

QuickFacts

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BLUESTONE & HOCKLEY

REAL ESTATE SERVICES

2015 Changes to the Oregon Landlord Tenant Act (SB 390)

By: Cliff Hockley, President
Bluestone & Hockley Real Estate Services

Once again, tenants and landlords have come together with the legislature to update the Oregon Landlord Tenant Act. On June 15, 2015, Oregon Governor Kate Brown signed SB 390 into law. The law itself takes effect the 1st of January 2016. While most of the changes to the act are basic clarifications, significant issues are addressed as well. I have reviewed the changes in the act and summarized them here for your convenience. Please read carefully.

1. Clarification regarding mailing of notices

To avoid confusion, **ORS 90.160** has been updated insofar that notices expire at 11:59 p.m. on the last day of the notice period rather than at 12 midnight.

2. Timing for notices of restitution

ORS 105.159 (with a specific focus on **ORS 105.151** regarding notices of restitution) has been updated insofar that notices of restitution expire at 11:59 p.m. on the last day of the notice period rather than at 12 midnight. This change also clarifies that the mail time for notices of restitution starts at 12:01 a.m., the day *after* a notice has been placed in the mail, and ends at 11:59 a.m. four days later. However, if the end date falls on a Saturday, Sunday or other legal holiday, then the notice period shall end at 11:59 p.m. on the day preceding the next judicial day.

2. Noncompliant pet fees

ORS 90.302 has been amended to include authorization to charge noncompliance fees to tenants for failure to clean up the waste of a service/companion animal from a part of the premises other than the dwelling unit. (The point of this change

was to encourage owners of those animals to pick up animal waste at a property just like any other tenant would be responsible for.)

In addition, there was a change to the section of the act that addresses the penalties for keeping an unauthorized pet capable of causing damage to persons or property as described in **ORS 90.405**.

Initial noncompliance fees are limited to \$50 (see **ORS 90.302(3)(a)(A)**). However, a fee for a second or any subsequent noncompliance relating to an unauthorized pet can increase to a maximum of \$250. Those unauthorized pet fees may not be imposed until 48 hours after the warning notice has been delivered to the tenant.

3. Assessments imposed by a homeowner / condominium association

ORS 90.302 has been modified to address homeowner / condominium association fees. This section clarified that assessments can be passed on to tenants if they are imposed for moving into or moving out of a unit or property located within the association.

To levy these fees the landlord must establish the fees in a written rental agreement at the beginning of the lease term and the landlord must give a copy of the assessment distributed by the association to the tenant before or at the time the landlord charges the tenant.

If a landlord charges a tenant a fee in violation of this section the tenant may receive from the landlord a penalty that recovers twice the actual damages to the tenant or \$300, whichever is greater.

4. Regarding a tenant's failure to pay

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for damages, utility fees and / or charges and deposits.

Amendments to **ORS 90.412** (the “waiver” statute) clarifies a tenant’s failure to pay money to a landlord for damages to the property, structures at the property, utility fees and / or charges and deposits. The following section is new:

The violation concerns the tenant’s failure to pay money owed to the landlord for damage to the premises, damage to any other structure located upon the grounds, utility charges, fees or deposits and, following the violation but prior to the acceptance of rent for three rental periods or performance as described in subsection (2) of this section, the landlord gives a written warning notice to the tenant regarding the violation that:

- a. Describes specifically the basis of the claim and the amount of money owed that
 - b. constitutes the violation; States that the tenant is required to correct the violation by paying the money owed; and
- States that continued nonpayment of the money owed that constitutes a violation may result in a termination of the tenancy pursuant to **ORS 90.392***

This statute is also amended to read that “for violations concerning the tenant’s failure to pay money owed to a landlord, the landlord’s written warning remains effective for 12 months from the date of the tenant’s failure to pay the money owed.”

5. Regarding renter’s liability insurance and landlord requirements thereof.

Changes to **ORS 90.222** are important given that as of January 1, 2016 landlords must provide a reasonable written summary of the exceptions to the insurance requirements to tenants. This typically addresses low income

tenants or tenants using vouchers or living in subsidized housing, and basically exempts Section 8 tenants for carrying rental liability insurance. Should a landlord desire to amend a month-to-month rental agreement, so as to require rental liability insurance, the landlord must not only give a tenant a 30 day notice, but must also deliver the same written summary of exceptions to a tenant/tenants.

A landlord may require that the tenant provide documentation that the tenant has named the landlord as an interested party on the tenant’s renter’s liability insurance policy authorizing the insurer to notify the landlord of:

- a. Cancellation or non-renewal of rental insurance policies
- b. Reductions of policy coverage
- c. Removal of the landlord or other interested party (like a property management company or an attorney)

If a landlord “knowingly” does not follow the modified rules, tenants may recover actual damages or \$250, whichever is greater.

6. ORS 90.325 tenant responsibilities

- 1. New codes require that new apartments be constructed with fire sprinklers installed. To that end tenants may not remove, obstruct, or tamper with a sprinkler head used for fire suppression.
- 2. Other new rules regarding tenant responsibilities define what damages tenants are NOT responsible for:
 - a. Acts of God
 - b. Conduct by a perpetrator relating to domestic violence, sexual assault or stalking
 - c. Damage resulting from conduct by a perpetrator relating to domestic violence, sexual assault or stalking.

A Landlord may require a tenant to provide verification that the tenant or a member of the tenant’s household is a victim of domestic violence, sexual assault or stalking as provided

in **ORS 90.453.**

7. Utility and public service charges

ORS 90.315 now allows landlords to bill tenants for utilities and public service charges (charged to the landlord by the public service.

A ‘public service’ is defined as municipal services and the provision of public resources related to the dwelling unit, including street maintenance, transportation improvements, public transit, public safety and parks and open space.

“Public service charge” means a charge imposed on a landlord by a utility or service provider by a utility or service provider on behalf of a local government or directly by a local government. However, “public service charge” does not include real property taxes, income taxes, business license fees or dwelling inspection fees.

Provided your rental agreement requires a tenant pay a utility or service charge, landlords can bill for it but landlords must bill for the utility within 30 days after receipt of the utility provider’s bill. If the landlord includes the bill in the monthly statement of the rent due, the landlord must separately and distinctly state the amount of the rents and the amount of the utility and / or service charge.

To be able to bill back utilities to the tenant the landlord must provide to the tenant in the rental agreement or in a separate bill to the tenant an explanation of:

- a. The manner in which the utility provider assesses the utility bill or service charge.
- b. The manner in which the service charge is allocated if the provider’s bill is allocated among multiple tenants, (for example: RUBs (Ratio Utility Bill back), sub meter, by number of residents in a unit, or by number of units).

Landlords must include a copy of the

utility bill for the tenant to review or state in the rental agreement and / or tenant bill back that the tenant can inspect the bill at the landlord's office (during reasonable office hours) and that the tenant can have copies of the bills at a reasonable cost. Utility bills and service charges can be transmitted to tenants via first class mail, posted on the door, or via email, if the rental agreement so provides (**ORS 90.155**).

Service charge pass through

A landlord must provide 60 days written notice to a tenant before the landlord may amend an existing rental agreement to require a tenant to pay a new service charge adopted by a utility service provider (such as a billing service or a local government) that was not in existence at the time the rental agreement was entered into and that was adopted by a utility or service provider or a local government within the previous six months. A landlord may not hold a tenant liable for a public service charge billed to a previous tenant.

8. Application order for tenant payments

According to **ORS 90.220(9)(a)**, as of January 1, 2016 funds received from tenants must be applied in the following order:

- a. Outstanding rents from previous periods
- b. Rent from the current period
- c. Utility or service charges
- d. Late rent payment charges
- e. Fees or charges owed by tenants under **ORS 90.302** or other fees and charges related to tenant caused damages and other claims

This section does not apply to rental agreements subject to **ORS 90.505 – 90.840** relating to manufactured dwellings or floating homes but does affect all rental agreements for fixed term tenancies entered into or renewed after the effective date of this 2015 Act

(January 1, 2016).

9. Definition change regarding emergency exits

Section **ORS 90.100** creates new language requiring a landlord to provide an emergency or secondary means of exiting a bedroom (in addition to the main door to the room,) and allows a tenant to terminate such a tenancy on 72 hours' notice unless the landlord cures the noncompliance, compensates for damages and pays a penalty for their failure to cure.

This change is aimed at landlords who rent out illegal units containing bedrooms without legal or approved egress, which can be catastrophic in the case of a fire or other emergency. This law is focused on landlords who build extra rental rooms without a permit, with a specific focus on basements, attics and rooms that have no windows that can be used for emergency egress.

If the landlord does not cure the noncompliance within a 72 hour period the tenancy terminates without any tenant penalties, and the tenant can recover twice the tenant's actual damages or twice the periodic rent, whichever is greater. Within four days after termination, the landlord must return all the security deposits and any prepaid rent owing to the tenant.

Summary

In summary, as these new laws take effect, landlords must be vigilant in cases regarding the mailing period of notices, pet waste in public spaces / noncompliant pets, homeowner / condominium association assessment fees, tenants' failure to pay fees, exceptions to insurance requirements, tenants' responsibility for damages, utility and public service charges, the order tenants' payments are applied, and provisions for emergency exits as they adapt their policies, procedures and documentation to the new provisions.

Clifford A. Hockley is President of Bluestone & Hockley Real Estate Services, greater Portland's full service real estate brokerage and property management company. **Founded in 1972**, Bluestone & Hockley's staff totals nearly 110 employees, including 20 licensed brokers. The company's property management division serves commercial buildings, apartments, condominium associations and houses in the Portland / Vancouver metro area, while the brokerage division facilitates both leasing and sales of investment properties throughout Oregon and Washington.

Cliff earned a degree in Political Science from Claremont McKenna College and holds an MBA from Willamette University. He is a Certified Property Manager and has achieved his Certified Commercial Investment Member designation (CCIM). Bluestone & Hockley Real Estate Services is an Accredited Management Organization (AMO) by the Institute of Real Estate Management (IREM). Cliff is a member of the Institute of Real Estate Management and was named Certified Property Manager of the year in 2001 and 2003. Cliff is a frequent contributor to industry newsletters.

Bluestone & Hockley offers **customized brokerage, property and asset management, as well as maintenance services** to property owners and investors throughout the Portland/Vancouver metro area. The company's full-service approach benefits busy property owners and investors, who know they can count on Bluestone & Hockley for high quality real estate services start to finish.

