Gilliam County's Landlord Toolkit

A PRACTICAL GUIDE FOR LANDLORDS AND PROPERTY MANAGERS

Sponsored by:

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FOREWORD

Neglected properties and nuisance behavior can harm the livability of residential communities. In addition, nuisance property *conditions*, such as property damage and chronically-deferred maintenance, can combine with illegal behavior to reduce a community to a mere shell of the healthy community it once was. Neighbors and landlords have tremendous power over the basic health and safety of a community. Local government and law enforcement have a critical responsibility, but community members — landlords, tenants, and homeowners — remain the foundation that make it all work. Typically, a city responds only after neighbors recognize and report nuisance conditions or illegal activity. When a problem arises, one of the first and most important decisions is made by the affected homeowners, tenants, and landlords: Each of us plays a different role and each bears a responsibility to keep a community safe and livable. The most effective way to deal with illegal activity on rental property is through a coordinated effort with neighbors, landlords, and police. What you can do is learn how to keep illegal activity off your property and to keep the property well-maintained, thus preventing many problems before they start and making it that much easier to remove or stop criminal activity and property damage should it ever occur. ~~A~~buses of the landlord-tenant relationship can, and do, come from both sides. Landlords should be fair and realize that most tenants are good neighbors. Responsible property management and ownership begins with the idea that it will benefit all. If the information given here is used responsibly, all of us — tenants, landlords, and neighbors— will enjoy safer, more stable neighborhoods.

ACKNOWLEDGMENTS

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POINTS TO CONSIDER

Tenants are an important part of our community as they support our schools, our businesses and our community-based organizations. The hope is that those who apply the principles in this guide will see improvements in the quality of their "rental business." Good landlord/tenant relationships benefit the entire community by making us safer, keeping our residents in stable housing, and supporting employers in retaining their employees. Please note that this guide is not meant to be a comprehensive source for all tenant/landlord laws and regulations but instead is meant to share best practices/lessons learned from other landlords.

The Benefits of Active, Responsible Management

Providing well-maintained rental properties in our community provides many benefits for landlords, tenants and the community, as a whole. Benefits include:

1. Steady income stream for landlords
2. Satisfaction from providing quality housing to tenants
3. A stable, more satisfied tenant base.
4. Increased demand for rental units.
5. Lower maintenance and repair costs.
6. Improved property values.
7. Improved personal safety for tenants and landlords.
8. Improved relations with neighbors.

What Should I Charge for Rent?

Take into consideration the local market conditions, your financial viability, and what will help to keep tenants in your rental over the long term. You should check with other landlords/property managers to ensure you are competitive, based on size, condition and location of your rental. The rent you charge will affect future buyers of your property. Rent will be factored in when buyers are considering whether it makes financial sense to purchase a rental property.

The Cost of Neglected Rental Property

When rental management practices are lax, chronic nuisance conditions and behaviors are much more likely to occur. Whether it is the eyesore and danger of physical nuisances or the fear and threat of behavioral nuisances (such as drug dealing or other criminal activity), when nuisance conditions persist at rental property, neighbors suffer and landlords pay a high price. That price may include:

1. Declines in property values.
2. Property damage arising from abuse, retaliation, or neglect.
3. Toxic contamination and/or fire resulting from drug manufacturing or grow operations.
4. Civil penalties, including loss of property use and financial penalties.
5. Loss of rent during the eviction and repair periods.
6. Fear and frustration of dealing with dangerous tenants.
7. Increased resentment and anger with neighbors

NOTE TO MOBILE HOME PARK OWNERS

This manual was written primarily for the most typical residential rental situation: A tenant rents a dwelling from a landlord. Owners of manufactured dwelling parks should know that additional, and at times different, regulations apply to your type of property.[1] Although we have given occasional

[1] Technically, not all manufactured dwelling "parks" are covered by the additional legal requirements. The additional

references to differences between typical rentals and situations where a homeowner rents land from a landlord, we have not attempted to cover all the differences that pertain to those situations.
If you own a manufactured dwelling park[1] review the special section of the Residential Landlord and Tenant Act that applies to such situations (generally ORS 90.505 to 90.875), and be sure to review your policies and practices with a qualified landlord- tenant attorney. For additional assistance, you may wish to contact the Manufactured Housing Communities of Oregon listed in the *Appendix* of this manual.

PREPARING THE PROPERTY

Make sure the aesthetic and physical nature of the property encourages responsible use of the property while discouraging illegal activity.

Keep the Property up to Habitability Standards

Maintaining housing standards is important to the public welfare and protects against neighborhood decay. With a substandard house you are more likely to attract problem tenant behavior, up to and including the potential for criminal activity. Eviction of a knowledgeable tenant from such a rental property could be expensive. If you are renting property that isn't maintained, you may have given up a number of your eviction rights.
Before renting your property, make sure it meets applicable local maintenance code and the habitability requirements of landlord-tenant law. For a discussion of basic requirements in Oregon law, see the section on *Ongoing Management* and review Oregon landlord-tenant law (ORS 90), available through local libraries or online at www.oregonlegislature.gov/bills_laws.

Keep it Looking Cared for

Housing that looks well cared for is more likely to attract good tenants, and it will also discourage many who are involved in illegal activity. Changes that communicate "safe, quiet, and clean" will encourage tenants to be good neighbors and maintain your property. Some best practices include:

- Keep the exterior looking clean and fresh (litter-free, fresh paint, exterior storage of bikes, appliances, abandoned vehicles, etc. forbidden)
- Keep the yard and garden looking well kept.

Smoke and Carbon Monoxide Detectors/Alarms.
Smoke and Carbon Monoxide detectors or alarms must be operable and installed in all sleeping rooms, in or within 15 feet outside the sleeping rooms, and on each level of the house, including basements and attics with habitable space.
Emergency Exits.
Tenants need to be able to escape if a fire blocks their way to the main outside doors of the dwelling. Therefore:

- Each apartment, or house, must have at least one approved emergency exit. This "secondary" exit could be used if, for example, fire is blocking the main entrance of the dwelling unit
- Every bedroom must also have a "secondary emergency exit," a working window or door that opens directly to the outside that could be used to accomplish an emergency rescue or escape. These emergency exits must be large enough for an adult to be able to use and able to stay open long enough for the occupants to get out. Bars or special locks that would prevent an easy exit are not allowed.
- Windows and doors should never be blocked. Required exit doors and secondary exits must be accessible; so furniture, appliances or other items that could block access may

[1] requirements apply only to those rentals that meet the legal definition of what is called a "Manufactured Dwelling Facility." See ORS 90 for the complete definition.

not be placed in their way.

- All fire escapes, as well as all stairways, stair platforms, corridors, or passageways that may be a regular means of emergency exit must be kept clear and unobstructed
- Display of Address Number:. All dwellings must have address numbers posted in a conspicuous place so they may be read from the street or public way and units at apartment houses must be clearly numbered, or lettered, in a logical and consistent manner.

When Permits Are Required

Basic maintenance such as painting, unclogging a sink, and general yard maintenance may be performed without a permit. However, permits *are* required for more extensive maintenance tasks including such work as electrical and plumbing repairs or upgrades as well as any type of structural repair or installation. If you need a permit, contact Mid Columbia Building Codes Services, 1113 Kelly Ave., The Dalles, Oregon, 97058. 541-298-4461. As examples, permits are required to do the types of work described below:

- Electrical
- Plumbing
- Construction
- Installation of Woodstoves[2]

Screening Prospective Tenants - The Basics

Use a method that welcomes all responsible applicants while discouraging the few who intend to break the rules from applying. Use a process that is legal, simple, and fair.

1. At every step reinforce the message that you are an active manager, committed to providing honest tenants with good housing and keeping dishonest tenants out.

2. Establish written screening criteria. Communicate those criteria to the applicant. Communicate your commitment to complete applicant screening.

3. Thoroughly screen each applicant. Most landlords don't. Check photo I.D. and run a credit check, independently identify and contact previous landlords, verify income.

4. Don't cut corners. Don't believe it won't happen to you. Don't trust without verifying, and don't accept applicants just because your "gut" says they're okay.

5. Apply your rules and procedure equally to every applicant.

6. Learn the warning signs of dishonest applicants.

7. Communicate that as an active landlord, you know the neighbors, they "watch" the property, and that you stay in contact with them.

Overview

There are two ways to screen out potentially troublesome tenants. The goal is to set up a screening process that will attract every good applicant while discouraging, or discovering, every problem applicant. The two basic elements to effective screening:

1. Encourage self-screening. Set up situations that discourage those who are dishonest from applying. Every person planning illegal activity who chooses not to apply is one more you don't have to investigate.

2. Uncover past behavior. More often than not, if the tenant has a history of misbehavior at a rental property, even a very basic background check can reveal poor references, substantial credit issues, or falsehoods recorded on the application.

The goal is to screen out applicants planning illegal behavior as early as possible. It will save you time, money, and all the entanglements of getting into a contract with people who may damage your property and harm the neighborhood.

Written Tenant Criteria: What to Post

It is valuable to develop written rental criteria and post a copy of those criteria in your rental office. If

[2] See Oregon Fire Code, Chapter 5, Section 505.1. Available online. Search for "Oregon Fire Code

you do not have a rental office that all applicants visit, give a copy of the criteria to *every* applicant. *For landlords who use an applicant screening charge, this is no longer advice — it is the law*. ORS Chapter 90 requires that, before you may accept a screening charge, you must provide the applicant with a copy of your written screening criteria along with other specified information (see ORS 90.295). Also, *for those who require an applicant screening charge, note that "posting" the criteria in your office isn't good enough. You must give each applicant written notice of your criteria*.

The following is intended as a general example of written criteria a manager might use. The intent is to encourage every honest tenant to apply, while providing those who plan to break rules or otherwise use the property illegally with a clear incentive to pursue housing elsewhere.

By itself, this information will not prevent every person involved in illegal activity from applying. Many will expect landlords to be either too naïve, or too interested in collecting rent, to implement effective screening. The important thing is to follow through in word and action. Continue reinforcing the point that you enjoy helping responsible tenants find good housing by carefully screening all applicants, and then actually screen them.

While we have attempted to ensure that the following section adheres to the goals of Fair Housing, this does not replace your responsibility to understand the law and follow it. Applying Fair Housing practices involves much more than the language used in the applicant screening process. If you are unfamiliar with your Fair Housing responsibilities, seek additional information from your local rental housing association, from an attorney who specializes in the subject, or from the Fair Housing Council of Oregon at 800-424-3247 or www.fhco.org.

Also, the following is only an example intended to show various types of rules that might be set. You should adjust the criteria as appropriate for your own needs. Whatever criteria you set, have them reviewed by an attorney familiar with current landlord-tenant issues before you post them.

Application Process

It is important to set the tone for your applicants, making sure that good applicants want to apply and that problem applicants may begin to think twice. Here's one approach:

We are working with neighbors and other landlords in this area to maintain the quality of the neighborhood. We want to make sure that people do not use rental units for illegal activity. To that end, we have a thorough screening process.

Please note that we provide equal housing opportunity: We do not discriminate on the basis of race, color, religion, sex, disability, national origin, familial status, marital status, source of income, age, or sexual orientation.

Applicant Screening Criteria

Require a complete application from every adult. *One for each adult (18 years of age or older). If a line*

isn't filled in (or the omission explained satisfactorily), we will return it to you.

This requirement helps make sure that every application has enough information for you to make an informed decision. One of the simpler methods for hiding one's financial history is to "forget" to fill in one's social security number or date of birth on the application. Without a name, social security number, and date of birth, credit checks cannot be run. To the person contemplating illegal activity, this requirement will communicate a very basic message: that you will actually screen your applicants. That message alone will turn away some. The core purpose of this requirement is making sure you get complete information. For example, make sure you get full names, including middle names. It is hard to run a credit check without an accurate name.

This rule also allows you to receive an application from *each* roommate and not just the one with the better rental history. People involved in illegal activity may have friends and roommates who still have clean credit or a positive rental history. The obvious approach for such people is to have the person with the better rental history apply and then follow that person into the unit. You have a right to know who is planning to live in the unit, so require an application and verify the information for each adult.

Rental history verifiable from unbiased sources. *If you are related to one of the previous landlords listed, or your rental history does not include at least two previous landlords, we will require a qualified co-signer on your rental agreement (qualified co-signers must meet all applicant screening criteria).*

It is your responsibility to provide us with the information necessary to allow us to contact your past landlords. We reserve the right to deny your application if, after making a good faith effort, we are unable to verify your rental history.
If you owned, rather than rented, your previous home, you will need to furnish mortgage company references and proof of title ownership or transfer.
Variations of this rule have been used by many landlords to address the issue of renting to those who do not have a rental history or those who say "I last rented from my mother (or father, aunt, or uncle)." This makes it harder for a dishonest applicant to avoid the consequences of past illegal behavior. While loyal relatives may say a relation is reliable, they might be reluctant to co-sign if they know that isn't true.
If requiring a co-signer seems unwieldy for your type of rentals, you may want to offer a different option: Require additional prepaid rent or security deposit from people who don't have a verifiable rental history.
Sufficient and verified income/resources. *If the combination of your monthly personal debt, utility costs, and rent payments will exceed X % of your monthly income, before taxes, we will require a qualified co-signer on your rental agreement. If the combination exceeds X+Y % of your monthly income, your application will be denied.*
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We must be able to verify independently the amount and stability of your income (e.g., through pay stubs, employer/source contact, or tax records. If self-employed: business license, tax records, bank records, or a list of client references.)
You can, and should, verify self-employment. Those involved in illegal activity may describe themselves as self-employed on the assumption that you will have to take their word as verification. Some will be unprepared to supply tax returns, a copy of a business license, or other verification.
Two pieces of I.D. must be shown. *We require a photo I.D. (a driver's license or other government-issued photo identification card) and a second piece of I.D. as well. Present with completed application.*
This is a simple and effective rule. Note that the second piece of I.D. could be a social security card or could be something less "official," such as a credit card. People who carry fake I.D. often don't carry *two* pieces of fake I.D. with the same name on it.
False information is grounds for denial*. You will be denied rental if you misrepresent any information on the application. If misrepresentations are found after a rental agreement is signed, your rental agreement will be terminated.*
If your applicants are not honest with you, you may turn them down. It's that simple.
A history of criminal behavior may result in denial of your application. *You will be denied rental if in the last X years you have been engaged in, or convicted of, drug-related crimes, person crimes, sex offenses, financial fraud, or any other type of crime that would adversely affect the property of the landlord or a tenant or adversely affect the health, safety or right to peaceful enjoyment of the premises of the residents, the landlord or the landlord's agent.*
This criterion is more controversial than it may seem. In April 2016, for example, the U.S. Department of Housing and Urban Development issued updated guidance advising that overly- broad criminal conviction screening criteria could be in violation of Fair Housing laws (specifically prohibitions against discrimination based on race, color, and national origin). HUD recommends, among other steps, ensuring policies have "legally sufficient justification" as "necessary to achieve a substantial, legitimate, nondiscriminatory interest" of the landlord and that there is not a less discriminatory alternative to achieve the same goal. Concern about these issues is also one of the reasons the 2013 regular session of the Oregon Legislature introduced legal limits on the types of convictions that a landlord may consider as a basis for adverse action. In a related issue, should you wish to deny a person for criminal behavior for which there has *not* been a conviction, ORS Chapter 90 now forbids relying on the fact of an arrest to do so, with some exceptions for pending charges that have not been dismissed. Instead, other independent information or documentation, such as the word of a past landlord or other person familiar with the relevant behavior would be required in order to deny based on behavior that had not resulted in a conviction or pending charges. Also, don't use a criminal

background screening requirement as a crutch — many who engage in criminal activity haven't yet been convicted of a crime. In addition, few who plan to use a rental for illegal activity, whether or not they have a criminal record, will have a verifiable, acceptable rental history. So, if you use this requirement, be sure you continue to perform other recommended screening steps conscientiously. Because interpretation of this area of law may continue to change, landlords are advised to verify the sufficiency of any criminal background checking criteria with a qualified attorney before implementation.

Poor credit record (overdue accounts) may result in denial of your application. *Occasional credit records showing payments within ___ to ___ days past due will be acceptable, provided you can justify the circumstances. Records showing payments past ___ days are not acceptable.*

If you are renting property, you are making a loan of the use of your property to your tenant. Banks check credit before lending money, and you should before "lending" the use of your property.

You may also want to include exceptions for specific types of bills. For example, you might wish to allow exceptions for unpaid medical bills, while setting stricter standards for other expenses. However, regardless of what other exceptions you define, it is a very poor idea to accept tenants who have a history of not paying the rent — if they didn't pay the last landlord, they may not pay you either. It is a poor idea to accept tenants with a history of not paying for other housing-related services, such as heat or electricity, that are required to ensure a rental unit is habitable.

Certain court judgments may result in denial of an applicant. *If you have had unpaid collections in the last X years, an FED judgment against you (a court-ordered eviction) that occurred less than 5 years ago, or any judgment against you for financial delinquency, your application may be denied. This restriction may be waived if there is no more than one instance, the circumstances can be justified, and you provide a qualified co-signer on your rental agreement.*

Although, you may turn down applicants who have been through a recent court- ordered eviction or have other unpaid financial judgments against them, we recommend maintaining some flexibility here. It is illegal for an Oregon landlord to discriminate against an applicant on the basis of that applicant having successfully defended a court-ordered eviction. If the judgment was in the tenant's favor, don't use that court proceeding as a basis to deny the applicant.[3]

Poor references from previous landlords may result in denial of your application. *You will be denied rental if previous landlords report significant levels of noncompliance activity, including but not limited to:*

- *Repeated disturbance of the neighbors' peace.*
- *Gambling, prostitution, drug dealing, or drug manufacturing.*
- *Allowing persons not on the rental agreement to reside on the premises.*
- *Damage to the property beyond normal wear for which timely reimbursement by the tenant was not provided.*
- *Violence or threats against landlords, other tenants, or neighbors.*
- *Disabling a smoke alarm or carbon monoxide detector.*
- *Smoking inside a rental home governed by a no-indoor-smoking rule.*
- *Failure to give proper notice when vacating the property.*

Also, you will be denied rental if previous landlords would be disinclined to rent to you again for other reasons pertaining to the behavior of yourself, your pets, or others allowed on the property during your tenancy.

Even when applying these basic past rental behavior criteria, flexibility in a few specific areas is important. For example, if the applicant was a victim of domestic violence at the last rental and the noncompliance activity is limited to issues associated with the perpetrator's acts of domestic violence, a landlord may not use that information to take adverse action against the victim.

There is a $X application screening charge. *If you are offered the unit and accept it, we will keep*

[3] As of January 1, 2014, landlords in Oregon may not deny applicants based on past evictions if the judgment occurred five or more years prior to submission of the rental application.

the payment and apply it to your first months rent. If you are offered the unit and refuse it, or if you withdraw your application after we have incurred screening expenses, we will not return your payment. In all other cases, the payment will be returned to you. Before accepting payment, we will provide you with all notices that ORS Chapter 90 requires be provided in advance of accepting your payment. You will be provided with a receipt for the charge you pay. Also, should we deny your application, we will provide a written statement of the reason for the denial and we will refund your applicant screening charge.

This is just one example. Be very careful when setting criteria for collection of payments with applications. The practice of charging an "applicant screening charge" is closely regulated by the Oregon Residential Landlord and Tenant Act. The law defines specific limits for the amount that can be charged and sets specific types of disclosure requirements.

We will accept the first qualified applicant(s).

In the interests of ensuring that you meet the requirements of Fair Housing law, this is the best policy to set. Take applications for tenancy in the order received, noting the date and time on each application (or, as is often the case, on each *set of applications for one tenancy* when more than one adult applies to share the same tenancy). Start with the first application(s). If the applicant(s) meets your requirements, go no further and offer the unit to the first applicant(s). This is a fair approach, and it helps make sure that you do not introduce inappropriate reasons for discriminating when choosing between two different, qualified sets of applicants.

We will require up to X business days to process an application.

Many landlords specify five business days or seven consecutive days. Generally, it is a good idea to allow yourself at least a week, although you may often complete the process more quickly.

Rental Agreement

Some landlords post a copy of the rental agreement next to their screening requirements. Others offer a copy to all who wish to review it. The key is to make sure that each applicant is aware of the importance you place on the rental agreement. In addition, you may want to set a procedure to ensure that every applicant is aware of key elements of the agreement that limit a tenant's ability to allow others to move onto the property without the landlord's permission. One approach:

If you are accepted, you will be required to sign a rental agreement where you agree to abide by the rules of the rental unit and/or apartment community. A complete copy of our rental agreement is available for anyone who would like to review it.

Please read the rental agreement carefully, as we take each part of the agreement seriously. For example, along with many other requirements, the rental agreement:

- *Allows only those people listed on the rental agreement to live at the property (you'll need our written permission to move someone else in);*
- *Does not permit subleasing;*
- *Does not allow disturbing the neighbors;*
- *Forbids (or allows) smoking inside the dwelling unit;[1] and*
- *Forbids illegal activity on the property including drug use, sale, growth, or manufacture.*

The agreement has been written to help us prevent irresponsible and illegal activity from disturbing the peace of our rental units and make sure that our tenants are given the best housing we can provide.

Other Forms and Procedures

You may want to post other information, as applicable, about waiting list policies, security deposits, prepaid rent, pet deposits, check in/check-out forms, and other issues relating to rental of the unit.

Applicant Background/Screening Checks

It is recommended that you have a background/screening check done on all applicants of your property before a lease is signed. Some landlords require an applicant to pay for this service prior to a background/screening(s) being conducted. Many employers conduct a background/screening check before employees are hired. It's important to note when this background/screening check was

conducted.

Rental Applications

It is recommended that prospective tenants complete a rental application which can be found online or you can easily create one yourself. Information on an application includes:

- Full name, including middle initial, any previous names, aliases or nicknames
- Permanent address
- Other occupant names, birthdates and relation (children, etc)
- Pet information
- Birthdate
- Drivers license number and state
- Social security number (unless this is provided for the background/screening check)
- Names, address and phone number of past two landlords
- Income/employment history for the past year, contact/supervisor's name, phone number, address (if self employed – ask for copy of business license, tax returns, bank records or client references)
- Additional income
- Bank references
- Name and phone number for emergency contacts
- "During the last [X] years have you or any person named on this application engaged in, or been convicted of, dealing or manufacturing illegal drugs?" (You could also ask about other types of crime including person crimes, sex offenses, financial fraud, or any other type of crime that would adversely affect the property of the landlord or a tenant or adversely affect the health, safety or right to peaceful enjoyment of the premises of the residents, the landlord or the landlord's agent."
- "During the last [X] years have you or any person named on this application...
  - Allowed unauthorized occupants (persons whose occupancy is not permitted by a rental agreement) to move into rental property with you?
  - Kept an unauthorized pet at rental property?
  - Disabled a smoke alarm?
  - Smoked at rental property where smoking was not permitted?

If they do have a history of criminal or other lease violating behavior, they may not tell the truth about it. If you discover they have lied, you have appropriate grounds for denying the application or, with the right provision in your lease, terminating the tenancy. Also, it is one more warning to dishonest tenants that you are serious in your resolve.

How to Verify Information

It is well worth the time, money and effort to do these steps:

- **Compare the I.D. to the information given on an application.**
- **Have a credit report run and analyzed.**
- **Independently identify previous landlords.**
- **Verify the past address through the credit check.** If the addresses on the credit report and the application don't match, find out why. If they do match, you have verification that the tenant actually lived there.
- **Verify ownership of the property through the tax rolls.** A call to the county tax assessor will give you the name and address of the owner of the property that the applicant previously rented. If the name matches the one provided by the applicant, you have the actual landlord. Note that, in some jurisdictions, this same information can be found online through tax assessment data bases. If the name on the application doesn't match with tax rolls, it could still be legitimate. Sometimes tax rolls are not up to date, property has changed hands, the owner is buying the property on a contract, or a management company has been hired to handle landlord

- **If possible, cross check the ex-landlords' phone numbers through an online search or phone book.** This will uncover the possibility of an applicant giving the right name, but a different phone number (i.e., of a friend who will pretend to be the ex-landlord and vouch for the applicant). If the owner's number is unlisted, you will have difficulty verifying the accuracy of the number provided on the application.
- **Have a prepared list of questions that you ask each previous landlord.** Applicant verification forms, available through rental housing associations, give a good indication of basic questions to ask. You may wish to add other questions that pertain to your screening criteria. In particular, many landlords we spoke with use this question: *"If given the opportunity, would you rent to this person again?"* Also, if you suspect the person is not the actual landlord, ask about various facts listed on the application that a landlord should know such as the address or unit number previously rented, the zip code of the property, and the amount of rent paid. If the person is unsure, discourage requests to call you back. Offer to stay on the line while the information is looked up.
- **Get co-signers if necessary.**
- **Verify income sources.**
- **Consider checking for criminal convictions.**

The Importance of Screening Employees

Many rental property owners hire employees to assist with tenant screening, routine maintenance, and other tasks. It is critical that these individuals be screened,. In general, when an employee breaks the law while on duty, both the employee *and* the employer can be held responsible by the harmed party.

Other Screening Tips and Warning Signs

The following are additional tips to help you screen applicants. You should also be familiar with the warning signs described in the chapter on *Warning Signs of Drug Activity.*

- **Consider using an "application interview."**
- **Watch for gross inconsistencies.**
- **Watch out for Friday afternoon applicants who say they must move in that very weekend.** Tell the applicant to find a hotel or a friend to stay with until you can do a reference check. It may cost you some rent in the short run. It could save you money in the long run.
- **Observe the way applicants look at the home.** Do they look in each room? Do they ask about other costs, such as heating, garbage service, or others? Do they notice improvements you've made? Do they mentally visualize where the furniture will go, which room the children will sleep in, how the sun lies on the backyard? Or did they barely walk in the front door before asking to rent, showing a surprising lack of interest in the details? People who are planning an honest living care about their home and often show it in the way they look at the property. Some who rent for illegal operations forget to pretend they have the same interest.
- **Consider driving by the applicant's current residence.** Some property managers consider this step a required part of *every* application they verify. A visual inspection of applicants' current residences may tell you a lot about what kind of tenants they will be.
- **Announce your approach in your advertising.** Some landlords have found it useful to add a line in their ads announcing that they do careful tenant screening or that they run credit checks. It is important to make sure the opportunity to apply for your units, and to be accepted if qualified, is open to all people regardless of race, color, religion, sex, disability, national origin, familial status, marital status, source of income, sexual orientation, and age.

RENTAL AGREEMENTS

Use a Current Rental Agreement

Many landlords continue to use the same rental agreements they started with years ago. Federal and state law can change yearly, and case law is in constant evolution. With an outdated rental agreement,

you may give up some of your rights. If a tenant chooses to fight you in court, an outdated rental agreement may cost you the case. There are both rental housing associations and legal publishing companies that provide rental agreement forms (as well as other management forms) and consider it their job to make sure their forms are consistent with current law. Unless you are planning to work with your own attorney to develop rental forms, purchasing updated forms from one of these organizations (see *Appendix*) will be your best bet. Purchase your forms from a reputable source and make absolutely sure you are buying forms tailored specifically to current ***Oregon*** law.

Month-to-Month or Long-Term Lease?

In many parts of the country, year-long leases are standard, while in Oregon it is still common for many landlords to rent on a month-to-month basis from the day the tenant moves in. A month-to-month rental agreement gives you (and the tenant) the additional option of terminating the rental agreement with a no-cause notice. If you want the maximum ability to remove tenants involved in illegal activity, this is the type of rental agreement to use. There are benefits to leases that both parties can enjoy. Good tenants may appreciate the stability of a longer term commitment, and you may benefit if you have tenants who respect the lease term as a binding agreement. It is true that you give up your right to serve a *no*- cause notice during the period of the lease. However, you may serve one of the *for*-cause notices defined in landlord-tenant law if tenants are in violation of that law or not in compliance with the lease. Landlords who are familiar with the process for enforcing for-cause evictions can succeed with these notices as well. The decision about the type of rental agreement to use (unless you are managing subsidized or public housing with specific lease-term requirements) is up to the individual landlord; either approach can work.

Also, remember that while the terms of your rental agreement are important, even the best rental agreement is not as valuable as effective applicant screening. *The most important part of any rental agreement is the character of the people who sign it.* No amount of legal documentation can replace the value of finding responsible tenants.

Lease Language to Emphasize

Inspect the rental agreement you use to see if it has language that addresses the following issues. If they are not in the rental agreement, consider adding them. To prevent having issues with tenants related to these issues, it's recommended that you should point out this language to your tenant and communicate that you take your rental agreement seriously. This list is not at all comprehensive, nor does it cover all elements that a lease or rental agreement must have in Oregon.

1. Subleasing is not permitted without prior approval by the landlord.

2. Only those people listed on the rental agreement are permitted to occupy the premises.

3. No illegal activity. Make it clear that the tenant must not allow illegal drug activity, other criminal behavior, or allow other activity on or near the premises that violates applicable law**.**

4. For apartments: the landlord is the "person in charge" of the common areas.

5. The tenant will not unduly disturb the neighbors. drug criminal's first observed, evict-able offense is the dealing or manufacturing of narcotics.

6. Written notices from either party may be served by "posting and mailing." In Oregon, hand-delivered landlord-tenant notices begin at 11:59 p.m. on the day of service if the notice counts *days* (e.g., 30-day notice) or begin immediately upon service if the notice counts *hours* (e.g., 24-hour notice). All mailed landlord-tenant notices, begin at 11:59 p.m. on the day they are mailed; however*, the length of the notice must be extended by three days*. There is also a third option, but it only applies if your rental agreement spells it out: With the right clause in your rental agreement, written notices from either party could be served by fixing the notice securely to the tenant's or landlord's front door[1] and, on the same day, mailing a copy by regular first-class mail. Although the law is no longer entirely clear on this point, courts have typically considered the notice served on the day that both steps are taken.

8. Indoor and possible, outdoor tobacco use is not permitted. Many landlords enforce tobacco free properties to discourage smoking and helping those smokers who want to quit.

Lease Addendum Forbidding Illegal Activity

Many rental owners have begun to attach an addendum to their rental agreements spelling out specific crimes under state and local law that will be considered violations of the lease. Before using such an addendum, have your attorney review it.

While the behaviors proscribed in such addenda are generally already against the law, spelling it out in the lease may give you additional legal choices should you have to evict on the basis of criminal behavior. Announcing your commitment to safe housing through the use of such a lease addendum can help discourage those planning criminal activity from moving in.

Recreational Marijuana and Rental Housing

In July of 2015 it became legal, under state law, for most adults in Oregon to smoke marijuana recreationally. In short, Oregon laws now permit people who are at least 21 years of age to grow up to four plants on their property, possess up to eight ounces of usable marijuana in their homes and up to one ounce on their person. State law continues to prohibit smoking or using marijuana in a "public place," which is defined as "a place to which the general public has access and includes, but is not limited to, hallways, lobbies, and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation."

Note that "public place" does not mean only "public property" but more broadly places to which the public has access — so recreational marijuana smoking would not be permitted in a bar or restaurant, for example, even though such commercial establishments are commonly privately owned. However, state law no longer forbids people 21 and older from smoking marijuana inside their homes or, generally, on the portions of residential property exclusively occupied by one tenancy — so no smoking in common areas, shared hallways or public sidewalks, for example, but smoking inside one's own dwelling unit or in one's own backyard is generally allowed under state law. (While the law isn't entirely clear, the front yard of a private residence may be considered publicly accessible, so a safer bet is to take it to the backyard.)

For landlords, what this means is that recreational marijuana that is possessed, used, or grown consistent with Oregon law is now, very roughly, as legal in rental property as tobacco smoking or pet ownership — two other legal activities that are often limited or regulated by property owners. That is, a landlord who wishes to forbid recreational marijuana on rental property may do so, even though state law otherwise permits it. The wrinkle that makes recreational marijuana different from these other two activities is that the federal government (which subsidizes the rent for many in affordable or public housing) considers any form of marijuana possession illegal. The following are general guidelines for landlords considering policies in relation to recreational marijuana.

- **If you are renting non-subsidized, market-rate housing.** If your rentals do not have any sort of federal subsidy or contract attached to them, then the following guidelines apply. If you wish to allow possession and use of marijuana consistent with Oregon's recreational marijuana law on your property, you may do so. If you do not wish to allow smoking of marijuana on your property (inside, outside, or both) you can no longer rely on a general rule forbidding illegal activity, but instead must specify that smoking (or growing or possession) are not permitted. That is, you may limit or forbid the behavior at your property by contract, just as you may limit or forbid the otherwise legal activities of tobacco smoking or pet ownership.

Be aware that case law is likely to grow around this new law that may change how it is interpreted. Generally, if you are planning to limit your tenant's permission to use recreational marijuana, it would make sense to focus on the behaviors that are most directly connected to potential property damage — e.g., smoking and indoor growing are more of a threat to rental property than is simple possession of a legal quantity.

- **If you have properties or tenancies with any sort of federal subsidy attached:** Because marijuana possession remains a crime under federal law, you may be in violation of your own contractual obligations if you allow a tenant in public, subsidized, tax credit, or similar properties (along with those on the Section 8 Housing Choice Voucher program) to possess or use marijuana, whether recreational or medical. Because the recreational marijuana law is quite new, it is particularly important to check with your attorney for the best current practice on this issue.

Finally, if you have both types of property or tenancies, check with your attorney if you are contemplating setting different rules in different situations on these issues. Often, the safer route is consistency in lease and house rules across all tenancies.

Medical Marijuana and Rental Housing[4]

Oregon's medical marijuana law[1] permits a person who has been issued a "marijuana grow site registration card" to grow and possess marijuana in specified quantities for up to four "registry identification cardholders." Those who are "registry identification cardholders" have a right to use marijuana to relieve symptoms or effects of a debilitating medical condition and must do so in a manner that is, among other requirements, not in a public place or in the "public view." In November of 2010, Oregon's Bureau of Labor and Industries (BOLI) issued a policy change that provided some clarification regarding the degree to which a landlord may legally regulate practices associated with the medical marijuana law. While previous instruction on the degree to which an Oregon landlord could limit medical marijuana practices in a rental unit involved a distinction between personal use and growing for others, the latest policy change allows a simpler answer. Under the policy change announced in 2010, BOLI will no longer investigate claims of housing discrimination regarding the use of medical marijuana. The action followed an Oregon Supreme Court ruling relating to the preemption of State law by Federal law regarding medical marijuana. In other words, Oregon landlords who elect not to rent to persons with medical marijuana cards may now have a firmer legal basis to do so. Nevertheless, because the interpretation of these and related legal issues continues to evolve, our best recommendation is to check with the Fair Housing Council of Oregon and to seek the advice of a competent landlord-tenant attorney for the latest interpretation of these issues.

Pre-Move-In Inspection

Prior to signing the rental agreement, walk through the property with the tenant and make a visual inspection together. Agree on any repairs that need to be done. Write it down and sign it. Make agreed-upon repairs and document having done so. Give copies to your tenant and keep signed and dated copies in your files. Now, should tenants damage the property, you have a way to prove it happened after they took possession of the unit. An even better record may be kept by taking pictures or video-recording the walk-through with the tenant.

The pre-move-in inspection can reduce the likelihood of some tenants causing damage to the premises. It can also protect you against the rare case of a tenant who chooses to damage the property and then complains to a code enforcement agency that the damage was a preexisting condition, thus potentially blocking an otherwise legitimate eviction attempt.

While you can develop such forms yourself, the simplest approach is to contact a property management association for check-in/check-out inspection forms.

Smoke & Carbon Monoxide Alarm Contracts

Oregon landlord-tenant laws require that you provide your tenant with a unit in "habitable condition" that includes "safety from fire hazards" as well as a carbon monoxide alarm in applicable structures. The following provides additional detail on these two safety requirements:

Smoke Alarms

Landlords are required to do the following:

1. Supply and install a working smoke detection device(s)[5] for each unit. Smoke alarms can be provided with two different technologies: ionization or photoelectric. Ionization alarms are required to have a 10-year battery and include a "hush" feature that allows the unit to be silenced if nuisance smoke sets it off. A photoelectric fire alarm unit does not require a silencing button or a long-life battery. They can have built-in, long life, or regular batteries. Either type can be hardwired into the

[4] See ORS 475.300 to 475.346 for the text of the law.

[5] contained devices and a "smoke detector" which now means a centrally wired system with a control panel. The law now defines two types of smoke detecting devices, a "smoke alarm" which refers to one or more self-

home's electrical system. Both types of fire alarms, if hardwired, are required to have a battery backup (long life is not required). Oregon law dictates the types of smoke alarm that can be sold in Oregon (see ORS 479.257). Since states surrounding Oregon don't share the same laws and standards, there are variations in smoke alarms being sold outside of Oregon.
It is still up for debate regarding which type of smoke alarm is best. In rental units, the ionization smoke alarm with the silencing button is a good choice because it allows "nuisance alarms" to be silenced.
2. Provide written instructions for testing the smoke detection device. The instructions must be given to the tenant at the time the tenant first takes possession of the unit. Also, if your alarms are equipped with a "hush" button feature, explain how the silencing button operates when nuisance smoke sets the alarm off. This will further help to prevent the tenant from disabling the smoke alarm by removing the batteries**.**
3. Provide working batteries at the start of any new tenancy.
4. Provide maintenance of the device (other than replacing dead batteries) upon written notice from the tenant of any deficiency.
5. Test and maintain smoke detection devices located in the common areas of any multifamily rentals.
Tenants must:
Test the smoke detection device(s) in the rental unit at least every six months. Tenants must also notify the landlord in writing of any deficiency.
Replace batteries as needed. Note: While ORS 90.325(f) requires that tenants replace the batteries as needed. Continuing to replace long-life batteries may extend the device's life beyond its operational limit.
Not remove or tamper with functioning smoke detection devices. This includes removal of still working batteries for any purpose other than immediate replacement.
Some landlords have tenants sign a copy of the notice that describes how and when to test the smoke alarm or detector and states the tenant's responsibility to do so. Consider keeping a maintenance log of the smoke alarm's performance. Each time a residential unit is entered for maintenance or inspection by the landlord, manager, or maintenance staff, test every smoke alarm and document its condition. If a tenant has disabled a smoke alarm, document it, correct it, and take prompt lease enforcement action. This is more than a paperwork exercise. Without a properly working smoke detector, if there is a fire, lives could be lost — particularly if tenants are asleep when the fire begins. Make sure that if a fire breaks out, your tenants will have an early and effective warning.

Carbon Monoxide Alarms

All dwelling units that have a carbon monoxide source (e.g., fireplace, or heating or cooking sources that involves the combustion of oil, coal, gas, wood or similar materials), or are located within a structure that has a carbon monoxide source (e.g., attached garage or other carbon monoxide sources), must have one or more carbon monoxide alarms installed in compliance with State Fire Marshal rules and the state building code. Landlords are also required to provide tenants of such dwelling units with a written notice containing instructions for testing of the alarm no later than at the time the tenant first takes possession of the premises. Generally, the written notice for carbon monoxide alarms covers similar requirements to those that have been established for smoke alarms. Contact a provider of Oregon rental forms (see APPENDIX) or an experienced landlord-tenant attorney for additional information.

Exclusion Criteria

In multifamily property, it is important to set rules for the common areas to ensure, in particular, that the manager has the ability to exclude nonresidents from the common areas of the property. The section on *The Role of Police* discusses the trespass exclusion process in more detail (page 89). The following is an example of exclusion rules suggested by police agencies in Oregon and used successfully in public housing in Oregon:
Any nonresident will be directed to leave and may be barred from returning to the premises if that person does one or more of the following:

- *Makes unreasonable noise.*
- *Engages in fighting or in violent, tumultuous, or threatening behavior.*
- *Substantially interferes with any right, comfort, or convenience of any (Name of premises) resident or employee.*
- *Engages in any activity that constitutes a criminal offense.*
- *Damages, defaces, or destroys any property belonging to (Name of premises) or any resident or employee.*
- *Litters on (Name of premises) property.*
- *Drives in a reckless manner.*
- *Consumes or possesses an open container of any alcoholic beverage in the common areas without being accompanied — meaning actual physical presence — by an adult (21 years of age or older) resident of (Name of premises).*
- *Violates any applicable city or county curfew ordinance.*

Any person who fails to leave the premises after being directed to do so, or who returns to the premises after being given such direction, will be subject to arrest and prosecution for criminal trespass under ORS 164.245.

ONGOING MANAGEMENT

The Basics

Maintain the integrity of a good tenant-landlord relationship.

1. Managers who encourage a landlord-tenant relationship based on the values of mutual respect, responsibility, and prompt, open communication often find it easier to enforce rules when the need arises *and* find that the need arises less frequently.

2. Don't bend your rules. By the time most criminal behavior at rental property is identified, there is a history of lease noncompliance that the landlord ignored.

- Serve the appropriate notices quickly to reinforce your commitment.
- If you do not serve appropriate notices while continuing to accept rent, understand that doing so may forfeit your right to enforce parts of the lease.

3. Know, and fulfill, your responsibilities as a landlord.

4. Conduct periodic inspections.

5. Keep a paper trail of all activity.

6. Open communication channels so you hear of problems early.

- Encourage tenants to feel comfortable letting you know of property condition issues and, in multifamily property, of problems associated with other tenants when noncompliant behavior harms the peace at the property.
- Trade phone numbers with property neighbors.
- In multifamily properties, build a sense of community with apartment watch and apartment organizing techniques.

"Management 101"

While the material that follows in this chapter primarily focuses on meeting basic responsibilities of ongoing management, it is impossible to over-emphasize the value of a wide range of management techniques that are not so much a function of law, but of human nature. In a sense, the most important

skill for successful property management is not the ability to maintain property, nor is it the dedication to ensure one's rental agreements remain up-to-date with current law, as helpful as both of those can be. Rather, it is the ability to manage people well. Good, experienced managers understand the importance of setting and reinforcing clear expectations, building an environment of mutual respect, encouraging routine open communications, modeling desired behavior, addressing problems early, and acknowledging beneficial performance.

People who are genuinely skilled in such management approaches can expect to be more successful, with better behaved and more appreciative tenants, than those landlords who rely on the strength of law to ensure acceptable behavior. The desire to take uncommonly good care of another's property, to pay rent on time (or even early), and to be a good and communicative neighbor does not grow from requirements in a rental agreement alone. It is also a function of both the character of the tenants you select through screening and the tone you set in the landlord-tenant relationship throughout the tenancy. As you consider the basic management approaches described in this chapter, consider how much more effectively they can be applied in an environment where the manager has taken the time to encourage a landlord-tenant relationship based on the values of mutual respect, responsibility, and prompt, open communication.

Don't Bend Your Rules

Key to ongoing management of your property is demonstrating your commitment to the rental agreement and to landlord-tenant law compliance. Make sure you meet *your* responsibilities and hold tenants accountable for meeting theirs. By the time most criminal behavior is positively identified, there is a long history of lease and landlord-tenant law violations behavior that the landlord ignored.

There are strong parallels between this basic rule of property management and a concept in crime prevention known as the "Broken Window Theory" — small signs of disorder (such as a broken window, graffiti, or other petty vandalism), when left unaddressed, can lead to greater disorder.[6] In the landlord-tenant world, a variety of more significant behavior problems can be prevented — including those that may enable very serious criminal activity — if managers

ensure simple compliance issues are addressed early and consistently. Examples of such active management steps include:

- **If you are aware of a serious breach, take action as promptly as possible.** If you accept rent during three or more separate rental periods while knowing that your tenant is breaking a rule, but take no action to correct the behavior, you have effectively lost your right, in most circumstances, to serve notices for the behavior. To protect your rights, you could serve a "termination" notice (such as the 30-day notice with 14 days to remedy a problem). You could also protect your right to enforce the rule by serving a warning notice that meets requirements specified in the statute.[1] Should you accept rent in the third of three separate rental periods during which you were aware of a breach without acting to enforce the agreement, you can protect your right to enforce the rental agreement for that breach by refunding the rent within 10 days after receiving it. Your best approach is to avoid such a situation by enforcing rental agreement rules more promptly.

- **If someone other than the tenant tries to pay the rent, get an explanation.** Also, note on the receipt that the payment is for your original tenants only. Otherwise, you may be accepting new tenants or new rental agreement terms.

- **If you have reason to believe that a person not on the lease is living in the unit, pursue the issue immediately.** If you take no action to correct the behavior, and you accept rent during three or more separate rental periods knowing the tenant has allowed others to move in, you have accepted the others as tenants as well. If, contrary to your written rental agreement, your tenant allows others to move in, Oregon landlord-tenant law allows landlords with most types of rentals to serve a notice that

[6] See: George L. Kelling and Catherine M. Coles, *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities,* © 1996, Kelling and Coles. The concept was first introduced in "Broken Windows," © 1982 by George L. Kelling and James Q. Wilson, *The Atlantic Monthly*, March, 1982.

advises the tenant to correct the problem in 14 days or face termination of the rental agreement at the end of 30 days (see the section on *Crisis Resolution* for more detail). Alternately, you could require that the person who is not on the lease fill out an application and pass your screening process in order to stay, either as a tenant or as a "temporary occupant" as defined in ORS 90.275.[2]

- **If you have habitability or code violations at your property, fix them.** Maintaining habitable housing for tenants is the most important of a landlord's responsibilities. If your tenant complains to a code enforcement agency, or makes a good faith complaint to you about issues related to the tenancy, some of your rights as a landlord may be compromised. If your tenant complains in good faith about issues related to the tenancy, serving a no-cause notice would be considered an act of retaliation by the landlord and thus not allowed.
- **If a tenant doesn't pay the rent, address the problem.** Some landlords have let problem tenants stay in a unit not just weeks after the rent was overdue, but *months*. While flexibility is important in making any relationship work, be careful about being too flexible. There is a difference between being willing to receive rent late during a single month and letting renters stay endlessly without paying. If you wish to allow your tenants to live in your unit for months on end rent-free, you may do that. The law gives you the ability to prevent this situation, even with very irresponsible tenants. For notice options in a nonpayment situation, see the Section on *Crisis Resolution*.
- **If neighbors call to complain of problems, pursue the issue; don't ignore it.** Few neighbors call landlords about minor problems. If a neighbor calls, find out more about the problem and take appropriate action. If there are misunderstandings, clear them up. If there are serious problems with your tenants, address them. The Section on *Crisis Resolution* gives additional information about steps to take when a neighbor calls to complain. (If the problems reported by neighbors include domestic violence or child abuse, make sure it is reported to police right away and then find out other ways that you can help to stop the victimization. References to domestic violence resources are provided in the *Appendix* of this manual.)

If you respect the integrity of your own rules, the tenant will too. If you let things slide, the situation can muddy fast. Once the tenant is accustomed to your management style, you will be less likely to be caught by surprises.

Habitability Requirements

The following describes some of the basic habitability requirements that apply across the state of Oregon. Landlords are encouraged to be familiar with this.

Oregon law calls it maintaining the premises in a "habitable" condition. The Section 8 program calls it "decent, safe, and sanitary" housing. For a legal description, see ORS Chapter 90 and, if applicable, your Section 8 Housing Choice Voucher contract. On some issues, habitability requirements for federally subsidized rentals, including housing rented to Section 8 participants, exceed the requirements defined by Oregon's Residential Landlord and Tenant Act.

Following is what the State law requires. Note that, under State law, both landlords *and* tenants have obligations.

Landlord Responsibilities

The basic requirement for landlords is to provide the tenant with a "habitable" unit at the time the tenant moves in and provide such repair and maintenance as is necessary to keep the unit habitable. Of course, if a problem is caused by the tenant's negligence or deliberate acts, the landlord may hold the tenant financially responsible for the cost of making repairs and may also serve eviction notices to address the problem behavior — the type of noticed used will depend on the severity of the tenant's behavior. (For more on notice options, see the Section on *Crisis Resolution.*) See the ORS Chapter 90 (available online at www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx) for more on this topic. Overall, landlords must provide:

- **A weatherproof exterior.** Water and weatherproofing of roofs, exterior walls, doors, and windows.
- **Basic components in sound condition.** The floors, walls, ceilings, stairways, and railings must be

maintained in good repair.

- **Supply and maintenance of required systems.** An adequate heating system, electrical lighting and wiring system, and plumbing facilities. Also a water supply that is under either the landlord's or the tenant's control, provides hot and cold water, offers safe drinking water, and is connected to a maintained sewer system. In general, each required system must, at minimum, comply with building codes that were in place at the time of installation.
- **Safe and clean premises**. At the beginning of the rental agreement, both the building and the surrounding property must be safe for normal and foreseeable uses and the premises must be clean, sanitary, and free of rubbish, vermin, rodents, and garbage. Also, any areas of the property that remain in control of the landlord *after* the rental agreement begins (e.g., common areas on multifamily property) must be maintained in that condition by the landlord.
- **Garbage removal**. An adequate number of garbage receptacles and assurance that garbage will be removed on a regular basis. Most Oregon landlords may meet this obligation by requiring the tenant to fulfill it through the written rental agreement; so the landlord could require that the tenant provide garbage cans and arrange for garbage removal.
State statutes allow a landlord to require, through the rental agreement, that the tenant purchase regular garbage service.
- **Appropriate maintenance of other supplied systems.** Maintenance of ventilating, air conditioning, and other facilities or appliances, if supplied or required to be supplied (such as elevators in a high rise) by the landlord.
- **Safety from fire hazard.** This includes providing an installed, working smoke detection device at the beginning of the tenancy. For more information on smoke alarm or smoke detector compliance, see the discussion on page 41.
Also, the phrase from the Oregon statutes "safety from fire hazards" refers to more than just a smoke detector or alarm. For example, housing maintenance codes consistently require secondary exits in all sleeping rooms (and ORS chapter 90 now expressly requires this as well). This means that *each sleeping room must have an exterior door that opens or have a window that opens far enough to meet requirements for emergency escape or rescue*. A window in a sleeping room that is painted shut may be more than just an irritation. It could also be a trap, blocking the only means of escape in the event of a fire. For more information on things to look for when conducting a fire-safety inspection of your property in Portland see pages 98 and 99 in the Appendix.
- **Carbon monoxide alarms for dwellings that have CO sources**. Oregon landlords must ensure that a carbon monoxide alarm is installed in each dwelling unit where the dwelling, or the structure in which the dwelling unit is a part, contains a carbon monoxide source (defined as either "a heater, fireplace or cooking source that uses coal, kerosene, petroleum products, wood or other fuels that emit carbon monoxide as a by-product of combustion" or an attached garage). Broadly speaking, rules for disclosure and responsibility appear designed to follow the same type of structure already in place for smoke alarms.
- **Door locks and window latches.** Working locks for all dwelling entrances and keys for the locks. Working latches for any windows that could permit access into the tenant's rental unit, unless a local code does not permit window latches (generally, local codes permit such latches so long as they can be operated without the use of separate tools or any special knowledge or effort).

Tenant Responsibilities

The essential requirements for tenants are to take care of the property through basic housekeeping, behave as good neighbors, and at the end of the tenancy, return the property to the landlord in the same condition they received it, less only normal wear and tear. In addition to other applicable rental agreement provisions, tenants are required by State law to:

- **Use the property appropriately.** Use the various parts of the premises — bedrooms, kitchens,

bathrooms, etc. — in a reasonable manner considering their intended purpose and design.
Also, the unit may only be used for dwelling purposes (and not, for example, to run a business) unless the tenant and the landlord agree otherwise (see ORS 90.340). Of course, in addition to the landlord's consent, the tenant may also need a local permit to operate a business from a residential dwelling.

- **Keep it clean and take out the garbage.** Keep the premises clean, sanitary, and free from accumulations of debris, rubbish, filth, and garbage, as well as rodents, and vermin (to the degree this is controllable by a tenant in a single unit). Dispose of garbage, ashes, rubbish and other waste cleanly and safely. Keep plumbing fixtures clean.
- **Use appliances and facilities appropriately.** Use in a reasonable manner the various systems and appliances provided at the premises such as electrical, plumbing, sanitary, heating, ventilating, and others. This applies to the common areas also, so elevators and other shared facilities must also be used appropriately.
- **Cause no damage.** Tenants must not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or permit another person to do so. Note that a "negligent" act could include a tenant's failure to notify the landlord of a problem. For example, if a tenant is aware that a pipe has broken during a cold spell but does not tell the landlord, structural rot and other water damage resulting from long-term use of the broken pipe could be considered a result of the tenant's negligence. Note that tenants are not responsible for damage that results from what the law calls "Acts of God" or from conduct by a perpetrator relating to domestic violence, sexual assault, or stalking (though a landlord may require a tenant to provide qualified third-party verification that the tenant or a member of the tenant's household is a victim of such a crime.)
- **Test the smoke detector/alarm and (where required) carbon monoxide alarm and replace batteries.** Tenants are obligated to test the smoke detection devices and installed carbon monoxide alarms in their units at least once every six months, to replace batteries as needed, and to notify the landlord in writing of any operating deficiencies in the devices. They also may not tamper with a functioning alarm or detector, including the removal of still working batteries for any reason other than immediate replacement.
- **Be respectful of the neighbors**. The tenant, and others on the premises with the consent of the tenant, must behave in a way that does not disturb the peaceful enjoyment of the premises by neighbors. Note that tenants are responsible for the behavior of their guests. From an enforcement standpoint, it makes little difference whether the actual tenant is disturbing the neighbors or guests of the tenant are disturbing the neighbors. Either way, the landlord can require the tenant to "cure or quit" — stop disturbing the neighbors or move out. For more information on enforcing landlord-tenant law, see the Section on *Crisis Resolution*.

As you review the rights and responsibilities of both landlords and tenants, remember also who enforces landlord-tenant law: Enforcement is primarily up to the parties in the relationship, the landlord and the tenant. So, while the law identifies various tenant responsibilities, if tenants are not following the law, it is up to the landlord to enforce it, by requesting that the tenant correct the behavior or by serving one of the notices defined in the law. Likewise, if a landlord is not following landlord-tenant law, it is generally up to the tenant to take appropriate action to cause the landlord to correct the problem.

Other Responsibilities

A landlord's responsibilities are defined throughout the Residential Landlord and Tenant Act and elsewhere in state, federal, and local law. A landlord's responsibilities typically fall into three areas: The condition of the premises as delivered to the tenant, the obligation to maintain the unit once it is occupied, and the obligation to respect the rights of the tenant. In addition to meeting the habitability requirements described in the previous section, landlords are generally required to:

- **Respect the tenant's right to private enjoyment of the premises.** It has been a basic characteristic of landlord-tenant relationships for hundreds of years that, once the tenancy begins, the tenant has the right to be left alone. With some specific exceptions for such activities as serving

notices, conducting maintenance inspections, doing agreed-upon or necessary repairs or yard maintenance, or showing the unit for sale or rent, the landlord must respect the tenant's right to private enjoyment of the unit in much the same way that an owner-occupant's right to privacy must be respected. In those areas where a landlord does have a right to access, the landlord must follow the legal notification process (see *Property Inspections,* page 51).

- **Avoid retaliation against a tenant.** Generally, a landlord may not retaliate against a tenant who is legitimately attempting to cause the landlord to meet his or her responsibilities. For example, a landlord may not increase rent, decrease service, attempt to evict, or take other retaliatory action in response to a tenant making a good faith request of the landlord to repair a worn-out furnace, fix a rotting step, or take other actions that fall within the landlord's responsibility under the law. For a complete list of behaviors that are protected from retaliation, see ORS 90.385.
- **Avoid illegal discrimination.** As discussed earlier, you may not use protected class distinctions to screen applicants or to treat tenants differently once you enter into a rental agreement.
- **Enforce the terms of the rental agreement and landlord-tenant law.** While both the rental agreement and the law will identify various required behaviors of tenants, it is generally up to the landlord to make sure the tenant complies. Essentially, unless the landlord takes action to correct the problem, there are few other mechanisms to correct difficulties associated with problem tenants. If the tenant is not in compliance, it is up to the landlord to request that the tenant correct the behavior or to serve the appropriate notices defined in the law. The reverse is true as well — when landlords are not complying with their responsibilities, it is typically up to the tenant to take the initial action to cause landlords to comply.

Of course, if your problem tenants are involved in criminal behavior for which there is enough evidence to make an arrest, the police may be able to arrest the tenant as well. However, while arrest may remove a tenant from the dwelling temporarily, you may still need to serve an eviction notice to regain possession of the property. For more information on these issues, see the Sections on *Crisis Resolution* and *The Role of Police*.

Property Inspections

A cornerstone of active management is the regular inspection of the rented property.[7] Unless you inspect, you can't be sure you are meeting your responsibility to provide safe and habitable housing. While the purpose of an inspection is to care for the unit and ensure its habitability, regular maintenance inspections can also help to deter intentional property damage and other types of illegal activity. For example, if tenants know that the landlord actively manages the property, they aren't likely to make illegal modifications to the rented property. Further, visits can help catch problems associated with illegal activity before they get out of hand. For example, it is common for drug dealers to cause damage to a rental unit that is well beyond "normal wear and tear" — a problem that could be observed, documented, and addressed through the process of a regular maintenance program. Though early discovery of such damage is a possibility, the more frequent impact of a maintenance program on illegal activity is basic prevention. Illegal activity is less likely to happen at property where the landlord has a reputation for concerned, active management.

The key to a successful property inspection program is avoiding the adversarial position sometimes associated with landlord-tenant situations. An inspection program done properly should be welcomed by your good tenants. Begin by setting an inspection schedule and following it. Many active landlords recommend inspecting property at least every six months. The basic steps include:

1. Give at least 24-hours' notice prior to inspecting the property.[8] With such a notice, the tenant

[7] For those who manage manufactured dwelling and floating home facilities, if the tenant owns the home, then the inspection is generally of the rented exterior space only. Facility managers should see ORS 90.725 *Landlord access to rented space; remedies* for special rules relating to facility situations. For all other landlords, the inspection involves the interior of the dwelling unit as well (see ORS 90.322).

[8] See ORS 90.322 for most rental situations. However, *if you are managing a floating home or manufactured dwelling "facility"* see ORS 90.725.

must not “unreasonably” withhold consent to your entry onto the property. If the inspection is routine, keep the approach friendly — for example, give more than 24 hours’ notice when convenient to do so. If your tenant requests that you come at a different time from the one you suggested, work out a better, mutually-agreeable time to enter the unit — responsible tenants will value your understanding and flexibility.

Note that, unlike lease enforcement notices, this notice does not have to be provided in writing, though it is generally a good idea to do so. What is required is something called “actual notice.” For those procedures where the law requires only “actual notice” you could, give the notice verbally, either directly to the tenant or in the form of a message left on the tenant’s telephone answering device. However, because verbal notices make poor paper trails you are generally better off giving notices in writing. For more on the definition of “actual notice” see the description in ORS Chapter 90.150.

Tenants have the right to deny a landlord entry. If the denials become “unreasonable” (for example the tenant consistently refuses to negotiate a different entry time with the landlord), the landlord may serve a notice that requires the tenant to permit the landlord’s entry or face eviction (see the Section on *Crisis Resolution* for more information).

2. Find and address code and habitability problems. When you inspect the property, check for maintenance problems and handle any routine maintenance, such as replacing the furnace filter. Discuss with the tenants any concerns they have. Make agreements to remedy problem areas. Then repair what needs to be fixed.

Note: If a tenant is going to handle repairs or minor remodeling, make sure you specify the terms and conditions in writing, including spelling out the tenant’s compensation for the work to be done. Do not pressure tenants to handle repairs for you or ask them to do it for free.

Utilities

You may stipulate in a rental agreement that the tenant is responsible for utility bills, but if the tenant is so negligent that water, heat, or electricity is cut off, the property is no longer legally habitable — and you have a responsibility to rent habitable housing.

You have grounds for serving a for-cause eviction notice (typically with a 14-day remedy option) if tenants are not in compliance with a rental agreement stipulating that they pay their own utilities. You may face penalties if you continue renting a unit that lacks these basic services. If the utilities are shut off, address the situation as soon as you discover it.

Keep a Paper Trail

Verbal agreements carry less weight in court. The type of tenant who is involved in illegal activity *and* would choose to fight in court will know that. So keep a record of your agreements and provide copies to the tenant. Just having tenants know that you keep records may be enough to motivate them to stay out of court. You will need to retain documentation that shows your good- faith efforts to keep the property habitable and shows any changing agreements with a tenant, dated and signed by both parties.

Trade Phone Numbers with Neighbors

Landlords of single-family residential housing sometimes don’t hear of dangerous or damaging activity on their property until neighbors have written to city hall, housing maintenance inspectors have cited the property, or police are already planning an undercover drug buy. Often the situation could have been prevented if the landlord and area neighbors had established a better communications link.

Find neighbors who seem responsible, concerned, and reliable. Trade phone numbers and ask them to advise you of serious concerns. You’ll know you have found the right neighbors when you find people who seem relieved to meet you and happy to discover you are willing to work on problems. Conversely, if neighbors seek you out, work with them and solicit their help in the same way.

Landlords and neighbors tend to assume their relationship will be adversarial. Disarm any such assumptions and get on with cooperating. If you both want the neighborhood to remain healthy and

thriving, you are on the same side and have nothing to gain by fighting each other.

WARNING SIGNS OF DRUG ACTIVITY

The sooner it is recognized, the faster it can be stopped.
COMPLAINTS WE HAVE HEARD:
"The neighbors tell me my tenants are dealing drugs. But I drove by three different times and didn't see a thing!"
ADVICE WE WERE GIVEN:
"You've got to give up being naive. We could stop a lot more of it if more people knew what to look for." — Narcotics detective.

The Signs

The following lists describe signs of drug activity that either you or neighbors may observe. As the lists will show, many indicators are visible at times when the landlord is not present. This is one reason why a solid partnership with trusted neighbors is important.
Also, while some of the indicators are reasonably conclusive in and of themselves, others should be considered significant only if multiple factors are present.
This list is primarily targeted to tenant activity. For information on signs of dishonest *applicants,* see the chapter on *Applicant Screening.*

Dealing

Dealing locations are like convenience stores; there is high customer traffic with each customer buying a small amount.
Neighbors may observe:

· **Heavy traffic.** Cars and pedestrians stopping at a home for only brief periods. Traffic may be cyclical, increasing on weekends or late at night. Or it may be light for a few weeks and then intense for a period of a few days, particularly paydays.

· **Exchanges of money.** Cash and packets traded through windows, mail slots, or under doorways.

· **Lack of familiarity.** Visitors appear to be acquaintances rather than friends.

· **People bringing "valuables" into the unit**. Visitors regularly bring televisions, bikes, computers, cameras, and leave empty-handed.

· **Odd car behavior.** Visitors may sit in the car for a while after leaving the residence or may leave one person in the car while the other visits. Visitors may also park around a corner or a few blocks away and approach on foot.

· **"Lookouts."** Frequently these will be younger people who tend to hang around the property during heavy traffic hours.

· **Regular activity at extremely late hours.** For example, frequent commotion between midnight and 4:00 a.m. on weeknights. (Both cocaine and methamphetamine are stimulants. Users tend to stay up at night.)

· **Various obvious signs.** This may include people exchanging small packets for cash, people using drugs while sitting in their cars, syringes on the lawn, or other paraphernalia lying about.
Landlords may observe:

· **Failure to meet responsibilities.** Failure to pay utility bills or rent, failure to maintain the house in appropriate condition, general damage to the property. Some dealers smoke or inject much of their profits. As they get more involved in the drugs, they are more likely to ignore bills, maintenance, or housekeeping.

Distribution

Distributors are those who sell larger quantities of drugs to individual dealers or other, smaller distributors. They are the "wholesale" component, while dealers are the "retail" component. If distributors are not taking the drugs themselves, they can be difficult to identify. A combination of the following indicators may be significant:

· **Expensive vehicles.** Particularly when owned by people otherwise associated with a lower standard of living. Some distributors make it a practice to spend their money on items that are easily moved; so they might drive a $50,000 car while renting a very inexpensive unit.

· **Regular car switching.** Especially at odd hours — the people arrive in one car, leave it at the premises, and use keys already in their possession to get into another car and drive off.

· **A tendency to make frequent late-night trips.** Many people work swing shifts or have other legitimate reasons to come and go at late hours. However, if you are seeing a number of other signs along with *frequent* late-night trips, this could be an indicator.

Meth Labs

Methamphetamine labs can do serious and expensive harm to property quickly. Once the operator has collected the chemicals and set up the equipment, it doesn't take long to cook the drugs. Depending on the method used, a batch can be "cooked" in as little as four hours. Clandestine labs have been set up in all manner of living areas, from hotel rooms and RVs, to single-family rentals or apartment units. Lab operators favor units that are secluded. In rural settings it's barns or houses away from other residences. In urban settings it might be houses with trees and shrubs blocking the views or apartments that are well away from easy view by management. However, while seclusion is preferred, clandestine labs have been found in virtually all types of rental units.

Neighbors may observe:

· **Odd chemical odors.** The smell of chemicals or solvents not typically associated with residential housing.

· **Chemical containers.** Chemical drums or other containers with their labels painted over.

· **Strong ammonia smell.** Very similar to cat box odor. (This is associated with the amalgam process of methamphetamine production, which has fallen out of favor with meth cooks.)

· **Smoke breaks.** *If* other suspicious signs are present, people leaving the premises just long enough to smoke may also be an indicator. Ether, which is highly explosive, is used in meth production. Methamphetamine "cooks" need to get away from it before lighting up.

Landlords may observe:

· ***Many* empty containers of over-the-counter cold or allergy medicines.** Faster methods of cooking methamphetamine require the use of large quantities of cold medicines that contain the drug ephedrine. The average cold sufferer may leave one or two empty cold medicine containers in the trash. The presence of many such empty boxes, bottles, or blister packs is a definite warning sign. (Fortunately, this method of meth production has been curtailed substantially in recent years by the introduction of laws that make it more difficult to purchase ephedrine-based medicines anonymously.)

· **A *large* number of matchbooks in the units.** Cooks may use hundreds, or even thousands, of matchbooks to get enough red phosphorus from their striker plates. As such, you may observe that someone has been purchasing matchbooks in surprisingly large quantities.

· **A dark red residue on countertops, coffee filters, or aluminum foil in the unit.** The red residue may be left from the use of red phosphorus in the manufacturing process.

· **Chemistry equipment.** In some labs you will see flasks, beakers, and rubber tubing consistent with high school chemistry classes. Very few people practice chemistry as a hobby. If you see such articles, don't take it lightly.

· **Everyday items used in non-everyday ways.** While you might see high school chemistry equipment in a lab, it is more likely that you will see everyday items that have been pressed into service as chemical processing equipment instead. Milk jugs, screw-top beer bottles, or soda-pop bottles full of mysterious, dark or layered liquids. Coffee grinders with white or pink residue instead of the typical brown residue left from coffee grounds.

· **Equipment and chemicals in unusual places or quantities.** Heat plates and propane torches in a bedroom or living room instead of stored in the garage or basement. Lye, iodine, solvents, gasoline additives, drain cleaners, or alcohol in unusual quantities or unusual places. Any one of these might

not be significant, but a few together, especially in the presence of other signs, could be cause for concern.

· **A maroon-colored residue on aluminum sashes or other aluminum in the unit.** The ephedrine process of methamphetamine production is a more expensive process, but it does not give off the telltale ammonia/cat box odor. However the hydroiodic acid involved does eat metals and, in particular, leaves a maroon residue on aluminum.

· **Strong ammonia/chemical odors.** A particularly strong cat box/ammonia smell within the house. May indicate usage of the amalgam process for methamphetamine production, though this process is infrequently used today. The odor of ether, chloroform, or other solvents may also be present in any type of lab.

· **Discarded chemistry equipment or other unusual items.** Garbage containing broken flasks, beakers, tubing, or other chemical paraphernalia. Also, you may see quantities of matchboxes with their striker plates removed or lithium batteries that have been taken apart.

If you have reason to believe there is a meth lab on your property, leave immediately, wash your face and hands, and call police to report what you know. If you have reason to believe your exposure has been significant, contact your doctor. Some of the chemicals involved are highly toxic. For more information about meth labs, see the section in this chapter, If You Discover a Clandestine Lab, *and refer to the* Appendix *for list of agencies to contact.*

Illegal Marijuana Grow Operations[9]

Those who are growing large amounts of marijuana illegally are generally involved in practices that are substantively different from those who grow in full compliance with Oregon's recreational or medical marijuana laws. Illegal grow operations are hard to identify from the street. They are more likely to be found in single-family residential units than in apartments. In addition to the general signs of excessive fortifications or overly paranoid behavior, other signs are listed below.

Neighbors may observe:

· **Electric wiring that has been tampered with.** For example, evidence of residents tampering with wiring and hooking directly into power lines.

· **Powerful lights on all night in the attic or basement**. Growers will be using powerful lights to speed the development of the plants.

Landlords may observe:

· **A sudden jump in utility bills**. Grow operations require strong lighting.

· **A surprisingly high humidity level in the unit**. Grow operations require a lot of moisture. In addition to feeling the humidity, landlords may observe peeling paint or mildewed wallboard or carpet.

· **Rewiring efforts or bypassed circuitry**. Again, grow operations require a lot of electricity; some use 1,000-watt bulbs that require 220-volt circuits. The extra circuitry generally exceeds the power rating for the house and can burn out the wiring, resulting in fires in some cases, or often the need to rewire before you can rent the property again.

· **Various obvious signs.** For example, basements or attics filled with plants, lights, and highly reflective material (e.g., tinfoil) to speed growing.

General

The following may apply to dealing, distribution, or manufacturing.

Neighbors may observe:

· **Expensive vehicles.** Regular visits by people in extremely expensive cars to renters who appear to be significantly impoverished.

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[9] In Oregon, medical marijuana laws permit a person who has been issued a "marijuana grow site registration card" to grow and possess marijuana legally in specified quantities for up to four "registry identification cardholders" for whom the person has agreed to grow marijuana. Also, Oregon's recreational marijuana law now permits growing of limited amounts at home as well. See discussion in the Rental Agreements chapter for more on the issues of medical and recreational marijuana.

· **A drop in activity after police are called.** If activity stops after police have been called, but before they arrive, this may indicate usage of a radio scanner, monitoring police bands.
· **Unusually strong fortification of the unit.** Blacked-out windows, window bars, extra deadbolts, or surprising amounts spent on alarm systems. Note that grow operators and meth cooks, in particular, often emphasize fortifications — extra locks and thorough window coverings are typical.
· **Firearms.** Particularly assault weapons and those that have been modified for concealment, such as sawed-off shotguns.
· **Secretive loading of vehicles.** Trucks, trailers, or cars being loaded and unloaded late at night in a hurried, clandestine manner. This type of behavior may be an indicator of drug distribution, a grow operation, or a clandestine drug lab.
Landlords may observe:
· **A willingness to pay in advance, particularly in cash.** If an applicant offers you six months' rent in advance, resist the urge to accept, and require the person to go through the application process. You might have more money in the short run, but your rental will likely suffer damage, and you could be damaging the livability of the neighborhood and your long-term investment. If they run a meth lab out of your property, you may lose every penny paid and much more.
· **A tendency to pay in cash combined with a lack of visible means of support.** Some honest people don't like writing checks, so cash payments by themselves don't indicate illegal activity. However, if other signs are also noted, and there are large amounts of cash with no apparent source of income, get suspicious.
· **Unusual fortification of individual rooms.** Deadbolts and alarms on interior doors, for example.
· **Willingness to install expensive exterior fortifications.** If your tenant offers to pay surprisingly high amounts to install window bars and other fortifications, they may be interested in more than prevention of the average burglary.
· **Unusually sophisticated weigh scales.** The average homeowner might have a grocery scale or a letter scale, accurate to an ounce or so. The scales typically used by drug dealers, distributors, and manufacturers are noticeably more sophisticated, accurate to gram weights and smaller. (There are legitimate reasons to have such a scale as well, so don't consider a scale, by itself, as an indicator.)
· **Large amounts of tin foil, baking soda, electrical cords, or *many* cold remedy containers.** Tinfoil is used in grow operations and meth production. Baking soda is used in meth production and in the process of converting cocaine to crack. Electrical cords are used in meth labs and grow operations. Cold medicines containing the drug ephedrine are often used in the cooking of methamphetamine.
· **Presence of any obvious evidence.** Bags of white powder, syringes, or even very small "Ziploc" plastic bags — the type that small jewelry or beads are sometimes kept in — are not generally used in quantities by most people. The presence of such bags, combined with other factors, should cause suspicion.

The Drugs

While many illegal drugs are sold on the street today, the following are most common:
1. Methamphetamine. Methamphetamine is a stimulant. Nicknames include Meth, Crank, Speed, Crystal, Ice, STP, and others. Meth is usually ingested, snorted, or injected. A more dangerous form of methamphetamine, "crystal meth" or "ice," can be smoked.
"Pharmaceutical" grade meth is a dry, white crystalline powder. While some methamphetamine sold on the street is white, it can also be yellowish, or even brown, and is sometimes of the consistency of damp powdered sugar. The drug has a strong medicinal smell. It is often sold in tiny, sealable plastic bags.
Hard-core meth addicts get very little sleep and they look it. Chronic users and "cooks" — those who manufacture the drug — may have open sores on their skin, bad teeth, and generally appear unclean. Paranoid behaviors combined with regular late-night activity are potential indicators. Occasional users

may not show obvious signs.
Because of the toxic waste dangers associated with methamphetamine production, we have included an additional section on what to do if you discover a clandestine drug lab, as well as resource information in the Appendix. *For more information about meth, refer to those sections.*
2. Cocaine and Crack. Cocaine is a stimulant. Nicknames include Coke, Nose Candy, Blow, Snow, and a variety of others. Cocaine in its powder form is usually taken through the nose ("snorted"). Less frequently, it is injected.
"Crack," a derivative of cocaine, produces a more intense but shorter high. Among other nicknames, it is also known as "rock." Crack is manufactured from cocaine and baking soda. The process requires no toxic chemicals, nor does it produce any of the waste problems associated with methamphetamine production. Because crack delivers a high using less cocaine, it costs less per dose, making it particularly attractive to drug users with low incomes. Crack is typically smoked in small glass pipes. Powdered cocaine has the look and consistency of baking soda and is often sold in small, folded paper packets. Crack has the look of a small piece of old, dried soap. Crack is often sold in tiny "Ziploc" bags, little glass vials, balloons, or even as is, with no container at all.
In general, signs of cocaine usage are not necessarily apparent to observers. Users might show a combination of the following: Regular late-night activity (e.g., after midnight on weeknights), highly talkative behavior, paranoid behavior, constant sniffing or bloody noses (for intense users of powdered cocaine).
3. Tar Heroin. Fundamentally, heroin is a powerful painkiller, both emotionally and physically. Nicknames include Brown Sugar, Mexican Tar, Chiva, Horse, Smack, "H," and various others. Heroin is typically injected.
Tar heroin has the look of creosote off a telephone pole, or instant coffee melted with only a few drops of water. The drug has a strong vinegar smell. It is typically sold in small amounts, wrapped in tinfoil or plastic. Paraphernalia that might be observed include hypodermic needles with a brown liquid residue, spoons that are blackened on the bottom, and blackened cotton balls.
When heroin addicts are on the drug, they appear disconnected and sleepy. They can fade out, or even fall asleep, while having a conversation. Heroin addicts don't care about very much but their next fix, and their clothes and demeanor reflect it. When they are not high,
addicts can become quite aggressive. As with most needle users, heroin users rarely wear short-sleeved shirts.

If You Discover a Clandestine Lab

Because methamphetamine labs represent a potential health hazard far greater than other types of drug activity, we have included this section to advise you on how to deal with the problem. This information is intended to help you through the initial period, immediately after discovering a meth lab on your property.

The Danger: Toxic Chemicals in Unpredictable Situations

There is very little that is consistent, standard, or predictable about the safety level of a methamphetamine lab. The only thing we can say for sure is that you will be better off if you leave the premises immediately. Consider:

- **Cleanliness is usually a low priority.** "Cooks" rarely pay attention to keeping the site clean or keeping dangerous chemicals away from household items. The chemicals are rarely stored in original containers. Often you will see plastic milk jugs or screw-top beer bottles containing unknown liquids. It is all too common to find bottles of lethal chemicals sitting open on the same table with the cook's bowl of breakfast cereal, or even next to a baby's bottle or toys.
- **Toxic dump sites are common.** As the glass cooking vessels become brittle with usage, they must be discarded. It is common to find small dump sites of contaminated broken glass, needles, pipes, and other paraphernalia on the grounds surrounding a meth lab or even in a spare room.
- **The chemicals present vary from lab to lab.** While some chemicals can be found in any meth lab, others will vary. "Recipes" for cooking meth get handed around and each one has variations. So

we cannot say with certainty which combination of chemicals you will find in a lab you run across.

- **Booby traps are a possibility.** Other meth users and dealers may have an interest in stealing the product from a cook. Also, as drug usage increases, so does paranoia. Some cooks set booby traps to protect their product. A trap could be as innocent as a trip wire that sounds an alarm or as lethal as a wire that pulls a trigger.
- **The risk of explosion and fire is high.** Ether is highly explosive. Its vapor can be ignited by the spark of a light switch. Under some conditions, a bottle could explode just by jarring it. Meth lab fires are generally the result of an ether explosion — the result can be instant destruction of the room, with the remainder of the structure in flames.
- **Health effects are unpredictable.** Before law enforcement agencies learned of the dangers of meth labs, officers went into them without protective clothing and breathing apparatus. The results varied — in some cases officers experienced no ill effects, while in others they developed "mild" symptoms such as intense headaches. However, in other cases, officers experienced burned lung tissue from breathing toxic vapors, burns on the skin from coming into contact with various chemicals, and other more severe reactions.
- **Many toxic chemicals are involved.** The list of chemicals that have been found in methamphetamine labs is long. Some are standard household items, like baking soda. Others are extremely toxic or volatile like hydroiodic acid (it eats through metals), benzene (carcinogenic), ether (highly explosive), or even hydrogen cyanide (also used in gas chambers). For still others, like phenylacetic acid and phenyl-2-propanone, while some adverse health effects have been observed, little is known about the long-term consequences of exposure. If you desire more information about the chemicals found in methamphetamine labs and their health risks, see the *Appendix* for a list of resources you may wish to contact.

What to Do if You Find a Lab

1. Leave. Because you will not know which chemicals are present, whether or not the place is booby-trapped, or how clean the operation is, *don't stay around to figure it out.* Do not open any containers. Do not turn on, turn off, or unplug anything. Do not touch anything, much less put your hand where you cannot see what it is touching — among other hazards, by groping inside a drawer or a box, you could be stabbed by a hypodermic needle.

Also, if you are not sure you have discovered a clandestine lab, but think you may have, don't stay to investigate. Take mental notes of what made you suspicious and get out.

2. Check your health and wash up. As soon as possible after leaving the premises, wash your face and hands and check your physical symptoms. If you have concerns about symptoms you are experiencing, call your doctor, contact an emergency room, or call a poison control center.

Even if you feel no adverse effects, as soon as reasonably possible, change your clothes and shower. Whether or not you can smell them, the chemical dusts and vapors of an active meth lab can cling to your clothing the same way that cigarette smoke does. (In most cases, normal laundry cleaning, *not* dry cleaning, will decontaminate your clothes.)

3. Alert your local police. If the situation is one where immediate response can stop a threat to life or property, call 9-1-1. Otherwise, contact the narcotics or drugs and vice unit of your local law enforcement agency or their general, nonemergency number. Because of the dangers associated with labs, such reports often receive priority and are investigated quickly. Typically, law enforcement will coordinate with the local fire department's Hazardous Materials team to assist.

4. Arrange for a certified clean-up. Before you can rent the property again, you must comply with clean-up requirements. Begin by getting any appropriate information from law enforcement and hazardous materials officials who deal with your unit. Also, if there are remaining issues to be addressed with your tenants, do so. (Typically, the premises will be declared unfit for use, and your tenants removed. So, while there may be other issues to resolve, physical removal is usually not one of them.) Next, contact the Oregon Health Division and ask for their list of licensed contractors who have been trained in the clean-up of lab sites. You will need to select one of the listed contractors to

perform the work. Once a certified clean-up is complete, you will be permitted to rent the unit again. A brief summary of the law governing clean-up is described in the next section.

Lab Clean-Up and the Law

In Oregon, state law places restrictions on property contaminated by a clandestine drug lab. The following is intended as a very general summary. For more detail on the law, review the statute directly (see ORS 453.855 to 453.995).

The law makes it difficult to sell and unlawful to rent property that has been used as a meth lab. Essentially, until the property is certified as "fit for use" by the Oregon Health Division, you may not sell it without first disclosing that the premise is a contaminated lab site, and you may not rent the property at all. Should you fail to follow the procedure, potential buyers may void contracts and renters have the right to terminate the tenancy quickly, recover deposits and any prepaid rent, and collect damages from the landlord. In addition, if you rent contaminated property (or sell it without disclosure), you risk legal action from any who suffer adverse health effects.

In order to re-rent the structure (or sell the property as "fit for use" rather than "contaminated"), you must decontaminate it in accordance with guidelines established by the Oregon Department of Human Resources, Health Division. Contact the Health Division for details.

Depending on the level of contamination present, clean-up may be as simple as a thorough cleaning of all surfaces or as complex as replacing drywall. On very rare occasions demolition of the entire structure is required. Whether the process is simple or complex, you may be required to use a contractor licensed by the Health Division to make sure the work is done correctly. Because of the range of chemicals involved, and the differing levels of contamination possible, we cannot accurately predict the length of time involved to get a contaminated property back into use.

The *Appendix* includes references for more information about the chemicals involved, clean-up requirements, and other resources pertaining to clandestine drug labs.

How Can the "Cooks" Live There?

If lab sites are so toxic, how can meth lab "cooks" live there? The short answer is: Because they are willing to accept the risks of the toxic effects of the chemicals around them. Meth cooks are often addicted to the drug and under its influence during the cooking process. This makes them less aware and more tolerant of the environment, as well as more careless with the chemicals they use and more dangerous to those around them.

Meth cooks are frequently recognized by such signs as rotting teeth, open sores on the skin, and a variety of other health problems. Some of the chemicals may cause cancer — what often isn't known is how much exposure it takes and how long after exposure the cancer may begin. Essentially, meth cooks have volunteered for an uncontrolled experiment on the long-term health effects of the chemicals involved. There are occasions when meth cooks are forced to leave as well. For example, reports of explosions and fires are among the more common ways for local police and fire fighters to discover a lab.

You face a different set of risks in a meth lab than does the cook. The cooks know which compounds they are storing in the unmarked containers. They know where the more dangerous chemicals are located and how volatile their makeshift setup is likely to be. When you enter the premises, you have none of this information, and you face a much greater risk.

CRISIS RESOLUTION

Stop the problem before it gets worse.

ADVICE WE WERE GIVEN:

"Serving eviction papers is not the time to cut costs. Unless you already know the process, you are better off paying for a little legal advice before you serve the papers than for a lot of it afterwards."

"Don't put it off! The sooner you act, the easier it is to solve the problem."

The Basics

Resolve problems quickly and fairly. If eviction is required, do it efficiently. Minimize court time.

1. Don't wait. Act. If a tenant is not in compliance, address the situation immediately.
2. Know how to evict. Get a copy of landlord-tenant law and read it. If you're not sure, don't guess — find an attorney experienced in landlord-tenant relations. Cases are often lost on technicalities. You should:

- Know the type of termination notices available to you.
- Know the process for serving notices correctly.
- Understand the eviction process, including the difference between the potential full- length process, and the typical, more rapid outcome.

3. If a neighbor calls with a complaint, know how to respond.

Don't Wait — Act

Effective property management includes early recognition of noncompliance and prompt response. Don't wait for rumors of illegal activity and don't wait for official action against you (e.g., property closure related to code/health violations or police sending you a warning letter about criminal activity). Prevention is the most effective way to deal with illegal activity in a rental. Many drug house tenants have histories of noncompliant behavior that the landlord ignored. If you give the consistent message that you are committed to keeping the property up to code and appropriately used, your property will not become an enabling environment for illegal activity. The most common reasons why landlords put off taking action include:

- **Fear of the legal process.** Many landlords don't take swift action because they are intimidated by the legal process. The penalty for indecision can be high. If you accept rent during three or more rental periods after learning that a tenant is in noncompliance, you may lose your legal ability to evict for that cause. You will be in the best shape if you consistently apply the law whenever tenants are not in compliance with the rental agreement or not meeting their responsibilities under landlord-tenant law.
- **Fear of damage to the rental.** Some landlords don't act for fear the tenant will damage the rental. Unfortunately, such inaction generally makes the situation worse. Problem-tenants may see your inaction as a sign of acceptance and may even increase the problem behavior. You will lose what control you have over the renter's noncompliant behavior; you will lose options to evict while allowing a renter to abuse your rights; and you will likely get a damaged rental anyway — if they are the type who will damage a rental, sooner or later they will.
- **Misplaced belief in one's tenants.** While developing this manual, we heard this story, and similar ones, with considerable frequency: "The people *renting* the property aren't dealing the drugs. We haven't had any problems with them. The drug dealers are their friends who often stay at the property. So what do we do? The tenants aren't making trouble. It's these other people." Ask yourself: Did your tenants contact you or the police when the activity first occurred? Or did they wait to tell you about their problem guests until *after* you received phone calls from upset neighbors or a warning from police? Also: Is your tenant breaking your rental agreement guidelines by allowing guests or subtenants?

Unless the tenant contacted you, and the police, when the illegal activity started and has since made a genuine effort to address the problem (such as evicting subtenants or getting restraining orders), there is a strong likelihood that your tenant is a classic "enabler" of illegal activity and, by allowing the behavior, is in violation of Oregon's landlord-tenant laws. If such is the case, pursue your options to terminate the rental agreement.

The Secret to Good, Low-Cost Legal Help

If you are not familiar with the process for eviction, contact a skilled landlord-tenant attorney *before* you begin. By paying for a small amount of legal advice up front, many landlords have avoided having to pay for a lot of legal help down the road. The law may look simple to apply, but as any landlord or tenant who has lost in court can attest, it is more complicated than it seems. Both landlords and legal experts have reported the vast majority of successful eviction defenses are won because of incorrect procedures by the landlord and not because the landlord's case is shown to be without merit.

If you don't know a good landlord-tenant attorney, find one. Out of fear of paying an attorney fee, landlords make mistakes in the eviction process that can cost them the equivalent of many months' rent. Yet many evictions, *when done correctly*, are simple procedures that cost a fraction of a month's rent in attorney's fees.

Finding a good landlord-tenant attorney is relatively easy. Search directories for those local attorneys who list themselves as specialists under the subcategory of "landlord and tenant." Generally, you will find a very short list because few attorneys make landlord-tenant law a specialty.[10] Call at least three and interview them. Ask about how many evictions they do per month and how often they are in court on eviction matters. The safest bets are those attorneys who do many evictions per month — they see it as a major part of their practice, not a sideline that they advise on infrequently. Once you find attorneys who have the necessary experience, pick the one you feel most comfortable working with and ask that person to help.

Choices for Eviction

Type of Rental

In order to determine your options for eviction, consider the type of rental you have. While most rentals fit the first category described below, if yours do not, it is important that you become aware of the different rights and responsibilities involved.

Standard month-to-month or fixed-term lease. In the most common situation in Oregon, a tenant rents an apartment or house from a private landlord on a month-to-month or longer term basis, with no government subsidy involved. If that description matches what you provide, skip to the discussion of *Types of Notices*, following this section.

Subsidized rental units or subsidized tenants. Federal housing subsidies often carry restrictions on the type of notices that can be served, as well as on the methods for serving notices. For example, tenants on the Section 8 Housing Choice Voucher program — subsidized *tenants* — cannot be served a no-cause eviction notice during the initial term of the lease and some cannot be served a no-cause eviction notice ever. In subsidized rental *units*, no-cause notices are also generally not allowed and, for some notices, more time must be given than the minimum waiting period permitted under Oregon landlord-tenant law. We have given some examples of differences in the descriptions that follow, but have not attempted to cover every variation associated with each program. If you have subsidized rental units, or subsidized tenants, read your contracts carefully and be familiar with the applicable "CFRs" (sections of the Code of Federal Regulations) that apply. And, as in any rental situation, if you are not sure, contact a qualified landlord-tenant attorney.

"Week-to-week" tenancies. If you are renting on a week-to-week basis, you must meet specific qualifications in order to use the shorter notices for such tenancies. A qualifying "week-to-week" rental is one in which *all* of the following apply:[1]

- The rent is charged by the week and payable on a weekly, or more frequent, basis.
- There is a written rental agreement in use that defines the landlord's and the tenant's rights and responsibilities under ORS Chapter 90.
- No nonrefundable fees or security deposits have been collected (although applicant screening charges that meet the requirements of landlord-tenant law may be collected).

If your weekly rentals do not meet all the qualifications, the law considers your rental a month- to-month tenancy, and you must use the appropriate longer notice instead of a 10-day no- cause notice. Such distinctions make it important that innkeepers who become "landlords" by taking on weekly renters familiarize themselves with the requirements for week-to-week tenancies and other applicable

[10] In some communities you may not find any attorneys listed as specialists in this type of law. In such a case, try contacting a local property management association for referrals or call a few local property management companies and find out who they use, then interview the attorneys to find the one you feel comfortable with.

landlord-tenant law.[11] For more information about topics related to the control of illegal activity in hotels and motels, contact your local police department for a copy of the booklet *Crime Prevention in Overnight Lodging.* If your local police agency does not have copy, contact Campbell DeLong Resources, Inc. directly and one will be mailed to you, supplies permitting.

Manufactured dwelling parks or floating home facilities. Landlords of manufactured dwelling parks or floating home moorages also have limitations placed on their eviction options. In general, the added regulations apply only to the relationship between a landlord and an owner of a manufactured dwelling or floating home who rents space in a "facility." A facility is, essentially, a park or moorage that has four or more of that same type of living unit. If you own or manage such a "facility," review the section of the Residential Landlord and Tenant Act written to address these unique issues (see ORS 90.505 to 90.875).

Note that these added regulations do not apply to space rented out for use by a "recreational vehicle" or "residential vehicle" as defined in the law, nor do they apply in any situation in which the landlord rents out both the land (or moorage) space *and* the living unit. Generally speaking, if the added regulations do not apply, the law will treat the rental like any other standard, month-to-month or lease tenancy. (One significant exception: if you are renting space for a manufactured dwelling or floating home that is not in a "facility" a longer no-cause notice than allowed for standard month-to-month renting is required.[12])

If you have a manufactured dwelling park or floating home facility and your tenants own their homes and rent the land from you, note that:

No-cause evictions are not allowed. Landlords of manufactured dwelling parks or floating home facilities may not evict a tenant unless they can show that the tenant is not in compliance with the terms of the rental agreement or responsibilities as defined in landlord-tenant law. The only point at which a landlord could evict a tenant who *is* in compliance is if the landlord elects to close the facility entirely and convert the space to a different use. In such cases, unless special conditions are met by the landlord, a minimum of a full year's notice is required to remove tenants. Because of this limitation, the conditions of your rental agreement take on particular importance; so take the time, and purchase the necessary legal help, to make sure you have an effective, up-to-date rental agreement.

With some modification, most for-cause notices *are* allowed. While landlords of manufactured dwelling parks or floating home facilities may not serve a no-cause notice, they may serve most other notices defined in landlord-tenant law. For example, a landlord of such a facility may serve 72-hour notices for nonpayment of rent, 24-hour notices for physically threatening behavior, or 24-hour notices for acts that are outrageous in the extreme. In addition, facility landlords have the ability to serve a type of 30-day notice requiring tenants to 'remove or repair' structures that are deteriorated or in disrepair.

Landlords may also serve a modified version of the noncompliance 30-day for-cause notice — in this case, the tenant must be given the full 30 days to remedy a problem (instead of the 14-day remedy period in most other landlord-tenant situations). In addition, the repeat violation notice that can be served for committing substantially the same act any time in the next six months must allow at least 20 days to vacate, instead of the 10 days allowed in most other landlord-tenant situations.[13]

For owners of such facilities: Tenants who obey the rules are better protected than are comparable tenants in standard rental situations. However, those who break the rules are only marginally more protected. If you can show that the tenant has broken the rules, you have the power to enforce the rules by serving for-cause termination notices — whether for nonpayment, disturbing the neighbors'

[11] Innkeepers should also note how the law draws the line between a "tenant," who is covered by landlord-tenant law, and a hotel guest ("transient occupant"), who generally is not. See ORS 90.100.

[12] See ORS 90.429.

[13] See ORS 90.630 for more about the different notices for manufactured dwelling or floating home facilities.

peace, physically threatening yourself or other tenants, dealing drugs out of the rental unit, or any other prohibited behavior.

5. Tenancies in legally defined "Drug and Alcohol Free Housing." In 1995 the Oregon Legislature created a new definition for rental properties run by non-profit corporations, and in 1997, did the same for Public Housing Authorities for the purpose of renting to residents who are participating in a drug or alcohol recovery program and who meet other specific criteria set in the law. In brief, rental properties, including facilities, that meet the definition for drug and alcohol free housing provided in ORS Chapter 90, have additional notices available to them. First, they may enforce some regulations regarding the use of drugs, alcohol and other behaviors with a 48-hour notice to comply or vacate. Second, such a landlord may also serve a 24-hour notice to quit for certain repeat violations in a six-month period. For more about these notices, see ORS Chapter 90. Again, unless your organization meets the specific criteria defined in the law, these notices may not be used.

Types of Notices

What follows are general descriptions of the eviction options available to a landlord in Oregon. Each option has a specific legal process that you must follow. For a complete definition of the options and the serving process, review the latest version of landlord-tenant law (ORS chapter 90). The following descriptions generally follow the Oregon Revised Statutes as revised by the 2013 Oregon Laws.

Each of the following descriptions begins with a discussion of the option in the most typical landlord-tenant situation — a tenant renting an apartment or house on a month-to-month basis or a longer-term lease without any subsidy involved. Following that description is a discussion of variations for other types of residential rentals commonly found in Oregon.

 No-cause terminations of the rental agreement. No-cause notices may generally be used to terminate "periodic" tenancies such as month-to-month or week-to-week rentals (see ORS 90.427 *Termination of Periodic Tenancies*). Landlords often find this to be one of the easier notices to use because it does not involve accusing the tenant of wrongdoing — as a result, there may be less to argue about if the case goes to court.

 (30-day notice during the first year, 60-day notice after the first year). You would follow the timing described in ORS 90 for serving a no-cause notice: Note that the requirement to use a 60- day notice after the first year only applies when all tenants have resided in the unit for at least one full year. So, when you permit a new adult tenant to move in with tenants who have been renting for more than one year, the clock is reset and the 30-day no-cause notice may be used until the newest occupant has been a tenant for a full year.

If the tenant has not moved out by the time the 30, 60, or 90 days have expired, start the court (FED) process. For qualified week-to-week tenancies — those meeting the definition provided in ORS 90 — you may serve a shorter no-cause notice: Giving the tenant at least 10 days instead of either 30 or 60. No-cause notices may not be served on Section 8 Housing Choice Voucher tenants during the initial term of the lease (typically the first year), nor may they be served on other tenants who are on a lease, except at the end of the lease term. With some Section 8 tenants — but not all — no-cause notices may be served after the initial term of the tenancy. Also, no-cause notices are generally not allowed with tenants in manufactured dwelling parks or floating home facilities. However, for standard month-to-month, or week-to-week tenancies, this can be an option.

 Noncompliance(30-dayfor-causeandothers). If your tenant is not in compliance with the rental agreement, or not in compliance with the duties of tenants described in landlord-tenant law, you may serve a notice that requires the tenant to move out in 30 days unless the breach is corrected (see ORS 90.392). For most situations, you must give the tenant a 14-day "cure" period (within the 30 total days) to correct the breach. The 2005 legislature adjusted this notice to allow landlords to require an immediate cure for acts or omissions that "are separate and distinct... and not ongoing." For example, if the breach was a loud, all-night party, the 30- day for-cause notice can simply require that the tenant not do it again period, rather than require that the tenant refrain from such action after 14 days. The language does not seem entirely clear on the definition of acts that qualify for an instant cure, so unless the situation is quite obvious, it would make sense to check with a qualified landlord-tenant attorney before using this new approach.

If the effect of the noncompliant behavior can't be undone (e.g., by repair or payment) you may serve the notice without option to remedy. However, because most tenant-caused problems *can* be undone, the option to correct the problem is typically given when this notice is served. If you have a qualified week-to-week tenancy, you may shorten the notice to 7 days total, with 4 days to remedy the problem. In general, landlords who rent space for manufactured dwellings or floating homes must serve a modified version of this notice — the full 30 days must be given to remedy the problem, instead of the 14-day period described above (see ORS 90.630).

Examples of breaches under this notice include material noncompliance with the rental agreement and actions by the tenant or those on the premises with the tenant's permission that cause damage to the premises, health or code violations, or disturb the neighbors' peace.

This notice can allow the tenant to remedy the problem, if possible, and stay on. As such, it is appropriate to use the notice to address noncompliant behavior.

 Pet violation (10-day notice). If the tenant has a dog, cat, or other animal capable of damaging people or property *and* the rental agreement forbids it, you may serve a notice to vacate in 10 days unless the pet is removed (see ORS 90.405). Use this same notice regardless of whether you are using a lease, renting month-to-month, or week-to-week.

This notice is generally not available for use with tenants who own their home and are renting space for it in a manufactured dwelling park or floating home facility. Tenants with pet violations in those situations must be given the longer 30-day for-cause notice, with 30 days to remedy, as described earlier.

 Repeat violation (10-day notice). If you serve a tenant a 30-day for-cause notice or a 10- day pet violation notice that the tenant remedies at the time and, within six months, the tenant commits substantially the same breach again, you may serve a 10-day termination notice with no option to remedy the breach.

For qualified week-to-week tenancies this notice may be used for repeat violations of a 7-day for-cause notice, and the tenant may be given only 4 days to vacate, instead of 10. For a repeated *pet* violation, the landlord of a week-to-week tenancy would have to stay with the 10-day notice. In some subsidized tenancies, this second notice must be for 30-day termination instead of 10. Also, in general, for tenants in manufactured dwelling parks and floating home facilities, the second notice must give at least 20 days.

 Nonpayment of rent(72-hour notice or 144-hour notice). With some variations, this notice may be used in all residential rental situations (see ORS 90.394). If tenants have not paid rent (or if Section 8, their share of the rent) you may serve a 72-hour notice on the eighth day of the rental period for which the rent is delinquent. If the rent is due on the first of the month, serve this notice on the eighth or later. If you have qualified week-to-week tenancies, you may serve this notice on the fifth day of the rental period. Oregon law describes a second option for nonpayment notices: Instead of (or in addition to) serving the 72-hour notice on the eighth day, you may serve a 144-hour notice for nonpayment on the fifth day of the rental period. In many ways the 144-hour notice makes more sense for both parties: By giving tenants earlier notice, and more time to pay, the landlord may increase the likelihood of receiving rent before the notice expires and avoid the eviction process altogether.

If the tenants pay within the waiting period (72 or 144 hours, depending on the notice used), they may stay in the property. If they neither pay rent nor move out, then you may begin the FED process to regain the property. Be careful of accepting partial payments during the waiting period. Unless you and your tenant agree differently in writing, receipt of a portion of the rent may void the notice (see 90.417). Many landlords who serve nonpayment notices do not accept payment unless it is for the full amount. If the tenant offers the full amount before the notice expires, the landlord is required to accept it.

In Oregon you may serve a nonpayment notice on a Section 8 tenant even if you have deposited the government-subsidized portion of the rent. Also, if you are managing subsidized properties, note that your program regulations may require that you allow more time to vacate if the rent isn't paid.

 Various extreme situations (24-hour notice to vacate). This notice may be used in virtually all types of residential rentals, but it is reserved for truly extreme situations (see ORS 90.396). Except for

when the violation is committed by the tenant's pet, this is a "no-cure" notice. That is, there is no option to remedy the problem. For those situations where the tenant's pet causes the violation, the landlord must give the tenant the option to remove the pet from the premises within the 24-hour period, but retains the option to terminate the rental agreement with a 24-hour notice if the same pet is returned to the property. The option to serve a 24-hour termination notice applies in the following situations:

 Unauthorized possession of the premises. The tenant has vacated the premises and, contrary to a written rental agreement that prohibits subleasing or occupancy without the landlord's written permission, people not on the rental agreement are in possession of the premises *and* the landlord has not knowingly accepted rent from them.

This situation can sometimes also qualify for criminal trespassing, but it often doesn't. Since the landlord was not "in charge" of the unit when the unknown person moved in (that is, had not yet taken possession of the unit after the original tenant left), the landlord may not have the right to direct a police officer to enforce criminal trespass laws on the occupants. Therefore, a 24-hour notice for unlawful occupant must be served.

 Physical injury. The tenant, someone in the tenant's control, or the tenant's pet seriously threatens to inflict substantial personal injury or actually inflicts substantial personal injury on a person on the premises other than the tenant or inflicts such injury on any neighbor living in the immediate vicinity.

 Reckless endangerment. The tenant or someone in the tenant's control recklessly endangers a person on the premises, other than the tenant, by creating a serious risk of substantial personal injury.

 False information about criminal background. The tenant intentionally provided substantial false information on the application for the tenancy within the past year that meets these conditions: 1) The false information regarded a criminal conviction of the tenant that would have been material to the landlord's acceptance of the applicant for tenancy and 2) The landlord terminates the rental agreement (i.e., serves the 24-hour notice) within 30 days after discovering the fact of the false of the information.

 Substantial damage. The tenant or someone in the tenant's control intentionally inflicts substantial damage to the premises. Note that the damage here must be both *substantial* and *intentional.* If a tenant punches a hole in a wall, use the noncompliance notice described earlier. If the tenant tears out the whole wall, serve this notice. This type of notice may also be served if the tenant's pet inflicts substantial damage to the premises on more than one occasion.

Of course, the individual who does the actual damage may also be guilty of a crime. If sufficient proof can be established that links a specific person to an act of intentionally damaging the property, an arrest of that person may also be possible. The Section on *The Role of Police* explains, arrest does not take the place of eviction.

 Domestic violence, sexual assault, or stalking within a tenancy. ORS 90.445 is explicit in allowing the landlord to serve a 24-hour notice to terminate the tenancy rights of any specific tenant who "perpetrates a criminal act of physical violence related to domestic violence, sexual assault or stalking against a household member who is a tenant." The law is also explicit that this notice may be used only to terminate the tenancy rights of the perpetrator and *not* that of any other tenant in the household, including the victim.

 Other acts "outrageous in the extreme." The tenant or someone in the tenant's control, or the tenant's pet, commits any act that is "outrageous in the extreme." The 1993 legislature clarified the law to specify that "outrageous in the extreme" covers the following acts when committed by a person on the premises or in the immediate vicinity. The 1997 legislature expanded the types of burglary and intimidation that would qualify and the 2003 legislature added possession of certain controlled substances as described below:

 Prostitution or promotion of prostitution. This includes paying for it, offering it for sale, and inducing others to engage in prostitution. It also includes owning, controlling, managing, or otherwise supervising a place of prostitution.

 Manufacture, delivery, or possession of a controlled substance. All growing, manufacturing, and selling of illegal drugs qualifies for serving a 24-hour notice. A 24-hour notice may now also be served for possession of any illegal non- prescription drug, with the exception of certain types of marijuana possession.

 Intimidation as described in ORS 166.155 and 166.165. This would include, for example, the act of seriously threatening, or physically harming, people or property out of a perception regarding a person's race, color, religion, national origin, or sexual orientation.
 Burglary as described in ORS 164.215 and 164.225. This includes both first and second degree burglary.

While violations of criminal statutes are given as examples of acts that are outrageous in the extreme, the law clarifies that a *civil* level of proof is all that is necessary to prove the landlord's case for eviction. While criminal acts are given as examples, other acts can also be proven to be outrageous, even if they do not violate a criminal statute.

Twenty-four-hour eviction notices were designed to address the most dangerous and extreme situations. Do not serve this notice lightly. While it is always important to consult an attorney when you are unfamiliar with the law, it is particularly important to do so if you face a situation that may merit serving a 24-hour eviction notice.

Equally, your failure to act if you have grounds for serving such a notice may put you at risk. If your tenants act on a threat or continue to carry out extreme behaviors that endanger the community, you could face legal action by harmed neighbors or a local government for not taking action once you first had knowledge of the problem.

 Mutual agreement to dissolve the lease. A frequently overlooked method. Write the tenant a letter discussing the problem and offering whatever supporting evidence seems appropriate. Recommend dissolving the terms of the lease, thus allowing the tenant to search for other housing without going through the confrontation of the eviction process. Let Section 8 renters know that mutual agreement to dissolve the lease is permissible — that is, in most circumstances, it will not threaten a resident's eligibility for the program.

Make sure the letter is evenhanded. Present evidence, not accusations. Make no claims that you cannot support. Have the letter reviewed by an attorney familiar with landlord-tenant law. Done properly, this can be a useful way to solve a problem to both your tenant's and your own satisfaction without getting tied up in a court process. Done improperly, this will cause more problems than it will solve. Don't try this option without doing your homework first.

If illegal activity *is* going on, most tenants will take the opportunity to move on.

How to Serve "Written Notice"

When a landlord serves an eviction[1] notice, often the tenant moves out and the procedure is complete. However, in those cases where a tenant requests a trial, the details of the notification process will be analyzed. As one landlord put it: "90% of the cases lost are not lost on the bottom- line issues, but on technicalities." As another points out: "Even if you have police testimony that the tenants are dealing drugs, you *still* have to serve the notice correctly."

Each of the eviction options includes a legal process that you must follow. The process may also be affected by the provisions of your rental agreement or, if applicable, your Section 8 contract or other subsidized housing agreement. Begin by reading your rental contracts and landlord-tenant law. One of the best tools you can develop is a comfortable, working knowledge of the law. In any eviction, take the following steps:

1. Start with the right form.[14] Use forms already developed for each eviction option. Forms that have been written and reviewed for consistency with state law are available through the organizations noted in the *Appendix*.

2. Fill it in correctly. If it is a for-cause notice, you must cite the specific breach of landlord- tenant law or section of the rental agreement that the tenant has violated. Briefly describe the tenant's noncompliant behavior. If the notice requires the tenant to remedy a problem, one or more possible remedies must be described. You need to have the correct timing of the notice recorded. There will be other elements to include. For example, if it is a Section 8 rental, you may need to note that a copy of

[14] Technically, the first notice a landlord serves is one that will "terminate" the lease or rental agreement. Should the tenant fail to comply with the landlord's notice, a court-ordered "eviction" is a possible result.

the notice has been delivered to the local housing authority as well.

3. Time it accurately and serve it properly. Many cases are lost because a landlord did not extend the notice period to allow for delivery time, did not wait the correct number of days to serve a nonpayment notice, did not accurately note the timing of the process on the notice itself, or otherwise served the notice incorrectly. Check landlord-tenant law, your rental agreement, and your Section 8 contract (if applicable) to make sure you are timing the notice properly. Also, make sure that you specifying, in writing, when the notice expires. This is particularly useful for avoiding any confusion with tenants who receive 72-hour and 144-hour notices for nonpayment. The way one counts the hours or days in a notice depends on the type of notice and the method of service. Here are the basic options in Oregon (see ORS 90.155 and 90.160):

- **Hand delivery.** Place the notice directly into the tenant's hands. Do *not* slip it under the door or place it in a mailbox. It is a good idea to bring along a person who can witness the process in the event that you must prove the notice was delivered.

For hand-delivered notices that count *hours* (24-hour, 72-hour, and 144-hour notices), the countdown begins immediately upon service; so a 24-hour notice hand delivered by 1:00 p.m. on Monday can expire at 1:00 p.m. on Tuesday. For hand-delivered notices that count *days* (e.g., a 30-day notice), the countdown starts at 11:59 p.m. on the service date, counts consecutive calendar days, and ends at 11:59 p.m. on the last day.

- **First-class mail.** If you don't want to go onto the property, you can mail the notice by regular first-class mail. Mark the outside of the envelope with a return address and "please forward." *Do not use certified or registered mail;* Oregon landlord-tenant law requires you to mail by standard first-class only. You may, however, want to get a *certificate of mailing* from the post office as evidence that a letter was sent.

All mailed notices must be lengthened by three days. Regardless of whether the notice counts hours or days, all notices served by regular first-class mail begin at 11:59 p.m. on the day of mailing but are extended by three days; so a 24-hour notice that is postmarked on Monday can expire no earlier than 11:59 p.m. on Friday. You may need to add *another* three days if a mailed response is required — for example, a 72-hour nonpayment notice requiring payment sent to a post office box. You will shorten the length of notices considerably if you hand deliver.

- **Post and mail.** *If* your rental agreement allows it, all termination notices may now be served by "post and mail" — but the rental agreement must be explicit in allowing both the tenant and the landlord access to this method of serving notices 24 hours a day. Mail a copy of the notice by regular first-class mail and secure a second copy to the tenant's front door. Do both on the same day. Make sure you get a same-day postmark and the envelope is marked as noted above. The intent of the change in the law is that, when allowed by the rental agreement, posting and mailing these notices permits the countdown to begin without adding the additional three days for mailing time — in the case of a nonpayment notice, for example, this method of service would cause the notice period to begin at 11:59 p.m. on the date of service. However, the law does not explicitly state this for all notices. *Landlords are urged to verify with an attorney the appropriate timing of termination notices served by "post and mail" before using this method of service.*

4. Don't guess; get help. As mentioned earlier, unless you are comfortable with the process, consult with an attorney who is well experienced in landlord-tenant law before serving an eviction notice. If you have illegal activity on your property, you already have a major problem. Now is not the time to cut corners in order to save money. Using the correct legal process could save you thousands in damages, penalties, and legal fees down the road.

The Eviction (FED) Process

Pronounced *"F.E.D."* the letters stand for "forcible entry and detainer." Technically, you are suing for recovery of your property because the tenant has *wrongfully detained* it. The following is intended as a generalized overview of the process. It is only an introduction. Read landlord-tenant law (ORS Chapter 90) and FED law (ORS 105.105 to 105.168) for details and, until you are familiar with the process,

consult an attorney who specializes in the subject.
1. Serve the notice. Begin by serving the notice in the manner described earlier. Make sure you do it correctly.
2. Wait for the tenant's response. If the tenant remedies the problem (if allowable) or moves out, you are done. If not, after 24 hours, 72 hours, 10 days, 30 days, or whichever other length of notice, go to step 3. *Most evictions are resolved at this stage.*
3. File FED papers with the county clerk. The clerk will provide the forms. Note the reason for the eviction and attach a copy of the notice you served. Pay a filing fee and a fee for service of summons. The clerk will set a court appearance date that is generally eight to ten days in the future and mail a summons to your tenant. In addition, a "process server" will deliver the summons and complaint, handing it to the tenant (if in) or fixing it securely to the tenant's front door (if not in).
4. Go to the "first appearance." On the appearance date, the judge generally gives the parties the chance to resolve the issue through private discussion and through mediation. If a resolution is not reached, the judge may give the tenant a two-day continuance to get an attorney and reappear. After either the first or second appearance, depending on the circumstances, if no resolution is reached, the judge sets a trial date no more than 15 days after the appearance date. If you, or your legal representative, should fail to show for your appearance date, you will lose by default. If the tenant, or a legal representative, doesn't show, you will generally win by default.
re: cases of first appearance in FED court; most are resolved without a trial, either by default or by mutual agreement of the two parties. Quite often these agreements define a date for vacating the premises and determine which party will cover the court fees. The court then issues a "judgment of restitution" consistent with that agreement.
5. The trial is held. *Few cases make it this far.* The most frequent tenant defenses are: The notice was not served legally, the eviction is retaliation by the landlord for a legitimate action taken by the tenant, or there are habitability problems at the unit. Examples of other defenses include: The cause of action is not legitimate or the eviction is based on illegal discrimination by the landlord.
If the decision is in your favor, a "judgment of restitution" is issued which orders the tenant to move out and directs repayment of various court costs. If you lose, you will likely pay the tenant's legal costs and you will not be permitted to file a no-cause eviction notice against the tenant for at least six months. Essentially, unless the tenant fails to pay rent or commits a significant violation of landlord-tenant law, evictions attempted within six months after a failed FED attempt would be considered retaliatory. However, assuming that the judgment is in your favor, but the tenant *still* doesn't move out, go to the next step.
The county sheriff removes the tenant. If the tenant still doesn't move out, the landlord would return to the county clerk and file for a "notice of restitution," fill out the necessary papers, and pay a fee. The landlord would then have the sheriff (or a process server whom the landlord would hire) serve the tenant with a four-day notice, allowing another day for delivery (the notice can be longer if weekends or holidays are involved). If the tenant doesn't move out by the expiration of the four-day notice, the landlord would go back to the county clerk, pay another fee, and file for an "execution of judgment of restitution" that directs the sheriff to remove the tenants.
If you add it all up, it can take a month or more after the end of the initial notice period to remove tenants who choose to fight your eviction, assuming you win the case. Very few evictions make it all the way to trial. If you meet your responsibilities as a landlord and serve your notices correctly, defense attorneys will be unlikely to advise their clients to fight. If you serve the notice correctly, you may save considerable expense in the long run.
The most compelling point we can make about the entire eviction process, from service of notice to arguing in court, is this: *Eviction is an expensive, time-consuming way to "screen" tenants.* You will save much heartache and considerable expense if you screen your tenants carefully before you rent to them, instead of discovering their drawbacks after you are already committed.

"Abandonment" and "Abandoned Personal Property"

The following questions about the end of a tenancy have been raised in many trainings. Because these issues are somewhat beyond the scope of this program, they will be addressed in only

abbreviated form here. For a more comprehensive review of these issues, see ORS Chapter 90, available through local libraries or online at www.oregonlegislature.gov/bills_laws.

 How can a landlord be sure that a tenant is no longer in possession of the dwelling unit (that "*abandonment*" of the property has occurred)? For landlords, the critical issue is when you can presume that the tenant has "relinquished possession" of the premises, thus allowing the landlord to go in, clean up the unit, change the locks, and prepare the unit for re-renting. For a complete review of the law, see ORS Chapter 90.147. In brief, if the tenant gives "actual notice" of giving up the right to occupy the unit and, if the tenant returns the keys, then the landlord may assume that possession has been "relinquished." Other "reasonable belief" tests are defined in the law for situations where the landlord reasonably knows of the tenant's abandonment of the dwelling unit and can therefore enter the unit, for example, without serving a 24-hour notice for entry.

 What is a landlord required to do with personal property that departing tenants have left behind ("*abandoned personal property*")? The landlord must serve a 5 to 8- day notice, depending on the method of service, to request that the ex-tenant recover personal property [1] left at the premises. The specifics of *where* to serve the notice, as well as many more details about this issue, are defined in ORS 90.425. Be careful when serving this notice. If you are unsure about the correct notification process, contact a skilled landlord- tenant attorney for assistance. In the event the tenant fails to respond to the notice, or responds but then fails to pick up the personal property within 15 days after responding to the notice, assuming the landlord has followed the appropriate procedures, the landlord's options are then dependent on the value of the property in question. For example, if a landlord reasonably determines that the current fair market value of the abandoned property is not more than $1,000 or determines that the cost of storage and conducting a sale probably exceeds the amount that could be realized from the sale, the landlord may exercise an option to "dispose" of the property where "reasonably appropriate" by throwing it away or *giving* it (without compensation) to a nonprofit organization or an unrelated individual. The landlord may *not* keep the property for personal use or benefit. The landlord may charge the tenant for the cost of disposal. In cases where the disposal option cannot be exercised, the landlord will need to hold a sale of the unclaimed property and may retain moneys earned from the sale up to an amount equal to the cost of storing the goods, holding the sale, and recovering unpaid rent. The rest goes back to the tenant, or if the tenant can't be found, to the county treasurer.

Note also that ORS chapter 90 treats abandoned recreational vehicles, manufactured dwellings, and floating homes differently from other types of personal property, stipulating a longer process with requirements to provide notification to lien holders and other interested parties. A landlord with such a vehicle or structure left on his/her property should review the specifics of the law with particular care prior to starting the process.

Good Landlord/Tenant Relations

- Stay in contact with your tenants to ensure everything is functioning properly and there are no problems
- Visit or at a minimum drive by your property periodically
- When issues arise, attend to them promptly. Tell the tenant when you will follow up with them. Even if you don't have an update on resolution to the problem, it's important that you still contact them to tell them this.
- Know your neighbors and stay in contact with them. It's important that your tenants have good relations with the neighbors and that starts with you. Neighbors can also be your friends when it comes to looking out for you.

If You Have a Problem with a Neighboring Property

- Find others that are concerned and enlist their help
- If appropriate, contact the City or Town and/or local police.
- Contact 911 when issues arise
- Keep detailed notes about the problem

- Consider direct contact with the property owner to resolve the problem. Approach the situation as if you want to help and give them the "benefit of the doubt" that they may not be aware, in some cases.

THE ROLE OF POLICE

Build an effective partnership
SAMPLE COMPLAINTS:[15]
"The problem is the police won't get rid of these people when we call. We've had dealers operating in one unit for four months. The other tenants are constantly kept up by the activity, even as late as 2:00 or 3:00 in the morning on weeknights."
"I called police about one of my properties. They wouldn't even confirm that anyone suspected activity at the place. A month later they raided the house. Now I'm stuck with repair bills from the raid. If they had just told me what they knew, I could have done something."
SAMPLE RESPONSE:
"In almost every case, when the police raid a drug house, there is a history of compliance violations unrelated to the drug activity for which an active landlord would have evicted the tenant." — Narcotics detective

The Basics

1. Know how to work with the system to ensure rapid problem resolution. Have a working knowledge of how the police in your area deal with criminal activity at rental property.
2. Know how to work with the police, but don't expect cooperation when your (civil) concerns and their (criminal) concerns conflict.
3. If your police agency sends you a letter warning of illegal activity on your property, don't treat it as an early warning. Treat it as a final warning. Take action immediately.

Defining the Roles: Landlords and Police

It is a common misconception that the police can evict tenants involved in illegal activity. In fact, only the landlord has the authority to evict; police do not. Police officers may arrest people for *criminal* activity. But arrest, by itself, has no bearing on a tenant's right to possess your property.
Eviction is a civil process — you are suing a tenant for possession of the property. Note the differences in level of proof required: Victory in civil court requires "a preponderance of evidence," the scales must tip, even slightly, in your favor. Criminal conviction requires proof "beyond a reasonable doubt," a much tougher standard. Therefore, you may find yourself in a position where you have enough evidence to *evict* your tenants for engaging in criminal behavior, while police and prosecutors do not have enough evidence to gain a criminal *conviction* for the same behavior. Further, even if police arrest your tenants, and a court convicts them, you still must evict them through a separate process, or upon release, they have the right to return and live in your property.
Many landlords are surprised to discover the degree of power they have to stop illegal activity at their property and thus remove the threat to the neighborhood. As one police captain put it, "Even our ultimate action against a drug house — the raid and arrest of the people inside — will not solve a landlord's problem, because the tenants retain a legal right to occupy the property. It's still their home until they move out or the landlord evicts them. And, as is often the case, those people do not go to jail, or do not stay in jail long. It's surprising, but the person in our community with the most power to end an individual drug house problem rapidly is the property owner — the landlord. Ultimately, [the landlord] can make the people not be there anymore. The police can't do that."
The only time law enforcement may get involved in eviction is to enforce the outcome of your civil proceeding. For example, when a court issues a judgment requiring a tenant to move out and the tenant refuses, the landlord can go to the sheriff (or other appropriate law enforcement agency) and request that the tenant be physically removed. Until that point, law enforcement cannot get directly involved in your eviction process. However, police may be able to provide information or other support

[15] Note that some "complaints" contain inaccurate or incomplete assumptions about legal rights or procedure.

appropriate to the situation — for example, testify at the trial, provide records of search warrant results, or stand by while you serve notice.
Again, criminal arrest and civil eviction are unrelated; the only connection being the possibility of using arrest or conviction records as evidence in an eviction trial. No matter how serious a crime your tenants have committed, eviction remains your responsibility.

What to Expect

Police officers are paid, and trained, to deal with dangerous criminal situations. They are experts in enforcing criminal law. They are not authorities in civil law. If you have tenants involved in illegal activity, while you should inform the police so that they may consider criminal enforcement action, do not make the common but inaccurate assumption that you can "turn the matter over to the authorities" and they will "take it from there." Because landlord-tenant law is enforced only by the parties in the relationship, when it comes to removal of a tenant, landlords *are* the "authorities." With that in mind, you will get best results from police by providing any information you can for their criminal investigation, while requesting any supporting evidence you can use for your civil proceeding.
To get good cooperation, remember the rule of working with a bureaucracy: The best results can be achieved by working *one-on-one with the same contact*. Further, while this rule applies to working with any bureaucracy, it is especially important for working with a law enforcement agency where, if police personnel share information with the wrong people, they could ruin an investigation or even endanger an officer. So if an officer doesn't know you, the officer may be hesitant to provide information about suspected illegal activity at your rental.
Your best approach, therefore, is to make an appointment to speak with an officer at a specialized unit in person or to call your local police station or precinct and arrange to speak directly with an officer who patrols the district where your rental is located. There can be a huge difference between the type of information available through a single, anonymous phone call and the amount of assistance possible if you arrange an in-person meeting.
The type of assistance possible will vary with the situation, from advice about what to look for on your property to documentation and testimony in your eviction proceeding. It is not the obligation of the police to collect information necessary for you to evict problem tenants. Eviction is your responsibility, while criminal arrest is the responsibility of law enforcement. While you can get valuable assistance from the police, don't wait for police to develop a criminal case before taking action. If neighbors are complaining that you have criminal activity or other dangerous situations in your rental, investigate the problem and resolve it as quickly as possible (see *If a Neighbor Calls with a Complaint,* page 17). Do not assume that the situation at your unit must be under control simply because the police have yet to contact you or to serve a search warrant at the property.

Trespass Exclusion

Many law enforcement agencies in Oregon have begun working more closely with landlords of apartment complexes to address a key problem: Nonresidents causing problems in the common areas of the property. Apartment complexes with histories of criminal activity often suffer from the additional insult of having such activity carried out in the common areas of the property by people who don't live there.
Owners of multifamily complexes who use a "lease enabling" provision[1] may exclude nonresidents from the common area of the property and have such people arrested for criminal trespassing if they refuse to leave, or if they return after being excluded. In some Oregon jurisdictions landlords may empower local law enforcement to act on their behalf for the purpose of enforcing trespass exclusion laws.
Landlords who wish to set up such a partnership will need to use a lease enabling provision, establish criteria for exclusion[2] and provide documentation granting local law enforcement permission to enforce the nonresident exclusion criteria in the common areas of the property. There are other elements, such as agreements about record keeping, that you will need to have in place in order to set up this partnership. Contact your local law enforcement agency to find out about participation and specific procedures that may apply in your area.

Nuisance Abatement Laws

Nuisance abatement laws and ordinances give local communities the ability to pressure property owners (both owner-occupied and rental) to abate problems associated with chronic illegal activity on their property. While various local ordinances have been adopted, there is also a statewide version. The laws are designed to ensure that, in situations where property owners do not take appropriate action, recourse exists to force the owner to act. While police can arrest for criminal activity, only the landlord can evict. That is why these laws exist.[1] [2]

See page 41 for more about the "lease enabling" provision. See page 47 for more about exclusion criteria.

If you are a responsible landlord, it is extremely unlikely that these laws will be used against you. Each law has built-in safeguards designed to ensure that landlords who act in good faith, and are responsive to the problems identified, will not suffer penalties designed for those few landlords who truly do not care if they rent to tenants who harm the neighborhood. If you have reason to believe that your tenant's conduct could lead to such action, contact your local law enforcement agency and speak to neighbors, and possibly your tenants, to make sure the issues are addressed quickly and appropriately.

The statewide version of this type of nuisance abatement law is officially known as ORS 105.550 to 105.600 — *Abatement of Nuisance Activities or Conditions*. This law defines the process for legal action against Oregon property owners who allow gambling, prostitution, or the manufacture or sale of drugs to occur on their property. Action under this statute may be brought against a property owner by the attorney general, or by a district attorney, county attorney, city attorney, or *any person* living or doing business in the same county. Among other potential penalties note that the property can be closed for up to a year and the prevailing party in the suit is entitled to recover attorney fees. Parties bringing the lawsuit can sue for other damages as well.

"Chronic Nuisance" Letters and Other Reports

When an Oregon law enforcement agency decides to take action on a property where drug activity, gambling, or prostitution is occurring, they have a choice: To pursue it criminally, civilly, or both. If part of the process includes finding a civil solution (e.g., removing the menace from the neighborhood by encouraging the landlord to evict the tenants), police will contact the landlord.

The following describes the letters and other types of reports that some police agencies use when they choose to contact the landlord. The actual procedures used in the area where your property is located may vary from that described here; it depends on the policies of the local law enforcement agency. Keep in mind that a letter is not sent out for every situation. In addition to the steps described below, regardless of which letter you receive, you should contact police and find an officer you can stay in touch with until the problem is resolved. A one-on-one working relationship can improve the level of assistance you are likely to receive.

Only the first of the letters described is defined by law. The rest are warning letters and other types of correspondence, intended to give owners the opportunity to solve problems before legal action is required. Here's what the letters are and what you should do about them:

- **Statewide "drug house" statute letter**. This letter may be from local police, or it may be from a local government legal department, for example a district attorney or a city attorney. It will tell you that your property meets the criteria under ORS 105.550 to 105.600 and request that you take immediate action to remedy the situation or face closure of your property for up to one year and be subject to fines. The prevailing party in the suit is also entitled to attorney fees. (Note that there are variations of this letter sent out by some communities that have local ordinances — that either parallel the state statutes or go further in their scope.)

What to do: It is likely that you have a situation for which the 24-hour eviction notice for acts that are "outrageous in the extreme" was designed. Police do not attempt to close property with this ordinance unless there is a well-established history of criminal activity. Typically, there will be both arrests and convictions associated with people at the unit.

When you get this letter, it means the problem has gotten so out of hand that the City or County sees fit to sue you for not taking action. Move quickly. *Contact your attorney immediately.* Contact your

local police. Serve the eviction notice. After serving the notice, if the tenants don't move out, start the FED/court-ordered eviction process.
If you wish to serve the 24-hour eviction notice by hand (in order to avoid adding mailing time to the notice), but are frightened to go onto your property under these circumstances, find out if a police officer can "stand by" while you do it. Otherwise, consider serving the notice by mail.

- **An "arrest" or "consent search" letter.** This letter informs you that police have arrested a person on your premises for criminal activity (usually selling or manufacturing illegal drugs). Police agencies in Oregon are not obligated to send such a letter when they make an arrest, so it is up to department policy as to whether or not this approach is used.
What to do: If the person arrested is one of your tenants, you will likely have grounds for serving a 24-hour eviction notice. You have evidence presented by police of drug activity by your tenant — if it goes to trial, a 24-hour eviction for acts that are "outrageous in the extreme" can be reasonably argued. However, as with any eviction for drug activity, if it goes to trial, you may need to subpoena an officer to present the evidence collected. Practically speaking, if your tenants *are* dealing drugs, they're probably going to move out rather than ask to see you in court.
If the person arrested is not one of your tenants, depending on the circumstances, you may still have grounds for the 24-hour notice. Serving a 24-hour notice may result in the tenants moving out, but should the tenants choose to fight, they potentially have more defenses available to them. If you have the option, you could also serve a no-cause eviction notice. You also have the option of reviewing the situation and determining the causes that may exist to serve a noncompliance notice such as the 30-day for-cause notice. As with any allegation of illegal activity on rental property, a discussion with your attorney is appropriate before taking action.

- **A notice that a search warrant for illegal activity has been served.** This letter advises you that police have served a search warrant for illegal drug activity (or potentially, other types of criminal behavior). Generally, the evidence collected to serve the warrant (in addition to any evidence collected during the search) will hold up in court with roughly equal strength to the type of evidence represented by the "arrest" letter. As with the previous letter described, it is up to department policy as to whether these letters are sent out. Some Oregon police agencies make it standard practice to send these letters following the service of most search warrants; others do not.
What to do: Again, consider your options and then act. As described in the discussion of the "arrest" letter, above, you may be in a position to serve a 24-hour eviction notice. If not, consider serving a no-cause or a for-cause notice.

- **A warning letter.** This letter will state that the police have received information suggesting there is criminal activity on the property, and will advise you that, if further investigation reveals that such activity is occurring, civil proceedings (abatement) will be pursued.
What to do: You need to determine whether or not your tenants are involved in illegal activity and act accordingly. So consider what additional evidence you have and then take appropriate action. Generally, the letter is admissible as supporting evidence, but is not sufficient grounds for eviction by itself.
In addition to finding out what evidence police have, ask neighbors to describe the activity they have seen. If you feel comfortable doing it, inspect your property. Call and speak with your tenant about the activity mentioned in the letter. Keep watch for significant breaches of compliance. (By the time the police send out a letter, the tenants have already committed significant violations of their rental agreement or of landlord-tenant law.)
You may use the letter in combination with other evidence (e.g., the testimony of neighbors or police officers) to support your case for a 24-hour notice or a 30-day for-cause eviction, depending on the circumstances. Also, if you are satisfied your tenants are involved in serious illegal activity, and you have the option, you could consider a no-cause eviction notice as well.

- **An Apartment Incident Report or similar information via e-mail.**[1] Some Oregon police agencies have begun using these small report forms, about the size of a 3x5 note card, to inform on-site

managers of problems at a property. The cards are carried by officers and left either in-person with the manager or in the manager's drop box. The reports are one way police attempt to keep the landlord informed of when they are called to the property. The reports can be utilized both as a communication tool and as formal documentation for possible lease enforcement. The reports are a resource tool. The landlord must still follow through with the appropriate notices to the tenant. Some Oregon police agencies are now developing partnerships with property owners that include trading e-mail addresses to facilitate sharing the same information.

- **Call statistics research.** In some communities an apartment manager or landlord can obtain a computer printout of the police calls-for-service to their property and ask for assistance in reducing the number of calls. For additional details contact your local police agency.

Remember that if you are actively managing your property, while you may occasionally get an apartment incident report (if your police agency uses them), it is unlikely you will receive one of the warning letters described above. When police send warning letters, they have typically received numerous complaints — complaints an active manager would have already known about and addressed.

APPENDIX

The following are resources you may wish to use as you pursue your property management goals. We have not attempted to verify the nature, scope, or quality of every reference listed, nor have we made a comprehensive search for all possible resources.

Rental Housing Associations & Support

The type of support offered by each organization varies. Examples of services include: rental forms, continuing education, attorney referrals, legislative lobbying, running credit checks, and various others. The first three listed essentially serve all types of Oregon landlords.

- **Rental Housing Alliance Oregon** (formerly Rental Housing Association of Greater Portland) is based in Portland and now serves landlords and property managers throughout the state.

10520 NE Weidler
Portland, OR 97220
(503) 254-4723 rhaoregon.org

- **Oregon Rental Housing Association** (ORHA) has local chapters around the state and serves owners and managers of single-family and multifamily property. (*Portland Area Rental Owners Association* is the Portland chapter at 333 South State Street, Ste. V #443, Lake Oswego, OR 97034, (503) 364-5468, portlandarearoa.com)

1462 Commercial Street NE
Salem, OR 97301
(503) 364-5468 oregonrentalhousing.com

- **Stevens-Ness Law Publishing Company**. While Stevens-Ness is not a rental housing association, it provides some of the same services, including rental forms tailored to Oregon law, copies of landlord-tenant laws, and manuals on rental property management in Oregon.

916 SW 4th Avenue
Portland, OR 97204
(503) 223-3137 stevensness.com

- **The Manufactured Housing Communities of Oregon** serves the needs of owners of manufactured dwelling parks and floating home facilities, statewide. Owners of space for mobile, manufactured, or floating homes should contact:

P.O. Box 12709
Salem, OR 97309
(503) 391-4496 mhco.org

- **Institute of Real Estate Management.** Professional property managers seeking accreditation and educational support should also contact the Oregon-Columbia River Chapter of IREM at:
1215 E. Powell Blvd.
Gresham, OR 97030
(503) 228-0002 iremoregon.org

Screening Services

Screening companies provide a range of assistance, so ask for the type of help that is available. For example, you can pay a screening company to run a simple credit check or you can ask many screening companies to provide a much more comprehensive service, including checking all references, conducting criminal background checks and making rent/don't rent recommendations to you. Unfortunately, there is no section in business directories for "Tenant Screening Companies." You will find them under different headings, depending on the scope of services and the preferred heading of the business, including:

- **Employment Screening & Tenant Verification.** This category includes companies that provide a range of information and investigation services including credit checks, reference verification, and criminal background checks.
- **Real Estate Rental Service.** Some of these will be services to renters, rather than landlords.
- **Property Management.** In addition to tenant screening firms, this category includes everything from commercial real estate management firms to residential management companies.
- **Credit Reports.** Some specialize in tenant verification as their primary business, some concentrate on the credit reporting needs of other types of businesses.

Use the same "key words" listed above as a starting point if you are doing an Internet directory search for companies offering screening services as well — ideally after you have already limited your search to Oregon.

Reference Materials: Printed

Check with the associations listed on the previous page for information about both periodicals and handbooks on rental housing issues in Oregon. Other printed references on Oregon landlord- tenant issues include:

Handbook for Oregon Landlords. 2014 edition. Includes sample forms for illustration and excerpts from Oregon Revised Statutes and Oregon Administrative Rules. Stevens-Ness Law Publishing Company, 916 SW 4th Avenue, Portland, OR 97204, 503-223-3137, stevensness.com.

Landlord/Tenant Rights in Oregon. Seventh Edition. Janay Ann Haas, Attorney. Bellingham, WA, Self Counsel Press. Available in bookstores and through online booksellers.

Oregon Rental Housing Association Law Book, 2014 edition. J. Norton Cabell, Past- President, Oregon Rental Housing Association, 1462 Commercial Street NE, Salem, OR 97301. 503-364-5468. Available from ORHA and its chapters around the state.

State and Local Links

The following are just few of the resources that seem particularly useful to Oregon landlords:

Links to State-wide Information:

- **State government and laws:** To access State of Oregon information, including state statutes (follow links to the legislature) and references to local government web pages across the state, visit..... oregon.gov
- **The Oregon Judicial Department home page** contains a range of information, including links to Circuit Court information available online.....courts.oregon.gov/ojd
- **Oregon State Bar Landlord and Tenant Law Resource Page** contains various articles on landlord tenant law and practices..... osbar.org/public/legalinfo/tenant.html
- **The Fair Housing Council of Oregon** provides education, outreach, and access to enforcement

throughout Oregon and Southwest Washington with related information online. If you have questions about your rights and responsibilities under the law visit call the Fair Housing Hotline at 503-223-8197 or 1-800-424-3247 or visit ..... fhco.org

Forms to Pick Up

The following list shows examples of forms you can purchase to assist you in managing your property. We recommend that you don't leave this up to chance, but instead purchase forms published by a property management association or a legal documents publishing company that has tailored the forms specifically to match the latest version of Oregon's Residential Landlord and Tenant Act. Some of the forms suppliers make it easy to view a list of available forms online and to view sample copies. Take the time to familiarize yourself with the forms that are available.

Some forms you will want to purchase and keep on hand. Others you might elect to purchase on an as-needed basis only. Make sure you purchase forms designed for the type of rentals you have. Again, these are only examples. Suppliers of forms generally offer more forms, for more situations, than the partial list shown here.

- Application to rent
- Applicant screening/verification checklist
- Applicant screening fee disclosure
- Deposit receipts
- Rental agreement
- Check-in/check-out and final accounting
- Lead-based paint disclosure
- Smoke/Carbon Monoxide alarm acceptance
- Pet Agreements
- Partial Payment Receipt

· 24-hour notice to enter unit
· Emergency entry notice
· Maintenance and repair request

Fire Safety Checklist

The following checklist is recommended by Gilliam County Fire Service:

- Landlords must have smoke alarms on each level of the home, within 15 feet of the outside of any sleeping area, and a smoke alarm in each bedroom.
- Keep lots mowed.
- Don't stack flammables against homes or wooden fences.
- Be aware of the burn ban, typically during the spring, summer and fall months.

The following list provides additional useful resources:

URGENT/EMERGENCY NUMBERS IN OREGON:
EMERGENCY: .....USE 9-1-1
WHEREVER AVAILABLE Oregon Poison Center:.....1-800-222-1222
Oregon Poison Center Web site.....ohsu.edu/xd/outreach/oregon-poison-center
Note: Agency Web sites can be found through the state's site at www.oregon.gov
Board of Pharmacy
Building Codes Division
Department of Environmental Quality
Department of Consumer & Business Services State Police Drug Enforcement Section

Laws

Landlords are encouraged to review ORS Chapter 90, available on the web at www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx, as well as the other laws listed below:

· **Residential Landlord and Tenant Act (Oregon Revised Statutes Chapter 90).** ORS Chapter 90

is the most important law for any Oregon residential property manager to know. The law covers a range of issues including defining landlord and tenant rights, responsibilities, and recourse. The law describes rental agreement enforcement options and steps tenants may take to address problems generated by noncompliant landlords.

- **Forcible Entry and Wrongful Detainer (ORS 105.105 to 105.168).** Describes the FED/court process — the steps involved if a tenant stays on past the end of a termination notice.
- **Abatement of Nuisance Activities or Conditions (ORS 105.550 to 105.600).** Gives citizens and governments within the state important powers to bring legal action against property owners who allow specified crimes to occur on their property. Note that the prevailing party is entitled to recover attorneys' fees, and that general reputation of the premises is permissible as evidence.
- **Clean-up of Toxic Contamination from Illegal Drug Manufacturing (ORS 453.855 to 453.995).** Prohibits rental of property contaminated from illegal drug manufacturing and forbids sale of the property unless the contamination is appropriately disclosed. Sets down guidelines for decontamination and the process for having the property certified "fit for use."

Every two years the legislature reviews Oregon's statutes and makes changes. Updated versions of the law, once published, are available online, from your local library, or from a property management association. You may order state laws directly from the Legislative Council in Salem, which also provides the statutes on the Internet. For details call 503-986-1243 or go to the Legislative Counsel's web site at www.oregonlegislature.gov/lc.

Additional Items we may want to address:

If Gilliam County does develop a property management company, can they annual procure rental forms that their clients can utilize? Supply links to ORS, landlord tenant laws on their website or through a member portal?

Can we anonymously post our rental applications and forms for others in whatever program can critique?

Suggested that we put a clause in our rental agreements stating there is to be NO growing of marijuana on our property, otherwise they are free to do so and it does stink up a house.

One thing we require of our tenant's that I believe is a big boost for the community is the yard maintenance. Not only do we stipulate # of vehicles maintained on the properties, we require the yards to be watered, mowed and clippings hauled off. Too many poor kept yards in this community. We pay for the overage during the watering season. The tenant deducts the difference off their monthly rent and provide a copy of the water bill with their check.