**MEMORANDUM**

**TO: Manufactured Housing Communities of Oregon**

**FROM: Phillip C. Querin, QUERIN LAW, LLC**

**RE: Analysis of Senate Bill 891 (Special Session)**

**DATE: June 2021 the Oregon**

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***Background.*** In Mid-June 2021, the Oregon Legislature passed SB 278 which accomplished two major things with respect to nonpayment of rents, fees, and charges occurring after the end of the original eviction Moratorium on June 30, 2021.

1. It provided a 60-day window (or 90-day window in Multnomah County[[1]](#footnote-1)) during which a tenant *seeking rental assistance* could not be evicted for nonpayment of current rent (i.e., non-moratorium related rents, charges and fees; and
2. It authorized Oregon Housing and Community Services to establish a process for landlords impacted by this 60-day delay to recoup lost rents, charges and fees *if the tenant did not qualify for rental assistance*.

This 60/90 day “pause” on the eviction process was meant to provide time for the agencies screening and administering rental assistance to process applications for assistance and distribute funds. The system was quickly overwhelmed and nearly all the available $289 Federal assistance was committed, with less than half of the funds having been distributed as of late November 2021. The Oregon Emergency Rental Assistance Program has since halted the acceptance of applications for at least six weeks beginning on December 1, 2021 at 11:59 pm.

***Senate Bill 891 Discussion.*** On December 13, 2021, Governor Brown The legislature has convened a special session to address the ongoing housing crisis, citing the fact that “the need for rental assistance and eviction protection resources has outpaced available resources.”

SB 891 accomplishes several things:

1. It modifies SB 278 to redefine the period of protection from eviction;
2. Extends the “safe harbor” deadline for tenants who are applying for rental assistance from February 28, 2022 to June 30, 2022;[[2]](#footnote-2)
3. Modifies the language of the required Eviction Protection Notice (MHCO Form No. 111);
4. Provides additional guidance for rental assistance providers regarding notifications and processing of applications for assistance;
5. Extends the automatic repeal dates for certain sections of SB 278 (as modified by SB 891); and
6. Clarifies the circumstances under which a landlord may seek funding upon the denial of a tenant’s rental assistance application.

***Effective Date.*** SB 891 went into effect upon its passage, December 14, 2021.

***Definition of Nonpayment.*** Under SB 891 “Nonpayment” retains its standard definition from SB 278 as: “(t)he nonpayment of sums due to the landlord, including payment of rent, late charges, utility or service charges or any other charge or fee described in the rental agreement, *including* the following statutory sums:

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* ORS 90.140 (Types of payments landlord may require or accept);
* ORS 90.302 (Fees allowed for certain landlord expenses or tenant non-compliance);
* ORS 90.315 (utility or service payments);
* ORS 90.392 (termination of tenancy for cause);
* ORS 90.394 (termination of tenancy for failure to pay rent),
* ORS 90.560 to 90.584 (provisions for various utilities and service charges); or
* ORS 90.630 (termination by landlord: manufactured dwelling or floating home).[[3]](#footnote-3)

***Mechanism for Protecting Tenants.*** If a tenant provides their landlord with documentation that they have applied for Emergency Rental Assistance, on or before June 22, 2022, the landlord may not do the following *while the application is pending:*

* Deliver a termination notice for nonpayment; or
* Initiate or continue an action for possession (i.e., an FED) based upon a termination notice for nonpayment.

*Comment:* This is a significant change from the prior law, which operated under a 60-day (or 90-day in Multnomah county) delay. Now, a notice of termination may not be issued until the landlord receives notice, either from the tenant or from the rental assistance provider, that the application is no longer pending.

***Updated Eviction Protection Notice***. SB 891 still requires that the (new) statutory notice regarding eviction protection is required to be delivered. The language of the updated Eviction Protection Notice has been amended and it must be provided with either of the following documents on or after the effective date of this Act (December 14, 2021):

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* Any notice of termination for nonpayment of rent; and
* Any summons for a complaint seeking possession based on nonpayment of any sums due to the landlord. (See, discussion of “Nonpayment” above.)

*Note:* A landlord will not be penalized for using the earlier Eviction Protection Notice (“Notice”) provided the notice of termination and/or summons for the FED complaint were issued prior to the December 14, 2021 effective date of SB 891.

***Translations.*** The court system will translate the Notice into Spanish, Korean, Russian, Vietnamese and Chinese. They will be available on their main webpage www.courts.oregon.gov. The court clerk is also required to mail the Notice with any summons and complaint mailed to a tenant from the Court.

***Tenant Delivery of Documentation.*** “Documentation” includes electronic mail, a screenshot or other written or electronic evidence verifying the submission of an application for emergency rental assistance.The tenant may deliver the Documentation (including but not limited to, copies, photographs, screen shots, etc.) by email, text message, or any other “method reasonably calculated to achieve receipt by the landlord.”

***Timing of Delivery of Documentation to Landlord***.

* If the tenant delivers the appropriate Documentation of an application for rental assistance, the landlord may *not* issue a notice of termination for nonpayment *until after they receive notice that the application is no longer pending, or June 30, 2022, whichever first occurs*.
* If the tenant provides the appropriate Documentation *after* the issuance of a notice of termination for nonpayment, the landlord may not act upon that notice of termination or initiate an FED based on the nonpayment. In order to terminate the tenancy, the landlord must wait until *after* they have been notified that the tenant’s application for assistance is no longer pending, or September 30, 2022 (whichever first occurs), before issuing a new notice of termination. [June 30, 2022 is the last day a tenant can apply for emergency assistance, however the protections against eviction do not stop until the application is no longer pending OR September 30, 2021, i.e., when the protection runs out.
* If the landlord has received notice that a tenant’s application is no longer pending, the landlord need not provide a new Eviction Protection Notice with the new notice of termination.
* If eviction proceedings have already begun, the court will cease all action until after it receives from the tenant or the landlord, notice that the application is no longer pending. The court will then re-schedule a new first appearance date.

***Dismissal of Eviction for Nonpayment.*** The court shall dismiss an FED action based upon a notice of termination for nonpayment if:

* The landlord failed to provide the updated Eviction Protection Notice;
* The landlord “substantially caused” the tenant’s nonpayment by refusing to “reasonably participate with a rental assistance program;”
	+ *Note: Landlord is not required to apply for the Landlord Compensation Fund, so the failure to do so cannot be used to claim the landlord “caused” the tenant’s nonpayment.*
* The landlord receives rental assistance or any other payments covering the amount of nonpayment owed under the notice of termination; or
* The tenant had provided the Documentation before the FED (or action for possession) was filed.

***Penalties for Landlord Violation*.** Penalties for violating SB 891’s safe harbor rules remain the same as SB 278; the tenant may pursue injunctive relief to recover possession or address any other landlord violations, and the tenant will have a defense in the action for possession (i.e., the FED).

***Tenant Not Entitled to Costs, Attorney Fees, or Prevailing Party Fees.*** Actions dismissed under these rules will not result in a tenant recovering costs and fees if:

* The landlord delivered all required notices (i.e., the updated Eviction Protection Notice)
* The landlord did not know, or have reason to know, at the time of commencing the FED, that the tenant had already provided the required Documentation; and
* The landlord promptly dismissed the action upon becoming aware of the Documentation (Note: All three events must occur.)

***Status of Tenant’s Application for Emergency Rental Assistance.*** SB 891 directs the Oregon Housing and Community Services (OHCS) to prioritize the processing of applications made on or before December 1, 2021, which is the beginning of the six-week “pause”. Applications received after that date will be evaluated in the ordinary course.

In addition to providing a dated receipt when the tenant applies for emergency assistance, the OHCS must also now:

* Close an application, after notice to the tenant, if OHCS determines the tenant is no longer participating in the application process
* Send tenant’s landlord a dated notice of payment, by mail or email, if payment is made to someone other than the landlord directly.
* Provide both tenant and landlord, by mail or email, a dated notice of denial or a dated notice of closure (if the application is closed without payment).

***Miscellaneous***. The 10 and 13-day notices for termination under ORS 90.394 will revert back to 72- and 144-hour notices, respectively, on October 1, 2022;

1. Multnomah County extended the Safe Harbor timeframe from 60 to 90 days with Multnomah County Ordinance 1296 (dated July 9, 2021). [↑](#footnote-ref-1)
2. SB 278’s safe harbor provisions and OHCS notification provisions(discussed below), as amended by SB 891, will automatically be repealed on October 1, 2022. [↑](#footnote-ref-2)
3. However, SB 891 now *excludes* from the definition of nonpayment any payments owed by a tenant for damages to the premises. [↑](#footnote-ref-3)