


# House Bill 4401

## ~ Moratorium 3.0 Explained ~

Presented By

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On December 21<sup>st</sup>, 2020, the Oregon Legislature met in special session, passing *House Bill 4401* effective immediately upon Governor Brown's signature. So, what does this change mean to residential Housing Providers in Oregon? Here's my 'take' on the most current version of today's 'Rules' \*

### What Does *HB 4401* Do?

- Prohibits evictions without cause before July 1, 2021, except (after the first year of occupancy) for circumstances under *ORS 90.427 (5)* involving the demolition or conversion of the dwelling unit, major repairs or renovations when the dwelling unit is or will be unsafe to occupy, or the occupancy of the dwelling unit by the Housing Provider or the Housing Provider's family member or someone who purchases the dwelling unit.
- Prohibits Housing Providers from charging late fees for rent accruing between April 1, 2020, and June 30, 2021.
- Extends the emergency period and the end of the grace period and prohibits eviction for non-payment until June 30, 2021 for Residents providing proof of financial hardship, and for Residents who do not provide proof of financial hardship, extends the emergency period to December 31, 2020 and requires Residents to pay past due rent by March 31, 2021.
- Provides grant payments directly to Housing Providers accepting certain conditions, with multiple application access points and procedures for ease of applying for payments.
- Requires Housing Providers to provide Residents with written notice informing them of their right to submit a declaration of financial hardship made under penalty of perjury in a form proscribed in HB 4401.
- Changes the Timelines for Non-Payment Termination Notices.

## How Long is the Moratorium Extended?

- “No-cause” evictions and late fees are prohibited until after **June 30, 2021**.
- If the “first year of occupancy” ends between April 1, 2020 and August 31, 2021, the “first year of occupancy” is extended for the purposes of a termination notice without cause to mean a period lasting until August 31, 2021.
- “Landlord-cause” evictions pursuant to *ORS 90.427(5)(a) – (d)* (change of use, substantial repairs/renovations, housing provider or immediate family member moving into home, buyer or buyer’s immediate family moving into home) are allowed after the first year of occupancy.
- The emergency period and the end of the grace period is extended to June 30, 2021 for Residents providing a declaration of financial hardship, and requires Residents who provide their declaration of hardship to pay all past due rent by July 1, 2021.
- The Resident’s declaration describes their financial hardship experienced 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.
- For Residents who do not provide a declaration of hardship, the emergency period is extended to December 31, 2020 and requires Residents to pay all past due rent accruing between April 1, 2020 – December 31, 2020 by March 31, 2021.

## How Do I Receive Grant Payments?

- Housing Providers provide Residents with a written notice informing them of their right to submit a declaration of financial hardship signed under penalty of perjury.
- Residents must provide a signed declaration for every household or tenancy declaring financial hardship, delivered to the Housing Provider in writing, email, text message or other method reasonably calculated to achieve receipt.
- Housing Providers complete an online application detailing all unpaid rents from qualified Residents and the Housing Provider's agreement to forgive 20 percent of outstanding unpaid rent.
- Housing Providers can apply more than once, if new arrearages arise after an initial application.

## What Conditions Must Housing Providers Accept to Receive Payments?

To qualify, Housing Providers must:

- A. Submit a single application for all of the Residents who have not paid rent and who have delivered a declaration to the Housing Provider stating that they have experienced certain financial hardships;
- B. Include copies of all Resident declarations;
- C. Provide a description of the unpaid rents not collected since April 1, 2020;
- D. Agree to forgive 20% of the unpaid rents not collected since April 1, 2020 through the date of application for payment;
- E. Agree to repay the Department any rent that a qualified Resident or someone on the Resident's behalf later pays;
- F. *Not* include unpaid rents owed by immediate family members of the Housing Provider; and,
- G. Agree not to issue no-cause or non-payment termination notices to the Residents while the application is pending.

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**Rent Reduction** - By agreeing to receive grant funds, Housing Providers agree to accept 80% of unpaid rent accruing between April 1, 2020 and the date of application for payment (ending June 30, 2021).

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- \$150,000,000 of state general funds are authorized for distribution and administrative support. OHCS will prioritize payments to Housing Providers with fewer units or a higher percentage of unpaid rents and set qualifications, priorities, restrictions, and limits for distributing funds to Housing Providers. OHCS will provide Residents with notice of rent payments and forgiveness on their behalf. The grant payments will be delivered to Housing Providers by local housing authorities.
- \$50,000,000 are also authorized for Residents to apply for grant payments to their Housing Providers. OHCS will also distribute rent assistance to recipients of federal *Coronavirus Aid, Relief, and Economic Security (CARES) Act Emergency Solutions Grants*, which includes community action agencies and culturally specific providers, who will make payments directly to Housing Providers upon Residents' applications.
- The rent assistance program is designed to also distribute any federal funding for rent assistance in the still-being-negotiated-between-Congress-and-President stimulus package

## **Reminder Notices About Non-Payment**

- A Housing Provider may deliver a written notice to a Resident before the end of the grace period stating that the Resident continues to owe any rent due. The notice must also include a statement that eviction for nonpayment of rent, charges and fees accrued from April 1, 2020 to June 30, 2021 is not allowed to be filed until after June 30, 2021.
- The notice may also include information regarding Resident resources and may offer a voluntary payment plan for the nonpayment balance. If the notice offers a voluntary payment plan, the notice must state that the payment plan is voluntary. The notice may include a request that the Resident contact the Housing Provider to discuss the voluntary payment plan.
- If the Resident has not already provided a declaration of financial hardship, the Housing Provider must provide a written notice informing them of their right to submit a declaration of financial hardship signed under penalty of perjury as well as a form declaration along with every reminder notice.

## How are Termination Notices for Non-Payment Timelines Changed?

- Every termination notice or summons for non-payment of rent delivered before June 30, 2021 must be accompanied by a written notice informing the Residents of their right to submit a declaration of financial hardship signed under penalty of perjury, together with a declaration form;
- The 72-hour notice is now a 10-Day notice ending at 11:59 PM; and,
- The 144-hour notice is now a 13-Day notice ending at 11:59 PM.
- The **changed timelines end 6/30/21.**

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*Revise Your Non-Payment Notices Accordingly*

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## Filing Evictions

- A Housing Provider who files a complaint for possession under *ORS 105.105 to 105.168* based on a notice for nonpayment under *ORS 90.392, 90.394 or 90.630* shall file with the complaint a declaration under penalty of perjury stating that the Housing Provider gave the Resident written notice informing them of their right to submit a declaration of financial hardship signed under penalty of perjury together with a form declaration, and that the Housing Provider is not aware of any declaration signed or delivered by the Resident. A copy of the written notice informing them of their right to submit a declaration of financial hardship signed under penalty of perjury together with a form declaration shall be attached to and served with the Summons. A Housing Provider may not challenge the Resident's declaration.
- Evictions may continue to occur for violations of the rental agreement, other than non-payment of rent, as well as for non-payment that occurred prior to April 1, 2020.
- A Housing Provider's acceptance of a partial payment of rent before the end of the grace period does not constitute a waiver of a Housing Provider's right to terminate the tenancy for:
  - (A) A violation of the rental agreement, notwithstanding *ORS 90.412 (2)*; or

- (B) Nonpayment of the rent balance owed under *ORS 90.394* after the end of the grace period, notwithstanding *ORS 90.417 (4)*.
- If a tenancy terminates before the end of the grace period, a Housing Provider may claim from the security deposit or last month's rent deposit to repay the unpaid rent balance that accrued during the emergency period under *ORS 90.300 (7)* or (9).

## What If I Make A Mistake?

- The Court is required to dismiss an eviction action filed before end of the grace period based solely on nonpayment if the Resident declares financial hardship or if the Housing Provider fails to provide proof they gave the Resident a notice of rights and declaration form.
- The Resident has a defense to an eviction proceeding – *but* – court costs and attorney fees won't be assessed against the Housing Provider if they did not know, and did not have reasonable cause to know, at the time of commencing the action that the Resident had submitted a completed form; and promptly dismissed the action, upon becoming aware of the completed form.
- The Resident has a private right of action against their Housing Provider for violations of this Act, providing for injunctive relief and statutory damages equal to the greater of three month's rent or three times actual damages sustained by the Resident.

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\* This update is not intended as legal advice. There are a number of other technical requirements in *HB 4401*, and you should certainly consult a knowledgeable attorney before taking any eviction or collection action. Please obtain the advice of a knowledgeable attorney for any policy change or decisions regarding residential and commercial Landlord-Tenant matters, as well as laws that impact your local jurisdictions.

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Housing Providers may find updated information on the Oregon Housing and Community Services landlord compensation fund by visiting <https://www.oregon.gov/ohcs/housing-assistance/Pages/Landlord-tenant-resources.aspx>

# DECLARATION OF FINANCIAL HARDSHIP FOR EVICTION PROTECTION

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This form may be given to the housing provider in person, by first class mail or, if available, by sending a copy or photograph of the completed form by e-mail or text message.

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I, \_\_\_\_\_ (resident's name), am a resident at \_\_\_\_\_ (resident'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.**

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**(Resident's signature)**

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**(date)**