Testimony in Support of SB 91A
House Committee on Human Services and Housing
May 6, 2013

John VanLandingham
Lane County Legal Aid & Advocacy Center

1. SB 91A is introduced on behalf of the **General Residential Landlord/Tenant Coalition**. The General Residential Landlord Tenant Coalition is a state-wide coalition of tenant advocates and landlord interest groups that has existed for about thirty years for the purpose of coming to consensus in revising, clarifying, and updating Oregon's Residential Landlord and Tenant Act (ORLTA) in ways that work for landlords and for tenants. SB 91A is the product of months of negotiation (14 regular monthly meetings typically of 3 hours each since May of 2012) by the Coalition. The bill is consensus for all but one member, who objects to one part of one issue (see 5-c-i below or Section 3 (3)) in the bill.

a. The Coalition consists of 10-15 active members, which includes landlord representatives, tenant representatives, and representatives who have both perspectives (a housing authority and a local government housing program specialist.) The email list consists of 62 folks, and meeting notices, summaries, and drafts of proposals are shared with all along the way. Participation is open to anyone.
b. The coalition has existed since the early 1980s, and has produced a negotiated bill amending Oregon's residential landlord/tenant law every session since then except in 1991, when we agreed to focus instead on affordable housing funding.
c. The coalition works a number of issues which don't show up in our bills, perhaps because we decide they are not good ideas (for example, this time, extending the statute of limitations for landlord/tenant claims) or because there is not support among a significant members of the coalition or because an issue is complex and needs more work, in which case we may try to work it further for a future session (e.g., guests and exclusions).
d. Coalition bills are always a product of compromise. No side gets everything that it wants. And there is no way to quantify who got what or whether each side got an equivalent amount. Still, pulling out one issue now may well cause the whole applecart to fail.
e. One of the benefits of the coalition is its longevity, in that we have a commitment to come back in future sessions and try to fix any mistakes that we've made; see the housekeeping issues in this bill, for example.

2. The negotiated agreement includes **five issues or areas**:

a. Mandatory Renter's Liability Insurance (#3 below)
b. Fees (#4 below)
c. Prior History (#5 below)
d. Early termination in a foreclosure (#6 below)
e. Housekeeping (#7 below)

3. Mandatory Renter's Liability Insurance:

a. **Current Law:** Current statutes are unclear on the ability of landlords to require Renter's Liability Insurance as a condition of tenancy.

b. **Problem:** Landlords would like to be able to require tenants to maintain liability insurance, to insure the landlord and other tenants for any damages caused by tenants' actions. Tenant advocates are concerned about the cost of renter's liability insurance, and the inability of some tenants to find insurance they can afford, or at all. Insurance is often more expensive in lower-income areas, so low-income tenants get hit harder by a cost they can least afford.

c. **Solution:** Allow landlords to require mandatory renter's liability insurance, with some parameters:

- **i.** Must be in a written rental agreement.
- **ii.** Required coverage may not exceed $100,000 per occurrence or the customary amount in that rental market, whichever is greater.
- **iii.** A landlord must advise an applicant in writing of any insurance requirement and the amount required, prior to entering a rental agreement. The landlord may require documentation of insurance coverage before the tenancy begins.
- **iv.** In an existing tenancy, a landlord may amend a written rental agreement to require renter's liability insurance, after giving the tenant at least 30 days' written notice of the requirement. If the tenant fails to obtain insurance coverage within that 30 day period, the landlord may terminate the tenancy pursuant to ORS 90.392. The tenant may cure the cause of the termination as provided by ORS 90.392 by obtaining insurance within a second 30-day period.
- **v.** A landlord may require documentation of continuing or renewed insurance coverage on a periodic basis related to the insurance policy coverage period or more frequently if the landlord reasonably believes that the insurance policy is no longer in effect.
- **vi.** A landlord may only require that a tenant obtain or maintain renter's liability insurance if the landlord also has comparable liability insurance coverage and provides documentation of that.
- **vii.** Neither the landlord nor the tenant can make unreasonable demands that have the effect of harassing the other with regard to providing documentation of insurance coverage.
- **viii.** A landlord may not require use of a particular insurance provider or carrier, require that a tenant name the landlord as having special status on the tenant's insurance policy, or require waiver of the insurer's subrogation rights.
- **ix.** A landlord cannot make a claim against the tenant's liability insurance unless the claim is for damages or costs for which the tenant is legally liable; the claim is greater than the amount of the tenant's security deposit, if any; and the landlord provides a copy of the claim to the tenant contemporaneous with filing the claim with the insurer.
- **x.** A landlord may not require insurance if the tenant's household income is equal to or less than 50 percent of the federal Housing and Urban Development family adjusted median income level for that area and household size, as measured up to a five-person household.
- **xi.** A landlord may not require insurance in low-income subsidized housing.
- **xii.** Penalty for frivolous claims against a tenant's insurance (damages plus $500).
- **xiii.** A landlord must provide notice of the requirement for renter's liability insurance before charging a screening fee of an applicant.

4. **Fees:**
    a. **Current Law:** Currently, ORS 90.302 (2) allows landlords to charge $50 non-compliance fees for 5 specific non-compliances.
    b. **Problem:**
        i. Landlords would like to be able to charge fees for additional types of non-compliances with written rules or rental agreement provisions, for unauthorized smoking and unauthorized pets.
        ii. Landlords want to be able to escalate fees for repeat violations.
        iii. Tenants worry about inappropriate use of fees assessed unfairly, with little or no process to challenge the issuance of the fee. Bad-actor landlords sometimes assess fee after fee, leaving vulnerable tenants with the choice of paying up or losing their housing.
        iv. Escalating fees exacerbate these fears.

    c. **Solution:** Add two new noncompliance fees in 90.302 (2) (f) (the provision that allows noncompliance fees), for smoking and unauthorized pets. Add an escalating factor, for repeat violators. Add procedural protections for tenants to prevent mis-use of fees.
        i. Fees can be stair-stepped as follows: First noncompliance, warning notice; second noncompliance within one year, $50; third and any subsequent noncompliances within one year of the warning notice, $50 plus 5 percent of the rent.
        ii. Fee provisions must be spelled out in the rental agreement/rules, including any stair-step.
        iii. A landlord must give a written warning before assessing a fee for a subsequent noncompliance (part of the stair-step); warning must specify the fee, including the second-offense, stair-stepped fee.
        iv. A landlord must assess the fee within 30 days; can't wait and surprise the tenant later.
        v. A landlord cannot both assess a fee and evict the tenant for the same noncompliance; landlord could evict for subsequent noncompliances without assessing a fee for that noncompliance.
        vi. A landlord cannot deduct the fee from a rent payment. The landlord can deduct from any deposit or evict using a 30/14 day for-cause notice.

5. **Prior History:**
    a. **Current Law:** Current law prohibits landlords from considering an applicant's prior eviction history if the prior eviction was dismissed against the applicant/tenant or decided in the tenant's favor, but allows unlimited use of prior eviction judgments against a tenant no matter how old or of the applicant/tenant's prior history of arrests and convictions.

    b. **Problem:** Tenants with prior eviction history or criminal history often encounter insurmountable barriers when seeking safe, affordable housing. Even if years have passed since the FED, arrest, or conviction, the tenant often cannot overcome this

barrier. This history can shut the door to housing for years to come, even when the past behavior presents no current threat or is for conduct unrelated to performance as a tenant. Tenants looking for safe housing for themselves and their families deserve to be evaluated and assessed individually.

c. **Solution:**

i. A landlord may not consider eviction history when screening applicants, if:

1. The eviction was dismissed or the applicant prevailed (doesn't apply if the case is still pending); this is current law; or
2. The eviction judgment against the applicant/tenant is 5 or more years old.

ii. A landlord may not consider arrest history in evaluating an applicant, where the arrest did not result in charges which are still pending or in a conviction.

iii. A landlord may consider a criminal conviction (whether as a result of a trial, guilty plea, or no-contest plea) and arrest and charging history in evaluating an applicant if the conviction or pending charge is for criminal behavior that is:

1. A drug related crime;
2. A person crime;
3. A sex offense;
4. A crime involving financial fraud, including identify theft and forgery; or
5. Any other crime, if the nature of the criminal conduct for which the applicant was convicted would adversely affect the landlord or other tenants' property, or the health, safety, or right to peaceful enjoyment of the premises by other residents, the landlord or the landlord's agent.

6. Early termination in a foreclosure:

a. Current Law: ORS 90.310 requires a landlord of a property with 4 or fewer units to disclose the existence of a pending foreclosure of the property to a tenant prior to the execution of a rental agreement for that property. If a home goes into foreclosure after the execution of a rental agreement, state and federal law protect the tenant's ability to remain in the home for the remainder of a fixed term lease, or for 90 days after the foreclosure if the rental agreement is a month-to-month agreement. ORS 90.367 allows a tenant to apply a security deposit or pre-paid rent to any rents owing a landlord who goes into foreclosure, on the theory that a landlord in financial distress will not otherwise refund such payments. These provisions of current law provide some protection from the instability that foreclosure inflicts on tenants. However, there is no provision allowing a tenant to terminate a fixed term lease for a dwelling unit that goes into foreclosure after the lease has begun.

b. Problem: When a rental unit goes into foreclosure, it is a reflection of the landlord's financial distress. Upon notice of a pending foreclosure, tenants are compelled to

continue paying rent to a landlord who is not in-turn paying their mortgage and not providing the tenant with the implied right to a secure tenancy. A tenant may want to terminate a lease and relocate for a variety of reasons such as the uncertainty of the future housing security.

c. **Solution:** Amend ORS 90.367 to allow a tenant, after receiving notice that the rental property is in foreclosure, to serve a 60 day notice of termination of the tenancy on the landlord. If the landlord does not provide proof that the foreclosure has been averted within 30 days of receipt of the tenant's notice, the tenancy will terminate and the tenant is released from the rental agreement.

7. **Housekeeping:**
    a. ORS 90.275 (1): Remove the reference to guest in the temporary occupant statute. A temporary occupant is not a type of guest.
    b. Amend ORS 90.160 re calculation of notice periods to clarify inconsistency regarding use of the term "midnight."
    c. Amend the period to refund of rent to avoid waiver in ORS 105.120 to ten days, to be consistent with other sections in the Act on this topic.
    d. Amend ORS 90.320 (1) (k), pertaining to carbon monoxide detectors. In 2011, the Coalition bill amended ORS 90.316 and ORS 90.317 to be consistent with Fire Marshal rules, but we failed to amend a similar provision in 90.320.
    e. Amend ORS 90.302 (2) (c) to add a penalty for tampering with a carbon monoxide detector, same as with a smoke alarm.
    f. Amend ORS 90.425 and 90.675 to clarify that a landlord who simply stores a tenant's abandoned property, without seeking to dispose or sell it, still must give the required notice and comply with the rest of the procedure.
    g. Amend the definition of "rent" in ORS 90.100 (35) to clarify that rent is paid in exchange for use of the dwelling **and the premises.**
    h. Small changes to the rules relating to fees/deposits:
        i. Amend ORS 90.302 to allow a landlord to charge for allowing credit/debit card payments, where the landlord is passing through the credit card company's fee and the landlord also allows check or cash payment.
        ii. Amend ORS 90.302 (6) (c) to clarify that the fee exception language includes the cost to replace a lost key.
        iii. Amend ORS 90.300 (6) (c) (a) (ii) to clarify the deposit language regarding carpet cleaning.
        iv. Amend ORS 90.300 (7) (c) (B) re deposits to clarify that the application of the deposit for "down time" covers just time needed to clean or repair beyond ordinary wear and tear, not standard cleaning.