

HB 4401

Eviction Moratorium Extension FAQ Questions from Attendees of 1/6/2021 Webinar

Oregon Law Center

For more tenant resources, go to www.oregonlawhelp.org.

Notices

Q: Are landlords required to proactively provide a notice of tenant rights and a copy of the declaration form to all tenants?

A: No. Landlords have no obligation to proactively provide notice of rights to all tenants. However, landlords must provide the tenant with a notice of rights and a declaration form along with any of the following:

- Notice of termination for non-payment;
- Service of an eviction summons when the case is based on a non-payment notice;
- Notice about how much rent is owed.

Q: Are there limits on how often the landlord can "remind" tenants of how much they owe, or is there a point at which it becomes harassment? I have some clients whose landlords have been pressuring them to repay due rent by bringing it up frequently.

A: The bill is very specific about how landlords can send "you owe rent" notices - they are specifically allowed to do this, but only if they also tell tenants that they cannot be evicted for non-payment while protected by the moratorium, and only if they also provide the tenant with a notice of rights and a declaration form.

Immigration Status

Q: Would completing a declaration affect clients with immigration legal status in process?

A: No. Completing, signing and submitting the Declaration to a landlord does not have an impact on a tenant's immigration status. Submitting the Declaration is not a consideration under the public charge test relating to immigration status. Also, receiving short-term rent assistance is not a weighted factor in the government's analysis of whether a person is considered a "public charge," so tenants, regardless of immigration status, should pursue rent assistance options available to them.

Late Fees

Q: Are tenants responsible for late fees for rent that was due before April 1, 2020?

A: Yes, tenants are responsible for late fees from rent that was due before April 1.

Q: Can tenants be charged late fees or reported to a credit bureau for rent that was due from April 1, 2020 through December 31, 2020?

A: No. A tenant may not be charged a late fee or reported to a credit bureau for rent that was due from April 1 through December 31, 2020.

Q: Can tenants be charged late fees for rent that is due after January 1, 2021?

A: Qualifying tenants (those who have experienced financial hardship and given a declaration form to their landlord), may not be charged late fees for rent due from January, 2021 thru June, 2021.

Q: If tenants accrue late fees from now until they turn in their declaration, do they have to pay those back or are they forgiven because they declared that they have a financial hardship?

A: Because HB 4401 states that a landlord may not “assess a late fee” during the emergency period/ before the end of the grace period, and the emergency period is extended to June 30 if the tenant submits a declaration, the landlord cannot collect late fees that were charged before the tenant submitted the declaration.

Moratorium and Back Rent Timelines

Q: When is back-rent due?

A: All tenants have until March 31st, 2021, for back rent owed from April-December of 2020. There is no declaration required for this grace-period. Qualifying tenants (those who have experienced financial hardship and submit a declaration) have until June 30, 2021 to pay their back-due rent.

Q: If a tenant experienced hardship last summer, but is now able to pay current rent, do they still qualify for the moratorium for back rent?

A: Yes. All tenants have until 3/31/21 to pay past-due rent from April-December of 2020, regardless of whether they have given a declaration form to their landlord. If you experienced financial hardship at any time after March 16th, 2020, when the Governor first issued her Stay at Home order, you may give your landlord a declaration of financial hardship to extend your due-date until June 30, 2021.

Q: For rent that was not paid from April, 2020 -December, 2020 (no financial hardship form turned in) can landlords issue a non-payment termination notice on April 1, 2021?

A: Yes. If past-due rent is not paid by 3/31/21, and the tenant has not given a financial hardship form to the landlord, the landlord may give a 10-day termination notice for non-payment. BUT, this notice must be accompanied by a Notice of Tenant Protection and a Declaration of Financial Hardship. A qualifying tenant has 10 days to sign and return the Declaration of Financial Hardship to the landlord in order to stop the filing of an eviction proceeding. If the tenant turns the form in to the landlord, the landlord may not proceed with the eviction, charge late fees, or pursue collections until after June 30, 2021.

Credit Protections, Collections, Grace-period, Payment Plans:

Q: If a person submits the hardship declaration, is there any issue with them making partial payments when they are able to?

A: No. If a tenant is able to make partial payments, they can do that without waiving the protection of the bill.

Q: What if a tenant is not able to get rent assistance, and the landlord does not apply for landlord-based compensation, and the tenant then owes way more than they can pay by the final deadline? Can the tenant and the landlord make a payment plan? For example, what if the tenant's income has been reduced to 50% of their normal income pre-pandemic and they don't know when it is going to go back up?

A: Tenants who have been impacted in this way are protected from eviction if they give a declaration form to their landlord. This gives them time (until June 30) to make up payments and to find rent assistance. There are substantial new rent assistance resources allocated by the state that will become available in February, with even more federal money coming soon thereafter. Tenants should not give up hope of assistance! But yes, voluntary payment plans are allowed.

Q: Does the prohibition on reporting "non-payment balance to any consumer credit agency" include stopping landlords from sending past residents to collections?

A: If the debt is for rent owed during the moratorium period, and is either debt from before December, or the tenant has submitted a Hardship Declaration, then the landlord may not make a report to the credit bureau and may not pursue collections while the tenant is covered by the moratorium. After the tenant has moved out, the law is less clear. There is an argument that these protections continue until the end of the moratorium period, regardless of whether the tenant has moved out.

Q: What if a client has vacated a unit with a remaining balance of rent still due, can they submit the declaration of hardship to prevent those charges from being submitted to collections? Also, can the client apply for the 80/20 forgiveness program for a former living situation?

A: If a tenant vacates a unit with a remaining balance of rent still due, the landlord can use the deposit to pay for past-due rent. If there is still remaining past due rent owed, and the tenant had submitted a declaration form to the landlord before moving out, it is unclear whether the landlord can pursue collections and make a credit bureau report right away, or has to wait until the end of the moratorium period (June 30, 2021).

A tenant may not apply for the 80/20 Landlord Compensation Program. That program is only available based on landlord applications. A tenant may apply for assistance with rent debt via community organizations, go to www.211info.org.

Q: If a tenant enters a voluntary payment plan, but is then unable to keep to the terms of it, are they still able to sign the declaration form & provide it to the landlord to be covered by the HB 4401 protections?

A: Yes. The purpose of the bill is to protect people who have experienced financial hardship impacting their ability to pay rent. If a tenant is unable to keep to the terms of a payment plan because of financial hardship, they should fill out the form and get it to the landlord as soon as possible..

Hardship Declaration Form

Q: Does the declaration have to be a formal letter?

A: The declaration needs to include specific language as required by HB 4401, and must be a sworn statement. Forms that meet those requirements are available for free on our [website](#) or on the Judicial Department [website](#) in multiple languages. It is safest to use one of those forms. BUT, a tenant could simply handwrite/copy the form, and a handwritten letter is fine - it just needs to include the right language.

Q: If no declaration is submitted, can a landlord assume that the tenant is not experiencing "financial hardship" and demand that rent be paid?

A: If a landlord has not gotten a declaration, they can serve a 10-day termination notice for non-payment of rent. But the landlord has to include a notice to the tenant explaining the tenant's right to protection from eviction if they have suffered financial hardship since the pandemic, and must also include a declaration form. The tenant has 10 days to get the declaration form back to the landlord, and if they do that, the landlord cannot proceed with the eviction for non-payment.

Q: If a family is providing increased financial assistance to an individual outside of the household, do they qualify to sign the Hardship Declaration?

A: Yes. Circumstances that have increased a family's expenses, that impact their ability to pay rent, qualify as financial hardship. The bill defines financial hardship as one or more of the below conditions that has occurred on or after March 16, 2020:

- Loss of household income
- Loss of work or wages
- Increased medical expenses
- 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*

Q: Is a written form required to show financial hardship? Can't a phone call work?

A: A phone call is not sufficient under the state law. HB 4401 requires that a declaration form be signed, and given to the landlord, in person, by mail, by text, or via email.

Q: Where can I find the hardship declaration form?

A: Here are the declaration forms in several languages:

<https://www.courts.oregon.gov/forms/Documents/FED-NoticeProtectionDeclHardship.pdf>

Q: Is there a deadline to submit the hardship declaration? Can a landlord give an eviction notice now, if they have not received the declaration from their tenant?

A: Tenants can submit a declaration at any time, up until the first appearance in court. We recommend that tenants who have experienced financial hardship give notice right away, proactively, to prevent an eviction notice. This lets the landlord know their status, and provides the greatest protection. If the T has not given a declaration, the landlord can give an eviction notice. But the notice must be accompanied by a declaration form, and the tenant will have 10 days to get that form back to the landlord, to stop the process. The latest time a tenant can submit a declaration is at the 1st court appearance.

Q: What if a tenant has not paid on January 1, how long does a tenant have to give the declaration to the landlord, to qualify for extended protections?

A: They should give the declaration form as soon as possible, to prevent the landlord from giving a notice of non-payment. If they haven't given the form, the landlord can give a termination notice for non-payment. But, the notice from the landlord must include a notice of rights and a declaration form.

The tenant will have 10 days to get that form back to the landlord, to stop the filing of an eviction case. The last time the tenant can submit a form is at the first court appearance. The best practice is for a qualifying Tenant to use the declaration form right away, pro-actively. This lets the landlord know their status, and provides the greatest protection.

Q: Are community health workers allowed to help tenants fill this form out if they don't have internet/printer access?

A: We absolutely suggest that advocates print forms for tenants, and help them access the forms. The tenant must make the determination whether they meet the criteria, and if so, they must sign the form themselves. No one else can sign the form for the tenant, but the signature can be an electronic signature.

Q: What if a tenant figures out a way to pay January rent, but then cannot pay February rent, is it too late to submit a declaration form and qualify for protection? Is this something that can be submitted anytime in any month between now (January) to June?

A: Absolutely, the declaration form can be submitted at any time it is needed, but no later than the time of first appearance. So long as a tenant qualifies for protection, because they have experienced financial hardship as a result of an increase in expenses or a decrease in income that occurred on or after March 16th, 2020, and that hardship has impacted their ability to pay rent at any time between January and June of 2021, they can submit a declaration form at any time. We recommend that tenants submit the form as soon as possible, proactively.

Q: Is the hardship declaration form provided in various languages?

A: The form is available in English and Spanish at this [website](#) and additional languages are on the way. Forms in multiple languages will also be available on the Oregon Judicial Department [website](#).

Q: Is this a fillable form, that can be sent electronically?

A: We do not currently have fillable forms, but we think the form can be sent electronically, in a few ways. The tenant can print the form out, sign it, and then text or email a photo or scan of the signed form. We also think the tenant could copy and paste or simply re-type the form and the declaration statement and use an electronic signature.

Applicability/Coverage

Q: What qualifies as a “residential tenancy” covered by the protections? What about a tenant who lives in housing on the property of a storage facility?

A: This may depend on the facts and this is worth getting legal advice about. Contact one of our offices at www.oregonlawhelp.org.

Q: Does HB 4401 apply to people renting a room in someone’s house?

A: Yes, the bill applies to anyone covered by the Residential Landlord Tenant Act. There are no exceptions in HB 4401 for situations where roommates are sharing a house with the landlord.

Q: Does this bill apply to people who received an eviction notice from the bank that is repossessing the house for non-payment of the mortgage?

A: This law does not cover foreclosure or any other issues relating to situations where a homeowner is unable to pay the mortgage. A tenant who receives communication from the landlord’s bank should seek legal advice: www.oregonlawhelp.org.

Q: If a property management company from outside of Oregon manages apartments in Oregon, does this bill apply to these apartments too?

A: Yes. The law applies to all units in Oregon, regardless of where the management company is located, headquartered or registered.

Q: Does HB 4401 also apply to subleased rentals?

A: Yes. Generally, when a tenant subleases a unit, the master tenant steps into the shoes of the landlord and has many of the same rights and obligations of a landlord. If the sublessor cannot pay rent, the tenant cannot take action to terminate the sublet and the landlord cannot take action to terminate the tenancy, so long as those parties submit the Declaration.

No Cause Terminations and Landlord-Based Terminations

Q: Who is considered to be a landlord's immediate family member, allowing a landlord to issue a 90-day notice to allow the family member to move into the unit?

A: That is defined in statute in ORS 90.427(b) - (b) "Immediate family" means:

(A) An adult person related by blood, adoption, marriage or domestic partnership, as defined in ORS 106.310, or as defined or described in similar law in another jurisdiction;

(B) An unmarried parent of a joint child;

(C) A child, grandchild, foster child, ward or guardian; or

(D) A child, grandchild, foster child, ward or guardian of any person listed in subparagraph (A) or (B) of this paragraph.

Q: Are for-cause evictions still allowed, for example, if a tenant has violated lease requirements?

A: Yes, that is correct. The moratorium pauses non-payment evictions and no-cause evictions, and has no impact on for-cause evictions.

Harassment, Violations, Legal Assistance

Q: If a tenant was being harassed by a landlord prior to the extended rent moratorium, can the tenant still seek legal help?

A: Yes. The statute of limitations on claims under Oregon Revised Statutes Chapter 90 is 1 year.

Rent Assistance

Q: Will a tenant whose landlord accepts the 80% be subject to a 1099 from the landlord for the "forgiven" 20%?

A: Though we are not tax law experts, we have consulted with some and we think that is possible. Here's a link to an IRS publication that says that debt forgiveness is taxable income:

<https://www.irs.gov/taxtopics/tc431>. The creditors, here landlords, are supposed to give the IRS and the debtors/tenants a copy of the 1099-C form showing the debt forgiveness. More importantly, there is an exclusion if the debtor is "insolvent." Here's a link to another IRS publication with more info (pages 5 to 7) on insolvency, including a form to determine whether you are insolvent:

<https://www.irs.gov/pub/irs-pdf/p4681.pdf>

Q: Are there processes in place to prohibit a landlord from getting double payments, through the Landlord Compensation Fund and from another agency when the tenant also applies, independent of the landlord, for rent assistance.

A: Yes, there are processes in place to prevent duplication of benefits. If a landlord is awarded funds through the landlord-based portal, notice will go to the tenant of the award and that tenant no longer owes the rent. Contract requirements between the landlord and the agency paying the rent assistance will require that the landlord not accept duplicate payments, and repay any inadvertent duplication of benefits.

Q: If a landlord applies for rent assistance, are they required to inform the tenant? What if the landlord receives assistance, is the landlord required to tell the tenant that they no longer owe rent for that time period?

A: If the landlord gets a payment from the landlord compensation program, the agency will notify the tenants that their rent has been paid. The landlord is prohibited from further collection of the rent that has been paid.

Q: Are there any requirements for landlords of multiple units to apply for the Landlord Compensation Fund for all of their tenants, or do landlords have the freedom to pick and choose which tenants' rent gets forgiven? Do tenants have any protections if they feel they are getting discriminated against in this way?

A: Landlords must apply on behalf of all of their tenants who owe back rent, and must submit a declaration form from each household in arrears. If the tenant refuses to submit a declaration form to the landlord, they will not be included in the application, and the landlord can pursue eviction. If a tenant feels they have been discriminated against, they should seek advice and assistance. One resource for assistance with fair housing and discrimination questions is the Fair Housing Council of Oregon (www.fhco.org).

Legal help

Q: What is the best way to get legal assistance for tenants who have questions, or feel their rights have been violated?

A. Refer to www.oregonlawhelp.org. Go to “Find Legal Help” and click on the map to find the local legal aid office by county. Each office lists its phone number and open intake hours.