

New Laws: 2021 Edition (Oregon)

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Oregon Senate Bill 282

I. Overview

Extends grace period for repayment of residential rent accrued during emergency period of April 1, 2020, to June 30, 2021, until February 28, 2022.

Prohibits residential landlord from reporting nonpayment of rent accrued during emergency period to credit bureaus.

Prohibits residential landlord from screening prospective tenant based on nonpayment of rent accrued during grace period.

Allows certain defendants to set aside and seal judgments of evictions based on claims arising during grace period.

Limits certain restriction on residential tenant's guests.

Declares emergency, effective on passage. *(But some sections don't actually take effect until July 1, 2021)

II. Eviction Moratorium (SB 282, Sections 1 – 5): Effective July 1, 2021

A. Grace Period Extended to February 28, 2022 (Emergency Period ends June 30, 2021)

SB 282 extends the Emergency Period to June 30, 2021 in all cases and extends the Grace Period to February 28, 2022.

Because this does not take effect until July 1, 2021, in the relatively brief interim, the Grace Period is still defined by HB 4401 (i.e., it ended March 31, 2021 if the tenant hasn't returned a Declaration of Financial Hardship).

As of July 1, 2021, Declarations of Financial Hardship no longer matter, as all tenants are automatically protected by the extended Grace Period for all sums that accrued between April 1, 2020 and June 30, 2021.

B. First Year of Occupancy (Extended to August 31, 2021)

1. History: This is a continuation from previous Executive Orders and House Bill 4401.

2. Explanation: The First Year of Occupancy is extended to August 31, 2021. Accordingly, if your first year of occupancy (or fixed term lease) would have expired during the COVID-19 pandemic (April 1, 2020 - June 30, 2021), you can still serve a No Cause Notice or Non-Renewal Notice up until August 31, 2021.

C. Balance Due Notices

Again, this section does not take effect until July 1, 2021. Accordingly, Balance Due Notices sent in the interim must comply with HB 4401. Under HB 4401, the specific disclosure language required depends on whether the tenant has returned a Declaration of Financial Hardship. As of July 1, 2021, all Balance Due Notices must conform to the following:

1. Required Statement: Balance Due Notices must include statement that eviction for nonpayment of rent, charges and fees accrued from April 1, 2020 to June 30, 2021 is not allowed before February 28, 2022

2. Permissible Inclusions: Balance Due Notices *may* (a) include information on tenant resources (b) offer voluntary payment plan; and (c) include a request that the tenant contact the landlord to discuss the voluntary payment plan.

(Note: If voluntary payment plan is offered, notice must state the payment plan is voluntary.)

This will remain in effect through February 28, 2022, when it is automatically repealed.

D. Changes to Nonpayment Notices / Required Disclosures

Because this section does not become operative until July 1, 2021, HB 4401 continues to govern nonpayment of rent notices through June 30, 2021. Through June 30, 2021, so long as the tenant has not returned a Declaration of Financial Hardship, a landlord can serve a 10-Day Nonpayment Notice for rent (or a 30-Day Nonpayment Notice if the property is subject to CARES or the landlord wants to include non-rent items like utilities). The notice must contain certain disclosures and must be served with the Notice of Eviction Protection and Declaration of Financial Hardship.

As of July 1, 2021, the 10-Day Nonpayment Notice will still be in effect (with the significant caveat that a property subject to CARES must effectively serve a 14/30 for nonpayment). 10-Day Nonpayment Notices will only be able to include unpaid rents from July 2021 forward and can still only be served on the 8th day of the rental period. Beginning I July 2021, 10-Day Nonpayment Notices “substantially state that...”

1. Eviction for nonpayment of rent, charges and fees that accrued on and after April 1, 2020, and before June 30, 2021, is not allowed before February 28, 2022; and
2. Information regarding tenant resources is available at www.211info.org.

The above new disclosure requirements will remain in effect through February 28, 2022, when they are automatically repealed. As of March 1, 2022, the 10-Day Nonpayment Notice will be retired and the pre-pandemic 72-Hour Notice will be reinstated (unless future legislation changes this, of course).

E. Other Prohibitions

1. Late Fees

- a) July 1, 2021: Landlords can assess late fees for July rent and beyond (but cannot assess late fees for any unpaid rents accrued during the emergency period).
- b) March 1, 2022: Statutory language suggests that if the tenant has not paid the nonpayment balance that accrued during the emergency period, landlords may now assess late fees for all unpaid rents that remain, even those that accrued during the emergency period. However, the statutory language is far from clear on this point. Accordingly, landlords should obtain individual legal advice before assessing any late fees for rents that accrued from April 1, 2020 through June 30, 2021—or simply forego from charging any late fees attributable to the emergency period.

2. Actions to Recover Nonpayment Balance

Landlords cannot file suit (small claims or otherwise) to collect the nonpayment balance until March 1, 2022.

III. Tenant Reporting and Screening (SB 282, Sections 6 – 8) (Effective immediately)

A. Prohibition on Credit Reporting

A landlord may not report to any consumer credit reporting agency a tenant's nonpayment of rent, charges or fees that accrued on or after April 1, 2020, and before July 1, 2021.

B. Prohibited Screening Considerations re Prior FEDs

When considering applicants, landlords cannot consider FED actions in which the landlord prevailed, if the FEDs are based on "claims" that arose on or after April 1, 2020 and before March 1, 2022.

C. Prohibited Screening Considerations re: Unpaid Rent

When evaluating an applicant, a landlord may not consider an applicant's unpaid rent, including rent reflected in judgments or referrals of debt to a collection agency, that accrued on or after April 1, 2020, and before March 1, 2022.

The above provisions remain in effect until January 2, 2028.

IV. Setting Aside Eviction Judgments (SB 282, Section 9) (Effective immediately)

Tenants who lost in FEDs can seek an order setting aside the FED judgment and sealing the official records, if the court finds that (a) the judgment was a judgment of restitution entered against the applicant; (b) the applicant has satisfied any money award included in the judgment; (c) at least five years have passed from the date of the judgment; and (d) the judgment was based on claims that arose after April 1, 2020, and before March 1, 2022.

V. Non-Tenant Guests (SB 282, Sections 13 – 15) (Effective Immediately)

A. Prohibited Restrictions

A landlord may not enforce a restriction by any means including assessing a fee or terminating the tenancy, if the restriction is based on:

1. A maximum occupancy guideline for the number of tenants or guests lower than an amount required by federal, state or local law or regulation
2. The maximum duration of a guest's stay in the tenancy.

B. 15 Day Limits

If a tenant's guest resides in the dwelling unit more than 15 days in any 12-month period, a landlord may require that:

1. The tenant's guest be screened, but not based on credit reports, credit references or income; and
2. The tenant and the guest enter into a temporary occupancy agreement (see ORS 90.275). (Note: The temporary occupancy agreement cannot have an ending date earlier than February 28, 2022.)

C. Additional Rules/Laws Regarding Guests

1. When Fees and Terminations Are Allowed: This section does not prohibit a landlord from assessing a fee allowed by ORS 90.302 or terminating a tenancy based upon the conduct of a tenant's guest or based on the tenant's guest's failure to comply with subsection (2) of this section.

2. Acceptance of Payment from Tenant/Guest Does Not Create Tenancy: Notwithstanding ORS 90.403 or 90.412, acceptance of a payment by a landlord from the tenant or guest does not make the guest a tenant under this chapter.

3. Definition of "Guest": As used in this section, "guest" means an individual who is staying temporarily, including overnight, within the dwelling unit at the invitation of the tenant.

4. March 1, 2022 Repeal Date: The guest provisions are repealed on March 1, 2022.