

Oregon's Eviction Moratorium Update Phil Querin, MHCO Legal Counsel

House Bill 4213. In late 2020 the Oregon Legislature enacted HB 4401 which implemented changes to the existing Eviction Moratorium bill (HB 4213). HB 4213 was the Oregon legislature's initial response to the Covid-19 emergency. Here is what it provided:

- It created an "Emergency Period" during which time termination for nonpayment of rents, charges, and fees and no-cause evictions were prohibited.
- The Emergency Period originally ran from April 1, 2020 to September 30, 2020.
- HB 4213 provided an additional six-month "Grace Period," running from September 30, 2020 until March 31, 2021, during which time tenants in arrears could catch up on their unpaid rents, charges, and fees, without incurring further penalties or being evicted for their Nonpayment Balance (defined below).
- Since the Covid-19 emergency did not abate by the end of September 2020, by Executive Order 20-56, the Governor extended the original "Emergency Period" until December 31, 2020.¹
- The Executive Order did not extend the Grace Period, so all outstanding rents, charges and fees incurred between April 1, 2020 and December 31, 2020 were still due by March 31, 2021.

House Bill 4401. In recognition that tenants were still struggling financially, and that the Covid-19 emergency was placing a strain on landlord/tenant relationships, in December 2020, the Oregon Legislature enacted HB 4401. It had two main functions:

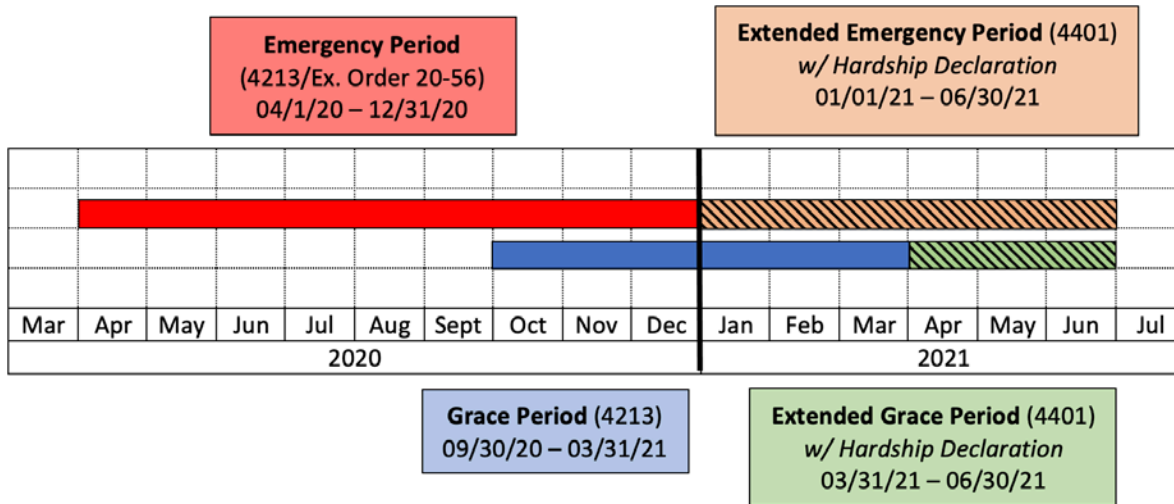
- It authorized creation of a program of direct aid to affected landlords; and
- It extended the Emergency and Grace Periods to June 30, 2021. ("Extended Emergency Period" and "Extended Grace Period") – ***But only for tenants who provided their landlords with a completed Hardship Declaration form stating under oath that they were still experiencing financial difficulty.*** (See, MHCO's Form No. MHCO Form 110 attached.)
 - This means tenants who have not submitted a completed Hardship Declaration to their landlords are subject to receiving A 10-DAY (formerly 72-hour) notice for nonpayment of rent after March 31, 2021² for debt incurred between April 1, 2020 and December 31, 2020 all of which is due by March 31, 2021.

¹ Executive Order 20-56.

² Or 30-day notices for nonpayment of charges and fees.

Important Terms Under HB 4401

1. **Nonpayment Balance** – All outstanding rents, charges, utilities, and fees that have accumulated during the Emergency Period (ending December 31, 2020) or the Extended Emergency Period (ending June 30, 2021).
2. **Emergency Period** – created by HB 4213 – the period of time during which a landlord is prohibited from terminating a tenant for failing to pay the Nonpayment Balance.
 - a. During Emergency Period (April 1, 2020 to December 31, 2020) landlords are also prohibited from:
 - i. threatening to terminate for the Nonpayment Balance,
 - ii. initiating or continuing any FEDs because of a Nonpayment Balance;
 - iii. interfering with a tenant’s use or possession of their dwelling unit due to a Nonpayment Balance;
 - iv. assessing late fees or charges because of a Nonpayment Balance;
 - v. reporting a tenant to a credit agency for a Nonpayment balance; and
 - vi. initiating any legal action to recover a Nonpayment Balance.
3. **Extended Emergency Period** – created by HB 4401 – tenants may extend the above Emergency Period protections from December 31, 2020 to June 30, 2021 by delivering to their landlord a Hardship Declaration form.
 - a. The Extended Emergency Period is January 1, 2021 to June 30, 2021.
4. **Grace Period** – created by 4213 – the period of time during which the tenant has the right to repay their Nonpayment Balance without penalty or threat of eviction.
 - a. **Note**: During the Grace Period tenants must still pay their current month’s rent, charges, utilities, and fees.
 - b. The Grace Period extended originally from September 30, 2020 to March 31, 2021. The Governor’s extension of the Emergency Period to December 31, 2020 effectively eliminated the first three months of the Grace Period.
5. **Extended Grace Period** – created by HB 4401 – permits tenant to extend the time to repay the Nonpayment Balance, without penalty or threat of eviction, to June 30, 2021 by delivering a completed Hardship Declaration to landlord.
 - a. It began on January 1, 2021 and ends on June 30, 2021.
 - b. Because the Extended Grace Period and the Extended Emergency Period end at the same time, tenants who have delivered the Hardship Declaration form to their Landlord are not required to make payments of the current month’s rents, charges, utilities, and fees until July 1, 2021.



Important Dates Under HB 4401.

1. **January 1, 2021** – end of the Emergency Period for all tenants. Thereafter, tenants have one of two choices:
 - a. Pay current rents, utilities, and fees due (rents due from January 1 forward) or
 - b. Submit a Hardship Declaration (MHCO Form 110) which extends the Emergency and Grace Period through June 30, 2021.

2. **March 31, 2021** – end of the Grace Period for all tenants. Tenants must have paid all non-payment debt (outstanding rents, utilities, and fees previously accumulated from April 1, 2020 to December 31, 2020) OR must submit a Hardship Declaration (MHCO Form 110) which extends the Emergency and Grace Period through June 30, 2021.

3. **June 30, 2021** – end of the Extended Emergency and Extended Grace Period for all tenants.

4. **July 1, 2021** – *barring any additional action taken by state or local officials* – Landlord may commence legal action for all non-payment debt (rents, fees, chares, and utilities) accumulated from April 1, 2020 through June 30, 2021; it is now legally due and owing. The 10- and 13-day³ non-payment termination notices under ORS 90.394(2)(a) and (b) return to the normal 72- and 144-hour notices.

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³ Note: The 13-day notice applies only if the rental agreement or lease allows landlord to issue the notice of nonpayment on the 4th day instead of the 7th day after payment is due.

Landlord Action	Has Tenant filed a Hardship Declaration (MHCO Form 110)?	
	No	Yes
Charge late fees for current month's rent	Jan 1, 2021	July 1, 2021
Serve 72-hr termination notice for non-payment <i>only</i> on a week-to-week tenancy (MHCO Form 85)	Jan 1, 2021*	July 1, 2021
Serve 10-day termination notice for non-payment of current month's rent on an RV or Park-owned Home and Space Rental? (MHCO Form 82)	Jan 1, 2021*	July 1, 2021
Serve 10-day termination notice for non-payment of current month's rent on a tenant-owned Mobile Home or Floating Home? (MHCO Form 42)	Jan 1, 2021*	July 1, 2021
Serve a termination notice for the "non-payment balance" (i.e., the rent, fees and utilities accrued since April 1, 2020)	April 1, 2021*	July 1, 2021
Refuse to renew a tenancy and/or terminate a tenancy for no-cause	July 1, 2021	
Serve a 90-day termination notice for a Qualified Landlord Reason (ORS 90.427(5))	Jan 1, 2021	
Terminate a tenancy for-cause	Anytime	
Report non-payment balance to a credit reporting agency	April 1, 2021	July 1, 2021
File an action to recover the non-payment balance	April 1, 2021	July 1, 2021

* Any termination notices for non-payment of rent issued prior to the end of the Extended Emergency and Grace Periods (June 30, 2021) must be accompanied by Notice of Eviction Protection (MHCO Form 111) and Hardship Declaration (MHCO Form 110).

Landlord Legal Rights Before July 1, 2021 If Tenant HAS NOT Submitted Hardship Declaration

If tenant has not submitted a Hardship Declaration, they must be current on all rents, charges, utilities, and fees due after January 1, 2021. If they have not paid their current term's⁴ rent landlord is entitled to issue a notice of nonpayment.

NOTE: However, a landlord must provide the tenant with a Notice of Eviction Protection (MHCO Form 111) and the Hardship Declaration (MHCO Form 110) for every notice of termination for nonpayment, and for every summons and complaint for eviction based on a termination for nonpayment, delivered before June 30, 2021. Failure to provide these forms may result in a landlord's action being dismissed at court and could result in the landlord having to pay a judgment of three-months' periodic rent plus damages to the tenant.

⁴ I.e., Monthly or weekly payment term.

A tenant may return the Hardship Declaration to the landlord at any time up to and including at the first appearance in an eviction proceeding.

A landlord may also issue the tenant a notice, before March 31, 2021, the end of the initial Grace Period, informing him/her that they continue to owe any rent due. The notice must include a statement that eviction for nonpayment of rent, charges, and fees accrued between April 1, 2020 and March 31, 2021, cannot occur before March 31, 2021. While this notice is optional, if a landlord chooses to send it, he or she must also provide the tenant with the Notice of Eviction Protection (MHCO Form 111), attached, and the Hardship Declaration (MHCO Form 110) attached, at the same time.

NOTE: Landlord Option: May propose voluntary payment plans for the Nonpayment Balance. Must clearly state that the plan is voluntary.

If a landlord does not issue the notice that rent continues to be due, does not issue a notice of termination for nonpayment, and/or does not issue a summons and complaint for eviction based on a notice of termination for nonpayment, they are not obligated to provide the Notice of Eviction Protection (MHCO Form 111) and the Hardship Declaration (MHCO Form 110) to a tenant. However, in order to apply for the Landlord Compensation Fund ([link here](#)) a landlord must have a copy of the Hardship Declaration form for each tenancy for which he or she will be submitting an application.

Tenants also may also independently acquire the Hardship Declaration (in English or an approved translation) from other sources including the State court's website and various tenant advocacy groups.

NOTE: The landlord may not:

- Challenge the accuracy of the contents of the Hardship Declaration;
- Require additional information from the tenant;
- Require more than one Hardship Declaration per household or tenancy;
- Refuse to accept a Hardship Declaration in a language other than English if the tenant is using an approved translated form; or
- Prohibit a tenant from delivering the Hardship Declaration in any means available to them including sending a copy or photo by email or text message.

Landlord Legal Rights Before July 1, 2021
If Tenant HAS Submitted Hardship Declaration

A landlord may issue the tenant a Notice before June 30, 2021, the end of the Extended Grace Period, informing the tenant that they continue to owe any rent due. While this Notice is optional, if a landlord chooses to issue a Notice regarding the outstanding balance, the Notice must include a statement that eviction for nonpayment of rent, charges and fees accrued between April 1, 2020 and June 30, 2021, cannot occur before June 30, 2021.

- Landlord Option: May propose voluntary payment plans for the nonpayment balance. Must clearly state that the plan is voluntary.

NOTE: Acceptance of partial rent payments does not waive landlord's right to:

- terminate for cause; or
- terminate for nonpayment of any outstanding Nonpayment Balance at the end of the Extended Emergency Period and Extended Grace Period *[Both end on June 30, 2021]*

A landlord may also apply for the Landlord Compensation Fund: ([link here](#)) First round funding applications closed on March 5, 2021, but another round will be opening in April 2021.

Conclusion.

Undoubtedly, there is a lot here. And it is all subject to change based upon the whims of the Oregon Legislature. So before taking any legal action against a tenant for nonpayment of rent, charges, utilities, or fees (or a no-cause eviction), qualified legal counsel or someone versed in the current status of these ever-changing laws should be consulted.



Manufactured Housing Communities of Oregon

MHCO Form 110: Declaration of Financial Hardship (HB 4401)

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Name of Community: _____

Address: _____

DECLARATION OF FINANCIAL HARDSHIP FOR EVICTION PROTECTION (“DECLARATION”)

This Declaration may be given to your landlord in person, by first class mail or, if available, by sending a copy or photograph by e-mail or text message.

I, _____ (tenant’s name) am a tenant at: _____
 _____ (tenant’s address). I am unable to pay my obligations under the rental agreement because of one or more of the reasons below that have impacted me since March 16, 2020:

- Loss of household income;
- Increased medical expenses;
- Loss of work or wages;
- Increased child-care responsibilities or responsibilities to care for a person with a disability or a person who is elderly, injured or sick;
- Increased costs for child-care or caring for a person with a disability or a person who is elderly, injured or sick; or
- Other circumstances that have reduced my income or increased my expenses.

Any public assistance, including unemployment insurance, pandemic unemployment assistance and other public assistance that I have received on or after March 16, 2020, does not fully make up for my loss of income or increased expenses. I understand that I still owe my rent, which must be paid by July 1, 2021. I understand that I must comply with other obligations that I may have under my rental agreement.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it may be used as evidence in court and is subject to penalty for perjury.

Signature

Print Name

Date: _____



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MHCO Form 111: Notice of Eviction Protection (HB 4401)

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Name of Community: _____

Address: _____

DATE OF LANDLORD'S DELIVERY OF THIS NOTICE: _____

METHOD OF DELIVERY OF THIS NOTICE (SELECT ONE): [] PERSONAL SERVICE; [] REGULAR MAIL;
[] MAIL AND ATTACHMENT

TENANT(S): _____

ADDRESS: _____

CITY _____ STATE _____ ZIP _____

NOTICE OF EVICTION PROTECTION ("NOTICE")
(Landlord should retain a completed copy of this Notice.)

TO TENANT(S): THIS IS AN IMPORTANT NOTICE ABOUT YOUR RIGHTS TO PROTECTION AGAINST EVICTION FOR NONPAYMENT.

For information in Spanish, Korean, Russian, Vietnamese or Chinese, go to the Judicial Department website at www.courts.oregon.gov.

Until June 30, 2021, you may be protected from eviction for non-payment of rent.

IF YOU ARE UNABLE TO PAY YOUR RENT BECAUSE OF A FINANCIAL HARDSHIP THAT OCCURRED ON OR AFTER MARCH 16, 2020, GIVE THE ATTACHED FORM ("HARDSHIP DECLARATION") TO YOUR LANDLORD TO QUALIFY FOR PROTECTION.

To be protected, you must provide your landlord with a signed Declaration, stating that you have experienced financial hardship because of one or more of the following conditions on or after March 16, 2020:

- Loss of household income;
- Increased medical expenses;
- Loss of work or wages;
- Increased child-care responsibilities or responsibilities to care for a person with a disability or a person who is elderly, injured or sick;

- Increased costs for child-care or caring for a person with a disability or a person who is elderly, injured or sick; or
- Other circumstances that have reduced income or increased expenses.

ONCE YOU HAVE PROVIDED THE SIGNED HARDSHIP DECLARATION FORM TO YOUR LANDLORD, THE LANDLORD CANNOT FILE, THREATEN TO FILE, OR COMPLETE AN EVICTION AGAINST YOU FOR NONPAYMENT OF RENT UNTIL JULY 1, 2021.

The Hardship Declaration Form is attached to this Notice. The Hardship Declaration Form can also be found translated into multiple other languages at www.courts.oregon.gov. You may give the Hardship Declaration Form to your landlord in person, by first class mail or, if available, by sending a copy or photograph of it by e-mail or text message. Tenants are advised to keep a copy of their Hardship Declaration Form and a record of providing it to the landlord.

Please note:

- You still owe rent, as required by your rental agreement. Any unpaid rent must be paid by July 1, 2021. You may qualify for help paying your rent. See below for Tenant Resources.
- Your landlord cannot charge late fees for any portion of unpaid rent from April 1, 2020, through June 30, 2021.
- If you are unable to pay your rent, give the attached Hardship Declaration Form to your landlord as soon as possible. You can submit it to your landlord at any time. You do not have to wait until you have received a nonpayment of rent notice. If you have experienced financial hardship, fill out and submit the Hardship Declaration Form immediately. You can still be evicted for violations of the rental agreement, other than nonpayment of rent.
- You cannot be evicted without cause before July 1, 2021, except for circumstances under ORS 90.427 (5) involving the demolition or conversion of the dwelling unit, major repairs or renovations when your dwelling unit is or will be unsafe to occupy or the occupancy of your dwelling unit by your landlord, the landlord's family member or someone who purchases the dwelling unit.

TENANT RESOURCES

For help paying your rent and for referrals to other support services such as food stamps, health benefits, unemployment insurance and other public benefits, dial 211 or go to www.211.org. To find free legal assistance for low-income Oregonians, go to www.oregonlawhelp.org.

LANDLORD: _____