

**Guidance for Landlords and Tenants under EO-13,
Relating to Certain Evictions and Terminations of Leases
in response to COVID-19 Outbreak**

Background: On April 1, 2020, in response to the COVID-19 public health emergency, Governor Brown issued Executive Order No. 20-13 in order to declare a 90-day moratorium on certain lease termination and eviction actions for nonpayment, for residential and non-residential tenancies in Oregon. The moratorium is necessary during this public health emergency to enable residents to stay in their homes, and to enable businesses to continue providing necessary goods and services to Oregonians.

Authority: Executive Order 20-13.

Note: The information below is intended to provide general guidance regarding the Executive Order; it is not intended to substitute for legal advice. Please read the Executive Order for complete information:

https://www.oregon.gov/gov/admin/Pages/eo_20-13.aspx

Guidance

General Questions

Which landlords and tenants are covered by the Executive Order?

The Executive Order applies to all landlords and tenants of rental properties in Oregon.

Does the Executive Order cover manufactured dwellings, recreational vehicles and floating homes?

Yes. Like other residential properties, the Executive Order covers manufactured dwellings and floating homes, as well as recreational vehicles if they are considered “dwelling units” under the Oregon Residential Landlord and Tenant Act (ORS chapter 90).

How long does the moratorium last?

The moratorium under the Executive Order lasts 90 days, beginning on April 1, unless it is extended or terminated earlier by the Governor.

What does “nonpayment” mean under the Executive Order?

Nonpayment means any nonpayment of rent, late charges, utilities charges, or any other service charge or fee. For residential leases only, nonpayment also means any termination without cause under ORS 90.427 of the Oregon Residential Landlord and Tenant Act.

What about late fees and interest?

Under the Executive Order, landlords may not charge tenants any late charges or other penalties arising from nonpayment during the moratorium. The Executive Order specifically waives those late charges and other penalties. This waiver of late charges and other penalties includes any interest on amounts that are not paid by tenants pursuant to the Executive Order.

Can I terminate a lease, or bring an eviction action, for something other than nonpayment as defined in the Executive Order?

Yes. For example, a landlord can terminate a residential rental agreement for cause, such as the tenant deliberately destroying or damaging the dwelling. For another example, if the terms of a non-residential lease allow it, a landlord can terminate the lease if the tenant uses the premises in a way that is not allowed by the lease (such as using the premises for heavy manufacturing instead of office use).

Are there any other differences under the moratorium between residential and non-residential tenancies?

Yes. Under non-residential leases only, the moratorium applies only if a tenant provides the landlord with documentation that the tenant's nonpayment is caused, in whole or in part, directly or indirectly, by the COVID-19 pandemic. The tenant must provide this documentation to the landlord within 30 calendar days after the unpaid rent was due.

Do tenants have any particular obligations under the Executive Order?

Yes. Tenants who are unable to pay the full rent when due should notify the landlord as soon as reasonably possible, and make partial rent payments to the extent the tenant is able. This obligation is in addition to the obligation of non-residential tenants, as described above, to provide landlords with documentation that the non-residential tenant's nonpayment is caused, in whole or in part, directly or indirectly, by the COVID-19 pandemic.

What if a landlord takes a lease termination or eviction action that is prohibited by the Executive Order?

If a landlord takes any action with regard to a residential or non-residential tenancy that is prohibited by the Executive Order, that action will have no legal force or effect, and the landlord may be subject to penalties under ORS 401.990.

How does the Executive Order relate to Executive Order 20-11?

Executive Order 20-11 prohibits law enforcement officers in Oregon from serving, delivering or acting on any notice, order or writ of termination of tenancy or any judicial action that relates to residential evictions for nonpayment. Executive Order 20-13 reaffirms and is consistent with Executive Order 20-11, and provides further protections for Oregon tenants, both residential and non-residential.

Specific Questions

During the moratorium, can a landlord terminate a lease because of rent that was overdue before the moratorium began?

No. A primary reason behind the moratorium on residential lease terminations and evictions is public health—allowing people to continue to stay in their homes regardless of their situations otherwise. A primary reason behind the moratorium on non-residential lease terminations and evictions is protecting businesses and the livelihoods of Oregonians, and making sure Oregonians can continue to have access to essential goods and services. For these reasons, regardless of when the obligation to pay rent began (meaning regardless of when the rent became “due”), a tenant’s nonpayment of rent is not a basis for residential or non-residential lease termination or eviction during the moratorium.

When the moratorium is over, do tenants have to pay any rent and other charges that they did not pay during the moratorium?

Yes. The Executive Order, in paragraphs 1.c and 2.d, specifies that tenants are not relieved of the obligation to pay rent, utility charges, or any other services charges or fees that tenants do not pay during the moratorium. This means that tenants remain responsible for paying the rent that is due but goes unpaid during the moratorium. As set forth above, tenants who are unable to pay the full rent when due should make partial rent payments to the extent the tenant is able. These partial payments will reduce the total amount of unpaid rent owed by tenants. The Executive Order does waive late charges or other penalties arising from tenants’ nonpayment during the moratorium.

How does the Executive Order relate to the requirements of SBA (Small Business Administration) programs, such as Payroll Protection Program (PPP) loans?

If such programs require participating tenants to pay rent, then those tenants must pay rent as required. Also, some SBA loan programs require proof of rent payment in order for borrowers to be eligible for loan forgiveness, and nonpayment of rent by those borrowers could result in loan defaults. Tenants should check with their lenders about requirements regarding rent payments under their loan agreements.

How does the Executive Order relate to other government relief actions and programs addressing the COVID-19 pandemic?

If another government relief action or program addressing the COVID-19 pandemic is based on a tenant paying rent, then the tenant must pay the rent as required.

What about tenants who receive direct government or other assistance for rent payments, whether due to the COVID-19 pandemic or otherwise?

Those tenants should continue to pay the rent assistance money directly to their landlords.

If a residential lease prohibits commercial use of the dwelling, can a landlord terminate the lease for cause because the tenant is working from home?

No. Executive Order 20-12 ordered Oregonians to “Stay Home, Save Lives,” directing individuals to stay home to the greatest extent possible. A landlord cannot terminate a residential lease for cause if the “cause” is a tenant complying with Executive Order 20-

12 by working from home, as long as the tenant's work does not materially violate any provision of the lease, such as damaging or destroying the dwelling.

What happens when the moratorium is lifted?

Many landlords and tenants have questions about what will happen when the moratorium expires or is lifted—for example, what is the deadline for a tenant to pay the landlord for rent that was unpaid during the moratorium? What if a tenant does not pay the unpaid rent?

When the moratorium expires or is lifted, Oregon law will continue to apply and leases and rental agreements will be enforceable in accordance with their terms, no longer modified by the Executive Order.