

# Updated Safe Harbor Protections From Nonpayment Eviction SB 891

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# The Basics:

- On December 14<sup>th</sup>, 2021, the Governor signed Special Session bills [SB 891](#) (safe harbor from eviction extension) and [SB 5561](#) (funding allocations). The bills took effect immediately.
- Principally, SB 891 extends the safe harbor period from nonpayment eviction that was previously established by the 2021 session's SB 278. The old 60 (or 90) day safe harbor periods no longer apply, and tenants are now protected during the entire pendency of their application.
- SB 5561 (sections 4 and 4a) allocated \$215 million dollars:
  - \$100 million to OERAP; \$5 million for admin/staffing/expediting;
  - \$10 million to the expanded Landlord Guarantee Program;
  - \$100 million for local emergency rent assistance and eviction prevention.

# Key Safe Harbor Elements of SB 891

- Tenants who have applied for rent assistance and given documentation of their application to their landlords are protected from eviction for nonpayment while the application is being processed.
  - *Documentation should be given to the landlord asap, and **no later than any first appearance in court.***
  - *Protection lasts until the application is no longer pending.*
  - *This safe harbor replaces the previous 60 (or 90) day safe harbor limits.*
- Safe harbor protections must be initiated no later than June 30<sup>th</sup>, 2022.
  - *After June 30th, only tenants who have already submitted their safe harbor documentation will be protected while their applications are processed.*
- All safe harbor protections expire on September 30<sup>th</sup>, 2022.
  - *Protections for anyone remaining in the queue from before June 30<sup>th</sup> will end entirely on 9/30/22.*

# Key Safe Harbor Elements of SB 891, cont.

- Once the tenant has given the landlord documentation of their application for rent assistance, the landlord may not move forward with a termination notice or an eviction action until the application has been closed, denied, or paid.
- Documentation of rent assistance can be by any reasonable method, including by sending a copy or photo of the documentation to the landlord by email or text message. “Documentation” includes email, a screenshot or other written or electronic documentation verifying the submission of an application for emergency rental assistance.

# Key Safe Harbor Elements of SB 891, cont.

- Safe Harbor protections apply to **all types** of emergency rent assistance applications, whether funded by private funds or by local, state, or federal funds. *Not just OERAP.*
  - *However, note that long-term rent assistance, such as the Section 8 Voucher Program, would not trigger safe harbor protections.*
- If the application is closed or denied without payment, or payment is made but the landlord received less than the amount owed, the landlord may proceed with termination.

# SB 891 – Applicability of Safe Harbor

- Section 3 of the bill provides that the new extended safe harbor provisions apply to:
  - *All termination notices given before, on, or after the effective date of the bill;*
  - *All eviction actions filed before, on, or after the effective date of the bill, so long as there has not been a judgment of possession.*
- In other words, the protections are **prospective and retroactive**:
  - *If a tenant has applied for rent assistance and given documentation to their landlord at any point since July 1, 2021, their safe harbor is now automatically extended for the pendency of their application. (So long as there has not already been a judgment against them.)*
  - *A tenant who is not already covered may initiate the extended safe harbor protections before June 30, 2022 by applying for assistance and giving their landlord documentation at or before any first appearance.*

# SB 891 – Rent Assistance Provider Requirements

- In distributing federal, state, or local emergency rent assistance, OHCS, public bodies, local governments, and subgrantees must: *(Section 5)*
  - Provide tenants with a dated **receipt** of application;
  - **Close** an application if the provider reasonably determines that the tenant is no longer participating;
  - Provide a dated **notice of payment** to the landlord at any known address or email, if the payment is made to someone other than the tenant's landlord;
  - Provide a **dated notice of closure or denial** to the tenant and the landlord at any known address or email, if the application is closed or denied without payment.
- *Remember that long-term rent assistance (like Section 8 Voucher, etc) does not trigger these requirements.*

# SB 891 – Rent Assistance Provider Requirements - Timelines

- Providers must *promptly* provide tenants with a dated receipt of application (can be electronic receipt).
- The bill does not impose a timeline on when a provider must close an application if **the provider reasonably determines that the tenant is no longer participating.**
  - *OLC's interpretation of this standard is that closure should only be done based on an individualized assessment after meeting minimum contact criteria.*
- The bill does not impose a timeline on when a provider must provide a dated notice of payment, denial, or closure.
  - *This should be done promptly or concurrently with the denial/payment/closure.*
  - *Can be electronic notification.*



# SB 891 – Notices from Landlord and Court

- Nonpayment termination notices must be 10-day notices (not 72-hour notices) until September 30, 2022.
- With any 10-day notice of termination for nonpayment or any eviction complaint for nonpayment, landlords must give tenants a form with information about their right to a safe harbor if they give their landlord documentation that they have applied for rent assistance, along with information about how to find resources.
- Any Court summons must be accompanied by the tenant information form, as well as by information about how to contact the Eviction Defense Project.

# SB 891 – Landlord Guarantee Program Changes

- Section 10 of the bill provides that the LGP is expanded to cover any nonpayment of rent that accrues during the applicable safe harbor period, if the landlord was not otherwise paid.
- There was another \$10 million investment in the LGP to ensure availability of funds, bringing the total to \$15 million available.
  - *The landlord guarantee program will no longer cover property damages.*
- Learn more at <https://www.oregonlgp.org/>

# SB 891 Did Not Alter the Grace Period for Back Rent..... **BUT** Safe Harbor Applies!

- Landlords still may not terminate tenancies for nonpayment of back-due rent that came due during the COVID period between April 1, 2020, and June 30, 2021, until March 1, 2022.
- This protection is automatic, and no declaration, income eligibility, or other criteria is necessary to qualify for this protection.
- Starting March 1, 2022, nonpayment proceedings can be initiated due to nonpayment of back-due COVID rent, **but the safe harbor protections also apply to this type of nonpayment.**
  - *If a tenant has applied for rent assistance and given documentation of their application to their landlord, their safe harbor protections apply to any nonpayment proceeding, whether for back-due COVID rent or other nonpayment.*

# What should tenants do if they receive a 10-day notice for nonpayment?

- Apply for emergency rent assistance, if you haven't already. Call 2-1-1 for the agency serving your area or go to [www.oregonrentalassistance.org](http://www.oregonrentalassistance.org) for information. The state portal will open again on 1/26/22.
- Provide documentation to the landlord of the application for rent assistance to get the safe harbor protections. If given within the 10-day notice period, landlord cannot file an eviction case in court. If after the court filing but before or during first appearance, court will set over the case until one party notifies the court that the rent assistance application has been processed.
- Tenants should call the Community Alliance of Tenants (503-288-0130) or Springfield Eugene Tenant Association (541-972-3715) Hotlines or their local legal aid office. ([www.oregonlawhelp.org](http://www.oregonlawhelp.org)).

# Penalty for violation

- If a landlord violates the grace period protections or does not honor the safe harbor after receiving timely documentation of a rent assistance application, the tenant may have a **defense to the eviction** and has the right to a **court order allowing return to the home**.
- If a landlord evicts a tenant in violation of the law, locks out a tenant, or turns off the utilities to force a tenant out, tenants can also get a court order forcing the landlord to allow them back into their home.



*Is your landlord taking you to eviction court?*

GET FAST AND FREE LEGAL HELP  
FROM LEGAL AID'S NEW

## **EVICTI**ON **DEFENSE** PROJECT



**CALL**

888-585-9638

OR



**EMAIL**

EVICTIONDEFENSE@OREGONLAWCENTER.ORG

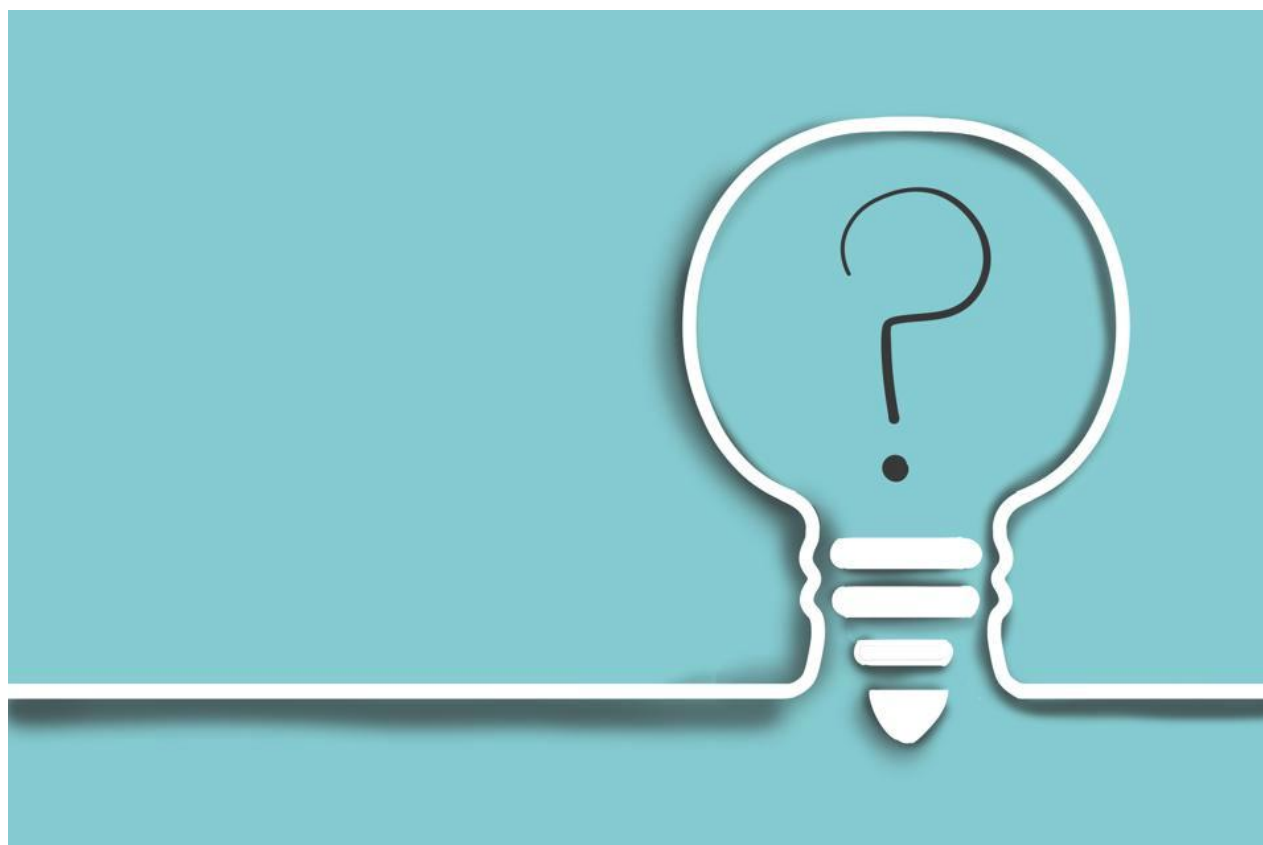
*Have your case number and appearance date ready.*

## Legal Aid Eviction Defense Project

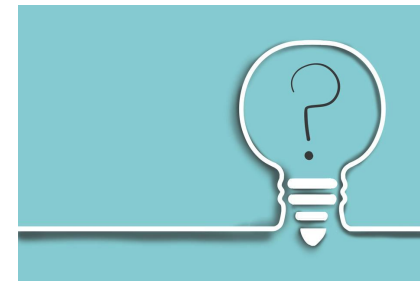
Legal Aid is staffing up to prioritize eviction defense in every county in the state.

Please refer tenants facing court proceedings to us. For-cause, no-cause, non-payment, discrimination, habitability, etc.

# Questions



# Questions



**Question:** What qualifies as an “emergency” rental assistance program? Would CDBG qualify, for example? What about Section 8 Housing Choice Vouchers?

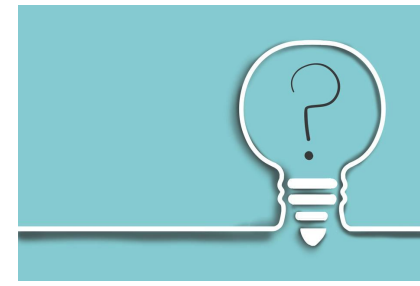
**Answer:** **All emergency rent assistance programs** that are publicly funded will trigger the rent assistance provider’s obligations under SB 891. That means all federal ERA allocations, including county and City of Portland allocations, EHA/SHAP, CDBG, STRAW, the new \$100 million in state funds, etc. Long term permanent rent assistance programs such as the Section 8 Housing Choice Voucher program **do not** qualify as emergency rent assistance programs.

**Question:** Do tenants whose applications are still being processed, but have received an eviction notice or an eviction court filing, have access to the new Safe Harbor protections?

**Answer: Yes!** Section 3 of the bill describes the bill’s applicability, and specifies that the protections apply to termination notices and eviction cases before, on, or after the effective date of the bill (so long as there was not already a court judgment against the tenant before passage of the bill.) If tenants provided documentation of assistance to their landlord before December 2021 they DO NOT need to provide additional documentation to verify their application is still pending.



# Questions



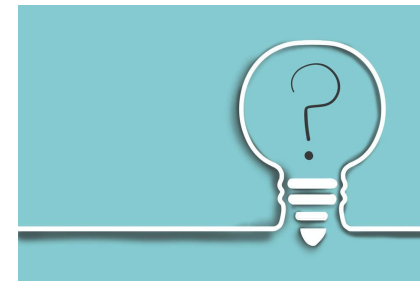
**Question:** Do tenants who have already given documentation to their landlords need to give new documentation after passage of the bill, if their applications are still pending?

**Answer: No!** These protections apply to anyone who has given documentation of their application at or before 1<sup>st</sup> appearance, since July 1. Tenants who have already given documentation to their landlords DO NOT need to provide additional documentation to qualify for protection.

*However, it may be a good idea to give the landlord a new notice, to help them understand their obligations.* OHCS is updating the Safe Harbor letters that can be reissued to tenants who may want to use them in this situation.

Please refer any tenants with pending evictions with the Oregon Law Center immediately through their [Eviction Defense Project](http://evictiondefense@oregonlawcenter.org): (888) 585-9638 or e-mail [evictiondefense@oregonlawcenter.org](mailto:evictiondefense@oregonlawcenter.org).

# Questions



**Question:** Does the safe harbor apply to all rent assistance programs, or just OERAP?

**Answer:** The safe harbor protections apply to anyone who has given documentation of their application for emergency rent assistance from **any rent assistance program, whether funded by state, local, federal, or other funds!** This means OERAP, a program run through a local Community Action Program, a local Community-Based Organization, a local foundation, etc.

**Question:** If I receive information from the state landlord portal or state provider that there is no pending application on record with the state, does that mean that there is no pending application anywhere?

**Answer: NO!** A tenant may seek assistance and provide documentation from any rent assistance provider. If this documentation is provided to the landlord at any time at or before a first appearance, the safe harbor protections are triggered, and these protections last until the application is no longer pending – that is, until the case has been closed, denied, or paid. A landlord will get notice of a case closure, denial, or payment.

**Other questions? Please ask!**

# Legal help resources

You can find contact information for a legal aid office near you at <https://oregonlawhelp.org/find-legal-help>.



Or, contact:

Oregon State Bar  
Lawyer Referral Service  
(800) 452-7636

THANK YOU!