



# MULTIFAMILY NW

The Association Promoting Quality Rental Housing

## **Legislative Update for Oregon Landlords – Passing of Senate Bill 608**

On February 28, 2019, Senate Bill 608 (“SB 608”) was signed into law. The law is effective as of February 28, 2019 due to an emergency clause. SB 608 creates two major changes to Oregon Residential Landlord Tenant Act by limiting the scope of termination notices without stated cause (End of Tenancy Notices) and the implementation of rent control. SB 608 does not affect landlords’ rights to issue other termination notices. Those changes are discussed below as follows:

*NOTE: Landlords in cities with separate laws governing End of Tenancy Notices and rent increases should refer to those laws and consult an attorney (i.e. Portland, Bend, Milwaukie). SB 608 does not explicitly preempt local laws.*

### **I. End of Tenancy Notices**

SB 608 significantly curtailed the use of End of Tenancy Notices, especially after the first year of occupancy, which is defined to include all periods in which any of the tenants has resided in the dwelling unit for one year or less. The law affects all fixed term tenancies entered into or renewed on or after February 28, 2019 and terminations of month-to-month tenancies occurring on or after March 30, 2019.

#### **A. Termination of Tenancies in First Year of Occupancy**

End of Tenancy Notices for month-to-month tenancies in the first year of occupancy are not affected by SB 608 and still require 30-days advance written notice, which must be issued during the first year of occupancy. End of Tenancy Notices for fixed term tenancies that expire in the first year of occupancy also remain unaffected and also still require 30-days advance written notice.

#### **B. Termination of Tenancies after First year of Occupancy**

End of Tenancy Notices for month-to-month tenancies and fixed terms that end after the first year are now prohibited with limited exceptions (addressed below). Any fixed term leases that end after the first year of occupancy now automatically convert to the month-to-month tenancies.

### **Exceptions / Allowable Non-Renewals for Cause (after the first year of occupancy)**

SB 608 carves out certain exceptions that allow landlords to not renew tenancies after the

first year of occupancy:

**Exception #1:** The landlord intends to demolish the dwelling unit or convert the dwelling unit to a use other than residential use within a reasonable time. This termination is designated as a for-cause termination.

**Exception #2:** Landlord intends to undertake repairs or renovations to the dwelling unit within a reasonable time; and either i) the premises is unsafe or unfit for occupancy; or ii)

the dwelling unit will be unsafe or unfit for occupancy during the repairs or renovations. This termination is designated as a for-cause termination.

**Exception #3:** Landlord intends for landlord or a member of the landlord's immediate family to occupy the dwelling unit as a primary residence (and landlord does not have a comparable unit in the same building available). This termination is designated as a for-cause termination.

**Exception #4:** The landlord has accepted an offer to purchase the dwelling unit separately from any other dwelling unit from a person who intends in good faith to occupy the dwelling unit as the person's primary residence and landlord has provided the notice and written evidence of the offer to purchase the dwelling unit to the tenant not more than 120 days after accepting the offer to purchase. This termination is designated as a for-cause termination.

### **Exception 1-4 Requirements**

Exceptions 1-4, described above, require that landlord's written notice:

1. States that the rental agreement will terminate upon a designated date not less than 90 days after delivery of the notice or the specified ending date for the fixed term, whichever is later;
2. Specifies the reason for the termination and supporting facts; and
3. Includes payment to tenant in the amount equal to one month's periodic rent unless landlord has an ownership interest in four or fewer residential dwelling units.

**Exception #5: *Non-Renewal for Repeat Violations.*** If tenant has committed three or more violations of the rental agreement within the preceding twelve months and the landlord has given written warning notices at the time of each violation the landlord may issue a Non-Renewal Notice. This termination is designated as a for-cause termination.

Warning Notices must:

1. Specify the violation;
2. State that the landlord may choose to terminate the tenancy at the end of the fixed term if there are three violations within a 12-month period preceding the end of the fixed term; and
3. State that correcting the third or subsequent violation is not a defense to termination under ORS 90.427(7).

90 Day Termination Notices must:

1. State that the rental agreement will terminate upon the specified ending date for the fixed term or upon a designated date not less than 90 days after delivery of the notice, whichever is later
2. Specify the reason for the termination and supporting facts; and
3. Be delivered to the tenant concurrent with or after the third or subsequent written warning notice.

**Exception #6. Tenancy at Landlord's Primary Residence of a 2-plex or less.** If a landlord's primary residence is a duplex or smaller, landlord may terminate a tenancy at the property as follows:

1. ***Termination of Month-To-Month Tenancy After First Year Of Occupancy.*** Landlord may issue Non-Renewal Notices after the first year of tenancy to month-to-month tenants with 60-days' notice unless the dwelling unit is purchased separately from any other dwelling unit, the landlord has accepted an offer to purchase the dwelling unit from a person who intends in good faith to occupy the dwelling unit as the person's primary residence, and landlord has provided the notice, and written evidence of the offer to purchase the dwelling unit, to the tenant not more than 120 days after accepting the offer to purchase, then landlord only need give 30-days' notice. This termination is designated as a termination without stated cause.
2. ***Termination of Fixed Term After First Year of Occupancy*** requires written notice 30 -days prior to the specified ending date for the fixed term, or 30 days prior to the date designated in the notice for the termination of the tenancy, whichever is later. This termination is designated as a termination without stated cause.

### **Penalties**

Penalties for terminating a tenancy after the first year of occupancy in violation of SB 608 subjects the landlord to:

1. Three months' rent;
2. actual damages sustained by the tenant;
3. Potential Attorney fees and legal costs; and
4. Is a basis for a defense against an eviction action.

Penalties under SB 608 may be imposed in addition to any penalties incurred for violation of local laws.

## **II. Rent Control**

Landlords may not increase rent in the first year of the tenancy and thereafter are limited to rent increases of no more than 7% plus the Consumer Price Index (CPI) as published by the Bureau of Labor Statistics of the United States Department of Labor in September of the prior calendar year.

The cap on increases applies to all renewals and to all rent increase notices delivered on or after February 28, 2019. If landlords terminate a tenancy of a prior tenant with a notice of termination without cause as described above during the first year of occupancy as

described in section I.A above, landlord may not increase rent for that unit by more than 7% plus CPI when the subsequent tenant moves in.

Exemptions to the cap apply when:

1. The first Certificate of Occupancy for the dwelling unit was issued less than 15 years from the date of the notice of the rent increase, or
2. Landlord is providing reduced rent to Tenant as part of a federal, state or local program or subsidy.

Any landlord claiming an exemption must list the facts supporting the exemption on any notice of rent increase.

### **Penalties**

Penalties for violating these laws shall result in landlord liability for:

1. Three months' rent;
2. Actual damages sustained by the tenant; and
3. Potential Attorney fees and legal costs.

Penalties for violating these amendments imposing rent control are in addition to any penalties incurred for violation of local laws.

**Due to the complex nature of these changes, landlords should contact an attorney with any questions or clarification of SB 608.**

## Frequently Asked Questions - Senate Bill 608

FAQ's are meant to answer general, broad questions about the changes to Senate Bill 608 ("SB 608"). Many of the answers below will have additional details or exceptions and Landlords should consult with an attorney before taking any action as it relates to End of Tenancy/Non-Renewal Notices and/or increasing rent.

### **General Questions:**

1. Question: When do I have to comply with the changes in the law set forth by SB 608?

Answer: SB 608 contains an emergency clause and as such, the changes to the Oregon Residential Landlord Tenant Act became effective immediately upon enactment on February 28, 2019.

2. Question: What if I have rent increase notices or end of tenancy notices pending that were issued prior to the enactment of SB 608?

Answer: Nothing in the law requires retroactive application to prior notices of rent increase or end of tenancy notices. Notices issued prior to the enactment are unaffected. The law now applies to any new notices of rent increase or end of tenancy notices issued after enactment as described above.

3. Question: Does this law preempt the Portland Ordinance relating to rent increases?

Answer: No. Landlords must comply with both laws and could be subject to damages for violation of the state and the local laws.

4. Question: Are there penalties for violation of SB608?

Answer: Yes. Penalties for violating these laws shall result in Landlord liability for:

- a. Three months' rent;
- b. Actual damages sustained by the tenant; and
- c. Potential Attorney fees and legal costs.

In some cases, violation of SB 608 may also be a defense to an eviction action.

### **End of Tenancy Notices:**

1. Question: What does "first year of occupancy" mean?

Answer: This relates to the length of time that a resident has resided at the property, not the length of a parties' lease or rental agreement.

2. Question: What if there are multiple tenants living at the premises and one moves out and another moves into the premises?

Answer: The “first year of occupancy” re-sets with each new tenant.

3. Question: When do I have to pay relocation fees?

Answer: If you are engaging in a non-renewal after the first year of occupancy by the tenant, and you qualify for one of the four exceptions described above. Payment must be sent with the termination notice.

4. Question: If I opt to pay relocation fees as described in Question #3, can they be issued as a rent credit?

Answer: No

5. Question: Does the four or fewer unit exemption apply to management companies managing more than four units, but the owner of the property owns four or fewer units?

Answer: The statute does not address this issue directly. Under the law, “Landlord” means the owner, lessor or sublessor of the dwelling unit or the building or premises of which it is a part. “Landlord” includes a person who is authorized by the owner, lessor or sublessor to manage the premises or to enter into a rental agreement. There are many factors to consider. Landlords with any confusion should consult an attorney.

### **Rent Control:**

1. Question: What are the limits on the amount of rent increases?

2. Answer: As described above, the limit is now 7% plus the Consumer Price Index (currently at just over 3.3%).

3. Question: Where do I find the Consumer Price Index (CPI)?

Answer: (CPI) is published by the Bureau of Labor Statistics of the United States Department of Labor in September of the prior calendar year. See: <https://data.bls.gov/pdq/SurveyOutputServlet>

4. Question: Do those limits apply to just the rent, or to other increases as well, such as utilities and parking?

Answer: Just rent. But, that may not be the case in individual cities with their own rules.

5. Question: What if I am an affordable housing provider?

Answer: Landlords with properties that offer reduced rent as part of a federal, state or local program or subsidy are exempt from rent control.

Due to the complex nature of these changes, Landlords should contact an attorney with any questions or clarification of SB 608.