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the impact of covid-19 regulations on portland's small landlords

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Due to new regulations enacted to protect renters during Covid-19 outbreak, small landlords have endured significant financial burdens due to the loss of rental income. Under the state's eviction moratorium, landlords have been required to continue offering their apartments to tenants since March, 2020, even if those tenants do not pay rent. Hence, the eviction moratorium has become a rent moratorium, damaging property owners' ability to pay their mortgages and, for many, limiting their retirement income. This article will discuss the new legislation that has been passed in the last year and its impact on multi-family property owners.

Sole proprietor landlords acquire residential property for various reasons - to create wealth for retirement, to provide monthly income during retirement, to fund college expenses, or provide back-up housing to the owner they become unemployed. Some landlords may have the ability to put a forbearance on their mortgage, however landlords face other costs, such as utilities, landscaping and maintenance expenses that cannot be delayed. Other landlords may have no mortgage and rely upon the income to live. Additionally, even with a loan forbearance in place many landlords struggle to maintain their rental properties or pay their property management company.

In Portland, the eviction moratorium acts in tandem with new rent control rules to impose a greater financial burden on landlords than in other jurisdictions where rent control is not in place. Many states lifted their eviction moratoriums at the end of June, 2020; you can see the range of policies at the following website: <https://www.rhls.org/evictionmoratoriums/>. Many landlords are concerned that the moratorium could be extended beyond September, 2020 and are uncertain regarding how to plan for the future when a moratorium extension may happen days before otherwise being scheduled to expire.

While I do not want to downplay the importance of maintaining housing for displaced workers during the pandemic, it's not clear why this social obligation should be borne by landlords instead of taxpayers as a whole. And because the state government has decided to offer rent relief through an eviction moratorium, there are no standards to helping tenants displaced by the pandemic from other tenants who have been able to adapt to social distancing. Approximately 15% of renters are not paying their rent according to an article published by the Oregonian on June 25, 2020. As a result, the benefits are not targeted, and the burden lies with property owners, rather than society as a whole.

The Covid-19 pandemic has impacted rental income for landlords, both due to a flattening of rents, as well as non-payment. Rents have flattened due to statewide unemployment rates hovering around 14%. Given the lack of demand, landlords are offering rent concessions to fill vacancies. For example, the Grand Belmont at 514 S.E. Belmont Street is offering eight weeks of free rent as an incentive to sign a lease.

The Oregon legislature extended its initial eviction moratorium on June 26, 2020, with House Bill 4213. The new law states extends the moratorium until October 1, 2020, and prevents landlords from the following actions:

- Giving a termination notice for nonpayment of rent, fees, utilities, or other charges
- Charging a late fee or penalty for nonpayment
- Giving a termination notice without cause (unless the landlord has sold the rental to someone who plans to move in)
- Starting an eviction case based on nonpayment
- Starting an eviction case based on a termination without cause
- Filing for noncompliance with a stipulated agreement in eviction court if the eviction was based on nonpayment or a termination without cause
- Reporting a tenant to a credit agency for nonpayment of rent or a late fee for any rent that due between April 1, 2020, and September 30, 2020.

Once the moratorium is lifted on October 1 (absent further actions by the legislature):

- Tenants are required to pay their rent each month under the terms of the rental agreement.
- Tenants have six months to pay back rent that built up before October. A landlord can evict a tenant for not paying rent under the terms of the rental agreement but cannot evict a tenant for not paying any rent that was deferred between April 1 and September 30. A landlord will have to wait until April 1, 2021 to evict a tenant for not paying rent that came due during the eviction moratorium.
- If a landlord violates any part of the new law, a tenant can get a court order to force the landlord to allow the tenant to move back into their home. And a tenant can also sue the landlord for three months' rent.
- A landlord can give the tenant a notice saying how much rent the tenant owes and will have to pay back by March 31, 2021.
- A landlord may give notice to the tenant requiring the tenant to tell the landlord within 14 days if the tenant plans to use the six-month grace period to pay back any rent owing.
- If a tenant does not tell the landlord that they plan to use the six-month grace period to pay back the deferred rent, the landlord can charge the tenant half a month's rent as a penalty.

THE CHALLENGES OF LANDLORD OCCUPANCY

To illustrate the burden of the new regulations, we will use an example of a property owner who sought to occupy one of her own apartments to reduce living costs during the pandemic. Prior to the Covid-19 pandemic, she was the sole proprietor owner of a duplex and had recently filed for divorce and moved into a rental apartment close to her two children's schools. Her budget was based upon steady income from accounting clients as well as income from her duplex that she rents out. The landlord had selected her rental apartment due to the extensive amenities in common areas in her complex, including ping pong tables, pool tables, lounge rooms, and gyms. Her unit is 750 square feet and provides a home for two children, a college-bound brother (whose parents are homeless) and a large dog.

Once the Covid-19 pandemic started, the landlord's client base as an accountant has diminished, creating financial stress for the family. In addition, the regulations following the Covid-19 outbreak required that the highly-desirable common areas be shut down for several months with access to the amenities and common areas greatly restricted thereafter. With no extra-curricular activities or children attending school since March, diminished income from work and her apartment, and no response to unemployment applications filed with the state of Oregon, the sole proprietor landlord was hoping to move back into the duplex she owns.

The duplex would allow her household to live in a 4-bedroom, 2-bath home with 1,500 square ft. that includes a backyard. Her financial burden as a single mom would be reduced. However, as the owner of a duplex she may not provide a no cause order to vacate for landlord occupancy until the moratorium is lifted. The current duplex tenant who has not paid rent during the moratorium asked the landlord if she could sublet part of the house using Airbnb. The landlord replied, "No, but if you let me move in, I will lower your rent. The landlord explained her financial hardship and the need for space. The tenant replied, "No, I feel like I own this home, and I don't think I would like to share the space with my landlord."

Because of the moratorium, the landlord was not permitted provide a notice to vacate to their tenant, even if they and their family members were in need of housing, until the moratorium has officially ended. The initial moratorium was planned to end June 30, 2020. On June 26, 2020 the state of Oregon legislature passed HB 4213, extending the statewide moratorium until September 30, 2020. Once the moratorium has ended, a 90 day order to vacate may be served, which means that the property owner won't be able to move into her apartment until January, 2021.

TENANT REPAYMENT OF RENT POST MORATORIUM

In the above example, if the moratorium is over September 30th and no payments of rent are made, there will be a balance of \$11,100 due. The tenant will have up to 6 months to repay this amount. 45 days prior to the tenant vacating \$4,500 relocation fee is due to the tenant while a \$11,100 owed by the tenant may exist. This causes undue hardship on the landlord. The only way to do a no cause order to vacate during a moratorium is to sell the duplex to a new owner who intends to inhabit the space in which case the owner or the new buyer may provide a 90 day order to vacate.

There are several concerns this landlord has.

- 1) If no partial payments are made over the entire 6 month moratorium period, how is the tenant going to pay rent along with the additional rent owed?
- 2) There has been a power shift that has become so severe that a sole proprietor owner of a duplex cannot inhabit the investment she owns for her family in financial distress.
- 3) It is perplexing that a landlord would be required to pay \$4,500 in relocation fees when there is a balance outstanding that greatly exceeds this amount.
- 4) The moratorium rules may force her to sell her property in order to make ends meet or pay the relocation fee when a deficit has been created for lack of rents received. A potentially forced sale may trigger capital gains taxes if a new investment cannot be found.

THE FIFTH AMENDMENT'S JUST COMPENSATION CLAUSE prohibits the taking of private property for public use without compensating the deprived property owner. Yet, landlords during a moratorium are forced to provide a social service of free housing without compensation.

FINANCIAL ASSISTANCE FOR LANDLORDS Currently, the only financial assistance for landlords is to apply for an EIDL loan through the SBA.

THIRD PARTY MANAGEMENT COSTS Several property managers within the Portland metro area have expressed frustration at not being able to perform one of their most important duties, collect rent. Yet, depending on the property manager, a property management fee is still due monthly.

PROPERTY OWNERS SELLING & INVESTING OUTSIDE OF MULTNOMAH COUNTY Many landlords may be hesitant to sell their investment during CV-19 due to lack of rents received affecting values. However, there has been much talk amongst investors and real estate brokers that Multnomah County has taken away the power of landlords to a degree that makes investment less financially feasible and risky. While the moratorium has affected landlords nationwide, the moratorium in tandem with rent control has caused many residential investors unreasonable hardship.

A current map indicating which states have a moratorium in place may be found at: <https://www.rhls.org/evictionmoratoriums/>

Most landlords did not invest in rental property to provide a social service that required financial sacrifice. The moratorium in essence requires landlords to provide a social service without compensation. The burden of helping tenants during the Covid-19 pandemic should be borne by all taxpayers, not by landlords.

RESOURCES

<https://www.portlandoregon.gov/citycode/article/748112>

<https://www.portland.gov/phb/rental-services/mandatory-renter-relocation-assistance>

<https://www.oregonrentalhousing.com/news/7798601>

<https://multco.us/chair-kafoury/covid-19-eviction-moratorium-information#:~:text=Tenants%20will%20have%20a%20six,back%20rent%20they%20may%20owe.>