notice of intent to terminate under ORS 90.400 (2).

(6) A written agreement under subsection (5) of this section may provide that the landlord may proceed to terminate the rental agreement and take possession in the manner provided by ORS 105.105 to 105.165 without serving a new notice under ORS 90.400 (2) in the event the tenant fails to pay the balance of the rent by a time certain.

(7) A landlord who has previously given a termination notice for cause other than nonpayment of rent does not waive the right to terminate the rental agreement for that cause if the landlord accepts rent prorated to the termination date specified in the notice.

(8) A landlord's acceptance of partial rent for a rental period does not waive the right to evict for nonpayment of rent if the entire amount of the partial payment was from funds paid under the United States Housing Act of 1937 (42 U.S.C.§1437).

(9) A landlord who has served a notice of termination for cause under ORS 90.400 (1) and who has commenced proceedings under ORS 105.105 to 105.165 to recover possession of the premises does not waive the right to evict on that notice:

(a) By accepting rent for any period beyond the expiration of the notice during which the tenant remains in possession provided:

(A) The landlord notifies the tenant in writing, in or after the service of the notice of termination for cause, that acceptance of rent while an eviction action is pending will not waive the right to evict on that notice; and

(B) The rent does not cover a period extending beyond the date of its acceptance.

(b) By serving a notice of nonpayment of rent under ORS 90.400 (2). [Formerly 91.830]

90.420 Enforceability of landlord liens; distraint for rent abolished. (1) A lien or security interest on behalf of the landlord in the tenant's household goods is not enforceable unless perfected before October 5, 1973.

(2) Distraint for rent is abolished. [Formerly 91.835]

90.425 Disposition of personal property abandoned by tenant; notice to tenant. (1) The landlord may dispose of any goods, chattels, motor vehicles or other personal property left upon the premises by the tenant in the manner provided by subsections (4) and (5) of this section, after giving notice as required by subsection (2) of this section, in the following circumstances only:

(a) A tenancy terminates by expiration of a lease or surrender or abandonment of the premises and the landlord reasonably believes under all the circumstances that the tenant has left the property upon the premises with no intention of asserting any further claim to the premises or to the property;

(b) The tenant has been absent from the premises continuously for seven days after termination of a tenancy by a court order that has not been executed; or

(c) The landlord elects to remove the property pursuant to ORS 105.165.

(2) To dispose of the tenant's property under this section, the landlord must give a written notice to the tenant which shall be:

(a) Sent by first class mail;

(b) Addressed to the tenant's last-known address and to any of the tenant's alternate addresses known to the landlord; and

(c) Mailed in an envelope indorsed "Please Forward."

(3) "First class mail" for purposes of this section does not include certified or registered mail, or any other form of mail which may delay or hinder actual delivery of mail to the tenant.

(4) The notice required under subsection (2) of this section shall state that the property is considered abandoned and must be removed from the premises or from the place of safekeeping, if the landlord has stored the property as provided in subsection (5) of this section, by a specified day not less than 15 days after delivery of the notice or the property will be sold or otherwise disposed of, and if the abandoned property is not removed:

(a) The landlord may sell the property at a public or private sale; or

(b) The landlord may destroy or otherwise dispose of the property if the landlord reasonably determines that the value of the property is so low that the cost of storage and conducting a public sale probably exceeds the amount that would be realized from the sale; or

(c) The landlord may sell certain items and destroy or otherwise dispose of the remaining property.

(5) After notifying the tenant as required by subsections (2) and (4) of this section the landlord shall store all goods, chattels, motor vehicles and other personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property, except that the landlord may promptly dispose of rotting food and allow an animal control agency to remove any abandoned pets or livestock. The landlord may store a tenant's manufactured dwelling or residential vehicle on the space rented or elsewhere on the premises. The landlord shall be entitled to reasonable storage charges and costs incidental to storage. The landlord may store the property in a commercial storage company, in which case the storage cost shall include the actual storage charge plus the cost of removal of the property to the place of storage.

(6) If the tenant upon the receipt of the notice provided by subsections (2) and (4) of this section or otherwise responds in writing to the landlord on or before the day specified in the landlord's notice that the tenant intends to remove the property from the premises or from the place of safekeeping, if the landlord has stored the property as provided in subsection (5) of this section, and does not do so within the time specified in the notice or within 15 days after the delivery of the tenant's response, whichever is later, the tenant's property shall be conclusively presumed to be abandoned. Except as provided in ORS 105.165, if the tenant removes the property the landlord shall be entitled to the cost of storage for the period the property remains in the landlord's safekeeping, including any cost of removal of the property to the place of storage.

(7) The landlord shall not be responsible for any loss to the tenant resulting from storage of property in compliance with this section unless the loss was caused by the landlord's deliberate or negligent act. In the event of deliberate and malicious violation the landlord shall be liable for twice the actual damages sustained by the tenant.

(8) A public or private sale authorized by this section shall be conducted under the provisions of ORS 79.5040 (3).

(9)(a) The landlord may deduct from the proceeds of the sale:

(A) The reasonable cost of notice, storage and sale; and

(B) Unpaid rent.

(b) After deducting the amounts listed in paragraph (a) of this subsection the landlord shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting.

(c) If the tenant cannot after due diligence be found, the remaining proceeds shall be deposited with the county treasurer of the county in which the sale occurred, and if not claimed within three years shall revert to the general fund of the county available for general purposes.

(10) Complete compliance in good faith with this section shall constitute a complete defense in any action brought by a tenant against a landlord for loss or damage to such personal property disposed of pursuant to this section.

(11) If a landlord seizes and retains a tenant's personal property without complying with this section, the tenant shall be relieved of any liability for damage to the premises caused by conduct which was not deliberate, intentional or grossly negligent and for unpaid rent and may recover up to twice the actual damages sustained by the tenant. [Formerly 91.840]

90.430 Claims for possession, rent, damages after termination of rental agreement. If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement. [Formerly 91.845]

90.435 Limitation on recovery of possession of premises. A landlord may not recover or take possession of the dwelling unit by action or otherwise, including wilful diminution of services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity or other essential service to the tenant, except in case of abandonment, surrender or as permitted in ORS 90.100 to 90.940. [Formerly 91.850]

MANUFACTURED DWELLING, RESIDENTIAL VEHICLE AND FLOATING HOME SPACES

(General Provisions)

90.500 Definitions for ORS 90.100 to 90.940. As used in ORS 90.100 to 90.940:

(1) "Dealer" means any person in the business of selling, leasing or distributing new or used manufactured dwellings or floating homes to persons who purchase or lease a manufactured dwelling or floating home for use as a residence.

(2) "Facility" means a mobile home or manufactured dwelling park, or a dock or pier owned by one person where four or more floating homes are secured, the primary purpose of which is to rent space or keep space for rent to any person for a fee.

(3) "Manufactured dwelling" has the meaning given that term in ORS 446.003.

(4) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.

(5) "Floating home" has the meaning given that term in ORS 830.700.

(6) "Mobile home park" has the meaning given that term in ORS 446.003.

(7) "Park purchase association" means a group of three or more tenants who reside in a manufactured dwelling or mobile home park and have organized for the purpose of eventual purchase of the manufactured dwelling or mobile home park.

(8) "Residential vehicle" means a vehicle or structure, other than a manufactured dwelling as defined in ORS 446.003, constructed for movement on the public highways that has sleeping, cooking or plumbing facilities, is intended for human occupancy and is being used as a residence. [Formerly 91.868]

90.505 "Rent a space for a manufactured dwelling, residential vehicle or floating home" defined for certain purposes. As used in ORS 90.510, 90.525, 90.620, 90.630 and 90.680, "rent a space for a manufactured dwelling, residential vehicle or floating home" means a transaction in which the owner of a manufactured dwelling, residential vehicle or floating home secures the right to locate the home on the property of another for use as a residence in return for value, and in which the owner of the manufactured dwelling, residential vehicle or floating home retains no interest in the real property at the end of the transaction. [Formerly 91.873]

90.510 Rental agreement to be in writing; contents; effect of tenant refusal to sign. (1) Every landlord who rents a space for a manufactured dwelling, residential vehicle or floating home shall provide a written agreement which shall be signed by the landlord and tenant.

(2) The agreement required by subsection (1) of this section shall specify:

(a) The location and approximate size of the rented space;

(b) The rent per month;

(c) All personal property, services and facilities to be provided by the landlord;

(d) All rules and regulations which, if violated, may be cause for eviction;

(e) All refundable deposits, nonrefundable fees and installation charges imposed by the landlord;

(f) Improvements which the tenant may make to the rental space, including plant materials and landscaping;

(g) Provisions for dealing with improvements to the rental space at the termination of the tenancy;

(h) Any conditions the landlord applies in approving a purchaser of a manufactured dwelling, residential vehicle or floating home as a tenant in the event the tenant elects to sell the home. Such conditions shall be in conformance with state and federal law and may include, but are not limited to, conditions as to pets, number of occupants, credit references, character references and criminal records; and

(i) That the tenant shall not sell the tenant's manufactured dwelling or residential vehicle to a person who intends to leave the manufactured dwelling or residential vehicle on the rental space until the landlord has accepted the person as a tenant.

(3) With respect to a rental agreement entered into after October 4, 1977, the landlord shall provide a copy of the agreement to the tenant.

(4) If a tenant refuses to sign a written agreement offered by the landlord which does not constitute a modification of the bargain entered into by the landlord and tenant and which does not violate a provision of ORS 90.100 to 90.940 the tenant shall not have a cause of action pursuant to ORS 90.710 (2)(a). [Formerly 91.875]

90.525 Unreasonable conditions of rental or occupancy prohibited. (1) No landlord shall impose conditions of rental or occupancy which unreasonably restrict the tenant or prospective tenant in choosing a fuel supplier, furnishings, goods, services or accessories.

(2) No landlord of a mobile home or manufactured dwelling park or floating home facility shall require the prospective tenant to purchase a manufactured dwelling, residential vehicle or floating home from a particular dealer or one of a group of dealers.

(3) No landlord renting a space for a manufactured dwelling, residential vehicle or floating home shall give preference to a prospective tenant who purchased a manufactured dwelling, residential vehicle or floating home from a particular dealer.

(4) No manufactured dwelling, residential vehicle or floating home dealer shall require, as a condition of sale, a purchaser to rent a space for a manufactured dwelling, residential vehicle or floating home in a particular facility or one of a group of facilities. [Formerly 91.895]

(Landlord and Tenant Relations)

90.600 Increases in rent; notice; meeting with tenants; effect of failure to comply. (1) In the case of a rental agreement to which ORS 90.500 to 90.940 apply, the landlord may not increase the rent unless:

(a) The landlord gives notice in writing to each affected tenant at least 90 days prior to the effective date of the rent increase specifying the amount of the increase, the amount of the new rent and the date on which the increase becomes effective;

(b) The landlord gives each affected tenant prior notice in writing that the landlord or a representative of the landlord will be available for discussion with tenants at a specified time which is not less than 10 nor more than 30 days after the date on which the landlord gave notice of the rent increase, and at a specified place which is on the premises in the case of a mobile home or manufactured dwelling park with facilities suitable for that purpose or, in all other cases, at a location reasonably convenient to tenants; and

(c) The landlord or a representative of the landlord is in fact available for discussion with tenants at the time and place specified in the notice required by subsection (2) of this section.

(2) The notice required by paragraph (b) of subsection (1) of this section shall be given with or after the notice of rent increase, and not less than 10 days before the time at which the landlord is available for discussion, unless the time and place that the landlord is available is a regular office hour or regularly scheduled meeting known to the tenants.

(3) In the event an association of tenants or a tenants' association chapter of tenants who reside in the mobile home or manufactured dwelling park requests in writing, within 10 days after mailing of a notice of rent increase under subsection (1) of this section, that the landlord meet to discuss the rent increase, the rent increase shall not become effective unless:

(a) The landlord or a representative of the landlord holds one meeting which shall be open, but may be limited to, all tenants of the park;

(b) The meeting is held not less than 10 nor more than 30 days after written notice to all tenants of the time and place of the meeting, and not more than 40 days after mailing of the notice of the rent increase; and

(c) The meeting is held on the premises if the mobile home or manufactured dwelling

park has facilities suitable for that purpose, or at a location reasonably convenient to the tenants if the mobile home or manufactured dwelling park has no such facilities.

(4) A meeting held under subsection (3) of this section constitutes compliance with paragraphs (b) and (c) of subsection (1) of this section.

(5) This section does not create a right to raise rent which does not otherwise exist.

(6) This section does not require a landlord to compromise or reduce a rent increase which the landlord is otherwise entitled to impose. [Formerly 91.869]

90.605 Persons authorized to receive notice and demands on landlord's behalf; written notice to change designated person. Any person authorized by the landlord of a mobile home or manufactured dwelling park or floating home facility to receive notices and demands on the landlord's behalf retains this authority until the authorized person is notified otherwise. Written notice of any change in the name or address of the person authorized to receive notices and demands shall be delivered to the residence of each person who rents a space for a manufactured dwelling, residential vehicle or floating home or, if specified in writing by the tenant, to another specified address. [Formerly 91.935]

90.620 Termination by tenant; notice to landlord. (1) The tenant who rents a space for a manufactured dwelling or floating home may terminate the rental agreement by giving to the landlord not less than 30 days' notice in writing prior to the date designated in the notice for termination.

(2) The agreement to rent required by ORS 90.510 may provide for termination on a specified date not less than 30 days after the parties enter into the agreement.

(3) No tenant shall be required to give the landlord more than 30 days' written notice to terminate. [Formerly 91.880]

90.630 Termination by landlord; causes; notice. (1) Except as provided in subsection (3) of this section, the landlord may terminate the rental agreement for space for a manufactured dwelling or residential vehicle by giving to the tenant not less than 30 days' notice in writing before the date designated in the notice for termination if the tenant:

(a) Violates a law or ordinance which related to the tenant's conduct as a tenant; or

(b) Violates a rule imposed as a condition of occupancy.

(2) The notice required by subsection (1) of this section shall state facts sufficient to notify the tenant of the reasons for termination of the tenancy.

(3) The tenant may avoid termination of the tenancy by correcting the violation within the 30-day period specified in subsection (1) of this section. However, if substantially the same act or omission which constituted a prior violation of which notice was given recurs within six months, the landlord may terminate the tenancy upon at least 20 days' written notice specifying the violation and the date of termination of the tenancy.

(4) The landlord of a facility, as defined in ORS 90.500, may terminate the rental agreement for a facility space if the facility is to be closed and the land or leasehold converted to a different use, which is not required by the exercise of eminent domain or by order of state or local agencies, by:

(a) Not less than 365 days' notice in writing before the date designated in the notice for termination; or

(b) Not less than 180 days' notice in writing before the date designated in the notice for termination, if the landlord finds space acceptable to the tenant to which the tenant can move the manufactured dwelling or residential vehicle and the landlord pays the cost of moving and set-up expenses or $3,500, whichever is less.

(5) The landlord may:

(a) Provide greater financial incentive to encourage the tenant to accept an earlier termination date than that provided in subsection (4) of this section; or

(b) Contract with the tenant for a mutually acceptable arrangement to assist the tenant's move.

(6) The Housing Agency shall adopt rules to implement the provisions of subsection (4) of this section.

(7)(a) A landlord shall not increase the rent for the purpose of offsetting the payments required under this section.

(b) There shall be no increase in the rent after a notice of termination is given pursuant to this section.

(8) Nothing in this section shall limit a landlord's right to terminate a tenancy for nonpayment of rent or any other cause stated in ORS 90.100 to 90.940 by complying with ORS 105.105 to 105.165. [Formerly 91.886]

(Ownership Change)

90.670 Payment of storage charges before removal of dwelling. (1) The landlord may serve a copy of the notice required by ORS 90.425 (2) or 90.690 (2) by certified mail on any lienholder. A tenant or a

lienholder to whom the landlord has sent a copy of the notice, or a successor in interest to such a lienholder, shall not remove the manufactured dwelling or residential vehicle from the mobile home or manufactured dwelling park without paying to the landlord reasonable storage charges, not exceeding the monthly rent last payable by the tenant, accruing since the notice was sent to the lienholder.

(2) The landlord may screen a purchaser from a lienholder who wishes to remain as a tenant under the same terms and conditions as the landlord could apply to a purchaser from the tenant as provided in ORS 90.510 (2)(h) and 90.680. [Formerly 91.915]

90.680 Right to sell dwelling on rented space; notice prior to sale; duties and rights of prospective purchaser. (1) No landlord shall deny any manufactured dwelling, residential vehicle or floating home space tenant the right to sell a manufactured dwelling or residential vehicle on a rented space or require the tenant to remove the home from the space solely on the basis of the sale.

(2) The landlord shall not exact a commission or fee for the sale of a manufactured dwelling, residential vehicle or floating home on a rented space unless the landlord has acted as agent for the seller pursuant to written contract.

(3) The landlord may not deny the tenant the right to place a "for sale" sign on or in a manufactured dwelling or residential vehicle owned by the tenant. The size, placement and character of such signs shall be subject to reasonable rules of the landlord.

(4) The landlord may require:

(a) That a tenant give not more than 30 days' notice in writing prior to the sale of a manufactured dwelling, residential vehicle or floating home on a rented space if the prospective purchaser of the home desires to leave the home on the rented space and become a tenant; and

(b) That the prospective purchaser complete and submit a complete and accurate written application for occupancy of the home as a tenant when the sale is complete.

(5) The following apply if a landlord receives an application for tenancy from a prospective purchaser under subsection (4) of this section:

(a) The landlord is subject to subsection (6) of this section if the landlord does not accept or reject the prospective purchaser's application within 20 days of receipt or within a longer time period to which the landlord and prospective purchaser agree.

(b) The landlord, for cause as specified in ORS 90.510 (2)(h), may reject the prospective purchaser as a tenant. In such case the landlord shall furnish to the seller and purchaser a written statement of the reasons for the rejection.

(c) If the landlord accepts the potential purchaser as a tenant, the landlord shall inform the purchaser, at the time of acceptance, what conditions will be imposed on a subsequent sale. These conditions need not be the same as those in the previous rental agreement.

(6) The following apply if a landlord does not require a prospective purchaser to submit an application for occupancy as a tenant under subsection (4) of this section or if the landlord does not accept or reject the prospective purchaser as a tenant within the time required under subsection (5) of this section:

(a) The landlord waives any right to bring an action against the tenant under the rental agreement for breach of the landlord's right to establish conditions upon and approve a prospective purchaser of the tenant's home;

(b) The prospective purchaser, upon completion of the sale, may occupy the home as a tenant under the same conditions and terms as the tenant who sold the home; and

(c) If the prospective purchaser becomes a new tenant, the landlord may only impose conditions or terms on the tenancy that are inconsistent with the terms and conditions of the seller's rental agreement if the new tenant agrees in writing. [Formerly 91.890]

90.690 Disposition of dwelling upon death of park tenant; requirements. (1) If a mobile home or manufactured dwelling park tenant residing alone dies, the landlord may dispose of the manufactured dwelling or residential vehicle pursuant to ORS 90.425 subject to subsection (2) of this section, provided:

(a) The landlord has requested in writing within two years before the tenant's death that the tenant designate a person to be contacted in the event of the tenant's death; or

(b) A personal representative has been duly appointed for the tenant.

(2) If subsection (1) of this section applies, the landlord may proceed as provided by ORS 90.425, except that the notice required by ORS 90.425 (2):

(a) Shall be sent to any personal representative appointed for the tenant and to any person designated by the tenant under paragraph (a) of subsection (1) of this section, except that if the tenant failed to designate

a person upon written request and there is no personal representative, the landlord shall send the notice to all living relatives of the tenant for whom the landlord has an address, if any;

(b) Shall state that any person entitled to possession of the manufactured dwelling or residential vehicle may remove it within 90 days of the mailing of the notice after paying reasonable storage charges and costs incidental to storage pursuant to ORS 90.425 (5);

(c) Shall state that the manufactured dwelling or residential vehicle may remain on the premises beyond the 90 days pending the conclusion of probate proceedings if reasonable storage charges not exceeding the tenant's monthly rent are kept current;

(d) Shall state any terms and conditions under which a devisee, legatee, heir or purchaser from the estate of the tenant who is entitled to possession of the manufactured dwelling or residential vehicle may remain as a tenant; and

(e) Shall state that if the manufactured dwelling or residential vehicle is not removed or the costs of its storage brought current by a specified date not less than 90 days from the mailing of the notice, the manufactured dwelling or residential vehicle will be considered abandoned and will be sold or otherwise disposed of, unless a person entitled to possession of the manufactured dwelling or residential vehicle has been accepted as a tenant.

(3) A landlord may screen a devisee, legatee, heir or purchaser from the estate of the tenant who wishes to remain as a tenant under the same terms and conditions as the landlord could apply to a purchaser from the tenant as provided in ORS 90.510 (2)(h) and 90.680. [Formerly 91.910]

(Actions)

90.710 Causes of action; limit on cause of action of tenant; costs and attorney fees. (1) Any person aggrieved by a violation of ORS 90.525, 90.630, 90.680 or 90.765 shall have a cause of action against the violator thereof for any damages sustained as a result of the violation or $200, whichever is greater.

(2)(a) Except as provided in paragraphs (b) and (c) of this subsection, a tenant shall have a cause of action against the landlord for a violation of ORS 90.510 (1) or (3) for any damages sustained as a result of such violation, or $100, whichever is greater.

(b) However, the tenant shall have no cause of action if, within 10 days after the tenant requests a written agreement from the landlord, the landlord offers to enter into a written agreement which does not substantially alter the terms of the oral agreement made when the tenant rented the space and which complies with ORS 90.100 to 90.940.

(c) If, within 10 days after being served with a complaint alleging a violation of ORS 90.510, the landlord offers to enter into a written rental agreement with each of the other tenants of the landlord which does not substantially alter the terms of the oral agreement made when each tenant rented the space and which complies with ORS 90.100 to 90.940, then the landlord shall not be subject to any further liability to such other tenants for previous violations of ORS 90.510.

(d) A purchaser shall have a cause of action against a seller for damages sustained or $100, whichever is greater, who sells the tenant's manufactured dwelling or residential vehicle to the purchaser before the landlord has accepted the purchaser as a tenant if:

(A) The landlord rejects the purchaser as a tenant; and

(B) The seller knew the purchaser intended to leave the manufactured dwelling on the space.

(3) Any person who brings an action under subsection (1) or (2) of this section may also recover costs, necessary disbursements and reasonable attorney fees at trial and on appeal as determined by the court. [Formerly 91.900]

90.720 Action to enjoin violation of ORS 90.750 or 90.755. In addition to the tenant's cause of action under ORS 90.710, any tenant prevented from exercising the rights in ORS 90.750 or 90.755 may bring an action in the appropriate court having jurisdiction in the county in which the alleged infringement occurred, and upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in any bylaw, rental agreement, regulation or rule, pertaining to a facility, which operates to deprive the tenant of these rights. [Formerly 91.930]

(Tenant Rights)

90.750 Right to assemble or canvass in park; limitations. No provision contained in any bylaw, rental agreement, regulation or rule pertaining to a mobile home or manufactured dwelling park or floating home facility shall:

(1) Infringe upon the right of persons who rent spaces in a mobile home or manufactured dwelling park or floating home facility to peaceably assemble in an open public meeting for any lawful purpose, at reasonable times and in a reasonable man-

ner, in the common areas or recreational areas of the facility.

(2) Infringe upon the right of persons who rent spaces in a mobile home or manufactured dwelling park or floating home facility to communicate or assemble among themselves, at reasonable times and in a reasonable manner, for the purpose of discussing any matter, including but not limited to any matter relating to the mobile home or manufactured dwelling park or floating home facility or manufactured dwelling or floating home living. The discussions may be held in the common areas or recreational areas of the facility, including halls or centers, or any resident's dwelling unit or floating home. The landlord of a mobile home or manufactured dwelling park or floating home facility, however, may enforce reasonable rules and regulations including but not limited to place, scheduling, occupancy densities and utilities.

(3) Prohibit any person who rents a space for a manufactured dwelling, residential vehicle or floating home from canvassing other persons in the same mobile home or manufactured dwelling park or floating home facility for purposes described in this section. As used in this subsection, "canvassing" includes door-to-door contact, an oral or written request, the distribution, the circulation, the posting or the publication of a notice or newsletter or a general announcement or any other matter relevant to the membership of a tenants' association.

(4) This section is not intended to require a landlord to permit any person to solicit money, except that a tenants' association member, whether or not a tenant of the park or facility, may personally collect delinquent dues owed by an existing member of a tenants' association.

(5) This section is not intended to require a landlord to permit any person to disregard a tenant's request not to be canvassed. [Formerly 91.920]

90.755 Right to speak on political issues; limitations. No provision in any bylaw, rental agreement, regulation or rule shall infringe upon the right of a person who rents a space for a manufactured dwelling, residential vehicle or floating home to invite public officers, candidates for public office or officers or representatives of a tenant organization to appear and speak upon matters of public interest in the common areas or recreational areas of the facility at reasonable times and in a reasonable manner in an open public meeting. The landlord of a mobile home or manufactured dwelling park or floating home facility, however, may enforce reasonable rules and regulations relating to the time, place and scheduling of the speakers that will protect the interests of the majority of the homeowners. [Formerly 91.925]

90.760 Notice to tenants' association when park becomes subject to listing agreement. (1) A tenants' association or a park purchase association may give written notice to the landlord of a mobile home or manufactured dwelling park in which some or all of the members of the associations reside as tenants requesting that the associations be notified, by first class mail to no more than three specified persons and addresses for each association, in the event the mobile home or manufactured dwelling park becomes subject to a listing agreement for the sale of all or part of the mobile home or manufactured dwelling park.

(2) If an association requests notice pursuant to subsection (1) of this section, the landlord shall give written notice to the persons and addresses designated in the request as soon as all or any portion of the mobile home or manufactured dwelling park becomes subject to a listing agreement entered into by or on behalf of the owner. [Formerly 91.905]

90.765 Prohibitions on retaliatory conduct by landlord. (1) In addition to the prohibitions of ORS 90.385, a landlord who rents a space for a manufactured dwelling or floating home may not retaliate by increasing rent or decreasing services, by serving a notice to terminate the tenancy or by bringing or threatening to bring an action for possession after:

(a) The tenant has expressed an intention to complain to agencies listed in ORS 90.385;

(b) The tenant has made any complaint to the landlord which is in good faith;

(c) The tenant has filed or expressed intent to file a complaint under ORS 659.045; or

(d) The tenant has performed or expressed intent to perform any other act for the purpose of asserting, protecting or invoking the protection of any right secured to tenants under any federal, state or local law.

(2) If the landlord acts in violation of subsection (1) of this section the tenant is entitled to the remedies provided in ORS 90.710 (1) and has a defense in any retaliatory action against the tenant for possession. [Formerly 91.870]

90.770 Confidentiality of information received from park tenants. The agency shall establish procedures to maintain the confidentiality of the information pertaining to individual tenants of mobile home or manufactured dwelling parks. These procedures shall meet the following requirements:

(1) The agency or designee of the agency shall not disclose, except to state agencies, the identity of any tenant unless the complainant or the tenant, or the legal representative of either, consents in writing to the disclosure and specifies to whom the disclosure may be made.

(2) The identity of any complainant or tenant on whose behalf a complaint is made, or individual providing information on behalf of the tenant or complainant, shall be confidential. If the complaint becomes the subject of judicial proceedings, the investigative information held by the agency shall be disclosed for the purpose of the proceedings if requested by the court. [Formerly 91.950]

91.775 Rules; adoption. The Housing Agency may adopt rules necessary to carry out the provisions of ORS 90.770. [Formerly 91.955]

(Park Purchase by Tenants)

90.800 Policy. (1) The State of Oregon encourages affordable housing options for all Oregonians. One housing alternative chosen by many Oregonians is mobile home or manufactured dwelling park living. The Legislative Assembly finds that many mobile home or manufactured dwelling park residents would like to join together to purchase the mobile home or manufactured dwelling park in which they live in order to have greater control over the costs and environment of their housing. The Legislative Assembly also finds that current market conditions place residents at a disadvantage with other potential investors in the purchase of mobile home or manufactured dwelling parks.

(2) It is the policy of the State of Oregon to encourage mobile home or manufactured dwelling park residents to participate in the housing marketplace by insuring that technical assistance, financing opportunities, notice of sale of mobile home or manufactured dwelling parks and the option to purchase parks are made available to residents who choose to participate in the purchase of a mobile home or manufactured dwelling park.

(3) The purpose of ORS 90.100, 90.500, 90.630, 90.760, 90.800 to 90.840, 308.905, 446.003, 456.579 and 456.581 is to strengthen the private housing market in Oregon by encouraging all Oregonians to have the ability to participate in the purchase of housing of their choice. [1989 c.919 §1]

Note: 90.800 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 90 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

90.810 Tenant notification of possible sale of park. (1) A mobile home or manufactured dwelling park owner shall notify, as described in ORS 90.760, the tenants' association and, as defined in ORS 90.500, a park purchase association within 10 days of receipt of:

(a) Any written offer received by the owner or agent of the owner to purchase the mobile home or manufactured dwelling park which the owner intends to consider; or

(b) Any listing agreement entered into, by the owner or agent of the owner, to effect the sale of the mobile home or manufactured dwelling park.

(2) The notice required by subsection (1) of this section shall be mailed to any association and park purchase association. [1989 c.919 §8]

90.815 Incorporation of park purchase association. A park purchase association shall comply with the provisions of ORS chapters 60, 62 and 65 before making the offer provided for under ORS 90.820. [1989 c.919 §9]

90.820 Park purchase by association; procedures. (1) Within seven days of receipt of the notice required by ORS 90.760 (2) or 90.810, a tenants' association or park purchase association may notify the park owner by certified mail and personal service at the park office that it is interested in purchasing the park.

(2) Upon receipt of the notice required by subsection (1) of this section, the owner shall negotiate in good faith with the association and provide it a reasonable opportunity to purchase the park as the owner would any bona fide third party potential purchaser.

(3) A park purchase association, actively involved in negotiations with a mobile home or manufactured dwelling park owner may waive or reduce the time periods for notice described in this section.

(4) This section, ORS 90.760 (2) and 90.810 do not apply to:

(a) Any sale or transfer to a person who would be included within the table of descent and distribution if the park owner were to die intestate.

(b) Any transfer by gift, devise or operation of law.

(c) Any transfer by a corporation to an affiliate. As used in this paragraph, "affiliate" means any shareholder of the transferring corporation, any corporation or entity owned or controlled, directly or indirectly, by the transferring corporation or any other corporation or entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation.

(d) Any transfer by a partnership to any of its partners.

(e) Any conveyance of an interest in a mobile home or manufactured dwelling park incidental to the financing of such mobile home or manufactured dwelling park.

(f) Any conveyance resulting from the foreclosure of a mortgage, deed of trust or other instrument encumbering a mobile home or manufactured dwelling park or any deed given in lieu of such foreclosure.

(g) Any sale or transfer between or among joint tenants or tenants in common owning a mobile home or manufactured dwelling park.

(h) Any exchange of a mobile home or manufactured dwelling park for other real property, whether or not such exchange also involves the payment of cash or other boot.

(i) The purchase of a mobile home or manufactured dwelling park by a governmental entity under its powers of eminent domain. [1989 c.919 §10]

90.830 Park owner; affidavit of compliance with procedures. (1) A park owner may at any time record, in the County Clerk Lien Record of the county where a mobile home or manufactured dwelling park is situated, an affidavit in which the park owner certifies that:

(a) With reference to an offer by the owner for the sale of such park, the owner has complied with the provisions of ORS 90.820;

(b) With reference to an offer received by the owner for the purchase of such park, or with reference to a counteroffer which the owner intends to make, or has made, for the sale of such park, the owner has complied with the provisions of ORS 90.820;

(c) Notwithstanding compliance with the provisions of ORS 90.820, no contract has been executed for the sale of such park between the owner and the park purchase association;

(d) The provisions of ORS 90.820 are inapplicable to a particular sale or transfer of such park by the owner, and compliance with such subsections is not required; or

(e) A particular sale or transfer of such park is exempted from the provisions of this section and ORS 90.820.

(2) Any party acquiring an interest in a mobile home or manufactured dwelling park, and any and all title insurance companies and attorneys preparing, furnishing or examining any evidence of title, have the absolute right to rely on the truth and accuracy of all statements appearing in such affidavit and are under no obligation to inquire further as to any matter or fact relating to the park owner's compliance with the provisions of ORS 90.820.

(3) It is the purpose and intention of this section to preserve the marketability of title to mobile home or manufactured dwelling parks, and, accordingly, the provisions of this section shall be liberally construed in order that all persons may rely on the record title to mobile home or manufactured dwelling parks. [1989 c.919 §11]

90.840 Park purchase funds, loans. (1) The Administrator of the Housing Agency may lend funds available to the Housing Agency to provide funds necessary to carry out the provisions of ORS 456.581 (2). Such funds advanced shall be repaid to the Housing Agency as determined by the administrator.

(2) Notwithstanding any budget limitation, the administrator may spend funds available from the Mobile Home Parks Purchase Account to employ personnel to carry out the provisions of ORS 456.581 (1). [1989 c.919 §12]

(Miscellaneous)

90.900 Termination of periodic tenancies; landlord remedies for tenant holdover. (1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 10 days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by giving to the other, at any time during the tenancy, not less than 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy. The tenancy shall terminate on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

(3) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and if the tenant's holdover is wilful and not in good faith the landlord may also recover not more than two months' periodic rent or twice the actual damages sustained by the landlord, whichever is greater. If the landlord consents to the tenant's continued occupancy, ORS 90.240 (4) applies. [Formerly 91.855]

90.910 Service of notices. (1) Notices under this chapter may be served by personal delivery or by first class mail. For purposes of this section, "first class mail" does not include certified or registered mail, or any other form of mail which may delay or hinder actual delivery of mail to the tenant.

(2) Except as provided in subsection (3) of this section, if a notice under ORS 90.400, 90.405, 90.630 or 90.900 is served by mail, the minimum period for compliance or termination of tenancy, as appropriate, shall be extended by three days, and the notice shall recite the fact and extent of the extension.

(3)(a) If a written rental agreement so provides, a notice of nonpayment of rent under ORS 90.400 (2), a 24-hour notice of termination under ORS 90.400 (3)(a), (b) or (d) or a notice of inspection under ORS 90.335 (3) may be deemed served on the day on which it is both mailed by first class mail to the tenant at the premises and attached in a secure manner to the main entrance to that portion of the premises of which the tenant has possession.

(b) Payment by a tenant who has received a nonpayment of rent notice under ORS 90.400 (2) is timely if mailed to the landlord within the period of the notice unless:

(A) The nonpayment of rent notice is personally served on the tenant;

(B) A written rental agreement and the nonpayment of rent notice expressly state that payment is to be made at a specified location which is either on the premises or, unless the tenant has become unable to make rent payments in person since the last rent payment, at a place where the tenant has made all previous rent payments in person; and

(C) The place so specified is available to the tenant for payment throughout the period of the notice. [Formerly 91.857]

90.920 Landlord and tenant remedies for refusal or abuse of access. (1) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access or may terminate the rental agreement. In addition, the landlord may recover actual damages.

(2) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demand for entry otherwise lawful but which has the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the reoccurrence of the conduct or may terminate the rental agreement. In addition, the tenant may recover actual damages not less than an amount equal to one month's rent. [Formerly 91.860]

90.930 Refusal to rent to physically impaired person because of assistance animal prohibited; extra fee prohibited; liability for damages. A landlord, as defined in ORS 90.100 (5), is subject to ORS 346.690. [Formerly 91.862]

Note: 91.862 [renumbered 90.930 in 1989] was enacted into law by the Legislative Assembly but was not added to or made a part of any series in ORS chapter 90 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

90.940 Right of city to recover from owner for costs of relocating tenant due to condemnation. (1) A city with a population that exceeds 300,000 shall have a right of action against the owner of any premises to recover the reasonable costs of relocation incurred by the city because the condition of the premises causes condemnation and relocation of the tenants at public expense. In order to recover the costs, the city must allege and prove that, due to action or inaction of the owner, the premises are or have been in multiple and material violation of applicable health or safety codes for a period of more than 30 days and that such violation endangers the health or safety of the tenants or the public, or both.

(2) It shall be an affirmative defense to recovery of relocation costs incurred for any tenant that the condition was caused by the action or negligence of that tenant.

(3) The official responsible for city code enforcement shall notify the owner in writing when the official finds the premises to be in a condition that may cause tenant relocation. The notice shall also inform the owner of the potential liability for relocation costs.

(4) A landlord may not evict a tenant because of the receipt of the notice required by subsection (3) of this section except for the reasons set forth in ORS 90.385 (3). The owner is not liable for tenant relocation costs if the eviction is for the reasons set forth in ORS 90.385 (3)(a).

(5) The action provided in subsection (1) of this section is in addition to any other action that may be brought against an owner under any other provision of law. [Formerly 91.866]

Chapter 91

1989 EDITION

Tenancy

CREATION AND TERMINATION OF TENANCIES

RENT

EMBLEMENTS

MATTERS RELATING TO GAMBLING LEASES

UTILITY COMPANY CLAIMS

CROSS REFERENCES

Challenge of juror for implied bias on ground of landlord-tenant relationship, 136.220

Complaint, 105.125

Discrimination in selling, leasing or renting real property prohibited, 659.033

Farm-worker housing, Ch. 458

Forfeiture of property for controlled substance offenses, 1989 c.791 §§ 1 to 14

How action conducted, 105.130 to 105.137

Methods of creating and transferring estate or an interest in realty, 93.020

Mobile Home Parks Purchase Account, 456.579, 456.581

Recordation of certain instruments, effect, 93.710

Subdivision and Series Partition Control Law, 92.305 to 92.495, 92.990

Time for bringing actions on rental agreements, 12.125

Writing essential for certain leases, 41.580

CREATION AND TERMINATION OF TENANCIES

91.010 Tenancy, when deemed to exist. A tenancy is deemed to exist under this chapter and ORS 105.115 and 105.120 when one has let real estate as a landlord to another. [Amended by 1987 c.158 §16]

91.020 Tenancies classified. Tenancies are as follows: Tenancy at sufferance, tenancy at will, tenancy for years, tenancy from year to year, tenancy from month to month, tenancy by entirety and tenancy for life. The times and conditions of the holdings shall determine the nature and character of the tenancy. [Amended by 1969 c.591 §273]

91.030 Tenancy by entirety or for life. A tenancy by entirety and a tenancy for life shall be such as now fixed and defined by the laws of the State of Oregon. [Amended by 1969 c.591 §274]

91.040 Tenancy at sufferance. One who comes into possession of the real estate of another lawfully, but who holds over by wrong after the termination of the term, is considered as a tenant at sufferance. No notice is required to terminate a tenancy at sufferance.

91.050 Tenancy at will. One who enters into the possession of real estate with the consent of the owners, under circumstances not showing an intention to create a freehold interest, is considered a tenant at will. When the rent reserved in the lease at will is payable at periods of less than three months, a notice to terminate the tenancy is sufficient if it is equal to the interval between the times of payment of rent. The notice to terminate a tenancy at will is sufficient if given for the prescribed period prior to the expiration of the period for which, by the terms of the lease and holding, rents are to be paid.

91.060 Tenancy from year to year. One who enters into the possession of real estate with the consent of the owner, and no certain time is mentioned, but an annual rent is reserved, is considered a tenant from year to year. A notice to terminate a tenancy from year to year is sufficient if it is given 60 days prior to the expiration of the period for which, by the terms of the lease and holding, rents are to be paid.

91.070 Tenancy from month to month. One who holds the lands or tenements of another, under the demise of the other, and no certain time has been mentioned, but a monthly rental has been reserved, is considered a tenant from month to month. Except as otherwise provided by statute or agreement, such tenancy may only be terminated by either the landlord or tenant giving the other, at any time during the tenancy, not less than 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy. The tenancy shall terminate on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy and holding, rents are to be paid.

91.080 Termination when expiration of tenancy fixed by terms of lease. A tenant entering into the possession of real estate may, by the terms of the lease, fix the date of expiration of the tenancy, and when so fixed, no notice is required to render the holding of the tenant wrongful and by force after the expiration of the term as fixed by the lease.

91.090 Termination of tenancy by failure to pay rent; reinstatement. The failure of a tenant to pay the rent reserved by the terms of the lease for the period of 10 days, unless a different period is stipulated in the lease, after it becomes due and payable, operates to terminate the tenancy. No notice to quit or pay the rent is required to render the holding of such tenant thereafter wrongful; however, if the landlord, after such default in payment of rent, accepts payment thereof, the lease is reinstated for the full period fixed by its terms, subject to termination by subsequent defaults in payment of rent.

91.100 Waiver of notice. Any person entering into the possession of real estate under written lease, as the tenant of another, may, by the terms of the lease of the person, waive the giving of any notice prescribed by ORS 91.050 to 91.070.

91.110 Notices to be in writing; how served. All notices required by ORS 91.050 to 91.070 and by ORS 105.120, must be in writing and must be served upon the tenant by being delivered to the tenant in person or by being posted in a conspicuous place on the leased premises in case of the absence of the tenant, or by being left at the residence or place of abode.

91.115 Tenant not to deny landlord's title. A tenant is not permitted to deny the title of the tenant's landlord at the time of the commencement of the relation. [1981 c.892 §85]

91.120 Eviction of employee; notice required. A landlord or employer of an employee of the landlord, as set forth in ORS 90.110 (5), may only evict the employee pursuant to ORS 105.105 to 105.165 after 24 hours following written notice of the termination of employment or as set forth in a written employment contract, whichever is longer. This section does not create the relationship of landlord and tenant between a landlord and such employee. [1987 c.611 §3]

91.125 Notice; service; calculation of days. Notwithstanding ORCP 10, the number of days allowed for notices served under this chapter shall be calculated by calendar days. [1987 c.611 §5]

Note: 91.125 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 91 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

RENT

91.210 Rents payable in advance unless otherwise agreed; demand unnecessary. Unless otherwise expressly provided by the lease or terms of holding, all rents reserved under the lease or terms of holding are due and payable in advance. The tenant shall pay or tender payment thereof on or prior to the first day of the rent paying period provided in the lease or by the terms of the holding, and no demand therefor is necessary to render a tenant in default.

91.220 Tenant in possession liable for rent; remedies for recovery. (1) Every person in possession of land out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold, or for any term of years, is liable for the amount or proportion of rent due from the land in possession of the person, although it is only a part of what was originally demised.

(2) Such rent may be recovered in an action at law, and the deed of demise, or other instrument in writing, if there is any, showing the provisions of the lease, may be used in evidence by either party to prove the amount due from the defendant.

(3) This section shall not deprive landlords of any other legal remedy for the recovery of their rents, whether secured to them by their leases or provided by law.

91.225 Local rent control prohibited; exclusions; exceptions. (1) The Legislative Assembly finds that there is a social and economic need to insure an adequate supply of affordable housing for Oregonians. The Legislative Assembly also finds that the imposition of general restrictions on housing rents will disrupt an orderly housing market, increase deferred maintenance of existing housing stock, lead to abandonment of existing rental units and create a property tax shift from rental-owned to owner-occupied housing. Therefore, the Legislative Assembly declares that the imposition of rent control on housing in the State of Oregon is a matter of state-wide concern.

(2) Except as provided in subsections (3) to (5) of this section, a city or county shall not enact any ordinance or resolution which controls the rent that may be charged for the rental of any dwelling unit.

(3) This section does not impair the right of any state agency, city, county or urban renewal agency as defined by ORS 457.035 to reserve to itself the right to approve rent increases, establish base rents or establish limitations on rents on any residential property for which it has entered into a contract under which certain benefits are applied to the property for the expressed purpose of providing reduced rents for low income tenants. Such benefits include, but are not limited to, property tax exemptions, long-term financing, rent subsidies, code enforcement procedures and zoning density bonuses.

(4) Cities and counties are not prohibited from including in condominium conversion ordinances a requirement that, during the notification period specified in ORS 100.305, the owner or developer may not raise the rents of any affected tenant except in a proportional amount equal to the percentage increase in the All Items Portland Consumer Price Index since the date of the last rent increase for the dwelling unit then occupied by the affected tenant.

(5) Cities, counties and state agencies may impose temporary rent controls when a natural or man-made disaster that materially eliminates a significant portion of the rental housing supply occurs, but must remove the controls when the rental housing supply is restored to substantially normal levels.

(6) As used in this section, "dwelling unit" and "rent" have the meaning given those terms in ORS 90.100.

(7) This section is applicable throughout this state and in all cities and counties therein. The electors or the governing body of a city or county shall not enact, and the governing body shall not enforce, any ordinance, resolution or other regulation that is inconsistent with this section. [1985 c.335 §2]

EMBLEMENTS

91.230 Farm tenant's right to emblements. When the leasing or occupation is for the purpose of farming or agriculture, the tenant or person in possession shall, after the termination of the lease or occupancy, have free access to the premises to cultivate and harvest or gather any crop or produce of the soil planted or sown by the tenant or person in possession before the service of notice to quit. [Formerly 91.310]

MATTERS RELATING TO GAMBLING LEASES

91.240 Gambling leases prohibited; status of rental contracts; termination;

recovery of possession. (1) No person shall let or rent any house, room, shop or other building, or any boat, booth, garden or other place, knowing or having reason to believe it will be used for gambling purposes.

(2) All contracts for the rent of a room, building or place in violation of subsection (1) of this section are void between the parties.

(3) Any person letting or renting any room, building, or place mentioned in subsection (1) of this section which is at any time used by the lessee or occupant thereof, or any other person with the knowledge or consent of the lessee or occupant, for gambling purposes, upon discovery thereof, may avoid and terminate such lease or contract of occupancy, and recover immediate possession of such building or other place by an action at law for that purpose to be brought before any justice of the peace of the county in which the use is permitted. [Formerly 91.410]

91.245 Penalty for letting or renting a place for gambling purposes. Violation of ORS 91.240 (1) results in a forfeiture of twice the amount of the rent of such building or other place for six months to be recovered by action at law instituted by the district attorney in the name of the state. [Formerly 91.420]

UTILITY COMPANY CLAIMS

91.255 Transfer of claim; prohibition. A utility company shall not transfer a claim against a tenant to the owner of the real property without the written consent of the owner. [1987 c.611 §1]

Note: 91.255 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 91 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

91.310 [Renumbered 91.230]

91.355 [1975 c.501 §1; renumbered 105.920]

91.410 [Renumbered 91.240]

91.420 [Renumbered 91.245]

91.500 [Formerly 91.505; 1979 c.650 §1; 1981 c.647 §1; renumbered 94.004]

91.503 [Formerly 91.510; 1981 c.647 §2; renumbered 94.011]

91.504 [Formerly 91.643; renumbered 94.017]

91.505 [1963 c.541 §2; 1965 c.430 §1; 1967 c.361 §1; 1977 c.484 §28; renumbered 91.500]

91.506 [Formerly 91.525; 1979 c.650 §26; 1981 c.647 §3; renumbered 94.023]

91.509 [Formerly 91.530; 1979 c.650 §2; 1981 c.647 §4; renumbered 94.029]

91.510 [1963 c.541 §1; renumbered 91.503]

91.512 [Formerly 91.535; 1979 c.350 §2; 1981 c.697 §7; renumbered 94.036]

91.515 [Formerly 91.540; 1979 c.650 §3; renumbered 94.042]

91.518 [Formerly 91.545; 1979 c.650 §27; 1981 c.647 §5; renumbered 94.047]

91.519 [1979 c.650 §24; renumbered 94.053]

91.521 [1977 c.658 §8; 1979 c.650 §4; 1981 c.647 §6; renumbered 94.059]

91.523 [1979 c.650 §8a; 1981 c.886 §1; renumbered 94.109]

91.524 [1977 c.484 §26; 1979 c.650 §5; 1981 c.886 §2; renumbered 94.116]

91.525 [1963 c.541 §§3, 15; renumbered 91.506]

91.526 [1979 c.650 §§6a, 7, 8; 1981 c.886 §3; renumbered 94.122]

91.527 [1977 c.658 §12; 1979 c.650 §9; 1981 c.647 §7; renumbered 94.146]

91.530 [1963 c.541 §§14, 16; 1965 c.430 §2; 1971 c.414 §1; 1973 c.421 §51; 1974 s.s. c.1 §24; 1977 c.658 §5; renumbered 91.509]

91.531 [Formerly 91.555; 1979 c.650 §10; 1981 c.647 §8; renumbered 94.152]

91.533 [Formerly 91.560; 1979 c.650 §11; 1981 c.647 §9; renumbered 94.158]

91.534 [1979 c.650 §29; renumbered 94.164]

91.535 [1963 c.541 §17; 1971 c.230 §1; 1973 c.402 §1; 1973 c.803 §1; 1977 c.658 §6; renumbered 91.512]

91.536 [Formerly 91.565; 1979 c.650 §12; renumbered 94.171]

91.539 [Formerly 91.575; 1979 c.650 §13; renumbered 94.185]

91.540 [1963 c.541 §§18, 19; 1973 c.803 §2; 1977 c.658 §1; renumbered 91.515]

91.542 [1977 c.658 §15; renumbered 94.190]

91.545 [1971 c.414 §3; 1977 c.658 §18; renumbered 91.518]

91.546 [Formerly 91.580; 1981 c.647 §10; renumbered 94.195]

91.548 [Formerly 91.585; renumbered 94.202]

91.551 [Formerly 91.590; renumbered 94.208]

91.554 [Formerly 91.595; 1981 c.647 §11; renumbered 94.214]

91.555 [1963 c.541 §20; 1977 c.658 §17; renumbered 91.531]

91.557 [1977 c.658 §13; 1981 c.647 §12; renumbered 94.221]

91.560 [1963 c.541 §21; 1971 c.414 §4; 1977 c.484 §29; 1977 c.658 §4a; renumbered 91.533]

91.561 [Formerly 91.605; renumbered 94.231]

91.562 [1979 c.650 §25; renumbered 94.237]

91.563 [Formerly 91.610; 1979 c.650 §14; renumbered 94.243]

91.564 [1979 c.650 §23; 1981 c.647 §13; renumbered 94.255]

91.565 [1963 c.541 §22; 1971 c.414 §5; renumbered 91.536]

91.566 [Formerly 91.615; 1979 c.650 §15; 1981 c.647 §14; renumbered 94.260]

91.569 [Formerly 91.620; 1979 c.650 §16; renumbered 94.265]

91.570 [1963 c.541 §23; repealed by 1977 c.658 §3]

91.572 [Formerly 91.625; 1981 c.647 §15; renumbered 94.270]

91.575 [1963 c.541 §24; renumbered 91.539]

91.576 [Formerly 91.630; 1981 c.647 §16; renumbered 94.275]

91.578 [Formerly 91.635; renumbered 94.280]

91.580 [1963 c.541 §§26, 27; 1977 c.658 §2; renumbered 91.546]

91.581 [Formerly 91.640; 1979 c.650 §17; renumbered 94.285]

91.584 [Formerly 91.655; renumbered 94.295]

91.585 [1963 c.541 §28; renumbered 91.548]

91.587 [1977 c.658 §11 (enacted in lieu of 91.660); renumbered 94.300]

91.590 [1963 c.541 §§29, 30; renumbered 91.551]

91.591 [Formerly 91.665; 1979 c.650 §18; renumbered 94.306]

91.593 [Formerly 91.670; renumbered 94.312]

91.595 [1963 c.541 §§25, 31; renumbered 91.554]

91.596 [Formerly 91.675; renumbered 94.318]

91.599 [1977 c.484 §1; 1979 c.650 §19; 1981 c.647 §19; 1981 c.886 §7; renumbered 94.324]

91.602 [1977 c.484 §2; renumbered 94.331]

91.605 [1963 c.541 §§4, 5; renumbered 91.561]

91.606 [1977 c.484 §3; renumbered 94.336]

91.608 [1977 c.484 §4; renumbered 94.342]

91.610 [1963 c.541 §§6, 7; 1977 c.658 §9; renumbered 91.563]

91.611 [1977 c.484 §5; renumbered 94.348]

91.614 [1977 c.484 §6; renumbered 94.359]

91.615 [1963 c.541 §§8, 12; 1971 c.414 §6; 1977 c.658 §16; renumbered 91.566]

91.617 [1977 c.484 §7; renumbered 94.366]

91.620 [1963 c.541 §9; renumbered 91.569]

91.621 [1977 c.484 §8; renumbered 94.372]

91.623 [1977 c.484 §9; renumbered 94.378]

91.625 [1963 c.541 §§10, 11; renumbered 91.572]

91.626 [1977 c.484 §10; 1981 c.647 §34; renumbered 94.384]

91.629 [1977 c.484 §12; renumbered 94.391]

91.630 [1963 c.541 §13; renumbered 91.576]

91.631 [1977 c.484 §13; renumbered 94.400]

91.634 [1977 c.484 §11; 1981 c.647 §20; renumbered 94.406]

91.635 [1963 c.541 §§38, 39; renumbered 91.578]

91.637 [1977 c.484 §14; 1981 c.647 §21; renumbered 94.412]

91.640 [1963 c.541 §§40, 41, 42; 1967 c.361 §2; renumbered 91.581]

91.641 [1977 c.484 §15; 1981 c.647 §22; renumbered 94.424]

91.643 [1977 c.658 §14; 1979 c.650 §20; renumbered 91.504]

91.646 [1977 c.484 §25; renumbered 94.431]

91.649 [1977 c.484 §16; renumbered 94.437]

91.652 [1977 c.484 §17; renumbered 94.448]

91.655 [1963 c.541 §32; renumbered 91.584]

91.656 [1977 c.484 §18; renumbered 94.454]

91.658 [1977 c.484 §19; renumbered 94.460]

91.660 [1963 c.541 §§33, 34; repealed by 1977 c.658 §10 (91.587 enacted in lieu of 91.660)]

91.661 [1977 c.484 §24; renumbered 94.465]

91.664 [1977 c.484 §20; renumbered 94.470]

91.665 [1963 c.541 §35; renumbered 91.591]

91.667 [1977 c.484 §21; renumbered 94.475]

91.670 [1963 c.541 §36; renumbered 91.593]

91.671 [1977 c.484 §22; renumbered 94.480]

91.675 [1963 c.541 §37; renumbered 91.596]

91.690 [1975 c.489 §§1, 2; 1981 c.841 §3; 1989 c.693 §11; renumbered 101.080 in 1989]

91.700 [1973 c.559 §1; renumbered 90.105 in 1989]

91.705 [1973 c.559 §5; 1979 c.384 §1; 1979 c.676 §4a; 1979 c.884 §2a; 1989 c.590 §1; 1989 c.648 §31; 1989 c.919 §16; renumbered 90.100 in 1989]

91.710 [1973 c.559 §4; renumbered 90.110 in 1989]

91.715 [1973 c.559 §3; renumbered 90.115 in 1989]

91.720 [1973 c.559 §33; 1975 c.648 §70a; 1989 c.648 §32; renumbered 90.120 in 1989]

91.725 [1973 c.559 §2; renumbered 90.125 in 1989]

91.730 [1973 c.559 §6; renumbered 90.130 in 1989]

91.735 [1973 c.559 §7; renumbered 90.135 in 1989]

91.740 [1973 c.559 §8; 1975 c.256 §1; 1979 c.632 §1; 1985 c.473 §9; renumbered 90.240 in 1989]

91.745 [1973 c.559 §9; 1989 c.506 §2; renumbered 90.245 in 1989]

91.750 [1973 c.559 §10; renumbered 90.250 in 1989]

91.755 [1973 c.559 §11; 1981 c.897 §28; renumbered 90.255 in 1989]

91.757 [1981 c.576 §2; 1983 c.303 §7; renumbered 90.265 in 1989]

91.760 [1973 c.559 §12; 1975 c.256 §2; 1985 c.588 §4; 1989 c.506 §5; renumbered 90.300 in 1989]

91.765 [1973 c.559 §13; 1987 c.611 §10; renumbered 90.305 in 1989]

91.766 [1985 c.588 §2; 1989 c.506 §6; renumbered 90.310 in 1989]

91.767 [1979 c.599 §2; renumbered 90.315 in 1989]

91.770 [1973 c.559 §14; 1979 c.643 §2; 1981 c.753 §1; 1987 c.611 §11; 1989 c.506 §8; renumbered 90.320 in 1989]

91.773 [1975 c.256 §5; repealed by 1979 c.643 §3]

91.775 [1973 c.559 §15;renumbered 90.325 in 1989]

91.780 [1973 c.559 §16; renumbered 90.330 in 1989]

91.785 [1973 c.559 §17; 1979 c.632 §2; 1981 c.753 §2; 1983 c.708 §1; 1989 c.506 §9; 1989 c.648 §33; renumbered 90.335 in 1989]

91.790 [1973 c.559 §18; renumbered 90.340 in 1989]

91.800 [1973 c.559 §19; 1985 c.588 §5; renumbered 90.360 on 1989]

91.805 [1973 c.559 §20; 1975 c.256 §6; 1985 c.588 §6; 1989 c.506 §11; renumbered 90.365 in 1989]

91.810 [1973 c.559 §21; 1979 c.854 §1; 1987 c.611 §6; renumbered 90.370 in 1989]

91.815 [1973 c.559 §22; 1985 c.588 §7; 1987 c.611 §8; 1989 c.506 §3; renumbered 90.375 in 1989]

91.817 [1983 c.356 §2; 1989 c.506 §12; renumbered 90.380 in 1989]

91.820 [1973 c.559 §23; 1975 c.256 §3; 1979 c.573 §1a; 1979 c.765 §3; 1981 c.753 §3; 1983 c.303 §1; 1987 c.611 §9; 1989 c.506 §13; renumbered 90.400 in 1989]

91.822 [1979 c.765 §2; renumbered 90.405 in 1989]

91.825 [1973 c.559 §24; renumbered 90.410 in 1989]

91.830 [1973 c.559 §25; 1983 c.708 §2; 1985 c.588 §17; 1989 c.506 §10; renumbered 90.415 in 1989]

91.835 [1973 c.559 §26; renumbered 90.420 in 1989]

91.840 [1973 c.559 §27; 1979 c.765 §4; 1981 c.753 §4; 1983 c.303 §4; 1985 c.473 §11; 1985 c.588 §8; 1987 c.611 §7; 1989 c.506 §4; 1989 c.648 §34; renumbered 90.425 in 1989]

91.845 [1973 c.559 §28; renumbered 90.430 in 1989]

91.850 [1973 c.559 §29; renumbered 90.435 in 1989]

91.855 [1973 c.559 §30; renumbered 90.900 in 1989]

91.857 [1985 c.588 §12; 1987 c.611 §4; 1989 c.171 §9; 1989 c.506 §16; renumbered 90.910 in 1989]

91.860 [1973 c.559 §31; 1985 c.588 §9; renumbered 90.920 in 1989]

91.862 [1981 c.179 §3; 1989 c.336 §4; renumbered 90.930 in 1989]

91.865 [1973 c.559 §32; 1979 c.643 §1; 1983 c.337 §1; 1985 c.588 §10; 1989 c.506 §17; renumbered 90.385 in 1989]

91.866 [1981 c.430 §2; renumbered 90.940 in 1989]

91.868 [1981 c.478 §2; 1987 c.274 §2; 1989 c.648 §35; 1989 c.919 §6a; renumbered 90.500 in 1989]

91.869 [1985 c.473 §10; 1989 c.648 §36; renumbered 90.600 in 1989]

91.870 [1975 c.353 §7; 1979 c.384 §1a; 1985 c.588 §18; 1989 c.648 §70; renumbered 90.765 in 1989]

91.873 [1977 c.348 §3; 1979 c.384 §2;1989 c.648 §37; renumbered 90.606 in 1989]

91.874 [1977 c.348 §1a; 1987 c.414 §144; repealed by 1989 c.918 §9 and 1989 c.919 §14]

91.875 [1975 c.353 §2; 1977 c.348 §1; 1979 c.384 §3; 1979 c.573 §2a; 1979 c.676 §1; 1989 c.648 §39; renumbered 90.510 in 1989]

91.880 [1975 c.353 §3; 1977 c.348 §4; 1979 c.384 §4; 1989 c.648 §71; renumbered 90.620 in 1989]

91.885 [1975 c.353 §4; 1977 c.348 §5; 1979 c.384 §5; 1979 c.676 §2; repealed by 1979 c.676 §5 (91.886 enacted in lieu of 91.885)]

91.886 [1979 c.676 §6 (enacted in lieu of 91.885); 1987 c.787 §1; 1989 c.919 §§ 13, 13a; renumbered 90.630 in 1989]

91.890 [1975 c.353 §5; 1977 c.348 §6; 1979 c.384 §6; 1979 c.676 §3; 1983 c.694 §1; 1989 c.648 §41; renumbered 90.680 in 1989]

91.895 [1975 c.353 §6; 1979 c.384 §7; 1981 c.478 §3; 1985 c.473 §6; 1989 c.648 §42; renumbered 90.525 in 1989]

91.900 [1977 c.348 §7; 1979 c.676 §4; 1981 c.897 §29; 1989 c.648 §43; renumbered 90.710 in 1989]

91.905 [1985 c.473 §8; 1989 c.648 §44; 1989 c.919 §7; renumbered 90.760 in 1989]

91.910 [1985 c.473 §12; 1989 c.506 §24; 1989 c.648 §45; renumbered 90.690 in 1989]

91.915 [1985 c.473 §13; 1989 c.648 §46; renumbered 90.670 in 1989]

91.920 [1985 c.473 §2; 1989 c.648 §47; renumbered 90.750 in 1989]

91.925 [1985 c.473 §3; 1989 c.648 §48; renumbered 90.755 in 1989]

91.930 [1985 c.473 §5; renumbered 90.720 in 1989]

91.935 [1985 c.473 §4; 1989 c.648 §49; renumbered 90.605 in 1989

91.945 [1987 c.786 §1; repealed by 1989 c.648 §73]

91.950 [1987 c.786 §2; 1989 c.648 §50; renumbered 90.770 in 1989]

91.955 [1987 c.786 §3; renumbered 90.775 in 1989]

91.990 [1977 c.484 §23; renumbered 94.991]

Chapter 105

1989 EDITION

Property Rights

FORCIBLE ENTRY AND WRONGFUL DETAINER

ACTIONS AND SUITS FOR NUISANCES

ABATEMENT OF UNLAWFUL GAMBLING, PROSTITUTION OR CONTROLLED SUBSTANCE ACTIVITIES

FORCIBLE ENTRY AND WRONGFUL DETAINER

105.105 Entry to be lawful and peaceable only. No person shall enter upon any land, tenement or other real property unless the right of entry is given by law. When the right of entry is given by law the entry shall be made in a peaceable manner and without force.

105.110 Action for forcible entry or wrongful detainer. Except as provided in ORS 46.060 (2), when a forcible entry is made upon any premises, or when an entry is made in a peaceable manner and possession is held by force, the person entitled to the premises may maintain in the county where the property is situated an action to recover the possession of the premises in the district court or before any justice of the peace of the county. [Amended by 1985 c.241 §1]

105.112 Action by tenant to recover personal property. (1) A tenant or former tenant may bring an action to recover personal property taken or retained by a landlord in violation of ORS 90.100 to 90.940.

(2) An action under this section shall be governed by the provisions of ORS 105.105 to 105.165 except that:

(a) The complaint form shall be available from the circuit or district court clerk in substantially the following form:

IN THE_____ COURT FOR THE COUNTY OF_____

(Tenant),)
)
Plaintiff(s),)
)
vs.) No.____
)
(Landlord),)
)
Defendant(s).)

COMPLAINT FOR RETURN OF PERSONAL PROPERTY

I

Defendant(s) (is) (are) in possession of the following personal property belonging to the plaintiff(s):

_____

_____

_____

[ ] See attached list.

II

Defendant(s) took the personal property alleged in paragraph I from premises rented by plaintiff(s) from defendant(s) at

_____(street and number)
_____(city)
_____(county)

III

Plaintiff(s) (is) (are) entitled to possession of the personal property because:

_____ Defendant(s) took the personal property wrongfully because plaintiff(s) had not abandoned the property, and because either there was no court order awarding defendant(s) possession of the premises or the plaintiff(s) (was) (were) not continuously absent from the premises for seven days after such an order when defendant(s) removed the personal property.

_____ Defendant(s) lawfully took possession of the personal property after enforcement of a court order for possession of the premises, but refused to return the personal property to plaintiff(s) without payment although plaintiff(s) demanded return of the property within 15 days of any written notice from the landlord that the property had been taken or within 15 days of the plaintiff's written response to such a notice.

_____ Defendant(s) lawfully took possession of the personal property, but refused to return the personal property to plaintiff(s) although plaintiff(s) offered payment of all sums due for storage and any costs of removal of the personal property and demanded return of the property within 15 days of any written notice from the landlord that the property had been taken or within 15 days of the plaintiff's written response to such a notice.

_____ Other:_____

_____

_____

Wherefore, plaintiff(s) pray(s) for pos-

session of the personal property and costs and disbursements incurred herein.

Date _____ Signature of Plaintiff(s) _____

(b) The complaint shall be verified by a plaintiff or an agent of the plaintiff.

(c) The answer form shall be available from the circuit or district court clerk in substantially the following form:

IN THE _____ COURT FOR THE COUNTY OF _____

(Tenant),)
Plaintiff(s),)
vs.) No. _____
(Landlord),)
Defendant(s).)

ANSWER

I (we) deny that the plaintiff(s) is (are) entitled to possession of the personal property subject of the complaint because:

_____ The defendant(s) did not take and do not have possession of any of the property listed in the complaint.

_____ The defendant(s) took possession of the personal property as provided in ORS 90.425 after giving written notice that it was considered abandoned, and the plaintiff(s) did not make a timely demand for return of the property.

_____ The defendant(s) took possession of the personal property as provided in ORS 90.425 after giving written notice that it was considered abandoned, but not after a sheriff's enforcement of an eviction judgment against the plaintiff(s) as provided in ORS 1[illegible] 165, and the plaintiff(s) refused to pay c arges lawfully due for storage.

_____ Other: _____

I (we) ask that the plaintiff(s) take nothing by the complaint and that I (we) be awarded my (our) costs and disbursements.

Date _____ Signature of defendant(s) _____

(d) The issue at trial shall be limited to whether the plaintiff is entitled to possession of the personal property listed in the complaint.

(e) No claim for damages shall be asserted by either party in the action for possession of the personal property under this section, but each party may pursue any claim for damages in a separate action.

(f) A party may join an action for possession of personal property with an action for damages or a claim for other relief, but the proceeding shall not be governed by the provisions of ORS 105.105 to 105.165.

(g) If the court determines that the plaintiff is entitled to possession of the personal property subject of the complaint, the court shall enter an order directing the sheriff to seize the personal property to which the court finds the plaintiff entitled, and to deliver that property to the plaintiff. The court may provide that the defendant have a period of time to deliver the property to the plaintiff voluntarily before execution. The costs of execution shall be added to the judgment as provided in ORS 21.410 (1)(d).

(h) Subject to the provisions of ORCP 68, a prevailing party who has been represented by counsel may recover attorney fees as provided by ORS 90.255. [1989 c.506 §22]

105.115 Causes of unlawful holding by force. (1) Except as provided by subsections (2) and (3) of this section, the following are causes of unlawful holding by force within the meaning of ORS 105.110 and 105.125:

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

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

(2) In the case of a dwelling unit to which ORS 90.100 to 90.940 applies, the following are causes of unlawful holding by force within the meaning of ORS 105.110 and 105.125:

(a) When the tenant or person in possession of any premises fails or refuses to pay rent within 72 hours of the notice required by ORS 90.400 (2).

(b) When a rental agreement by its terms has expired and has not been renewed, or when the tenant or person in possession is

holding from month to month or from week to week and remains in possession after a valid notice to quit as provided in ORS 105.120 (2), or is holding contrary to any valid condition or covenant of the rental agreement or ORS 90.100 to 90.940.

(3) In an action under subsection (2) of this section, ORS 90.100 to 90.940 shall be applied to determine the rights of the parties, including:

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

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

(c) Whether the tenant is entitled to remedies for retaliatory conduct by the landlord as provided by ORS 90.385 and 90.765. [Amended by 1973 c.559 §34; 1977 c.365 §1; 1981 c.753 §5]

105.120 Notice necessary to maintain action in certain cases; waiver of notice; effect of advance payments of rent. (1) Except as provided in subsection (2) of this section, an action for the recovery of the possession of the premises may be maintained in cases provided in ORS 105.115 (1)(b), when the notice to terminate the tenancy or to quit has been served upon the tenant or person in possession in the manner prescribed by ORS 91.110 and for the period prescribed by ORS 91.060 to 91.080 before the commencement of the action, unless the leasing or occupation is for the purpose of farming or agriculture, in which case such notice must be served for a period of 90 days before the commencement of the action. Any person entering into the possession of real estate under written lease as the tenant of another may, by the terms of the lease, waive the giving of any notice required by this subsection.

(2) An action for the recovery of the possession of a dwelling unit to which ORS 90.100 to 90.940 applies may be maintained in cases provided in ORS 105.115 (2) when the notice to terminate the tenancy or to quit has been served by the tenant upon the landlord or by the landlord upon the tenant or person in possession in the manner prescribed by ORS 90.910.

(3) The service of a notice to quit upon a tenant or person in possession does not authorize an action to be maintained against the tenant or person in possession for the possession of premises before the expiration of any period for which the tenant or person has paid the rent of the premises in advance except when:

(a) The only unused rent paid by the tenant was collected as a deposit for the last month's rent at the beginning of the tenancy;

(b) A 24-hour notice is given under ORS 90.400 (3);

(c) A notice for a pet violation is given under ORS 90.405; or

(d) The only unused rent was paid by the tenant for a rental period extending beyond a termination date specified in a valid and outstanding notice to terminate the tenancy, and the landlord refunded the unused rent within four days. [Amended by 1973 c.559 §35; 1981 c.753 §6; 1983 c.303 §5; 1985 c.588 §13; 1989 c.506 §18]

105.125 Complaint. (1) In an action pursuant to ORS 105.110 it is sufficient to state in the complaint:

(a) A description of the premises with convenient certainty;

(b) That the defendant is in possession of the premises;

(c) That the defendant entered upon the premises with force or unlawfully holds the premises with force; and

(d) That the plaintiff is entitled to the possession of the premises.

(2) In the case of a dwelling unit to which ORS 90.100 to 90.940 applies:

(a) The complaint form shall be available from the circuit or district court clerk in substantially the following form:

IN THE _____ COURT
FOR THE COUNTY OF

_____
No. _____

(Landlord), Plaintiff(s),

vs.

(Tenant), Defendant(s).

COMPLAINT (Forcible Entry and Unlawful Detainer)

I

Defendant(s) (is) (are) in possession of the following premises:

_____
_____ (city)
_____ (county)

II

Defendant(s) (entered upon the premises with force) (are/is unlawfully holding the premises with force).

III

Plaintiff(s) (is) (are) entitled to possession of the premises, because:

_____ 24-hour notice (personal injury)
_____ 24-hour notice (substantial damage)

_____ 24-hour notice (extremely outrageous act)
_____ 72-hour notice (nonpayment of rent)
_____ 10-day notice (pet violation)
_____ 10-day notice (week-to-week tenancy)
_____ 30-day notice (month-to-month tenancy)
_____ 30-day notice (cause)
_____ No notice

ATTACH A COPY OF THE NOTICE RELIED ON TO THE COMPLAINT

Wherefore, plaintiff(s) (prays) (pray) for possession of the premises and costs and disbursements incurred herein.

_____
Plaintiff(s).

(b) The complaint shall be verified by the plaintiff or the agent of the plaintiff. [Amended by 1975 c.256 §9; 1981 c.753 §7]

105.130 How action conducted; fees. (1) Except as provided in this section and ORS 105.135, 105.137 and 105.140 to 105.155, an action pursuant to ORS 105.110 shall be conducted in all respects as other actions in courts of this state.

(2) Upon filing a complaint in the case of a dwelling unit to which ORS 90.100 to 90.940 applies, the clerk shall:

(a) Collect a filing fee of $22;

(b) Collect the applicable fee for service of the summons if service will be made by the sheriff; and

(c) With the assistance of the plaintiff or an agent of the plaintiff, complete the applicable summons and forward the summons, with sufficient copies, and a true copy of the complaint for service by a person authorized to serve summons in a civil action in a circuit court.

(3) After a complaint is filed under subsection (2) of this section, if the defendant demands a trial, the plaintiff shall pay the difference between the filing fee paid under subsection (2) of this section and the fee required of a plaintiff in a district court action and the defendant shall pay the fee required of a defendant in a district court action.

(4) An action pursuant to ORS 105.110 shall be brought in the name of a person entitled to possession as plaintiff. The plaintiff may appear in person or through an attorney. In an action to which ORS 90.100 to 90.940 apply, the plaintiff may also appear through a nonattorney who is an agent or employee of the plaintiff or an agent or employee of an agent of the plaintiff. [Amended by 1975 c.256 §10; 1977 c.877 §15; 1979 c.284 §94; 1981 c.753 §10; 1983 c.581 §1; 1985 c.588 §16; 1987 c.829 §5]

105.132 Assertion of counterclaim. No person named as a defendant in an action brought under ORS 105.105 to 105.165 may assert a counterclaim unless the right to do so is otherwise provided by statute. [1985 c.244 §2]

105.135 Service and return of summons; posting; contents. (1) Except as provided in this section, the summons shall be served and returned as in other actions.

(2) At the time the clerk collects the filing fee under ORS 105.130, the clerk shall enter the first appearance date on the summons. That date shall be seven days after the judicial day next following payment of filing fees unless no judge is available for first appearance at that time, in which case the clerk shall enter the next later date on which a judge will be available. At the request of the plaintiff, the clerk may enter a date more than seven days after the judicial day next following payment of filing fees if a judge will be available.

(3) Notwithstanding ORCP 10, by the end of the judicial day next following the payment of filing fees:

(a) The clerk shall mail a true copy of the summons and complaint by first class mail to the defendant at the premises.

(b) The process server shall serve the defendant with a true copy of the summons and complaint at the premises by personal delivery to the defendant or, if the defendant is not available for service, by attaching a true copy of the summons and complaint in a secure manner to the main entrance to that portion of the premises of which the defendant has possession.

(4) The process server shall indicate by affidavit upon the return the manner in which service was accomplished.

(5) In the case of premises to which ORS 90.100 to 90.940 applies, the summons shall inform the defendant of the procedures, rights and responsibilities of the parties as specified in ORS 105.137. [Amended by 1975 c.256 §11; 1977 c.327 §1; 1979 c.854 §2; 1981 c.753 §11; 1983 c.303 §6; 1983 c.581 §3; 1985 c.588 §14]

105.137 Effect of failure of party to appear; appearance by attorney; scheduling of trial; unrepresented defendant. In the case of a dwelling unit to which ORS 90.100 to 90.940 applies:

(1) If the plaintiff appears and the defendant fails to appear at the first appearance, a default judgment shall be entered against the defendant in favor of the plaintiff for possession of the premises and costs and disbursements.

(2) If the defendant appears and the plaintiff fails to appear at the first appearance, an order shall be entered dismissing the complaint and awarding costs and disbursements against the plaintiff in favor of the defendant.

(3) An attorney at law shall be entitled to appear on behalf of any party, but no attorney fees may be awarded if the defendant does not contest the action.

(4) The plaintiff or an agent of the plaintiff may obtain a continuance of the action for as long as the plaintiff or the agent of the plaintiff deems necessary to obtain the services of an attorney at law.

(5) If both parties appear in court on the date contained in the summons, the court shall set the matter for trial as soon as practicable, unless the court is advised by the parties that the matter has been settled. The trial shall be scheduled no later than 15 days from the date of such appearance. If the matter is not tried within the 15-day period, and the delay in trial is not attributable to the landlord, the court shall order the defendant to pay rent that is accruing into court, provided the court finds after hearing that entry of such an order is just and equitable.

(6)(a) The court shall permit an unrepresented defendant to proceed to trial by directing the defendant to file an answer in writing on a form which shall be available from the court clerk, and to serve a copy upon the plaintiff on the same day as first appearance.

(b) The answer shall be in substantially the following form:

IN THE_____ COURT FOR THE COUNTY OF_____

(Landlord),)
)
Plaintiff(s),)
)
vs.) No.____
)
(Tenant),)
)
Defendant(s).)

ANSWER

I (we) deny that the plaintiff(s) is (are) entitled to possession because:

__ The landlord did not make repairs.

List any repair problems:_____

_____

__ The landlord is attempting to evict me (us) because of my (our) complaints (or the eviction is otherwise retaliatory).

__ The eviction notice is wrong.

__ List any other defenses:_____

_____

_____

_____

_____

I (we) ask that the plaintiff(s) take nothing by the complaint and that I (we) be awarded my (our) costs and disbursements.

_____ _____
Date Signature of defendant(s)

_____

(7) If an unrepresented defendant files an answer as provided in subsection (6) of this section, the answer shall not limit the defenses available to the defendant at trial under ORS 90.100 to 90.940. If such a defendant seeks to assert at trial a defense not fairly raised by the answer, the plaintiff shall be entitled to a reasonable continuance for the purposes of preparing to meet the defense. [1975 c.256 §13; 1979 c.765 §5; 1979 c.854 §3; 1981 c.753 §12; 1989 c.506 §19]

105.138 Compelling arbitration; procedure. (1) Notwithstanding ORS 105.137 (5), if a party to an action to which ORS 90.500 to 90.940 apply moves for an order compelling arbitration and abating the proceedings, the court shall summarily determine whether the controversy between the parties is subject to an arbitration agreement enforceable under ORS 446.537 and, if so, shall issue an order compelling the parties to submit to arbitration in accordance with the agreement and abating the action for not more than 30 days, unless the parties agree to an order of abatement for a longer period acceptable to the court.

(2) If the court issues an order compelling arbitration under subsection (1) of this section, the court shall not order the payment of rent into court pending the arbitration unless the court finds such an order is necessary to protect the rights of the parties. [1989 c.918 §7]

105.139 Burden of proof in certain cases. If a landlord brings an action for possession under ORS 90.400 (3)(c) and the person in possession contends that the tenant has not vacated the premises, the burden of proof shall be on the defendant as to that issue. [1983 c.303 §3]

105.140 Continuance. No continuance shall be granted to a defendant for a longer period than two days unless:

(1) The defendant gives an undertaking to the adverse party with good and sufficient security, to be approved by the court, conditioned for the payment of the rent that may accrue if judgment is rendered against the defendant; or

(2) In an action for the recovery of the possession of a dwelling unit to which ORS 90.100 to 90.940 apply, the court orders a defendant to pay rent into court as it becomes due from the commencement of the action until final judgment in the action. If a defendant fails to pay rent into court as ordered under this subsection, the action shall be tried forthwith. [Amended by 1973 c.559 §36; 1977 c.365 §2; 1979 c.854 §4]

105.145 Judgment on trial by court. If an action is tried by the court without a jury, and after hearing the evidence it concludes that the complaint is not true, it shall enter judgment against the plaintiff for costs and disbursements. If the court finds the complaint true or if judgment is rendered by default, it shall render a general judgment against the defendant and in favor of the plaintiff, for restitution of the premises and the costs and disbursements of the action. If the court finds the complaint true in part, it shall render judgment for the restitution of such part only, and the costs and disbursements shall be taxed as the court deems just and equitable.

105.150 [Repealed by 1989 c.506 §20]

105.155 Form of execution. (1) The execution, should judgment of restitution be rendered, shall be in the following form:

State of Oregon,)
) ss. EXECUTION OF JUDGMENT OF RESTITUTION
County of _____)

To the sheriff or any constable of the county:

Whereas, a certain action for the forcible entry and detention, (or the forcible detention) of the following described premises, to wit: _____, lately tried before the above entitled court, wherein _____ was plaintiff and _____ was defendant, judgment was rendered on the _____ day of _____, A.D.,____, that the plaintiff _____ have restitution of the premises, and also that the plaintiff recover the costs and disbursements in the sum of $____;

In the name of the State of Oregon, you are, therefore, hereby commanded forthwith to serve upon the defendant in the manner specified by ORS 105.155 (2) a notice that the plaintiff is to have restitution of the premises and that unless the goods, chattels, motor vehicles and other personal property on the premises are removed within three days you shall cause the same to be removed and will deliver possession of the premises to the plaintiff. In the event the goods, chattels, motor vehicles and other personal property are not removed by the end of the three days and the plaintiff has paid all fees for enforcement of this execution of the judgment of restitution, you shall immediately deliver possession of the premises to the plaintiff. Unless the premises are subject to ORS 105.165 and the plaintiff elects to remove the tenant's personal property pursuant to that section, you shall also remove the goods, chattels, motor vehicles and other personal property to a safe place for storage, levy on the same, make the costs and disbursements aforesaid, and all accruing costs, and make legal service and due return of this writ.

Witness my hand and official seal (if issued out of a court of record) this _____ day of _____, A.D., ____.

_____
Justice of the peace, or clerk of the district or circuit court.

---

(2) Notwithstanding ORCP 10, by the end of the judicial day next following the payment of fees therefor:

(a) The sheriff shall mail the notice of restitution and a copy of the execution of the judgment of restitution by first class mail to the defendant at the premises; and

(b) The sheriff shall serve a copy of the notice of restitution and of the execution of the judgment of restitution at the premises by personal delivery to the defendant or, if the defendant is not available for service, by attaching a copy of the notice in a secure manner to the main entrance to that portion of the premises of which the defendant has possession.

(3) Notwithstanding ORCP 10, the three-day period specified in subsection (1) of this section shall commence on the day following mailing and service pursuant to subsection (2) of this section and shall end on the third calendar day following such mailing and service unless the third day is a Saturday, Sunday or legal holiday, in which case the period shall end on the next judicial day.

(4) Unless the judgment otherwise provides, an execution of the judgment of restitution shall not issue more than 60 days after the judgment is entered.

(5) A judgment may not be enforced if the parties have entered a new rental agreement after that judgment was entered. [Amended by 1979 c.765 §6; 1985 c.588 §15]

105.160 [Repealed by 1977 c.365 §3 and 1977 c.416 §5]

105.165 Alternative method of removing, storing and disposing of tenant's personal property; requirements; landlord liability. (1) In the case of a dwelling unit to which ORS 90.320 to 90.375, 90.385, 90.400 to 90.435, 90.500 to 90.900 and 90.920 to 90.940 applies, the landlord may elect to remove, store and dispose of the tenant's goods, chattels, motor vehicles and other personal property upon restitution of the premises pursuant to ORS 105.155, provided:

(a) The sheriff shall first serve the notice of restitution and shall thereafter deliver possession of the premises to the landlord, as provided in ORS 105.155.

(b) The landlord shall notify the tenant and shall store and dispose of the goods, chattels, motor vehicles and other personal property of the tenant pursuant to ORS 90.425, except that if the tenant claims that property within the time provided in ORS 90.425, the landlord must make that property available for removal by the tenant without the payment of any costs, charges or other sums, and the notice to the tenant shall so state.

(2) Any cost incurred by the landlord for execution pursuant to ORS 105.155 or for removal, storage or sale of the tenant's property under this section and not recovered pursuant to ORS 90.425 (9) shall be added to the judgment.

(3) If the landlord fails to permit the tenant to recover possession of the tenant's personal property under paragraph (b) of subsection (1) of this section, the tenant may recover, in addition to any other amount provided by law, twice the actual damages or twice the monthly rent, whichever is greater. [1981 c.753 §9; 1989 c.506 §23; 1989 c.910 §5]

ACTIONS AND SUITS FOR NUISANCES

105.505 Remedies available for private nuisance. Any person whose property or personal enjoyment thereof is affected by a private nuisance, may maintain an action for damages therefor. If judgment is given for the plaintiff in the action, the plaintiff may, on motion, in addition to the execution to enforce the judgment, obtain an order allowing a warrant to issue to the sheriff to abate the nuisance. The motion must be made at the term at which judgment is given, and shall be allowed of course, unless it appears on the hearing that the nuisance has ceased or that such remedy is inadequate to abate or prevent the continuance of the nuisance,

in which latter case the plaintiff may proceed to have the defendant enjoined. [Amended by 1979 c.284 §96]

105.510 Procedure for abating a nuisance. If the order to abate provided for in ORS 105.505 is made, the clerk shall when requested by the plaintiff within six months after the order is made, issue a warrant directed to the sheriff, requiring the sheriff forthwith to abate the nuisance at the expense of the defendant and to return the warrant as soon thereafter as possible, with the proceedings of the sheriff indorsed thereon. The expense of abating the nuisance may be levied by the sheriff on the property of the defendant and in this respect the warrant is to be deemed an execution against property.

105.515 Stay of issuance of warrant to abate. At any time before an order to abate is made or a warrant to abate is issued, the defendant may, on motion to the court or judge thereof, have an order to stay the issuing of the warrant for such period as may be necessary, not exceeding six months, to allow the defendant to abate the nuisance, upon giving an undertaking to the plaintiff in a sufficient amount, with one or more sureties, to the satisfaction of the court or judge thereof, that the defendant will abate the nuisance within the time and in the manner specified in the order.

105.520 Justification of sureties; proceedings when nuisance is not abated. If the plaintiff is not notified of the time and place of the application for the order provided for in ORS 105.515, the sureties therein provided for shall justify as bail upon arrest, otherwise the justification may be omitted unless the plaintiff requires it. If the order is made and undertaking given, and the defendant fails to abate the nuisance within the time specified in the order, at any time within six months thereafter, the warrant for the abatement of the nuisance may issue as if the warrant had not been stayed.

105.525 [Repealed by 1969 c.509 §8]

105.530 [Repealed by 1969 c.509 §8]

ABATEMENT OF UNLAWFUL GAMBLING, PROSTITUTION OR CONTROLLED SUBSTANCE ACTIVITIES

105.550 Definitions for ORS 105.555 to 105.565 and 105.575 to 105.600. As used in ORS 105.555 to 105.565 and 105.575 to 105.600, unless the context requires otherwise:

(1) "Of record" means:

(a) With regard to real property, that an owner's interest is recorded in the public records provided for by Oregon statutes where the owner's interest must be recorded to perfect a lien or security interest or provide constructive notice of the owner's interest; or

(b) With regard to personal property, that an owner's interest is recorded in the public records under any applicable state or federal law where the owner's interest must be recorded to perfect a lien or security interest, or provide constructive notice of the owner's interest.

(2) "Owner" means a person having any legal or equitable interest in property, including, but not limited to, a purchaser, lien holder or holder of any security interest in such property.

(3) "Place" or "property" includes, but is not limited to, any premises, room, house, building or structure or any separate part or portion thereof whether permanent or not or the ground itself or any conveyance or any part or portion thereof. [1989 c.846 §2]

105.555 Places of prostitution, gambling or controlled substances as nuisances subject to abatement. (1) The following are declared to be nuisances and shall be enjoined and abated as provided in ORS 105.560, 105.565 and 105.575 to 105.600:

(a) Any place that, as a regular course of business, is used for the purpose of prostitution and any place where acts of prostitution occur;

(b) Any place which is used and maintained for profit and for the purpose of gambling or a lottery, as defined in ORS 167.117, by any person, partnership or corporation organized for profit and wherein take place any of the acts or wherein are kept, stored or located any of the games, devices or things which are forbidden by or made punishable by ORS 167.117 to 167.162; and

(c) Any place where activity involving the unauthorized delivery, manufacture or possession of a controlled substance, as defined in ORS 475.005, occurs or any place wherein are kept, stored or located any of the devices, equipment, things or substances used for unauthorized delivery, manufacture or possession of a controlled substance. As used in this subsection "devices, equipment and things" does not include hypodermic syringes or needles. This subsection shall not apply to acts which constitute violations under ORS 475.992 (2)(b) and (4)(f).

(2) Nothing in ORS 105.550 to 105.600, 166.715 and 167.158 applies to property to the extent that the devices, equipment, things or substances that are used for delivery, manufacture or possession of a controlled substance are kept, stored or located in or on the property for the purpose of lawful sale or use of these items. [1989 c.846 §3; 1989 c.915 §24]

105.560 Action to restrain or enjoin nuisance; jurisdiction. An action to restrain or enjoin a nuisance described in ORS 105.555 may be brought by the Attorney General, district attorney, county attorney, city attorney or a person residing or doing business in the county where the property is located. The action shall be brought in the circuit court in the county where the property is located. [1989 c.846 §4]

105.565 Complaint; service; jury trial; admissibility of reputation as evidence. (1) Any action shall be commenced by the filing of a complaint alleging facts constituting the nuisance, and containing a legal description of the property involved and an allegation that the owners of record of the property have been notified of the facts giving rise to the alleged nuisance at least 10 days prior to the filing of the action with the court.

(2) The complaint shall be served on owners of record and occupants of the property as provided in ORCP 7. No service need be made prior to an application for a temporary restraining order, provided the procedures of ORCP 79B are followed with regard to all persons entitled to service under this section.

(3) Any party or an owner of the property may demand a trial by jury in any action brought under ORS 105.560 to 105.600.

(4) On the issue of whether property is used in violation of ORS 105.555, evidence of its general reputation and the reputation of persons residing in or frequenting it shall be admissible. [1989 c.846 §5]

105.570 Conditions for dismissal of complaint; substituting parties; when costs payable by taxpayer. (1) If the complaint is filed by a person other than the Attorney General, district attorney, county attorney or city attorney, it shall not be dismissed except upon a sworn statement made by the complainant and the attorney of the complainant setting forth the reasons why the suit should be dismissed. If the court is of the opinion that the suit ought not to be dismissed, the court may direct the district attorney in writing to prosecute said suit to judgment.

(2) If the suit is continued more than one term of court, any citizen of the county or the district attorney may be substituted for the complaining party, and prosecute said suit to judgment.

(3) If the suit is brought by a taxpayer and the court finds that there was no reasonable ground or cause for said suit, the costs may be taxed to such taxpayer. [Formerly 465.140]

105.575 Precedence of action on court docket. An action under ORS 105.560 to 105.600 shall have precedence over all other actions, except prior matters of the same character, criminal proceedings and election contests. [1989 c.846 §6]

105.580 Order of abatement; cancellation. (1) Except as provided in subsection (3) of this section, if the existence of the nuisance is established in the action, an order of abatement shall be entered as part of the final judgment in the case.

(2) The order of abatement may direct the effectual closing of the premises, building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released.

(3) The court, if satisfied of an owner's good faith, shall enter no order of abatement as to that owner if the court finds that the owner:

(a) Had no knowledge of the existence of the nuisance or has been making reasonable efforts to abate the nuisance;

(b) Has not been guilty of any contempt of court in the proceedings; and

(c) Will make best efforts to immediately abate any nuisance that may exist and prevent it from being a nuisance for a period of one year thereafter.

(4) If an order of abatement has been entered and an owner subsequently meets the requirements of this section, the order of abatement shall be canceled as to that owner. [1989 c.846 §7]

105.585 Costs of securing property as lien; priority of lien; filing notice of pendency; recovery of attorney fees. (1) Any costs associated with securing the property under ORS 105.560 to 105.600 shall constitute a lien against the property declared to be a nuisance from the time a notice specifying the costs is filed of record. A lien created by ORS 105.560 to 105.600 is prior and superior to all other liens, mortgages and encumbrances against the property upon which the lien is imposed which attached to the property after any lien imposed by ORS 105.560 to 105.600.

(2) A notice of pendency of an action may be filed pursuant to ORS 93.740 with respect to any action filed under ORS 105.560 to 105.600.

(3) Any prevailing party may be entitled to reasonable attorney fees. [1989 c.846 §8]

105.590 Intentional violation of order punishable as contempt; fine; imprisonment. An intentional violation of a restraining order, preliminary injunction or order of abatement under ORS 105.560 to 105.600 is

punishable as a contempt of court by a fine of not more than $1,000 which may not be waived, or by imprisonment for not more than six months or by both. [1989 c.846 §9]

105.595 Action to abate nuisance not to affect other remedies. The abatement of a nuisance under ORS 105.560 to 105.600 does not prejudice the right of any person to recover damages for its past existence. [1989 c.846 §10]

105.600 ORS 105.550 to 105.600 not to limit authority of cities or counties to further restrict activities. The provisions of ORS 105.550 to 105.600, 166.715 and 167.158 shall not be construed to limit the powers of cities and counties to adopt ordinances and regulations that further restrict the activities declared by ORS 105.555 to be nuisances provided that no such ordinance or regulation shall affect real or personal property unless it is consistent with the provisions of ORS 105.550 to 105.600, 166.715 and 167.158. [1989 c.846 §11]

Chapter 453

1989 EDITION

Hazardous Substances; Radiation Sources

CLEANUP OF TOXIC CONTAMINATION FROM ILLEGAL DRUG MANUFACTURING

PENALTIES

CLEANUP OF TOXIC CONTAMINATION FROM ILLEGAL DRUG MANUFACTURING

453.855 Purpose. It is the purpose of ORS 433.025 and 453.855 to 453.912 to provide a just, equitable and practicable method, to be cumulative with and in addition to any other remedy provided by law, whereby property which endangers the life, safety or welfare of the general public or occupants of property because of toxic chemical contamination that may result from illegal drug manufacturing may be required to be decontaminated, vacated and secured against use, or demolished. [1989 c.915 §1]

Note: Section 27, chapter 915, Oregon Laws 1989, provides:

Sec. 27. The provisions of this Act [433.025 and 453.855 to 453.912] first become operative on July 1, 1989, for purposes of operation of rules and other actions necessary to implement fully the provisions of this Act on July 1, 1990. However, if the Emergency Board reviews but does not approve fees as required under section 14 of this Act [453.894], this Act shall not be implemented until July 1, 1991. [1989 c.915 §27]

453.858 Definitions for ORS 453.855 to 453.912. As used in ORS 433.025 and 453.855 to 453.912:

(1) "Illegal drug manufacturing site" means any property where activity involving the unauthorized manufacture of a controlled substance listed on Schedules I and II, excluding marijuana, or any precursor chemical for such substances, occurs or any property wherein are kept, stored or located any of the devices, equipment, things or substances used for unauthorized manufacture of such a controlled substance.

(2) "Property" means any house or an apartment, unit, room or shop within a building, or any boat, trailer, motor vehicle, manufactured dwelling, booth or garden. [1989 c.915 §2]

Note: See note under 453.855.

453.861 Applicability. The provisions of ORS 433.025 and 453.855 to 453.912 apply to any property described in ORS 453.858 (2) that is known to have been used as an illegal drug manufacturing site or for which there are reasonable grounds to believe that the property has been used as an illegal drug manufacturing site. Nothing in ORS 433.025 and 453.855 to 453.912 applies to property to the extent that the devices, equipment, things or substances that are used for delivery, manufacture or possession of a controlled substance are kept, stored or located in or on the property for the purpose of lawful sale or use of these items. [1989 c.915 §3]

Note: See note under 453.855.

453.864 Rules. The Assistant Director for Health shall adopt rules to carry out ORS 433.025 and 453.855 to 453.912. The rules shall be developed in consultation with:

(1) The State Fire Marshal or designee;

(2) The director of the Poison Control and Drug Information Program of the Oregon Health Sciences University, or a designee thereof;

(3) The Director of the Department of Environmental Quality, or a designee thereof;

(4) The State Building Code Administrator, or a designee thereof;

(5) The Administrator of the Motor Vehicles Division, or a designee thereof; and

(6) Any other governmental agency determined appropriate by the Health Division whose advice and information is necessary for the formulation of the rules authorized by this section. [1989 c.915 §6]

Note: See note under 453.855

453.867 Restriction on transfer of property used as illegal drug manufacturing site; contracts voidable. (1) Unless determined fit for use, pursuant to ORS 433.025 and 453.855 to 453.912 and rules of the Health Division, or as authorized by ORS 453.870, no person shall transfer, sell, use or rent any property knowing or having reasonable grounds to believe it was used as an illegal drug manufacturing site.

(2) All contracts, oral or written, for the transfer, sale, use or rent of property in violation of subsection (1) of this section are voidable between the parties, at the instance of the purchaser, transferee, user or renter. This subsection shall not make voidable any promissory note or other evidence of indebtedness or any mortgage, trust deed or other security interest securing such a promissory note or evidence of indebtedness, where such note or evidence and any such mortgage, trust deed or other security interest were given to a person other than the person transferring, selling, using or renting the property to induce such person to finance the transfer, sale, use or rental of the property. This section shall not impair obligations or duties required to be performed upon termination of a contract, as required by the provisions of the contract, including but not limited to payment of damages or return of refundable deposits. [1989 c.915 §4]

Note: See note under 453.855.

453.870 Transfer allowed after full disclosure. (1) Any property that is not fit for use as determined under ORS 453.876 may be transferred or sold if full, written disclosure, as required by rules of the Health Division, is made to the prospective purchaser, attached to the earnest money receipt, if any, and shall accompany but not be a part of the sale document nor be recorded. However, such property shall continue to be subject to the provisions of ORS 453.876, regardless of transfer or sale under this section.

(2) Any transferee or purchaser who does not receive the notice described in subsection (1) of this section may set aside the transfer or sale as voidable and bring suit to recover damages for any losses incurred because of the failure to give such notice.

(3) The transferor or seller of any property described in subsection (1) of this section shall notify the Health Division of the transfer or sale as required by rule of the division. [1989 c.915 §5]

Note: See note under 453.855.

453.873 Entry onto property; purposes; inspection. For the purposes of enforcement of ORS 433.025 and 453.855 to 453.912, the Assistant Director for Health or a designee thereof or the State Fire Marshal or a designee thereof, upon presenting appropriate credentials and a warrant, if necessary, issued under ORS 433.025 to the owner or agent of the owner, may:

(1) Enter, at reasonable times, any property described in ORS 453.858 (2) that is known to have been used as an illegal drug manufacturing site or for which there are reasonable grounds to believe that the property has been used as an illegal drug manufacturing site.

(2) Inspect, at reasonable times, within reasonable limits and in a reasonable manner, property known to have been used as an illegal drug manufacturing site or for which there are reasonable grounds to believe the

property has been used as an illegal drug manufacturing site. [1989 c. 915 §7]

Note: See note under 453.855.

453.876 Determination that property is not fit for use; appeal. (1) The Assistant Director for Health or a designee thereof, the State Fire Marshal or a designee thereof or any law enforcement agency may determine that property is not fit for use pursuant to ORS 433.025 and 453.855 to 453.912 and applicable rules adopted by the Health Division and may make that determination on site. The determination is effective immediately and renders the property not fit for use.

(2) The owner may appeal the determination, to the agency, within 30 working days after the determination, pursuant to rules of the agency, or to district or circuit court.

(3) The appeal to the agency is not a contested case under ORS 183.310 to 183.550. If there are reasonable grounds for making the determination that the property is not fit for use, the owner has the burden of showing that the property is or has been decontaminated and is fit for use. [1989 c.915 §9]

Note: See note under 453.855.

453.879 State Building Code Administrator to be notified of determination. When the Assistant Director for Health or a designee thereof, the State Fire Marshal or designee thereof or any law enforcement agency makes a determination that property subject to ORS 433.025 and 453.855 to 453.912 is not fit for use, the assistant director or designee thereof shall notify the State Building Code Administrator of the determination. The administrator shall list the property as not fit for use until the administrator is notified that the property has been certified by the Health Division pursuant to ORS 453.885, or the initial determination is reversed on appeal, or the property is destroyed. Upon receipt of the certificate, the administrator shall cause the property to be removed from the list described in this section. [1989 c.915 §10]

Note: See note under 453.855.

453.882 Use of contaminated property constitutes public nuisance. The owner of property that has been determined to be not fit for use pursuant to ORS 433.025 and 453.855 to 453.912 who allows such property to be used as if it were fit for use shall be considered to be maintaining a public nuisance subject to being enjoined or abated under ORS 105.570. [1989 c.915 §12]

Note: See note under 453.855.

453.885 Decontamination of property; certification process. (1) The owner of property determined to be not fit for use under ORS 433.025 and 453.855 to 453.912 who desires to have the property certified as fit for use must use the services of a contractor licensed by the Health Division to decontaminate the property. The contractor shall prepare and submit a written work plan for decontamination to the Health Division. If the work plan is approved and the decontamination work is completed according to the plan and is properly documented, the division shall certify the property as having been decontaminated in compliance with rules of the Health Division. The division may require the licensed contractor's affidavit of compliance with the approved work plan.

(2) The property owner shall notify the State Building Code Administrator of the certification. The division shall not issue the certificate if the work was not performed by a contractor licensed under ORS 433.025 and 453.855 to 453.912 and under the supervision of personnel who have satisfactorily completed a training course under ORS 453.888. No person who is not licensed by the Health Division under ORS 433.025 and 453.855 to 453.912 shall advertise, offer to undertake or undertake or perform the work necessary to decontaminate property determined to be not fit for use under ORS 433.0125 and 453.855 to 453.912.

(3) Upon receipt of the certificate and a request by the property owner to remove the property from the list, the State Building Code Administrator shall cause the property to be removed from the list. [1989 c.915 §11]

Note: See note under 453.855.

453.888 License required to perform decontamination; procedure; grounds for denial, revocation or suspension of license; civil penalty. (1) The Health Division by rule shall establish performance standards for contractors under ORS 433.025 and 453.855 to 453.912.

(2) The division shall train and test, or may approve courses to train and test, contractors' personnel on the essential elements in assessing premises used as an illegal drug manufacturing site to determine hazard reduction measures needed, techniques for adequately reducing contaminants, use of personal protective equipment and relevant federal regulations and state rules.

(3) Upon the contractor's supervisory personnel's successful completion of the training and testing and the contractor having complied with the rules of the division and having paid the required fee, the contractor shall be licensed. Licenses are renewable biannually, as determined by rule of the division, upon supervisory personnel's

successful completion of any required refresher course.

(4) The division may deny, suspend or revoke the license of any contractor pursuant to ORS 183.310 to 183.550 for:

(a) Failing to:

(A) Perform decontamination work under the supervision of trained personnel;

(B) File a work plan;

(C) Perform work pursuant to the plan;

(D) Pay a civil penalty imposed under ORS 433.025 and 453.855 to 453.912; or

(E) Perform work that meets the requirements of ORS 453.903.

(b) Committing fraud or misrepresentation in:

(A) Applying for a license;

(B) Seeking approval of a work plan; or

(C) Documenting completion of the work to the division.

(5) The division may impose a civil penalty not to exceed $500, in addition to or in lieu of license denial, suspension or revocation, pursuant to ORS 183.310 to 183.550. [1989 c.915 §13]

Note: See note under 453.855.

453.891 Health Division to provide information to licensed contractors and those planning to become licensed. Between the dates of scheduled training for contractors under ORS 453.888, the Health Division shall be available to consult with licensed contractors, as well as those planning to become licensed, on information pertinent to illegal drug manufacturing sites, including but not limited to chemicals found at such sites and their toxicity, new or revised decontamination procedures, personal protective equipment and applicable federal regulations and state rules. [1989 c.915 §19]

Note: See note under 453.855.

453.894 Licensing fees; rules. (1) The Health Division shall establish by rule a schedule of fees for at least the following:

(a) Initial licenses and renewal under ORS 433.025 and 453.855 to 453.912.

(b) Training courses and examinations conducted by or on behalf of the division.

(c) Reexaminations for failing the initial examinations.

(d) Review of work plans.

(2) The fees established under subsection (1) of this section shall be based upon the costs of the division in carrying out the provisions of ORS 433.025 and 543.855 to 453.912.

(3) If a license renewal application and fee is not received by the division within 15 days after the expiration of the license, a penalty of 50 percent of the license fee shall be added and collected.

(4) The fees collected under this section shall be paid into the State Treasury and deposited in the General Fund to the credit of the Health Division Account. Such moneys are continuously appropriated to the Health Division to pay the division's expenses in administering the provisions of ORS 433.025 and 453.855 to 453.912.

(5) The Emergency Board shall review and approve any fee or change therein prior to the fee or change in the fee being collected. [1989 c.915 §14]

Note: See note under 453.855.

453.897 Lists of licensed contractors to be made available. The Health Division shall provide lists of the names of contractors licensed under ORS 433.025 and 453.855 to 453.912 to the State Building Code Administrator who shall distribute the lists to local building code enforcement agencies. The local agencies shall make the list available on request and shall supply a copy to any property owner whose property is determined to be not fit for use under ORS 433.025 and 453.855 to 453.912. [1989 c.915 §15]

Note: See note under 453.855.

453.900 Inspection of decontamination work; contracts to perform. The Health Division may contract with state or local agencies or private persons to perform any inspection or to obtain any samples relative to determining the adequacy of decontamination work. [1989 c.915 §16]

Note: See note under 453.855.

453.903 Evaluation of decontamination projects. The Health Division shall evaluate annually a number of the property decontamination projects performed by licensed contractors to determine the adequacy of the decontamination work, using the services of an independent environmental contractor or state or local agency. If a project fails the evaluation and inspection, the contractor is subject to a fine and license suspension that prohibits the contractor from performing additional work until deficiencies have been corrected on the project. [1989 c.915 §18]

Note: See note under 453.855.

453.906 Condemnation or demolition of property; standards; rules. The State Building Code Administrator shall adopt rules fixing uniform standards whereby local building code enforcement agencies may require that property determined under ORS 433.025 and 453.855 to 453.912 to be not fit for use may be subject to action to condemn or demolish the property or to require the property be vacated or contents be removed from the property. [1989 c.915 §17]

Note: See note under 453.855.

453.909 Authority of counties and cities. Counties and cities by ordinance may prohibit use or occupancy of or provide for regulation of any property described in ORS 453.858 (2) so long as such prohibition or regulation is consistent with ORS 433.025 and 453.855 to 453.912 and rules of the Health Division. [1989 c.915 §20]

Note: See note under 453.855.

453.912 Governmental immunity from liability. The state and any local government, their officers, agents and employees shall not be liable for loss or injury resulting from the presence of any chemical or controlled substance at a site used to manufacture illegal drugs or from actions taken to carry out the provisions of ORS 433.025 and 453.855 to 453.912 except for liability for damages resulting from gross negligence or intentional misconduct by the state or local government. [1989 c.915 §21]

Note: See note under 453.855.

PENALTIES

453.990 Criminal penalties. (1) Any violation of ORS 453.175 or 453.185 or any rules of the State Board of Pharmacy thereunder is a Class C misdemeanor.

(2) Violation of any of the provisions of ORS 453.005 to 453.135 is a Class B misdemeanor. A second and subsequent violation of any of the provisions of ORS 453.005 to 453.135 is a Class A misdemeanor.

(3) Violation of any provision of ORS 453.605 to 453.745 is a Class A misdemeanor.

(4) Violation of ORS 453.885 (2) is a Class B misdemeanor. [Subsection (10) enacted as 1961 c.664 §15; 1969 c.631 §15; subsection (6) enacted as 1971 c.409 §15; 1977 c.582 §52; subsection (4) enacted as 1989 c.915 §22]

Note: See note under 453.855.

453.992 Jurisdiction. Circuit courts and district courts have concurrent original jurisdiction to try cases arising out of violations of ORS 453.175 and 453.185. [Amended by 1969 c.631 §16; 1977 c.582 §53]

453.994 [1971 c.609 §27; renumbered 469.992]

Chapter 14.80

SPECIFIED CRIME PROPERTY

(Added by Ord. No. 159640 passed and effective May 7, 1987.)

Sections:

14.80.010 Specified Crime Property Prohibited. (Amended by Ord. No. 161476, effective Dec. 15, 1988.)

A. It is unlawful for any structure to be employed or used as specified crime property within the City of Portland. If a structure is found to be used or employed in violation of this Subsection, it is subject to closure for a period of up to 1 year.

B. It is unlawful for any person to employ, use, maintain, or allow the employment, use or maintenance of structures under their ownership and/or control as specified crime property. If a person is found in violation of this Subsection, they are subject to civil penalties of up to $500 per day for each day the property has been so employed, used or maintained.

C. It is unlawful for any person to use or occupy any structure determined to be specified crime property after service of notice has been made pursuant to Section 14.80.030.

1. The provisions of Subsection C may be waived by the City in the event that the Chief of Police, Commissioner In Charge or a court of competent jurisdiction determines that exigent circumstances are such that the use or occupancy of the structure prior to a full court hearing is mandated.

2. Any occupant who fails to voluntarily cease the use or occupancy of a structure as required by Subsection C may be removed only pursuant to a court order after notice and an opportunity to be heard by the court having jurisdiction of an action brought pursuant to this Chapter.

14.80.020 Definitions. (Amended by Ord. No. 161476, effective Dec. 15, 1988.) As used in this Chapter, the following terms have the meanings given them in this Section.

A. Chief of Police. As used by this Chapter, includes any person designated by the Portland Chief of Police as his or her delegate in the enforcement of this Chapter.

B. Commissioner In Charge. That person on the Portland City Council who is assigned responsibility for the Bureau of Police.

C. Guidelines. The "Interim Guidelines for the Reduction of Contamination in Buildings used as Methamphetamine Drug Labs" found at Section 4 of the "Hazardous Chemical Guidelines" (4th Ed., June, 1988) published by the Oregon Department of Human Resources, Health Division.

D. Specified Crime Property. Any kind of structure, edifice, building or unit(s) thereof where activity involving the unauthorized delivery or manufacture of a controlled substance as defined in ORS Chapter 475, gambling as defined in ORS 167.117 or prostitution as defined by ORS 167.007 has occurred or is occurring.

E. Owner. Any person, agent, firm, corporation, association or partnership including:

1. A mortgagee in possession in whom is vested:

(a) All or part of the legal title to property, or

(b) All or part of the beneficial ownership and a right to present use and enjoyment of the premises; or

2. An occupant of that structure.

F. Person. Any natural person, association, partnership or corporation capable of owning or using property in the City of Portland.

14.80.030 Procedure. (Amended by Ord. No. 161476, effective Dec. 15, 1988.)

A. When the Chief of Police believes that a structure has been or is being used or maintained in violation of Section 14.80.010, the Chief of Police may commence proceedings to cause the closure of the structure as well as the imposition of civil penalties against any or all of its owner(s). Except in cases brought pursuant to 14.80.050, in the event the Chief of Police wishes to commence proceedings:

1. The Chief of Police shall notify the owner(s) of record in writing that the structure has been determined to be specified crime property. The notice shall contain the following information:

a. The street address and a legal description sufficient for identification of the premises on which the structure is located;

b. A statement that the Chief of Police has found the structure to be in violation of this Chapter with a concise description of the conditions leading to his/her findings.

2. A copy of the notice shall be served on the owner and/or their agent, if known, at least 10 days prior to the commencement of any judicial action by the City. Service shall be made either personally or by mailing a copy of the notice by registered or certified mail, postage prepaid, return receipt requested, to each person at their address as it appears on the last equalized assessment of the tax roll as well as on the last instrument of conveyance as recorded in the county where the structure is located, and as may be

otherwise known to the Chief of Police. If no address appears or is known to the Chief of Police, then a copy shall be mailed first class, postage prepaid, addressed to such person at the address of the structure believed to be specified crime property.

3. A copy of the notice shall be served on the occupant of the structure if that person is different than the owner and shall occur not less than 5 days prior to the commencement of any judicial proceeding and be made either personally or by mailing a copy of the notice by first class mail, postage prepaid, to them at the structure.

Furthermore, a copy of the notice may be posted at the property if 10 days has elapsed from the service or mailing of the notice to the owner(s), and no contact has been received by the City from them during that period of time.

4. The failure of any person or owner to receive actual notice of the determination by the Chief of Police shall not invalidate or otherwise affect the proceedings under this Chapter.

B. Concurrent with the notification procedures set forth above, the Chief of Police shall send a copy of the notice to the Commissioner In Charge as well as any other documentation which he/she believes supports the closure of the structure and the imposition of civil penalties. The Commissioner In Charge may then authorize the City Attorney's Office to commence civil proceedings in a court of competent jurisdiction seeking the closure of the structure as well as the imposition of civil penalties against any or all of the owners thereof, and any such other relief as may be deemed appropriate. Nothing contained in this Subsection shall be construed to limit the ability of the Commissioner In Charge prior to the institution of judicial proceedings to enter into agreements with an owner willing to voluntarily abate the condition(s) giving rise to the violation.

14.80.040 Commencement of Actions; Burdens of Proof; Defenses; Mitigation of Civil Penalty. (Amended by Ord. No. 161476, effective Dec. 15, 1988.)

A. Except in a proceeding under 14.80.050, if after the commencement but prior to the trial of an action brought by the City pursuant to this Chapter, an owner specifically stipulates with the City that they will pursue a course of action as the parties agree will necessarily abate the conditions giving rise to the violation(s), the City shall agree to stay proceedings for a period of not less than 10 nor more than 60 days. The owner or the City may thereafter petition the court for such additional like periods of time as may be necessary to complete the action(s) contemplated by the stipulation. However, in the event that the City reasonably believes the owner is not diligently pursuing the action(s) contemplated by the stipulation, it may then apply to the court for a release from the stay seeking some relief as is deemed appropriate.

B. In an action seeking the closure of a structure as specified crime property, the City shall have the initial burden of proof to show by a preponderance of the evidence that the structure is a specified crime property.

C. In an action seeking civil penalties from an owner, the City shall have the initial burden of proof to show by a preponderance of the evidence that the owner had knowledge of activities or conditions at the structure constituting a violation of this Chapter.

D. In any action brought to enforce the terms of 14.80.010, evidence of a structure's general reputation and the reputation of persons residing in or frequenting it shall be admissible as competent.

E. Except in an action brought pursuant to Section 14.80.050 (B), it is a defense to an action seeking the closure of a structure that the owner of a structure at the time in question could not, in the exercise of reasonable care or diligence, determine that the structure was being used or maintained as a specified crime property.

F. In establishing the amount of any civil penalty requested, the court may consider any of the following factors, as they may be appropriate, and shall cite those found applicable:

1. The actions taken by the owner(s) to mitigate or correct the problem at the structure;

2. The financial condition of the owner;

3. Whether the problem at the structure was repeated or continuous;

4. The magnitude or gravity of the problem;

5. The economic or financial benefit accruing or likely to accrue to the owner(s) as a result of the conditions at the structure;

6. The cooperativeness of the owner(s) with the City;

7. The cost to the City of investigating and correcting or attempting to correct the condition;

8. Any other factor deemed by the court to be relevant.

14.80.050 Closure During Pendency of Action; Emergency Closures. (Amended by Ord. No. 161476, effective Dec. 15, 1988.)

A. In the event that it is determined that the structure is an immediate threat to the public safety and welfare, the City may apply to the court for such interim relief that is deemed by the Commissioner in Charge and/or City Attorney to be appropriate. In such an event, the notification procedures set forth in 14.80.030 A and the limitation of 14.80.040 A need not be complied with.

B. In the event the chief of Police determines a structure is or has been used as the locale for the manufacture of controlled substances that involve the use of toxic, flammable, or explosive substances as defined in 49 CFR 172 (1988) and/or processes that, in the opinion Police Bureau or Fire Bureau personnel, present a continuing threat to the public's safety or welfare, the City may obtain an order from the court preventing that structure's use or occupancy for a period of 60 days.

1. No person shall enter the structure during the first 20 days of this 60-day period without first obtaining the prior written approval of the City or an order of the court. After the expiration of this 20-day period, the owner may enter the structure to clean and decontaminate it in accordance with guidelines established by the Oregon Department of Human Resources, Health Division.

2. After cleaning and/or decontaminating the structure, the owner shall attest in writing on a form to be provided by the City and sent to the Hazardous Materials Coordinator of the Portland Fire Bureau that the structure has been cleaned and/or decontaminated in accordance with the guidelines at which time the structure may be reused or reoccupied, provided it is not otherwise subject to the provisions of this Chapter.

3. In the event the owner fails to comply with the provisions of paragraph 2 above, the City may seek an order preventing the use or occupancy of the structure for such further time as, under the circumstances it deems appropriate, unless the owner shows to the satisfaction of the court that the structure no longer presents a continuing threat to the public's safety or welfare from the toxic, flammable or explosive substances and/or processes.

14.80.060 Enforcement of Closure Order; Costs; Civil Penalty.

A. In the event that a court finds that a structure constitutes specified crime property as defined in this Chapter, the court may order that it be closed for any period of up to 1 year and that the owner(s) pay to the City a civil penalty of up to $500 for each day the owner had knowledge of activities or conditions at the structure constituting a violation of this Chapter.

B. The court may also authorize the City to physically secure the structure against use or occupancy in the event that the owner(s) fail to do so within the time specified by the court. In the event that the City is authorized to secure the property, all costs reasonably incurred by the City to effect a closure shall be made an assessment lien upon the property. As used

in this Subsection, "costs" means those costs actually incurred by the City for the physical securing of the structure, as well as tenant relocation costs given pursuant to Subsection B 3 of this Section.

1. The City bureau(s) effecting the closure shall prepare a statement of costs and the City shall thereafter submit that statement to the court for its review. If no objection to the statement is made within the period prescribed by Oregon Rule of Civil Procedure 68, a certified copy of the statement, including a legal description of the property, shall be forwarded to the Office of the City Auditor who thereafter shall enter the same in the City's lien docket.

2. Liens imposed by this Chapter shall be collected in all respects as provided for street improvement liens, and shall bear interest at the rate of 9 percent per year from 10 days after the entry in the lien docket.

3. A tenant as defined by ORS 91.705(13) is entitled to their reasonable relocation costs as those are determined by the City, if without actual notice the tenant moved into the structure after either:

a. An owner(s) or agent received notice of the Chief of Police's determination pursuant to 14.80.030 A; or

b. An owner(s) or their agent received notice of an action brought pursuant to 14.80.050.

C. Any person who is assessed the costs of closure and/or a civil penalty by the court shall be personally liable for the payment thereof to the City.

14.80.070 Relief from Closure Order. An owner of a structure determined to be specified crime property may obtain relief from the court's judgment if:

A. They appear and pay all costs associated with the proceedings under this Chapter;

B. They file a bond in such a place and form as the court may by order direct in an amount not less than the tax-assessed value of the structure; and keep said bond in force for a period of not less than 1 year or for such period as the court directs.

C. They enter into a stipulation with the City that they will immediately abate the conditions giving rise to the specified crime property and prevent the same from being established or maintained thereafter. The stipulation will then be made part of the court's file.

In the event that the owner violates the terms of the stipulation, the City may thereafter apply to the court for an order awarding up to the entire amount of the aforementioned bond to the City as a penalty as well as such other relief, including closure for any additional period of up to 1 year, that is deemed by the court as appropriate.

14.80.080 Attorneys Fees. In any action seeking the closure of the structure pursuant to this Chapter, the court may, in its discretion, award attorneys fees to the prevailing party.

14.80.090 Severability. If any provisions of this Chapter, or its application to any person, or circumstances is held to be invalid for any reason, the remainder of the Chapter, or the application of its provisions to other persons or circumstances shall not in any way be affected.