

RESIDENTIAL EVICTION INFORMATION FOR LANDLORDS

An eviction is formally called an FED (Forcible Entry and Detainer). It is a complaint filed with the court to remove a tenant from property owned or managed by the person filing the complaint. This form is for **residential** evictions only – DO NOT use this form for a commercial property, group home, farm, vacation rental, social or fraternal home, or to evict a “squatter.”

COURT CLERKS CANNOT GIVE LEGAL ADVICE!

Landlord/Tenant law is *very* complex and detailed. Most of the laws are in chapters 90 and 105 of the Oregon Revised Statutes (ORS). You must also follow other laws, procedures, and prior appellate court decisions, including the Oregon Evidence Code (OEC), the Uniform Trial Court Rules (UTCR), and the Oregon Rules of Civil Procedure (ORCP).

(<http://courts.oregon.gov/OJD/rules/index.page?>). If you do not follow the laws *exactly*, the court may order you to pay the tenant’s lawyer fees. You are strongly urged to talk to a lawyer before you try to file an eviction on your own.

Contact the Oregon State Bar at 503.620.0222 or (in Oregon) 800.452.8260 or go to www.oregonstatebar.org for information and help finding a lawyer.

Following these instructions will not guarantee that you win your case. These instructions are general and may not apply in a given situation. YOU are responsible for getting legal advice about how to properly evict a tenant. These forms do NOT provide legal advice and the Oregon Judicial Department is not responsible for the outcome of your case if you rely on these forms.

The landlord is the *plaintiff*, and the tenant is the *defendant* throughout the case.

A judgment for the plaintiff (landlord) will be for return of the property and the costs of filing and serving the complaint. To collect back rent or damages, you must file a separate civil complaint. A judgment for the defendants (tenants) generally means that they do not have to move out of the property. It may also include the cost of responding to the complaint and lawyer fees.

Fees

If you are low-income, you can ask the court to defer or waive payment of filing fees. Fill out and submit an **Application and Declaration for Deferral or Waiver of Fees** and an **Order Regarding Deferral or Waiver of Fees** to the court clerk when you file your *Residential Eviction Complaint*. If you are on public assistance, you must provide proof of that assistance at the time you file the application. Your complaint **will not** be filed until you have paid the filing fee or the court grants your application for deferral or waiver.

FIRST: Give the defendant (tenant) an eviction notice

You must give written notice to the defendant (tenant).

- Your notice must be properly prepared and follow *both* the statutes (laws) and your rental agreement. You should talk to a lawyer about how you can give the defendant (tenant) notice. Not all notices can be delivered in the same way.

Before you file a *Complaint* with the court, you must give one of the following notices to the defendant (tenant) *in writing* **and** the time period in the notice must have ended:

- a) 24-Hour Notice (personal injury, substantial damage, or extremely outrageous act) (ORS 90.396)
- b) 24-Hour Notice (unlawful occupant) (ORS 90.403)
- c) 24-Hour Notice (perpetrator of domestic violence, sexual abuse, or stalking) (ORS 90.445)
- d) 24/48-Hour Notice (drug or alcohol program violation) (ORS 90.398)
- e) 72-Hour or 144-Hour Notice (nonpayment of rent) (ORS 90.394)
- f) 7-Day Notice (week-to-week tenancy, with cause) (ORS 90.392(6))
- g) 10-Day Notice (week-to-week tenancy, no cause) (ORS 90.427(2))
- h) 10-Day Notice (pet violation) (ORS 90.405)
- i) 10-Day or 20-Day Notice (repeat violation) (ORS 90.392(5) or 90.630(4))
- j) 30- or 60-Day Notice (month-to-month tenancy without stated cause) (ORS 90.427(3) or (4))
- k) 180-Day Notice (month-to-month tenancy without stated cause) (ORS 90.429)
- l) 30-Day Notice (month-to-month stated cause) (ORS 90.392, 90.630 or 90.632)

Other laws may allow you to proceed with another type of notice or no notice in some situations. Talk to a lawyer about these kinds of evictions.

Read the referenced statutes (laws) carefully! Go to www.leg.state.or.us/ors/090.html.

If you have questions about which type of notice you need to give, see a lawyer or contact the Oregon State Bar at 503.620.0222 or (in Oregon) 800.452.8260, or go to www.oregonstatebar.org.

Notices can be purchased at most office supply stores. You can write the notice yourself if all of the information required by the law is included.

Timing of the notice deadline

- ❖ Your notice *must* specify the date and time that it expires. You must give the defendant (tenant) the amount of time required by the laws.
- ❖ When counting time, Day 1 is the day *after* notice is given.
- ❖ If you mail the notice, add 3 days to the minimum time required by the law (see list above). So if you are mailing notice, you must allow 4 days before you begin counting the defendant (tenant)'s time to respond.
- ❖ If your notice period is given in hours rather than days (in the list above or other law you are using), then the time begins immediately when you give notice **except**
 - For 72-hour or 144-hour nonpayment notices, the time begins at 11:59 pm on the day you serve. **Talk to a lawyer for information about this type of service.**
- ❖ The last day does not end until midnight.

SECOND: File a *Residential Eviction Complaint* if necessary

- ❖ After the time specified in the notice has passed, if the defendant (tenant) has not left the property you may file a *Complaint* with the court for the county where the *property* is located.
- ❖ To file a complaint, complete the *Residential Eviction Complaint* and *Summons* forms and file them with the court clerk. **NOTE:** write all names *first, middle, last* on all forms.
 - You *must* include a copy of the notice you gave to the defendant (tenant), and the notice must have expired before you file.
- ❖ Along with the *Complaint*, you must give the court clerk the following:
 - Copies of the notice:
 - **3** copies if there is one adult defendant (tenant) *plus*
 - An additional copy for **each** additional adult defendant (tenant) (so if there are 2 adults, you need to file 4 copies (3 initial plus 1 additional))
 - The address of the premises (if there is no street address, see a lawyer)
 - A separate mailing address for the defendant (tenant) if the defendant (tenant) does not receive mail at that property **and**
 - The filing fee. Courts accept cash, credit and debit cards, and checks or money orders made payable to the State of Oregon. Go to www.courts.oregon.gov.

The court clerk will usually set a court date for 7-14 days from the judicial day *after* you file and pay the filing fee. A judicial day is a day that the court is open for regular business.

The clerk will give you the original *Summons* and copies of the *Complaint* for service on the defendant (tenant). Write the case number on the bottom of each page of each document.

HOW DO YOU “SERVE” THE DEFENDANT (TENANT)?

You must officially notify all defendants (tenants) that a case has been filed. This is known as service. Service rules are different for FED cases than for other cases. You must complete service by the end of the judicial day after the day you filed your *Complaint*.

1. Personal Service:

- a. By Process Server: Take a copy of the *Summons* and *Complaint* to the sheriff's office where the property is located and have a sheriff's officer serve the defendant (tenant). The sheriff's office charges a fee for service. You can also hire a private process server of your choice.
- b. By a Non-Party: Have a competent* person 18 years or older who is a resident of Oregon **and who is neither a party** to the case (plaintiff or defendant), **nor** the lawyer of a party, serve the papers. The server cannot be an employee of any defendant (tenant). If you have safety concerns, have the sheriff serve the papers.

*competent means a person who can understand, remember, and tell others about an event.

A ***Certificate of Service*** must be completed and filed with the court by whoever serves the defendant (tenant). If the server is not a sheriff's officer, then you must also include the address and phone number of the server. This form is available online or at the court.

2. **Posting:** If the defendant (tenant) cannot be personally served, the process server may post the notice at the main entrance of the defendant (tenant)'s part of the premises. This means that if the property is an apartment, it must be posted on the front door of the *apartment*, not of the whole building.

Service must be completed by the end of the judicial day *after* you file the *Complaint*.

FIRST APPEARANCE and MEDIATION

- ❖ If the defendant (tenant) leaves the property before the court date, you have two options:
 - Go to court on the date specified and request a judgment and money award for your costs of filing and service **or**
 - Have the case dismissed. Send a written notification *with your signature* to the court clerk, directing the court to dismiss your complaint.

You must appear at the time noted on the *Summons*. If you do not appear, the court will dismiss your case.

- ❖ If the defendant (tenant) does not move, does not appear in court, and has not reached an agreement with you, the judge may require the defendant (tenant) to return the premises and pay your costs. See the next section about the Servicemembers Civil Relief Act.
 - ❖ If the defendant (tenant) *does* appear in court to oppose the eviction, the judge may require that you try to reach an agreement. Some courts may have a mediator available. Check with your local court to see if it offers this service. A mediator can help you resolve your dispute, but *cannot* make decisions for you or order either party to do anything. Mediation is confidential. If you do not reach an agreement, the defendant (tenant) will have to file an answer with the clerk, who will provide you with a copy. The case will then be set for trial on another day.
 - ❖ **NOTE:** if you get a money judgment and the defendant (tenant) pays it, you **MUST** file a ***Satisfaction of Money Award*** with the court. This form is available online or at the court.
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Servicemembers Civil Relief Act

The Servicemembers Civil Relief Act (SCRA) may apply to your case. This federal law may not allow you to get a default judgment if the defendant (tenant) does not respond. This law starts at 50 U.S.C. App 501. Your local law librarian can help you find it, or go to www.law.cornell.edu* (under *Legal Resources* click *U.S. Code*, then click *Appendix to Title 50*). You must provide a ***Declaration of Non-Military Service*** before a judge can order a default. SCRA does not apply to all military servicemembers at all times. If a servicemember has signed the lease, you should see a lawyer before trying to evict.

If you know the defendant (tenant) is *not* in the military, you must state *facts* that explain how you know. Some things that are *not* supporting facts are: he has long hair, he has problems with authority, she does drugs, she's too old, or he is not a U.S. citizen. **Be aware** that if you make false statements about the defendant (tenant)'s status, you may face both federal and state penalties.

If you have the defendant (tenant)'s Social Security Number and date of birth, go to the Department of Defense website at www.dmdc.osd.mil/appj/scra/scraHome.do to find out if the defendant (tenant) is in active service. This site can give you a free statement of service status that you can print out (called a "certificate of service" on the website). Bring this statement, or a printout of the screen (by pressing the "print screen" button on your keyboard),

*This is an outside site maintained by Cornell University. The Oregon Judicial Department is not responsible for any information on this site. Links may have moved.

to court. You can also call 571.372.1100 for military verification. Put the date and the name of the person you spoke with on your motion. If you don't have the Social Security Number or date of birth, commercial websites may be able to provide information.

If you don't know whether the defendant (tenant) is in the military and have checked the website, or don't have the necessary information, check "I am unable to determine whether this person is in military service" and add any facts that you *do* know. The judge will decide whether to grant the default.

YOU ARE STRONGLY ADVISED TO TALK TO A LAWYER IF A DEFENDANT (TENANT) IS IN THE MILITARY! Contact the Oregon State Bar at the number on Page 1 for help finding a lawyer.

TRIAL

At trial, the judge will hear evidence and testimony, and will make a decision (called the "judgment"). Both parties may present physical evidence (like photographs, rental agreements, and the eviction notice) and call witnesses. You may read from a prepared statement or refer to notes, but do not expect the judge to read your notes or any witness statements.

The plaintiff (landlord) must prove the case, so be prepared to show that you own or manage the property, and facts supporting eviction, including proof of proper notice.

The Oregon Evidence Code (OEC) and Oregon Rules of Civil Procedure (ORCP) govern how to admit your evidence and what you need to prove. Talk to a lawyer about how to properly prove your case. You may believe that the facts are on your side, but if you don't follow proper court procedures, you may lose anyway. Links to these rules are on Page 1 of this form.

If the judge decides in favor of the defendant (tenant), the court may dismiss the case and require the plaintiff (landlord) to pay the defendant (tenant)'s costs and lawyer fees.

If the judge decides in favor of the plaintiff (landlord), the court may order the defendant (tenant) to leave the property (move out). The defendant (tenant) may also have to pay the plaintiff (landlord)'s costs and lawyer fees.

Go to www.osbar.org/public/legalinfo/tenant.html for information about what may happen after your judgment.

COURTROOM RULES: *These are general court rules. Judges may have additional rules.*

- *Appropriate dress is required. See UTCR 3.010 and local court rules.*
- *Caps and hats must be removed upon entering the courtroom.*
- *Food and drink are not allowed in the courtroom (including gum).*
- *Weapons are not allowed in any part of the courthouse.*
- *Pagers, cell phones, and all other electronic devices that may disrupt court proceedings must be turned off (not just silenced, signals interfere with recordings).*
- *Audio and video recording is not permitted without advance permission from the judge.*