

Summary of House Bill 4401

By

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Background. HB 4401 was signed by the Governor on December 23, 2020. It was the product of the Oregon Legislature's Third Special Session.

Ostensibly, this was to be an extension of the current eviction moratorium that was scheduled to expire on January 1, 2021. The new moratorium will now expire on July 1, 2021. However, if an extension was all the legislators sought to accomplish, they exceeded their own stated expectations. Actually, they had to deal also with HB 4213, which was the product of 2020's First Special Session.

In response to Covid-19 related financial hardships, the Oregon government passed HB 4213 in mid-2020. The bill prohibited evictions for nonpayment of rents, charges, and fees and no-cause evictions throughout a defined "**Emergency Period.**" The Emergency Period originally ran from April 1, 2020 to September 30, 2020.

HB 4213 further established an additional six-month elective "**Grace Period**" during which the tenant could arrange to pay back their accrued rent arrearages. The tenant was required to pay back their outstanding rents, charges, and fees at the end of the Emergency Period unless they notified their landlord that they intended to use the additional six months. The Grace Period originally began at the end of the Emergency Period and ran until March 31, 2021. Landlords were prohibited from filing nonpayment and no-cause evictions based on unpaid rent accrued during the Emergency Period.

All rents, charges, and fees accruing outside of the Emergency Period still must be paid as agreed under the rental or lease agreements. For-cause evictions were always still available to landlords.

On September 28, 2020, in recognition that Covid-19 hardships were still continuing, Governor Brown issued Executive Order 20-56 which extended the Emergency Period and corresponding prohibition on no-cause and nonpayment residential evictions to December 31, 2020. The executive order did not extend the Grace Period – all back rents, charges and fees accrued between April 1, 2020 and December 31, 2020 were still due on or before March 31, 2021.

Unfortunately, what occurs when (a) drafters are rushed, and (b) their work product is not subject to any review or amendment, as was the case with HB 4401, the result is a bill that creates more questions than answers. While it purports to provide funding for landlords who have suffered as a result of the many Executive Orders and makeshift legislation such as HB 4312, the reality is not promising. Why? Because the success of the bill still requires the Oregon Legislature to put some money where its mouth legislation is – the program must still be funded, and HB 4401 did nothing to address that issue.

Oregon House Bill 4401. This bill was passed December 21, 2020 and signed by the Governor on December 23, 2020. It accomplished two major objectives¹:

- 1) Directing the Oregon Housing and Community Services Department to implement a program for direct aid to landlords reimbursing a percentage of outstanding rents; and
- 2) Modifying the Emergency Period and Grace Period created under HB 4213 for tenants who claim financial hardship.

The Program. HB 4401 authorizes the Oregon Housing and Community Services Department (“OHCS”) to pay residential landlords 80% of unpaid rents due after April 1, 2020 and up to the date of the application, for certain qualified tenants.

Landlords, or their designees, must apply to OHCS to qualify for distributions for tenants who:

- 1) Have not paid rent, *and*
- 2) Have submitted a signed Hardship Declaration Form. (OHCS is directed to expedite implementation of the landlord compensation fund but the exact look and function of the program is unknown as of the writing of this summary.)

OHCS will develop an online application system to handle reimbursement requests. The application and related forms will be available in English, and translated for non-English speakers as well.² The program will also have more than one application period to assure broader reach and eligibility. It is unclear at this time how many application periods will be available. Landlords should be eligible to apply more than once, state funds allowing, if unpaid rents and fees continue to accumulate after the first application and distribution.

Landlord application. It will require, at a minimum:

- 1) A copy of the tenants’ Hardship Declaration Forms;
- 2) A description of the unpaid rent for all current tenants;
- 3) An agreement to forgive the remaining 20% of unpaid rent for tenants accrued between April 1, 2020 and the date of the application;
- 4) An agreement that, should the landlord receive from the tenant, or on the tenant’s behalf, any portion of the unpaid rent (forgiven or paid through the distribution) within a certain window specified by OHCS, that they will repay OHCS;
- 5) An agreement that the landlord is not seeking reimbursement for rents due from immediate family members;³

¹ The bill also made a few additional changes to Oregon Landlord-Tenant statutes which will be addressed below.

² The bill does not specify which non-English languages OHCS must provide, but specifies later that the Oregon Judicial Department provide translated forms (including the Hardship Declaration Form) in Spanish, Korean, Russian, Vietnamese, and Chinese.

³ Landlord may not seek reimbursement for any tenants that are immediate family members. For the purposes of this law “immediate family” means: a) an adult person related to the landlord by blood, adoption, marriage or domestic partnership; b) an unmarried parent of a joint child; c) a child, grandchild, foster child, ward or guardian of the landlord; or d) child, grandchild, foster child, ward or guardian of any person listed in (a) or (b). (“immediate family” definition from ORS 90.427)



- 6) An agreement that while the application for reimbursement is pending, the Landlord will not terminate⁴ a tenant without cause or for non-payment;⁵
- 7) Any other information or requested by OHCS in the application.

In order to reach landlords who are struggling the most (i.e. fewer rentable units or a higher percentage of outstanding rents) OHCS may establish qualifications, priorities, restrictions or limits on distributions, which may include:

- 1) Limits per tenant, per landlord, or per time period;
- 2) The number of units a landlord must own; or
- 3) The percentage of total rent unpaid.

OHCS may coordinate with the local housing authority to administer the rules and distribute the reimbursement funds. Either OHCS or the appropriate housing authority will notify tenants of the distribution to the landlord on their behalf and the agreed-upon amount of forgiveness to which they are entitled. OHCS may also conduct outreach to landlords and tenants, including non-English speaking parties.

Eviction Moratorium Extension. The Landlord distribution program provisions are set to automatically repeal on January 2, 2023.

FORMS.

Emergency Period and Grace Period Extensions. For all renters, the Emergency Period (until December 31, 2020)⁶ and Grace Period (through March 31, 2021) as defined in HB 4213 remain unchanged, unless:

- 1) The landlord fails to provide a Notice of Eviction Protection (see attached); and
- 2) The landlord fails to provide tenant with a Tenant's Hardship Declaration Form (see attached); together with
 - a. Any notice given under Section 3 (5)(c), chapter 13, Oregon Laws 2020 (first special session) (Enrolled House Bill 4213);⁷ and
 - b. Every termination notice for nonpayment of rent delivered before June 30, 2021; and
 - c. Any summons for eviction based on a termination notice for nonpayment delivered before June 30, 2021;

---OR---

⁴ "Termination notice without cause" means a notice delivered by a landlord under ORS 90.427 (3)(b), (4)(b) or (c), (5)(a) to (c), or (8)(a)(B) or (b)(B) (HB 4213)

⁵ "Nonpayment" means the nonpayment of a payment that becomes due during the Emergency Period to a landlord, including a payment of rent, late charges, utility or service charges or any other charge or fee as described in the rental agreement or ORS 90.140, 90.302, 90.315, 90.392, 90.394, 90.560, or 90.630. (HB 4213)

⁶ Emergency Period Extended to December 31, 2020 by Executive Order 20-56; confirmed in HB 4401 Section 8 (Amendment to Section 3, Chapter 13, Oregon Laws 2020 (first special session)(Enrolled House Bill 4213))

⁷ Under the original version of HB 4213, there is no Section 3 (5)(c). To find the required contents of the voluntary notice referred to in 2) a., one must look to the new HB 4401 Section 8 and follow the amended language.

- 3) Tenant fills out and returns the Hardship Declaration Form asserting financial hardship.

After a tenant delivers a copy of the Hardship Declaration to the Landlord, the Emergency Period and end of the Grace Period are extended to June 30, 2021. During that time, the landlord may not take or attempt to take any action to interfere with a tenant's possession.

The Hardship Declaration Form. It may be submitted to the landlord at any time, up to and including the first appearance in an action to recover possession. Delivery of the Hardship Declaration Form may result in dismissal of no-cause or nonpayment eviction proceedings during the Emergency Period and Grace Period.

Landlords may not:

- 1) Challenge the accuracy of a tenant's Hardship Declaration in an eviction proceeding;
- 2) Require additional information beyond what is required by the Hardship Declaration Form;
- 3) Demand more than one copy of the Hardship Declaration per household or tenancy;
- 4) Prohibit the tenant from submitting a Hardship Declaration in a language other than English if the tenant is using an approved translated form from the courts;
- 5) Prohibit the tenant from submitting the Hardship Declaration to the landlord in any manner, format or means available, including but not limited to, a photograph of the document submitted by email or text message.

Evictions During the Emergency and Grace Periods. Only the following landlord evictions are permitted during either of these two periods:

- 1) Evictions for violation of a rental agreement, other than non-payment may continue;
- 2) Evictions for nonpayment occurring before April 1, 2020 may also continue;
- 3) "Landlord-cause" evictions⁸ are allowed after the first year of occupancy. Landlord

cause evictions include:

- a. Demolition or converting dwelling unit to non-residential use;
- b. Intent to make repairs/renovations to the dwelling unit within a reasonable time, and the building is unsafe/unfit for occupancy or will be unsafe/unfit for occupancy during the repair/renovation period;
- c. Landlord intends for immediate family member to occupy dwelling unit as a primary residence and no comparable units at the same location are available; or
- d. Landlord has accepted an offer to purchase the dwelling unit; purchaser will use unit as a primary residence.⁹

Important Changes to Landlord Nonpayment of Rent Notices. The 72-hour nonpayment of rent notice under ORS 90.394 is now a 10-day notice ending at 11:59 pm. The 144-hour nonpayment of rent notice is now a 13-day notice ending at 11:59 pm. These changes expire July 1, 2021.¹⁰

⁸ See, ORS 90.427(5)(a)-(d).

⁹ Note: This does not include listing or marketing the home for sale. Seller/landlord would have to have a pre-arranged buyer who was willing to buy without inspections, etc., or a tenant who was willing to permit the same with 24-hour notice. Of course, seller/landlord could always make financial arrangements with tenant for concessions.

¹⁰ Amendments to 90.394 (2)(a) and (b). These changes from hour-notices to day-notices affect several other statutes that refer to 90.394. Changes revert to original language on July 1, 2021.

Tenant Relief for Landlord Violations. Any violation of the above rules may result in the tenant being granted an injunction to recover possession or address any other violations, and the award of the equivalent of three-months rent on top of any actual damages. Landlord's violation of the above rules will also give the tenant a defense to an eviction. In addition, tenant will be entitled to prevailing party fees, attorney fees or costs and disbursements unless the landlord can demonstrate:

- 1) That they delivered the required Notice of Eviction Protection and Hardship Declaration Form;
- 2) That they did not know or have reason to know at the time they filed the action that the Hardship Declaration Form had been completed and returned; and
- 3) That they promptly dismissed the action upon learning of the existence of the completed forms.

Summons and Complaint Forms: Note: Changes resulting from the Eviction Moratorium laws, and HB 4401's changes to Landlord-Tenant statutory language are reflected in the Summons and Complaint forms for residential evictions.¹¹ Summons and Complaint revert to the standard language on July 1, 2021.

Expiration. Under the terms of HB 4401 the provisions related to the eviction moratorium will automatically repeal on July 1, 2021.

Miscellaneous Provisions and Changes to HB 4213.

- 1) A landlord may apply a last month's rent or security deposit to the Nonpayment Balance if a tenancy terminates prior to the end of the relevant Grace Period;
- 2) Tenants with a Nonpayment of Rent Balance who are still within their Grace Period are not considered to be in default;
- 3) A landlord may accept partial payment of rents, charges and fees during the Grace Period. It does not constitute a waiver of the landlord's right to terminate a tenancy for cause, nor to terminate a tenancy for nonpayment after the expiration of the relevant Grace Period;
- 4) Amendments to HB 4213 expire on September 1, 2021;
- 5) For all Nonpayment evictions, the statute of limitations is tolled and does not begin to run against the Nonpayment claim until July 1, 2021.

Unanswered questions. In no particular order, here are some questions about HB 4401 that are sure to arise:

- What happens if landlord sends the Hardship Declaration to a tenant, who does not respond?

¹¹ For summons language: see ORS 105.113 (as amended by HB 4401 Section 13); for complaint form: ORS 105.124 (as amended by HB 4401 Section 15).



- Since landlords need the tenant's Hardship Declaration to complete their application for 80% of their unpaid rent, is the landlord stymied?
 - While the landlord will be able to file for eviction after the Grace Period ends under the old law (March 31, 2021), HB 4401 is clear that the tenant can submit the Hardship Declaration as late as the first appearance at the FED, and bring the proceeding to a halt.
 - So it's a bit of a guessing game what tenants will do; ignore the landlord's Notice of Eviction Protection until an FED is filed, or cooperate with the landlord and sign and return the Declaration? What incentive do tenants have to cooperate, if they can wait until the last minute to submit the Hardship Declaration?
 - In any event, no action can be taken against the tenant who does not cooperate until after March 31, 2021 *at the earliest*.
 - Since the Legislature has no landlord reimbursement program in place yet, one has to wonder when, and if, it will be of any help *now*.
 - There is no question that the landlord funding will eventually be exhausted, and some will be left out.
 - So, the take-away right now is that landlords should *immediately* reach out to their tenants in arrears and get their Hardship Declarations signed, so the application for reimbursement can be processed as soon as possible. 80% of unpaid rent is better than nothing - which is what could occur if the application is delayed.
 - Tenants do benefit by their cooperation, since when the moratorium is extended, they are not at risk of any eviction action until after July 1, 2021. *This is the message landlords need to get out to their tenants.*
 - Otherwise, a landlord may bring an eviction for nonpayment of rent, charges and fees accrued from April 1, 2020, to December 31, 2020 immediately after March 31, 2021. Perhaps this also should be part of the landlord's message.
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Notice of Eviction Protection (“Notice”)

(Landlord should retain a completed copy of this Notice.)

**THIS IS AN IMPORTANT NOTICE ABOUT YOUR RIGHTS
TO PROTECTION AGAINST EVICTION FOR NONPAYMENT.**

TENANT(S): _____
ADDRESS: _____
CITY _____ STATE _____ ZIP _____

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 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 these conditions on or after March 16, 2020:

- 6) Loss of household income;
- 7) Increased medical expenses;
- 8) Loss of work or wages;
- 9) Increased child-care responsibilities or responsibilities to care for a person with a disability or a person who is elderly, injured or sick;
- 10) Increased costs for child-care or caring for a person with a disability or a person who is elderly, injured or sick; or
- 11) 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.

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.

(tenant’s signature)

(date)