

House Bill 2478

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Sheriffs' Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires eviction judgment and writ of restitution to authorize sheriff's use of force in enforcing judgment.

Authorizes court to enter order or judgment during first appearance for residential eviction proceeding at stipulation of parties. Amends provisions in order by stipulation.

A BILL FOR AN ACT

Relating to evictions; amending ORS 105.137, 105.145, 105.146, 105.148 and 105.161.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 105.145 is amended to read:

105.145. (1) If an action is tried [*by the court without a jury, and after hearing the evidence the court concludes that the complaint is not true,*] **and the verdict is for the defendant**, the court shall enter judgment against the plaintiff for costs and disbursements.

(2) If the [*court finds the complaint true*] **verdict is for the plaintiff** or if judgment is rendered **against the defendant** by default, the court shall render a general judgment against the defendant and in favor of the plaintiff, for restitution of the premises and the costs and disbursements of the action. If the court finds the complaint true in part, the court shall render judgment for the restitution of such part only, and the costs and disbursements shall be taxed as the court deems just and equitable.

(3) **A general judgment rendered for restitution of the premises under ORS 105.105 to 105.168 shall identify the premises and order the sheriff to use all reasonable force that may be necessary to enter the premises and to remove from the premises the persons in possession of the premises that are subject to the judgment.**

[(2)] (4) If, as a result of a court-sponsored or other mediation or otherwise, the plaintiff and defendant agree, in the manner provided by ORCP 67 F for judgment by stipulation, that the [*defendant*] **parties** shall perform in a certain manner, **including the payment of moneys**, [*or that the plaintiff shall be paid moneys agreed to be owing by the defendant*] and that as a result of that performance or payment the defendant shall retain possession of the premises, including retention of possession contingent upon that performance or payment of moneys by the defendant by a certain date, the court shall enter an order or judgment to that effect. **An order under this subsection must provide that 12 months following the entry of the order, the court shall automatically dismiss plaintiff's action in favor of the defendant without an assessment of costs, disbursements, prevailing party fee or attorney fees against either party except as provided in the order and without further notice to either party.** [*In addition, if the plaintiff and defendant agree that the plaintiff shall perform in a certain manner or pay moneys to the defendant by a certain date, the court shall enter an order or judgment to that effect.*]

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 [(3) *If, as provided by subsection (2) of this section, the parties enter an order or judgment by*
 2 *stipulation that requires the defendant to perform in a certain manner or make a payment by a certain*
 3 *date and the defendant later demonstrates compliance with the stipulation, the court shall enter a*
 4 *judgment of dismissal in favor of the defendant.*]

5 **SECTION 2.** ORS 105.161 is amended to read:

6 105.161. (1) Following issuance of the writ of execution of judgment of restitution and payment
 7 of any fees required by the sheriff, the sheriff shall immediately enforce and serve the writ upon the
 8 defendant, along with the eviction trespass notice, as follows:

9 (a) The sheriff shall mail a copy of the writ and the eviction trespass notice by first class mail
 10 to the defendant at the premises;

11 (b) The sheriff shall serve the writ and the eviction trespass notice at the premises by personal
 12 delivery to the defendant or, if the defendant is not available for service, by attaching the writ and
 13 notice in a secure manner to the main entrance to that portion of the premises of which the de-
 14 fendant has possession;

15 (c) Immediately following the service of the writ and the eviction trespass notice, the sheriff
 16 shall **use all reasonable force that may be necessary to enter the premises and to remove**
 17 **from the premises the persons in possession of the premises that are subject to the judgment**
 18 **and** return possession of the premises to the plaintiff [*by removing the defendant or any other person*
 19 *subject to the judgment*]; and

20 (d) Following the sheriff's removal of the defendant and return of possession of the premises to
 21 the plaintiff, the plaintiff shall be responsible for removing, storing and disposing of any personal
 22 property left by the defendant on the premises, as provided by ORS 105.165.

23 (2) Following issuance of the writ, at the plaintiff's request, the sheriff shall delay enforcement
 24 and service of the writ.

25 (3) Any writ not enforced and served within 30 days following issuance expires and becomes
 26 unenforceable unless the court extends the operation of the writ before the writ expires based on
 27 a showing of good cause by the sheriff. If the court extends the operation of a writ under this sub-
 28 section, the sheriff shall promptly notify the plaintiff of the extension.

29 (4) A judgment may not be enforced if the parties have entered a new rental agreement or if the
 30 plaintiff has accepted rent for a period of occupancy beginning after the judgment was entered.

31 **SECTION 3.** ORS 105.137 is amended to read:

32 105.137. In the case of a dwelling unit to which ORS chapter 90 applies:

33 (1) If the plaintiff appears and the defendant fails to appear at the first appearance, a default
 34 judgment shall be entered in favor of the plaintiff [*for possession of the premises and costs and dis-*
 35 *bursements*] **in the manner provided under ORS 105.145 (3) except as provided under subsection**
 36 **(3) of this section.**

37 (2) If the defendant appears and the plaintiff fails to appear at the first appearance, a default
 38 judgment shall be entered in favor of the defendant dismissing the plaintiff's complaint and awarding
 39 costs and disbursements.

40 (3) An attorney at law shall be entitled to appear on behalf of any party, but attorney fees may
 41 not be awarded to the plaintiff if the defendant does not contest the action.

42 (4) If the plaintiff dismisses the action before the first appearance, a judgment of dismissal shall
 43 be entered in favor of the defendant dismissing the plaintiff's complaint and awarding costs and
 44 disbursements. The defendant may not recover attorney fees for prejudgment legal services provided
 45 after the delivery of written notice of the dismissal by the plaintiff to the defendant, or to an at-

1 torney for the defendant, in the manner provided under ORS 90.155.

2 (5) The plaintiff or an agent of the plaintiff may obtain a continuance of the action for as long
3 as the plaintiff or the agent of the plaintiff deems necessary to obtain the services of an attorney
4 at law.

5 (6) If both parties appear in court on the date contained in the summons, the court shall set the
6 matter for trial as soon as practicable, unless the court is advised by the parties that the matter
7 has been settled. The trial shall be scheduled no later than 15 days from the date of such appear-
8 ance. If the matter is not tried within the 15-day period, and the delay in trial is not attributable
9 to the landlord, the court shall order the defendant to pay rent that is accruing into court, provided
10 the court finds after hearing that entry of such an order is just and equitable.

11 (7)(a) The court shall permit an unrepresented defendant to proceed to trial by directing the
12 defendant to file an answer in writing on a form which shall be available from the court clerk, and
13 to serve a copy upon the plaintiff on the same day as first appearance.

14 (b) The answer shall be in substantially the following form:

15 _____

16
17 IN THE _____ COURT FOR
18 THE COUNTY OF _____

19
20 (Landlord),)
21)
22 Plaintiff(s),)
23)
24 vs.) No. _____
25)
26 (Tenant),)
27)
28 Defendant(s.))

29
30 ANSWER

31 I (we) deny that the plaintiff(s) is (are) entitled to possession because:

32 ___ The landlord did not make repairs.

33 List any repair problems: _____

34 _____

35 _____

36 ___ The landlord is attempting to evict me (us) because of my (our) complaints (or the eviction is
37 otherwise retaliatory).

38 ___ The landlord is attempting to evict me because of my status as a victim of domestic violence,
39 sexual assault or stalking.

40 ___ The eviction notice is wrong.

41 ___ List any other defenses: _____

42 _____

43 _____

44 _____

45 _____

1 I (we) may be entitled as the prevailing party to recover attorney fees from plaintiff(s) if I (we)
2 obtain legal services to defend this action pursuant to ORS 90.255.

3 I (we) ask that the plaintiff(s) not be awarded possession of the premises and that I (we) be
4 awarded my (our) costs and disbursements and attorney fees, if applicable, or a prevailing party fee.

5
6 _____
7 Date Signature of defendant(s)
8 _____
9

10 (8) If an unrepresented defendant files an answer as provided in subsection (7) of this section,
11 the answer may not limit the defenses available to the defendant at trial under ORS chapter 90. If
12 such a defendant seeks to assert at trial a defense not fairly raised by the answer, the plaintiff shall
13 be entitled to a reasonable continuance for the purposes of preparing to meet the defense.

14 **(9) If the parties inform the court that the matter has settled, the court may enter an**
15 **order or judgment in the manner provided by ORS 105.145 (4).**

16 **SECTION 4.** ORS 105.146 is amended to read:

17 105.146. (1) In an action to recover possession of the premises, if the court has entered an order
18 by stipulation that provides for the defendant to retain possession of the premises contingent upon
19 the defendant’s performance or payment of moneys by a certain date as provided under ORS 105.145
20 [(2)] (4), and the defendant fails to comply with the order, the plaintiff may obtain and enforce a
21 judgment of restitution of the premises pursuant to this section and ORS 105.148 and 105.149.

22 (2) A plaintiff may obtain and enforce a judgment of restitution based upon an order entered as
23 provided under ORS 105.145 [(2)] (4), provided the order includes only:

24 (a) Future performance or conduct as described in the order for a period of not more than six
25 months following entry of the order;

26 (b) Payment of past due rent and other past due amounts pursuant to a schedule provided in the
27 order for a period of not more than six months following entry of the order;

28 (c) Payment of rent due for future rental periods that follow entry of the order pursuant to a
29 schedule provided in the order for not more than the first three monthly rental periods following
30 entry of the order; and

31 (d) Payment of any costs, disbursements or attorney fees pursuant to a schedule provided in the
32 order.

33 [(3) *The order shall contain a statement providing that 12 months following the entry of the order,*
34 *the court shall automatically dismiss the order without further notice to either the plaintiff or the de-*
35 *fendant.*]

36 [(4)] (3) If the defendant fails to comply with the order, the plaintiff may file with the clerk of
37 the court an affidavit or declaration of noncompliance describing how the defendant has failed to
38 comply. The plaintiff shall attach a copy of the order to the affidavit or declaration. The affidavit
39 or declaration, or the order, must include the terms of the underlying settlement agreement or
40 stipulation or have a copy of the agreement attached.

41 [(5)] (4) Upon receipt of a plaintiff’s affidavit or declaration:

42 (a) The court shall enter a judgment of restitution; and

43 (b) The clerk shall issue a notice of restitution as provided by ORS 105.151 and attach to the
44 notice a copy of the plaintiff’s affidavit or declaration of noncompliance and any attachments for
45 service.

1 [(6)] (5) The court shall establish a procedure that allows the defendant to request a hearing
2 on the plaintiff's affidavit or declaration of noncompliance and delay expiration of the notice of
3 restitution period or execution upon a judgment of restitution pending the hearing.

4 [(7)] (6) The court shall enter a judgment dismissing the plaintiff's action in favor of the de-
5 fendant without assessment of costs, disbursements, prevailing party fee or attorney fees against
6 either party except as provided in the order and without further notice to either party:

7 (a) Upon receipt of a writing signed by the plaintiff showing compliance with or satisfaction of
8 the order; or

9 (b) Twelve months following entry of the order, unless the plaintiff has filed an affidavit or
10 declaration of noncompliance and the court has found in favor of the plaintiff on the affidavit or
11 declaration.

12 **SECTION 5.** ORS 105.148 is amended to read:

13 105.148. (1)(a) To contest a plaintiff's affidavit or declaration of noncompliance under ORS
14 105.146 and delay expiration of the notice of restitution period or execution upon the judgment of
15 restitution, a defendant shall file a request for hearing with the clerk of the court. The request must
16 be filed prior to issuance by the clerk of a writ of execution of judgment of restitution and must
17 include a statement by the defendant describing how the defendant complied with the order or de-
18 scribing why the defendant should not be required to comply.

19 (b) A court may, as part of the procedure authorized by ORS 105.146 [(6)] (5), require that a
20 defendant submit a hearing request to the court for ex parte review prior to the defendant's filing
21 the request with the clerk. If the court provides for ex parte review, the ex parte review must be
22 available every judicial day for appearance by the defendant before the court within the time period
23 between service of the notice of restitution and the date of expiration of the notice of restitution.
24 The notice of restitution must include or have attached to it a description of the requirements for
25 appearing before the court for ex parte review and a copy of the hearing request form. The court
26 may not require that the defendant notify the plaintiff of the defendant's intention to appear before
27 the court. If, after hearing the defendant at the ex parte review, the court finds that the reasons
28 given by the defendant for opposing the plaintiff's affidavit or declaration of noncompliance do not
29 relate to the issues listed in ORS 105.149 (2), the court shall deny the request for a hearing.

30 (2) The clerk shall make available a document providing for a request for hearing by a defend-
31 ant. The document must be in substantially the following form:

32 _____

33
34 IN THE CIRCUIT COURT
35 FOR THE COUNTY OF

36 _____

37
38 Defendant's Request for Hearing to
39 Contest an Affidavit or Declaration
40 of Noncompliance
41 Case No. _____

42
43 Landlord or agent (Plaintiff):

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vs.

Tenant/Occupant (Defendant):

Address of Property:

1. My landlord has filed a statement with the court saying that I have not complied with a court-approved agreement and that as a result my landlord is entitled to possession of the property.

2. I deny the landlord is entitled to possession of the property because (The reason must be one of the following. You must check one or more of these responses and you must explain in section 3.):

_____ a. The landlord is wrong. As explained below, I did comply with the agreement.

_____ b. Before I could comply with the agreement, the landlord was supposed to do what is explained below, which the landlord did not do.

_____ c. The landlord and I changed the agreement and I complied with the agreement as changed. The change we agreed to is explained below.

_____ d. The landlord prevented me from keeping the agreement. The way the landlord did that is explained below.

_____ e. The agreement was not made in good faith as required by ORS 90.130. The lack of good faith is explained below.

_____ f. The portion of the agreement described below was unconscionable as described in ORS 90.135.

_____ g. The landlord is required by law or contract to have good cause to force me to move out and my alleged conduct or performance does not meet the standard of good cause, as explained below.

_____ h. The landlord is claiming I did not pay rent for a period of time following the date of the agreement. I did not pay that rent because I have claims for money against the landlord to offset the rent. Those claims arise from the landlord's violation of the Residential Landlord and Tenant Act or the rental agreement since the date of the court order and are explained below.

3. Here is my explanation for the reason or reasons checked above:

4. I understand that if I lose in court, I may be responsible for the landlord's costs, disbursements, any attorney fees and a prevailing party fee.

I hereby declare that the above statement is true to the best of my knowledge and belief, and

1 that I understand it is made for use as evidence in court and is subject to penalty for perjury.

2

3

4 (Signature of tenant)

5 Date: _____

6

7

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9 (3) As an alternative to the document described in subsection (2) of this section, a defendant
10 may request a hearing by use of a notarized affidavit.

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