

AUGUST 2021

## OVERVIEW OF LEGISLATIVE BILLS AFFECTING REAL ESTATE INVESTORS AND CONDOMINIUM ASSOCIATIONS

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

Executive Director, SVN Bluestone and Hockley

It has been a very active legislative session this year. We have summarized below, bills that are active and passed, as well as bills that were defeated. The changes for landlords were of a significant nature and deserve your review.

### Residential Properties

#### *Federal CDC Moratorium Extension Extended to October 3, 2021*

On August 3, 2021, the Federal Government, through the Centers for Disease Control (CDC), once again extended the temporary ban on Landlords taking action against residential Tenants for nonpayment of any charges through October 3, 2021. It had expired on July 31, 2021. The new order covers counties experiencing “substantial” or “high” levels of Covid-19 spread. At the moment that includes 80% of US counties or 90% of the US population.

As a reminder, the CDC Moratorium prohibits Landlords from evicting any “covered persons” for nonpayment during the covered period (September 4, 2020, through October 3, 2021). A “covered person” is a residential Tenant who provides their landlord with a declaration containing several statements.

### New Oregon Laws

#### *Senate Bill 8- New law making it easier to locate affordable housing*

This bill encouraged the development of affordable housing by expanding areas where affordable housing can be built and removing barriers faced by developers, cities, and nonprofits. The Legislature also sent through a \$160 million housing package that contained funding for affordable housing in cities around Oregon.

#### *Senate Bill 282- Tenant Protections After Covid*

This bill provides the following tenant protections after the emergency period has ended, currently June 30, 2021.

- Extends expiration of grace period for tenant repayment of rental debt accrued during emergency period from June 30, 2021, to February 28, 2022, extending the grace period for rent arrearages from HB 4401, previously passed December 2020.
- Tenants cannot be evicted for nonpayment of back rent during the pandemic.



### A Full Service Real Estate Company

- Real Estate Sales and Leasing
  - Consulting
- Property Maintenance
- Member of Multifamily NW, IREM & BOMA



### Property Management Services

- Retail, Industrial & Office Buildings
- Condominium & Homeowners
  - Apartments
  - Houses

### News & Blog

Read this article and more at:

[B&H Industry News](#)

### ***Senate Bill 282- Tenant Protections After Covid, continued***

This bill provides the following tenant protections after the emergency period has ended, currently June 30, 2021.

- Restricts landlords from reporting tenant nonpayment accrued during emergency period to consumer credit agencies and from considering tenant nonpayment accrued during grace period in rental applications.
- Establishes limits on guest restrictions and on what landlords may require from tenants' guests during stays longer than 15 days in a 12-month period.
- Allows former defendants to apply to seal court records of judgments regarding certain claims related to tenancy made during grace period.
- Sets expiration dates for various provisions.
- Declares emergency, effective on passage.

### ***Senate Bill 278- Oregon Rent Moratorium***

#### ***New Language Notice Required with a 10-day Termination for Nonpayment and Summons and Complaint***

You must deliver a notice with any termination for nonpayment of any charges and any summons for an eviction based on nonpayment given to the Tenant. It must be exactly in the form as provided in the bill.

If a Tenant provides the Landlord with documentation that the Tenant has applied for rental assistance, a landlord may not deliver a termination notice for nonpayment or initiate or continue an action for possession based on the termination notice for nonpayment for 60 days.

Documentation includes electronic mail, a screenshot or other written electronic documentation from a rental assistance provider verifying the submission of an application for rental assistance. The courts will dismiss an eviction case for nonpayment if:

- The Landlord did not attach the required notice.
- The Tenant's nonpayment was substantially caused by the Landlord's failure to reasonably participate with a rental assistance program (this does not require that you apply for the Landlord Compensation fund);
- The Landlord receives rental assistance covering the rent owed in the termination notice.
- The Tenant provided the documentation before the case was filed. However, if the Tenant provides the documentation at any time after the Landlord filed the case and at or before the first appearance, the court will postpone the first appearance for at least 60 days.

#### ***Reissuing a Termination for Nonpayment if Balance is not Paid***

If 60 days have passed since the Tenant provided the documentation, a landlord may issue a new termination notice. If the matter was already filed with the court and the case was postponed for 60-days, the court must promptly set the matter for trial at the reset first appearance.

#### ***Penalties***

If a landlord violates SB 278, a Tenant may obtain injunctive relief to recover possession or address any other violation. The Landlord's failure to comply may also be used as a defense in a Forcible Entry and Detainer (FED). Finally, if an FED is dismissed based on SB 278, a Tenant is not entitled to a prevailing party fee, costs or attorney fees' if the Landlord delivered all notices as required, did not know or have reasonable cause to know that the Tenant had provided documentation when the FED was filed, and the Landlord promptly dismissed the FED when they became aware that the Tenant provided the documentation.

## ***Senate Bill 278- Oregon Rent Moratorium, continued***

### ***New Source of Landlord Compensation***

If a Tenant's application is denied or the 60-day period described above expires without payment, Landlords may apply to an agent of the Oregon Housing and Community Services for nonpayment that accrued during the delay. This source of rental assistance is different than the Landlord Compensation Fund [LCF] created by HB 4401.

### ***Increased LCF Funding***

The LCF will now reimburse applicants for 100% of any unpaid rent awarded. This will apply retroactively to Landlords who have already been approved in the first two rounds without requiring any additional request. It will also apply to any Landlords who timely submit applications for Round 3 of the LCF program that are approved.

*Note: Multnomah County commissioners approved a 30-day extension of the ban on evictions to allow housing providers more time to work through the significant number of Portland-area applications for rental assistance.*

The extension adds to legislation Oregon lawmakers approved via SB 278 that gives an additional 60 days of protection to renters who apply for rent assistance and notify their landlords. In Multnomah County, that protection now lasts 90 days.

The 90-day protection clock starts once a renter informs their landlord they have applied for assistance, not when they submit their application. Renters must provide proof they have applied for assistance at or before their first court appearance for eviction proceedings.

### ***Senate Bill 291A- Regarding Criminal History and Screening Criteria***

This requires changes to Written Rental Criteria, limit criminal history that housing providers may consider screening applicants and requires individual assessment of an applicant for any basis for denial. This is similar to the Portland FAIR ordinance application screening criteria but includes protection for those with a criminal record, where:

- The case against the applicant has been dismissed without conviction;
- The applicant is presently admitted into a diversion or deferral of judgment program including a program entered after conviction but prior to judgment; or
- The arrest was not for criminal behavior, as noted in ORS 90.303(3). This means that when evaluating an applicant the Landlord may still screen out those people with a drug related crime [excluding those solely based on marijuana], a person crime, sexual offenses, crime involving financial fraud, including identity theft or forgery, any other crime if the conduct of the crime would adversely affect the property of the land or other tenants, or the right to peaceful enjoyment of the property by the residents, Landlord or Landlord's agent.]

If a landlord denies an application, the landlord must, within 14 days of the denial, provide the applicant with a written statement of one or more reasons for the denial. Tenants with a criminal record may still be denied on the basis of bad credit or inability to pay the rent.

### ***House Bill 2077- Lead-based Paint Standards***

With the passage of this bill, Oregon Health Authority [OHA] secured greater enforcement tools for EPA lead-based paint Renovation, Repair and Painting [RRP] protocols that have been in place for over 10 years. Changes include:

- Authorizes Oregon Health Authority [OHA] to contract with a third party to obtain a lead-based paint risk assessment or control paint hazards identified by a risk assessment.
- Modifies the statutory process and increases authority to impose civil penalties related to lead-based paint activities including abatement or control.
- Grants OHA authority to file a lien on property if civil penalties are unpaid. Specifies rights and processes for hearing and judicial review of civil penalties.
- Requires moneys received through civil penalties be used to fund lead poisoning prevention and related activities.

This bill becomes operative January 1, 2022.

### ***House Bill 2583- Occupancy Limits***

It prohibits local governments from establishing or enforcing maximum occupancy limits in residential dwellings based on familial or nonfamilial relationship among occupants. Existing Fair Housing laws had already effectively nullified any of these occupancy limits.

### ***House Bill 3040 A- Review of System Development Charges***

It requires the Oregon Housing and Community Services Department [OHCS] to conduct a comprehensive study of system development charges [SDCs] in consultation with the Department of Land Conservation and Development, Department of Environmental Quality, Department of Revenue, and the Oregon Business Development Department. Changes include:

- Specifies the scope of the study, including the role of SDCs and their fee rates.
- Specifies the minimum requirements of the study, including the history of the charges, methodologies for setting the fees, the impact of charges on overall housing costs, the costs and benefits of payment deferrals, and aspects of transparency related to fee rates.
- Requires OHCS to provide a preliminary report by December 31, 2021, and a final report by June 1, 2022.
- Requires any local entity that charges SDCs to provide, starting on January 1, 2022, specified information related to SDCs either through a publicly accessible website or available to the public free of charge upon request.

### ***House Bill 3113- Affordable Housing***

It clarifies that a landlord who rents a dwelling unit regulated as affordable housing by a federal, state, or local government is exempt from rent increase limits if the change in rent does not increase the tenant's portion of the rent or is required by program eligibility requirements or by a change in tenant's income.

### ***House Bill 3155- Housing Needs Analysis for Cities over 10,000 inhabitants***

With the passage of HB 3155, the Legislature has prompted cities within Metro, of a population greater than 10,000, to conduct a housing needs analysis.



### ***House Bill 3275- Tax Exemption for Affordable Housing***

This bill provides property tax exemption for land owned by an eligible covenant holder who is burdened by an affordable housing covenant requiring permanent affordability. Changes include:

- Specifies that exempt land must be held or improved for the construction or rehabilitation of owner-occupied housing.
- Provides a property tax exemption of 27 percent of the real market value of an owner-occupied condominium unit burdened by an affordable housing covenant requiring permanent affordability, subject to certain conditions.
- Applies provisions of this Act to property tax years beginning on or after July 1, 2022.

### **Mobile Home Parks**

#### ***House Bill 2364 A- Opportunity of Tenants to Purchase a Mobile Home Park***

It allows tenants, upon receipt of notice of owner's intent to sell a residential dwelling facility, 15 days to form tenants committee for the purpose of competing to purchase the facility. Changes include:

- Requires tenants committee to provide to facility owner written notification and request for financial information related to the sale of the facility.
- Extends the time by which an owner must provide tenants committee with requested financial information from seven days to 14 days after tenant delivery of request and expands provision of financial information to include total operating expenses for the facility paid by the owner or landlord in the prior calendar year.
- Extends to 45 days the time period in which tenants committee must form entity legally capable of purchasing real property and submit to owner written offer to purchase the facility.
- Clarifies the duty of the facility owner to consider and negotiate in good faith any offer from tenants or any entity formed by or associated with the tenants.
- Allows tenants to recover 10 percent of sale price of facility if owner does not negotiate with tenants or associated entity in good faith.
- Designates, upon award of damages, Department of Justice and prevailing party as judgment creditors for 50 percent, respectively, of the award, and allocates department's share of award to the Manufactured Parks Account after the deduction of collection costs.
- Requires prevailing party to notify department of award within seven days following award judgment.

### **Applicable to Residential and Commercial Property New Construction**

#### ***House Bill 2180- New Building Codes regarding electrical vehicle charging stations***

This bill requires the Director of Department of Consumer and Business Services (DCBS) to adopt state building codes that require at least 20 percent of parking spaces in newly constructed privately owned commercial buildings, multifamily residential buildings with five or more residential dwelling units, and mixed-use buildings consisting of privately owned commercial space and five or more residential dwelling units to provide electrical vehicle charging infrastructure, and allow municipalities to adopt building codes that require a higher percentage of parking spaces to provide electric vehicle charging. It clarifies definition of "provisions for electrical service capacity." Authorizes municipalities, by ordinance, rule or process concerning land use, to require that each newly constructed building include provisions for electrical service capacity to accommodate more than 20 percent of vehicle parking spaces in the garage or parking area for the building. Requires director to make code amendments effective July 1, 2022. Applies to new construction building permit applications beginning on or after July 1, 2022.

## ***House Bill 2021- Clean Energy***

Creates what supporters dubbed the strongest electricity emissions reduction timeline in the country. The bill changes Oregon's Renewable Portfolio Standard requiring retail electricity providers to reduce greenhouse gas emissions associated with electricity sold to Oregon consumers to 80% below baseline emissions levels by 2030, 90% below baseline emissions levels by 2035 and 100% below baseline emissions levels by 2040.

## **Commercial Properties**

### ***House Bill 2966- Extends Grace Period for repayment of rent due to Covid***

Bill extends the grace period, from March 31, 2021, to September 30, 2021, for a commercial tenant to repay any outstanding nonpayment balance of rent, late charges, utility charges, or any other service charge or fee during the emergency period between April 1, 2020, and September 30, 2020. Limits the extension from applying if a landlord attempts to apply for financial assistance, if the application requires the tenant to be a co-applicant, and if the tenant does not make a good faith effort to comply with the application requirements for the tenant. It becomes operative retroactively to March 31, 2021, if the effective date is after March 31, 2021. Stipulates that any otherwise lawful action taken, or lawful obligation incurred between March 31, 2021, and the effective date is declared ratified and approved. Requires that any claim for possession of real property based on a commercial tenant's nonpayment that was filed after March 31, 2021, and that has not resulted in a judgment must be stayed until October 1, 2021. Sunsets on September 30, 2021.

## **Associations**

### ***Senate Bill 329- Electronic Meetings Permitted***

Allows homeowners and condominium associations to conduct meetings electronically. Clarifies effective delivery of electronic notices, effective on passage.

## **Real Estate Brokers and Property Managers**

### ***House Bill 2703- Fair Housing Educational Hours***

Requires principal real estate brokers, real estate brokers, and property managers to complete a course on state and federal fair housing laws as part of a 30-hour continuing education requirement to renew or reactivate a license. Applies to real estate licenses renewed or reactivated on or after July 1, 2022.

## **What Didn't Pass?**

The following is a list of some of the bills residential and commercial rental owners and their Lobbyists defeated in the 2021 session. It was impressive that the lobbyists were able to scuttle the following bills, all of them harmful to our industry, when in fact they could not even speak to the legislators due to Covid-19. Many of these bills would have been very harmful to our industry.

- SB330A would limit housing providers ability to screen applicants. Create income tax credit for landlords equal to amount of unpaid rent forgiven as condition of accessing Landlord Compensation Fund. Establish certificate of eligibility from Oregon Housing and Community Services (OHCS) for landlords to claim credit. Require taxpayer to claim credit in tax year beginning on or after January 1, 2021, and before January 1, 2022.
- SB 838 would have created a real property ownership registry across the State of Oregon.
- HB 2372 would have eliminated the housing provider's ability to terminate any residential tenancy without a stated cause.

## What Didn't Pass?

### *Continued from previous page*

- HB 2427 directed the Housing and Community Services Department to establish and maintain a uniform rental application system and required landlords to accept the uniform rental application submitted and uniform tenant screening report.
- HB 2484 would have required landlords to allow tenant's use of a dwelling as a family childcare home if certified or registered and notification provided. Require landlord to take reasonable steps to cooperate with tenant. Allow tenants to enforce requirements under ORS 90.360. Allow landlord to require tenant to pay in advance for costs of modifications. Allow landlord to prohibit use not allowed under zoning or association's governing documents.
- HB 2580 prohibited a landlord from increasing rent for prospective purchaser of a manufactured dwelling or floating home in a facility, except as part of a facility-wide rent increase for all tenants.
- HB 2621 for purposes of Oregon Indoor Clean Air Act, expanded definition of "public place" to include common areas of commercial residential buildings and residential buildings with two or more rental units.
- HB 2677 would have repealed Oregon's prohibition on local rent control.
- HB 2736 B died in the Senate Rules Committee. HB 2736 would require landlords of residential complexes with 11 units or more to inform existing and new tenants of antidiscrimination laws, including how to file discrimination complaints, as provided by the Bureau of Labor and Industries (BOLI). The measure also requires the same antidiscrimination notice to be posted prominently in at least one common area. The House passed this bill in April, and by the end of May it was passed out of the Senate Housing and Development Committee with a Do Pass recommendation. However, the bill was just assigned to the Senate Rules committee instead of going to the Senate floor for a vote.
- HB 2761 tried to mandate Rental Agreements and addenda for manufactured housing parks to be translated into the 5 most spoken languages (other than English).
- HB 3263 would have required owners of multifamily rental housing to offer a right of first refusal to tenants.
- HB 2677 would have repealed Oregon's prohibition on local rent control.
- HB 3325 established Task Force on Rental Property Inspections.
- SB 838 directed Secretary of State to establish real property ownership registry.

## Summary

Many of our clients were instrumental in supplying testimony to committees during the session, often answering the call at short notice when we only had hours or a few days to respond to quickly scheduled legislative committee hearings. We thank you for your efforts and encourage you to keep up your active engagement.

This list of bills passed and dead, and the active 2021 session should be a reminder to all real estate investors of the critical need to support the rental housing, manufactured housing and commercial building associations who are at the forefront of protecting our investments.

They need our financial support; active involvement, and they need us to talk to our legislators and convince them of the key role private real estate investors play in the development of real estate throughout the state.

Have a great summer!