

**RESIDENTIAL LANDLORD-TENANT FORM
(NOT IN PARK OR MOORAGE)**

Does notice content comply with statute (ORS 90.392, 90.394, 90.396, 90.398, and 90.403; 90.380(5), 90.405, 90.427, 90.429, 90.630 or 90.632)? Yes No

If no, describe why: _____

If the tenancy is month-to-month and every tenant has lived there at least a year, is the landlord's no-cause notice for at least 60 days, not just 30? (ORS 90.427)? City of Portland, Bend, Milwaukie, 90 days?

Is the tenant terminating due to military duty? (ORS 90.472, 90.475) Yes No

Is domestic violence involved? (ORS 90.445 to 90.459) Yes No

Is landlord treating differently a tenant or applicant who is a victim of domestic violence? (ORS 90.449) Yes No

Is there a restraining order, other verification, or ouster order? Yes No

Is there a co-tenant/abuser who is being excluded? Yes No

If early release, are there any remaining tenants? Yes No

Is landlord evicting only the abuser? (ORS 90.445, 105.128) Yes No

If eviction is for closure of a facility, has the landlord provided the required notice and payments? (ORS 90.645; OAR 813.065) Yes No

if this eviction is a result of a condominium conversion, has the landlord given the notice and offer to sell? (ORS 90.490, 90.493, 100.305) Yes No

Is this a termination of a tenancy in a Group Recovery Home? (ORS 90.440) Yes No

If this is a post-advertisement-and-sale-foreclosure eviction of a tenant (as opposed to the owner), has the purchaser given sufficient notice under ORS 86.745?

Forcible Entry and Detainer

FED filed after notice's termination date, as extended by 18.010? Yes No

Served by the next judicial day? (105.135)? Yes No

Copy of notice attached to complaint (105.124)? Yes No

Identical to one given tenant earlier? Yes No

Date of first FED appearance: _____

Is first appearance at least 7 days after judicial day following date complaint filed? (ORS 105.135, but see *Balboa v. Patrick*, 351 Or 205 (2011)).

Non-Payment Eviction (ORS 90.394)

Behind in rent? Yes No

\$ _____ Amount owed

Does the notice specify the amount owed? Yes No

_____ Amount and date of last payment; review payment history

_____ # of payments behind

Has landlord allocated payments correctly (90.220)?

Does the notice claim amounts other than rent? Yes No

If yes, what? _____

Does the notice specify both a due date and time? Yes No

Receipts: attached at home lost not provided

Reasons for nonpayment: Lack of funds
 Dwelling unit in bad condition (describe in Habitability section)
 Landlord refused to accept rent (if yes, describe what happened and when) _____

Other: _____

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Does tenant already have rent money to pay right now? Yes No
 How much? \$ _____
 Deposit into Trust Account? (Danger: *In re Williams*, 314 Or 530 (1992)) Yes No
 If no money now, when? _____
 Is there a dispute over amount of rent due? Yes No
 Does the notice include charges other than rent? ORS 90.260(6)(late fee); .302(5)(fees); .315(4)(d)(utilities)
 Yes No
 Has tenant made partial payments? Yes No

DATE OF PARTIAL PAYMENT	AMOUNT	METHOD OF PAYMENT	ORS 90.417(4) AGREEMENT MADE?

Did landlord return any money? (ORS 90.412(3)) Yes No
 If yes, when, and how many days after receipt? _____
 Is there a waiver due to landlord's acceptance of partial payment? (ORS 90.417) Yes No

CURE/WAIVER

If eviction is for cause other than nonpayment, has landlord waived breach? (ORS 90.412, 90.414) Yes No
 How: _____
 When: _____
 Cure of eviction cause? (ORS 90.392; 90.630 for mobile home parks and marinas)
 How: _____
 When: _____
 Does the notice describe a cure? Does notice demand a particular cure?
 Deadline for cure: _____

HABITABILITY

Within the last year (ORS 12.125 limitation), did the apartment or house lack any repair item under 90.320? Or did the space in a facility lack any item under ORS 90.730? If yes on any item, from when to when?
 Did the dwelling lack any unlisted item of similar importance? *Bellikka v. Green*, 306 Or 630 (1988).

Complaints to landlord:

DATE OF COMPLAINT TO LANDLORD	WRITTEN OR ORAL?	PROBLEM	LANDLORD'S RESPONSE

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Did landlord know or should landlord have known about the problem?
ORS 90.360 Yes No
If yes, why: _____

Did public fire, health or housing inspector check out dwelling?
If yes, is there a written report? Copy? Yes No

Did tenant or tenant's guest cause the problem? Yes No
ORS 90.360(5) Describe: _____

Did tenant invoke repair-and-deduct procedure, ORS 90.368? Yes No

Is the dwelling unsafe or unfit to occupy due to the problem? ORS 90.365(1)(c) Yes No
Describe: _____

Has a government agency posted the dwelling as unsafe or unfit to occupy?
(ORS 90.380) Attach copy of the notice? Yes No

Did landlord disclose the subject of the posting at start of tenancy?
(ORS 90.380(3)(c)) Yes No

Has tenant negligently damaged the dwelling or premises? (ORS 90.360(4)) Yes No
Describe: _____

Has tenant denied landlord access to make repairs? (ORS 90.322) Yes No
If yes, describe what happened and why: _____

DEPOSITS/FEEES

Are deposits, prepaid rent, or fees involved? Are they authorized by law, and described in a writing? Attach a copy. (ORS 90.300, 90.302) Yes No

Deposits, ORS 90.300

Describe any deposits charged: amount, purpose, date paid

Date by which both tenancy had terminated and possession returned to landlord: _____

Did landlord refund by 31st day afterward? Yes No Amount? _____

Did landlord account by 31st day afterward? _____

By personal delivery or by first-class mail as defined in ORS 90.100?

If late, then when? _____

Have deposits or prepaid rent been garnished? (ORS 18.618)

If yes, by whom and when _____

Fees, ORS 90.302

Did landlord charged any one-time, up front fees? Yes No Describe: _____

Is tenant within one-year (12.125) of paying the fee? Yes No

Has landlord charged any noncompliance fees? Yes No Describe: _____

Both

Has landlord charged any pet deposits or fees for service or companion animals? Yes No

Describe: _____

Distrain: Is landlord holding any property of the tenant? (ORS 90.420, 105.112)

ATTACH A LIST OF ITEMS AND THEIR VALUE

Has the tenant demanded the return of the property? When? _____

Was the demand in writing? Yes No

Landlord's reason or response: _____

Parking/towing: Has landlord had tenant's car towed? Without notice? Yes No

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(ORS 90.485 and further statutes cited there)

If yes, when? _____ Landlord's reason? _____

DEFENSES/COUNTERCLAIMS/ACTIONS

Defenses/Counterclaims against landlord (describe): _____

Defense: Protected class _____
Discrimination Describe the landlord's discriminatory conduct: _____
(ORS 90.390; _____
ORS 105.132) _____

Defense and Protected conduct _____
Counterclaim: _____
Retaliation _____
(ORS 90.385, *Elk* Did tenant make complaint in an unreasonable manner? Yes No
Cr'k, 353 Or 565 (2013) Describe: _____

Counterclaim: Has the landlord entered the dwelling or premises without tenant's
Abuse of access permission or without notice? Yes No
(ORS 90.322) If yes, when: _____
Landlord's reason (emergency, etc.): _____
Was anything damaged? Yes No
What: _____

Other Counterclaims and Actions:

- Lockout/utility shutoff or threat (ORS 90.375)
- Utilities/services benefiting landlord or other tenants not disclosed when tenancy starts, ORS 90.315. (One-year statute of limitations, ORS 12.125 begins second day of tenancy.)
 - Failure to disclose foreclosure (ORS 90.310)
 - Improper utility or service charge (ORS 90.315)
 - Application denial (ORS 90.304, 90.390) or applicant screening charge issue (ORS 90.295)
- Unlawful debt collection practice (See *Hoffer v. Szumski*, 129 Or App 7 (1994) and discussion below.
- Miscellaneous sales practices violating the Unlawful Trade Practices Act (describe any misrepresentations by the landlord; unreasonable rejection of a prospective manufactured dwelling purchaser in a facility, ORS 90.680; false representations about insurance or warranty by dealer, ORS 646.648).

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Date	Nature of Misrepresentation/Rejection	Oral or Written

NOTE: See UTPA discussion at end of this form.

Landlord failure to give written notice that unit is in a 100-year flood plain (90.228)

POST-EVICTION

Was there a judgment or order by stipulation? Yes No
 If so, did the judgment or order include only the items listed in ORS 105.146(2)? Yes No
 Did one party fail to comply? (ORS 105.146 - 105.149) Yes No

Describe the noncompliance _____

Describe any excuse or defense to the noncompliance _____

Notice of Restitution given? ORS 105.161 Yes No

Deadline to move out: _____

Have 60 days passed since judgment (ORS 105.159) or 30 days since writ of execution? ORS 105.161? Yes No

Abandoned property (ORS 90.425, 90.675) Yes No

Signs that the tenant has abandoned or relinquished the premises:

Notice of abandoned property given? Yes No

Date: _____

Notice waived? (If yes, attach copy of agreement) Yes No

Describe the abandoned property or attach list: _____

Where stored: _____

Does the abandoned property include a manufactured dwelling or floating home? Yes No
 If yes, notice given to any lien holder or owner? Yes No

Has government posted the dwelling for methamphetamine? ORS 90.425(23) Yes No

If abandoned by death of a tenant living alone, has the landlord notified personal representative and State Lands, etc? (ORS 90.425) Yes No

MANUFACTURED AND FLOATING HOMES IN "FACILITIES"

Does the space tenant own the home? Yes No
 Now or in the past, are or were there four or more home spaces? Yes No

Was the owner's purpose for at least four spaces to rent them out?
 Were floating-home spaces contiguous and transferrable as a single unit?
 Did landlord ever close the park under ORS 90.645 or 90.671?

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Note: Where the owner of a manufactured dwelling or floating home rents a space in a park or marina (a "facility") the tenancy is treated differently from apartment occupancy in many ways. 90.505-90.875. The questions above relate to definitions in ORS 90.100 for "facility," "manufactured dwelling park," and "marina," so the practitioner can determine under ORS 90.120 and .505 whether ORS 90.510 et seq. apply. Despite the implication of the questions, no reported case has said whether a park or moorage can lose its character as such without a closure under ORS 90.645 (park) or .671 (marina).

What year was manufactured dwelling built? _____

Is there a lender or lien holder on the dwelling or home?

Yes

No

If yes, name and address: _____

Has the manufactured dwelling park or floating home marina landlord registered with the state and completed the required training in ORS 90.732 and .734?

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Unlawful Trade Practices Act By Craig Colby

The core purpose of the UTPA is to discourage fraudulent conduct in the formation of consumer contracts. Its original provisions prohibited various tricks used to lure consumers into transactions, but the act did not try to regulate the conduct of the merchant who simply defaulted on a contract.

Also in its original provisions, the UTPA applied only to the formation of contracts for "goods and services." When the act was being enlarged in 1977 to encompass the formation of real-estate contracts, a May 10, 1977 memorandum from Chief Counsel, Consumer Protection Division, to the House Committee on Business and Consumer Affairs said, "The law also does not include all things covered under the residential landlord-tenant law. * * * There is landlord-tenant law already on the books, and since the Consumer Protection Division of the Department of Justice normally does not act in the area of residential landlord-tenant, extension of jurisdiction over residential landlord-tenant is not needed at this time." Accordingly the legislature provided, "As used in ORS 646.605 to 646.652: * * * real estate does not cover conduct covered by ORS Chapter 90."

Much of the UTPA regulates conduct in connection with sale or lease of "real estate, goods or services," and in my view that much of the UTPA does not apply to residential landlords. On the other hand, the legislature has used the UTPA as a dumping ground for miscellaneous regulations, including unlawful debt collection practices, that might well catch up residential landlords. My purpose here is not to list them -- they change every biennium -- but just to warn the practitioner that core provisions of the UTPA may not apply.

Hoffer v. Szumski, 129 Or App 7, 877 P2d 128 (1994) controls, or doesn't. It arose from a residential FED where the trial court had dismissed tenant's UTPA counterclaim as "outside the purview" of an FED. On appeal landlord conceded that the trial judge was wrong. In a short discussion agreeing with landlord, the Court of Appeals truncated the front of what is now ORS 646.638(7) to, "[I]n any action brought by a seller or lessor against a purchaser or lessee of real estate, goods or services, such purchaser or lessee may assert any counterclaim the purchaser or lessee has arising out of a violation of [the UTPA]." Based on the partial quotation the Court determined that counterclaims would lie.

Actually, the statute begins now and, with subsection numbers updated, began then, "(7) Notwithstanding subsection (6) of this section, in any action * * *." The referenced subsection (6) sets a one-year statute of limitations. Thus the full language extends the limitations period if the merchant starts the fight, but does not overturn general rules concerning FED procedures.

The landlord in *Hoffer* conceded error on the jurisdictional question but sought to justify the trial court's dismissal of the UTPA claim on the ground that tenant had failed to state a claim. Presumably landlord argued that the act's definition of "real estate" denied tenant's coverage by the part of the UTPA the tenant had invoked. The Court's opinion noted this argument of the landlord but did not respond to it. Perhaps the court reached and rejected the argument; perhaps it thought landlord hadn't preserved it; perhaps the court deemed it patently irrelevant. Some lawyers believe that because landlord lost on appeal *Hoffer* must have decided generally that tenants may rely on the entire UTPA, at least for matters not explicitly regulated by the ORLTA. I suggest caution.

IMPORTANT NOTICES

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