



# Elder Law Newsletter

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## Reverse mortgages can provide cash flow for elders

By Mitch Lambley and Jim Temple

A homeowner rightly regards his or her home as an asset, but cashing in that asset usually means selling the house and moving elsewhere, which an elder may not want to do. An alternative is a “reverse mortgage” – a loan against a residence that the owner does not have to pay back as long as he or she lives there. A reverse mortgage can turn the value of a home into cash without forcing the owner to move or to make payments on the loan each month.

### Overview

Reverse mortgages have been a frequent topic of late, and many attorneys have a good understanding of the main concepts, but here’s a quick overview.

- Homeowners age 62 or older can borrow against their homes without incurring a monthly payment.
- The amount available is based on the age of the youngest borrower, the home’s value, and current interest rates.

- Available funds can be taken as a line of credit, monthly payments, a lump sum, or a combination of these options.
- The homeowner retains title to property.
- A government-insured FHA reverse mortgage is non-recourse to the borrower, i.e., the borrower generally cannot owe more than the home’s value at the time the loan is repaid.

### Changes in the market

Due to the recent market instability, the Fannie Mae Homekeeper program and most lender-proprietary loans have all but disappeared. The Federal Housing Administration (FHA) reverse mortgage – the Home Equity Conversion Mortgage (HECM) – is virtually the only loan available. The Housing and Economic Recovery Act of 2008 (HERA) and the recent 2009 stimulus package both include significant improvements to the FHA program.

One of the most significant improvements made to the program as part of the HERA legislation was an increase in the national loan limit from \$417,000 to \$625,000. This enables elders to use more home equity, particularly in high-value markets. The cost of a reverse mortgage has long been a concern, and HERA addressed this by capping the loan origination fee at \$6,000. HERA enhanced the required Housing and Urban Development (HUD) consumer counseling to ensure independence of the process. Lenders are now prohibited from steering customers to any one agency and must provide a list of five local counselors from which the customer may choose. Independent counseling is one of the strongest protections for elders considering a reverse-mortgage loan.

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## Reverse mortgages

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*Mitch Lambley, CSA, is a reverse mortgage specialist with HomeStreet Bank and has been with the bank for more than six years.*



*Jim Temple, CSA, is the manager of the HomeStreet's Seniors Markets Group. He has been with the bank for 21 years as a loan officer, branch manager, and regional manager, and now serves in both production and operations capacities.*

### **When is it advantageous to consider a reverse mortgage?**

A reverse mortgage provides an additional source of income by providing access to home equity without imposing a payment on the borrower. Those who seek a reverse mortgage typically fall into two categories: "need based" and "equity asset management."

#### **1. Need based**

This is the most common use of a HECM and applies to elders who lack sufficient funds to maintain their standard of living. HECM funds can be used for basic necessities or for any purpose the homeowner wishes.

#### **2. Equity asset management**

This is a newer trend in reverse mortgages. Borrowers often have sufficient assets or cash flow to meet their needs and also have significant equity. From an asset view, there are times when using home equity is preferable to liquidating other assets, particularly now that many people's investments have significantly decreased.

### **What are the drawbacks of a HECM?**

While the benefits of a reverse mortgage are apparent, there is a downside. Although loan origination fees have been capped, FHA mortgage insurance and other standard mortgage transaction fees can be high. Because of these fees, a reverse mortgage is normally not a good solution for someone who plans to stay in his or her home for fewer than four to five years. Options such as selling and downsizing, refinancing, or taking out a home equity line of credit should all be explored before making a final decision.

Another concern is that a reverse mortgage uses the equity in an elder's home and therefore reduces the potential estate available to heirs.

What happens if an elder takes all the equity out of his or her home—or perhaps more than the home is worth? HUD has taken steps to clarify this issue. A HECM loan is non-recourse to the borrower, thereby protecting other personal assets. However, heirs are not protected and could owe the entire balance of the loan should they seek to keep the home.

### **Property taxes**

Under the Senior Citizen Tax Deferral Program, older homeowners with a household income less than \$39,000 in 2008 are able to defer county property taxes indefinitely and are charged six percent simple interest. When a reverse mortgage is taken out, deferred taxes must be paid in full, but one may reapply to participate in the program the following tax year.

### **Medicaid & SSI**

A reverse mortgage does not automatically disqualify a homeowner for Medicaid, but the homeowner has to be careful with the timing of reverse mortgage funds. If, for example, an individual on Medicaid were to receive a lump sum of \$6,500 from a reverse mortgage loan, spend only \$4,000 of it in the month in which it was received, and put the remaining \$2,500 in the bank, he or she would no longer be eligible to receive Medicaid, because after thirty days the \$2,500 would become an asset and exceed the eligibility requirements. The rules for SSI are very similar to those for Medicaid. We are not experts in Medicaid or SSI qualifications and this area is subject to frequent change. Please refer to Oregon Medicaid and SSI law for updates and state-specific details.

### **Paying back the loan**

After an elder no longer occupies the home, he or she or the heirs have six months in which to repay the loan. Two three-month extensions may be requested, which allows up to one year for repayment. If the home remains unsold, foreclosure is a possibility, so the family can lose equity in a bad real estate market. However, most liens are paid off within the one-year period.

### **Having the right information is key**

Reverse mortgages have become more common in the last few years. This is particularly true given the current economy and people's concerns about their finances. Reverse mortgages are complex, so we encourage our customers to seek appropriate legal, tax, and financial advice before making any decision.

Additional sources of information about reverse mortgages may be found on the Web sites of the National Reverse Mortgage Lenders Association (NRMLA) and the American Association of Retired Persons (AARP). ■

*For a typical reverse-mortgage scenario, see page 3.*

## A typical reverse-mortgage scenario

Mrs. Austin, a 75-year-old widow, has a mortgage of \$90,000 against her home, which is valued at \$250,000. Her only income is Social Security, which covers her house payment and a few bills, but leaves little for other needs or wants.

She has heard about reverse mortgages but doesn't really know how they work, whether she qualifies, or if it's the right option for her.

A reverse mortgage loan officer would talk with Mrs. Austin about her reasons for wanting access to more money. This discussion should include other options she may not have thought of, such as selling the home and downsizing, refinancing her current mortgage for a better rate or taking cash out, obtaining a home equity line of credit, or even taking in a roommate to augment her income. Any alternatives should be discussed so that when she makes a decision on a direction, she is confident and fully informed of her choices.

Assuming she chooses a reverse mortgage, Mrs. Austin makes application and completes the required HUD counseling. The loan officer is now able to make a request for the FHA appraisal to be ordered and for an escrow company to be contacted for escrow setup and a title search. After the appraisal is completed, the application is submitted to an underwriter for review to ensure all FHA conditions for Mrs. Austin and her home have been met.

Once this process has been completed, Mrs. Austin will sign her final loan documents at the escrow company office. Reverse mortgages are technically refinance transactions and require a three-day right of recession. When this has passed, her loan will be funded with the lender and recorded with the county.

Mrs. Austin will have achieved the following:

- Paid off her existing mortgage
- Gained access to about \$65,000 of tax-free money she may use for any purpose
- Financed all up-front closing costs so she has had no cash out-of-pocket expenses
- Eliminated having to make mortgage payments as long as she occupies her home
- Gained the financial independence she desired, without taking on additional payments and by using an asset she owned ■

## Social Security to make one-time economic recovery payments

President Obama recently signed the American Recovery and Reinvestment Act of 2009. This act provides for a one-time payment of \$250 to individuals who received Social Security, SSI, Veterans, or Railroad Retirement benefits at any time during the months of November 2008, December 2008, or January 2009.

In most cases, the following individuals will *not* receive the one-time payment:

- Anyone living outside of the United States or its territories
- Individuals who no longer are lawfully present in the United States
- Individuals whose benefits have been suspended under the law for giving false or misleading statements
- Social Security beneficiaries who are minor children
- SSI beneficiaries who receive benefits at a reduced rate of \$30 because they live in a medical treatment facility (such as a nursing home or hospital) and Medicaid pays more than 50 percent of the cost of their care
- Individuals entitled only to Medicare and not to Social Security or SSI benefits
- Prisoners, fugitive felons, and probation and parole violators

Individuals will receive only one \$250 payment regardless of how many types of benefits they receive. An individual who receives Social Security and SSI or an individual who receives Social Security and Veterans or Railroad Retirement benefits will be entitled to only one payment.

In the case of married couples where and both spouses receive benefits from Social Security or SSI, each will get the one-time payment. Although children under the age of 18 (19 if still in high school) who

receive Social Security benefits are *not* eligible for the one-time payment, disabled adult children *will* receive a payment.

The Social Security Administration (SSA) plans to make this payment to all eligible Social Security and SSI beneficiaries by late May 2009. They should expect to receive their payments no later than the first week of June 2009. The one-time payment will be a separate payment, which will not be included in the regular monthly benefit payment.

No action is necessary on the part of recipients. The SSA will deliver the payment in the same way it currently delivers the recipient's monthly Social Security or SSI benefit—by check, direct deposit, or debit card payment.

The payment will not count as gross income for federal income tax purposes.

It will not count as income for SSI. The payment will not count as a resource in the month it is received or the following nine months. For example, if a beneficiary receives the one-time payment in May 2009, it would not count as a resource from May 2009 through February 2010. If he or she still has this money after February 2010, it will be counted as a resource starting in March 2010. ■

## Shared housing may be the right solution for an elder

By Sylvia Callaway

*Sylvia Callaway has been with Shared Housing of Ecumenical Ministries of Oregon for almost two years. Before joining the Shared Housing staff, she served as executive director of a humane society in a large northwest Montana county, and guided the building of its first adoption center for abandoned companion animals.*

Oregonians love to share. We share rides and stories and our favorite jokes. We share DVDs and kids' outgrown clothes, our best gardening tips, and recycled Halloween gear. We share our time and money for causes that are dear to our hearts. Poems, political discussions, our love of nature—all eagerly shared. We especially love to share by scrawling "free" on a piece of cardboard and placing it next to items we put out on our front curbs in nice weather. We share a good meal and friendship at a neighborhood potluck. Some of our favorite things to share are our ideas. Right now there is a timely and helpful sharing opportunity available in the Portland metropolitan area.

Amidst the stresses of job loss, tightened budgets, and hardship during this time of economic uncertainty, more people are experiencing difficulty in finding or keeping affordable housing. The Shared Housing program, under the auspices of Ecumenical Ministries of Oregon, is a practical alternative that eases the burden of living costs for some homeowners and persons who need to rent living space.

In the Shared Housing program, homeowners or home lessees make a room available for rent to a person who would like to share space with others and who may not be able to afford a house on her or his own. A computer matching system is used to help people find one another. Individuals then negotiate directly to decide whether their housing needs are compatible. Tenants can be singles, couples, or single parents, depending on preferences and the space available in each home. One helpful feature for renters is the fact that they are not asked to put forth exorbitant deposits, and problematic credit or bankruptcy histories are not automatic barriers for joining our program.

Houses, apartments, or manufactured homes are all suitable as provider homes. Individuals, couples, or families can join the program as home providers. They can rent out a room, or they can reduce the rent in exchange for some help with household chores, companionship, and/or light-to-moderate caregiving tasks.

The following options are available:

- Rent only (homeowner is simply charging rent for the room)
- Reduced rent for services (tenant trades services for some reduced rent; in some instances this could go down to zero rent)
- Room and board for services (the room and food costs are provided in return for more substantial services)
- Room and board plus salary for services (full time, live-in care, with two days off per week)

In all cases the homeowner provides at least one private room for the tenant. A homeowner may have two separate rooms that can be rented. In that case, two individuals may rent the spaces or one individual may choose to pay rent for both rooms. Common areas such as living rooms, kitchens, and yards are shared. Bathrooms may be shared with the renter, or the renter may have her or his own bath, depending on the space in the home.

### The screening process

The process for participation in Shared Housing is fast and easy. People who want to apply as renters must first schedule an in-person interview with the Shared Housing staff. A homeowner can call the Shared Housing office to schedule a telephone interview.

All Shared Housing participants—both those who want to rent out a room and those looking for a room to rent—must agree to a criminal background check as part of the application. Shared Housing uses a commercial online service to perform criminal background checks. All states that allow electronic background checks are included in the national search. Shared Housing also runs a real-time check for Oregon—and for Washington if the client lives or has recently lived in Washington. Every client is screened to the same criteria.

Both parties must also certify that they will not abuse alcohol or engage in the use of illegal drugs.

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## Shared housing *Continued from page 4*

Shared Housing requires every person who joins the program to provide three personal/character references which are kept on file. Shared Housing does not call these references, but contact information is made available upon request to the home provider or the potential renter, so that he or she may call the references directly.

Shared Housing staff explains to every program participant what screenings the program does and includes in the new-member packet a reminder of what the background check entails. The documentation each client receives also includes a description of the “best practice” for finding a home share partner that every program participant should follow.

### The rental agreement

The homeowner or home lessee sets the amount of rent to be charged. Shared Housing provides a home share rental agreement that the provider and tenant use to record their agreement in writing.

Every Shared Housing participant is coached on how to negotiate a home share rental agreement and house rules to be followed for the duration of the home share. Both are subject to renegotiation if the two individuals want to do so. Home providers and home seekers are free to run credit reports and eviction checks on individuals with whom they are considering sharing a home.

The presence of a home share rental agreement – or appropriate length of tenancy in the event no document has been agreed to – constitutes a housing contract in the state of Oregon. The normal legal process for removing a tenant should be followed. If a tenant wishes to terminate the agreement, he or she is generally required to give thirty days’ notice.

### Follow-up

Shared Housing follows up with all matches shortly after the individuals notify the program that they have moved in together to remind them that if they have not already done so, they need to write up their home share rental agreement and house rules. The staff checks back with each home share match at least once a quarter for the duration of the match to make sure the individuals are still in their housing, ask if there are any issues, and assist with any needed programmatic help.

### Availability

Multnomah, Washington, Clackamas, and Clark Counties are included in this innovative yet tried and true service. At the present time, there are no other shared housing programs located in Oregon. People outside the Portland metropolitan area who are interested in shared housing can contact the local senior center or Area Agency on Aging for information about resources available in their areas. The National Shared Housing Resource Center has an online directory that lists programs in other states: [www.nationalsharedhousing.org](http://www.nationalsharedhousing.org).

The Shared Housing program has been bringing people together since 1982, building friendships and making resources go a lot further. Homeowners often find renters who have interests or life experiences in common with them. Many elderly, disabled, and low-to-moderate income persons have found Shared Housing to be a happy mutual solution that enables them to continue living with independence, comfort, and companionship.

Shared Housing believes that if more homeowners knew about this opportunity, they would use it. The program is actively seeking additional homeowners and home lessees. There are always more persons who need the rental space than homes available to meet this growing need.

There are three Shared Housing staff members to help you, including Program Manager Barbara Stone. One staff member is bilingual in Spanish and English. Questions can be answered by calling 503.225.9924, Monday through Friday. The program’s Web site is at [www.emoregon.org/shared\\_housing.php](http://www.emoregon.org/shared_housing.php). ■



## Property tax relief available under several Oregon programs

By Leslie Kay, Regional Director, Legal Aid Services of Oregon, Multnomah County Office, and Elizabeth Oshel, second year law student, Lewis and Clark Law School

**If an Oregon elder or person with disabilities qualifies for one of the deferral programs, the state pays the property taxes to the county.**

Several Oregon programs provide property tax relief for Oregon elders, persons with disabilities, and veterans. Two deferral programs allow qualifying elders and persons with disabilities to delay paying property taxes on their residences. Disabled war veterans – or a surviving spouse or registered domestic partner of a war veteran – may be eligible for an exemption from property taxation of \$16,391 or \$19,669 of their homestead property's assessed value.

### Property tax deferral programs

If an Oregon elder or person with disabilities qualifies for one of the deferral programs, the state pays the property taxes to the county. A lien is placed on the property and the deferral account accrues six percent simple interest each year. The lien amount for a disabled person is 90 percent of the real market value of the property at the time the original application is filed. The lien amount for an elder is an estimate of future taxes to be paid and interest to be charged based on life expectancy tables. Lien fees and interest are also deferred. The property tax lien follows any other lien on the property. ORS 311.666 *et seq.* Deferral is available even if delinquent taxes are owed.

To be eligible for the "senior citizens" property tax deferral, each applicant must be over the age of 62 before April 15 of the year of filing. If a couple is married or registered as domestic partners and filing jointly, both must be 62 years old on or before April 15. If only one spouse or partner is 62, the one who is older must file as an individual.

To be eligible for the "disabled citizens" property tax deferral, the applicant must be receiving (or eligible to receive) federal Social Security disability benefits before April 15 of the year of filing.

### Income limits apply

For both programs, household taxable and nontaxable income for tax year 2008 must be less than \$39,000, including Social Security and pensions. If passed by the 2009 Oregon legislature, House Bill 2609 may change the

formulas for calculating income limits each year, and will raise the income limit to \$49,000. If the applicant's income exceeds the limit after a deferral account is established, the applicant may be responsible for all or part of property tax liability for that year. The deferral amount will be reduced by 50 cents for each dollar earned over the income limit. If household income exceeds the limit by more than double the property tax bill, no taxes will be deferred for that year. Money received from a reverse mortgage is not considered "income" for deferral qualification.

Joint owners must live on the property and own or be purchasing the property together. The applicant must have a recorded deed to the property or be buying the property under a recorded sales contract. All joint owners must live on the property unless there are medical reasons for not doing so. Manufactured homes, houseboats, multi-family, and income-producing properties are potentially eligible for the programs. Multi-family buildings may only be eligible for a portion of the property taxes to be deferred. See ORS 311.666(2).

There must be no prohibition to the deferral of property taxes contained in any provision of federal law, rule, or regulation applicable to a mortgage, trust deed, or land sale contract for which the property is security.

### Application process

To apply for programs, the applicant must obtain a deferral application booklet (form number 150-490-015) from the county assessor's office or the Department of Revenue's Web site: [www.oregon.gov/DOR/PTD/docs/490-015.pdf](http://www.oregon.gov/DOR/PTD/docs/490-015.pdf).

The application must be filed between January 1 and April 15. To complete the application, the following documents must be attached:

- A copy of the property deed
- A copy of the property tax statement or printout from the previous year
- An income worksheet

## Property tax relief

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- A copy of the applicant's federal income tax return from the previous year
- A copy of the title if the property is a manufactured home
- A copy of the trust if the property is in trust
- A power of attorney if an attorney is applying for the deferral
- A copy of a doctor's statement if the applicant does not live on the property for medical reasons
- A copy of the federal Social Security award letter if the applicant is applying for the disabled citizen's property tax deferral

Once the application is filed, the Department of Revenue will pay 2009–2010 property taxes that are due November 15 and all future taxes as long as the applicant remains eligible.

Only one application is needed for the deferral. The deferral continues until the property is sold or changes ownership, the applicant moves permanently from the property (unless for medical reasons), the applicant dies, or the property (in the case of a manufactured home or floating home) is moved out of state. If the applicant dies, the surviving spouse or partner may be eligible for continuing deferral, if the surviving spouse or partner meets the conditions of ORS 311.688.

### Payment of deferred taxes

When the deferral property is inherited and the heir makes the property his or her principal residence by August 15 of the following year, the deferred taxes plus interest become due and payable. A repayment schedule may be arranged with the Oregon Department of Revenue. ORS 811.695.

The deferred taxes and interest may be paid in full or in part while taxes continue to be deferred. The applicant, relatives, or others with an interest in the property may make payments on an account if the deferral holder does not object. Payments are applied first to accrued interest, then to past deferred taxes. ORS 311.690.

### Delay of foreclosure

The deferral programs pay only the current and future property taxes to the county. The deferral programs do not pay any delinquent property taxes or the interest owed on those. After an application for tax deferral is approved by the Oregon Department of Revenue, the applicant may apply to the county for the delay of foreclosure based on delinquent taxes. The county assessor will approve or deny the application. If the application is denied, the owner may appeal to the circuit court in the county in which the tax-deferred property is located. Manufactured structures and floating homes that are not real property do not qualify for a delay of foreclosure.

Worksheets, applications, and information for both tax deferral programs are available at the Department of Revenue Web site: [www.oregon.gov/DOR/SCD/formpub.shtml](http://www.oregon.gov/DOR/SCD/formpub.shtml).

### Veteran's exemption

Disabled war veterans or their surviving spouses or registered domestic partners may be entitled to exempt \$16,391 or \$19,669 of their homestead property's assessed value from property taxes. The exemption amount increases by three percent each year. Oregon residents and qualifying veterans or veterans' surviving spouses or partners who live in their homes may file a claim and receive the exemption. ORS 307.250–307.283. The exemption applies to the home and then to taxable personal property.

### Eligibility

The \$19,669 exemption is available for:

- War veterans who are officially certified by the U.S. Department of Veterans' Affairs or any branch of the United States Armed Forces as having disabilities of 40 percent or more
- Surviving spouses or partners of war veterans who have not remarried or entered into a new domestic partnership. Surviving spouses or partners may file a claim for the exemption even though their spouse was not disabled or never filed a claim for the exemption if disabled.



***Disabled war veterans or their surviving spouses or registered domestic partners may be entitled to exempt part of their homestead property's assessed value from property taxes.***

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## Property tax relief

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### For further information

Contact the Department of Revenue toll-free within Oregon: 800.356.4222. The deferral unit can be contacted directly at 503.945.8348.

See also the Department of Revenue's deferral program Web site: [www.oregon.gov/DOR/SCD/index.shtml](http://www.oregon.gov/DOR/SCD/index.shtml).

The \$16,391 exemption is available for those who are eligible as above or war veterans who served with the United States Armed Forces and are certified each year by a licensed physician as being 40 percent or more disabled. For these veterans, total gross income cannot be more than 185 percent of the annual federal poverty level guidelines. Total gross income includes pensions, disability compensation, and retirement pay received for military service. For 2008, the income limit for a family of one is \$18,130. These guidelines are updated yearly.

To be counted as a "war veteran," the veteran must have served during certain specified dates. See the Department of Revenue publication for those specific dates and requirements: [www.oregon.gov/DOR/PTD/IC\\_310\\_676.shtml](http://www.oregon.gov/DOR/PTD/IC_310_676.shtml).

To be eligible for either exemption amount, the veteran or surviving spouse or partner must own and live on the homestead property. This includes recorded contracts of purchase and life estate holders. Temporary absence for vacation, travel, or illness do not disqualify homeowners from eligibility in this program.

A new exemption claim must be filed each year with the county assessor where the property is located. Claim forms are available from the county assessor's office. The claim must be filed on or before April 1 of the year for which the exemption is claimed. For property acquired between March 1 and July 1, the claim must be filed with attached documentation within 30 days of the date of acquisition of the property. Late filing is available if an applicant received an exemption the previous year and a notice from the county assessor that a claim was not filed for the current year. Late claims must be filed by July 1 and include a \$10 late filing fee.

A surviving spouse or partner may file a claim at any time during the tax year if the war veteran died during the prior tax year, or the homestead property was acquired between March 1 and July 1 and the veteran died within 30 days of the date the property was acquired.

If the war veteran received his or her initial disability certification years after the U.S. Department of Veterans Affairs or a branch of the U.S. Armed Forces examined the veteran for disability rating, the veteran may qualify for a prior year's exemption.

To qualify for a prior year's exemption, the veteran must:

- Receive a recent notice of disability certification indicating disabilities of 40% or more as of a prior date shown on the certification, and
- File a claim for exemption with the county assessor within six months of the date of the federal government notification of the certified disability.

To complete the application, the following documents must be attached:

- A DD-214 or other military-issued documentation showing a discharge of release from the military under honorable conditions and showing the period of active service
- A certificate verifying disabilities of 40 percent or more, issued by the U.S. Department of Veterans Affairs or a branch of the U.S. Armed Forces within three years prior to the date of the claim for exemption, or from a licensed physician within one year prior to the date of the claim for exemption

A surviving spouse or domestic partner must also include:

- The marriage certificate or certificate of registered domestic partnership, showing marriage or partnership to the war veteran at the time of his or her death, and
- The war veteran's death certificate. If the veteran died as a result of service-connected injury or illness, the surviving spouse or partner may qualify for the greater exemption amount. ■



## Changing ownership of a manufactured home

By Theresa Swearingen

On May 1, 2005, responsibility for maintaining ownership and siting information for manufactured structures transferred from the Department of Motor Vehicles (DMV) to Building Codes Division (BCD), Department of Consumer Business and Services. County assessors and/or county tax collectors act on behalf of BCD. Homeowners and other interested parties should contact the county in which the home is located if they buy, sell, move, or otherwise change the status of a manufactured home.

When ownership of a home changes, all taxes must be current. Contact the office of the local assessor or tax collector to determine if there are unpaid taxes or the home has a senior deferral. If there is a senior deferral on the property, contact the Oregon Department of Revenue deferral unit for a payoff value and the date when it will release its lien on the home. It is possible to transfer title of a mobile home into trust without paying the deferred property taxes if Department of Revenue signs off in the box that says, "I acknowledge this sale/change of ownership but do not release my interest in the structure."

To change ownership, you will need a "Notice of Sale/Change of Ownership" form (440-2952), a "Supplemental Information" form (440-1066), and a signed title. The title would look like a motor vehicle title if issued prior to May 1, 2005, or an ownership document after that date. The ownership document was originally printed on 8 1/2" x 11" white paper. If processed after October 7, 2007, it is printed on light green paper. If there is no title/ownership document, a "Bill of Sale" (440-3925) will be needed. There is a transaction fee of \$55 to change ownership and produce a new ownership document. Some counties have additional charges. Ask them for any additional fees when checking on the tax status.

When changing ownership because of a death you will need a "Notice of Sale/Change of Ownership form" (440-2952), a "Supplemental Information form" (440-1066), and either the title or ownership document, if available, or a "Bill of Sale" (440-3925). BCD will need to see a copy of the death certificate of the owner; it does not retain this copy. If there are multiple owners with right of survivorship on the home, no additional information is needed. The fee of \$55 would complete the transaction. If right of survivorship is not indicated, an "Inheritance Affidavit" (440-2946) will also be needed, unless a directive is stated in the will.

When there is no surviving owner listed on the home and there is a will directing who gets the home, a copy of the will is needed along with the notice of sale form, supplemental form, bill of sale, and transaction fee. It is not necessary to submit a complete copy of the will. Only the first page, the page listing the home itself, who is to receive the home, and signature page are required. If the will assigns a personal representative/executor, a copy of the will (as listed above and the page listing the personal representative/executor) is needed. The personal representative will sign the documents. According to BCD, the personal representative or executor cannot put the home into his or her name unless it is stated in the will, or all the heirs have approved.

ORS 446.641 requires the seller to transfer ownership within 30 days of the date of sale or ownership change. To retrieve the current forms, visit the BCD Web site at <http://bcd.oregon.gov/lois/forms.html>.

The instructions listed above are an outline of what is required by BCD, although some counties may request additional information. Please contact the county where the home is located with any questions you might have. ■



*Theresa Swearingen is a Senior Assessment Clerk for Manufactured Structures at Marion County. She serves as the county assessor's representative on the Manufactured Housing Ownership and Dealer Regulation Advisory Committee for the manufactured-housing computer system.*

## A practical guide to FED court

By Frank Wall, Attorney at Law

*Frank Wall has practiced in the area of landlord-tenant law, representing both landlords and tenants, since his 1973 graduation from the University of Oregon Law School.*

This article, which assumes you are a landlord and you want to evict an occupant through Forcible Entry and Detainer (FED) court, is a practical guide to help you avoid common mistakes and successfully process a fairly simple eviction case.

An FED is fast. Initial appearances are generally scheduled eight days after filing. ORS 105.135(2). The court supplies form summons, complaints, and answers. Trials are required fifteen days after the first appearance. ORS 105.137(6). Tenant defenses and counterclaims are limited. ORS 105.132. Settlements are encouraged. ORS 105.145. The FED is the remedy of choice to remove an unwanted occupant.

For a successful FED you'll need a landlord-tenant relationship, a valid termination, and proper service of a termination notice.

### Landlord-tenant relationship

Before 2003 the FED process was understood to be available to remove a variety of unwanted guests, caretakers, adult children, and other non-tenants. The Court of Appeals has questioned that understanding.

To prevail in an FED you must prove the occupant entered by force or is holding possession by force. ORS 105.110. When there is no evidence of a forcible entry, there must be a landlord-tenant relationship for the plaintiff to prevail. *Bunch v. Pearson*, 186 Or.App 138 (2003), *Kerr v. Jones*, 193 Or.App. 682 (2004).

In *Bunch* both parties stipulated there was no landlord-tenant relationship. In *Kerr* the defendant entered into possession as a tenant in common. The plaintiff purchased the property after a judgment by some of the cotenants in an action to partition the property. *Kerr* found there was no landlord-tenant relationship. In the absence of a landlord-tenant relationship the FED process could not be used.

If there is no landlord-tenant relationship, your remedy is a suit for ejectment, not an FED. The defendant in your ejectment action will have thirty days to answer and the case goes on the regular trial docket. You lose the advantage of summary processing.

Notwithstanding *Bunch v. Pearson*, it may still be possible to use an FED to remove an unwanted occupant that does not at first glance appear to be a tenant.

It takes very little to establish a tenancy under the Oregon Residential Landlord Tenant Act (ORLTA). There must be a rental agreement for a dwelling unit. ORS 90.115. "Rental agreement" means all written or oral agreements and valid rules and regulations that embody the terms and conditions concerning the use and occupancy of a dwelling unit and premises. ORS 90.100(34). In the absence of an agreement the ORLTA supplies the rent rate (fair market value), term (month-to-month), place of payment (at the dwelling unit), and time of payment (beginning of the term). ORS 90.220.

"Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. ORS 90.100(9).

Where no residential landlord-tenant relationship exists, you may be able to establish a tenancy at sufferance (ORS 91.040) or tenancy at will (ORS 91.050).

If the occupant is an employee of a landlord whose right to occupancy is conditioned on employment in and about the premises, the employee may be evicted with 24 hours' notice. ORS 90.110(7), ORS 91.120. This is intended to permit summary eviction of a resident apartment manager who has been fired, but the scope is also broad enough to cover other employees.

Let's assume you have a residential landlord-tenant relationship. How do you terminate it?

### Termination

Most terminations are because of nonpayment or no-cause terminations of month-to-month tenancies. Less common are for-cause terminations, terminations for outrageous conduct, and terminations for pet violation.

### Termination for nonpayment of rent

This discussion assumes a month-to-month or fixed-term tenancy and a rental agreement that requires a 72-hour notice for nonpayment. The time periods and deadlines are different

*Continued on page 11*

## Guide to FED court

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for week-to-week tenancies. Most landlords use a 72-hour notice for nonpayment. However, a rental agreement may authorize a 144-hour notice. See ORS 90.394.

Tenants have a seven-day grace period to pay rent. You can give a 72-hour notice on the eighth day. The 72-hour notice must be in writing and must state the amount due and the date and time by which rent must be paid. You should avoid demanding payment at a specific location and should consider rent timely if mailed by the deadline. ORS 90.394. The deadline for payment depends on the method of service.

### Thirty-day no-cause terminations

A month-to-month tenancy permits either party to terminate with 30 days' written notice without having to prove a breach or violation. Notice may be given at any time during the month. The notice must designate a date for termination. ORS 90.427.

Senate Bill 771, currently pending before the Oregon legislature, would require a 60-day no-cause termination notice for a month-to-month instead of 30 days if the tenant has been there for a year or more. SB 771 is sponsored by a coalition of landlord and tenant groups and will probably be adopted.

Most Section 8 tenancies convert to month-to-month after their initial term. Although Oregon Law permits a month-to-month tenancy to be terminated at any time, Section 8 may require the termination to be at the end of the monthly term, which could be on any day of the month, depending on when the initial term ended. Trial courts have been inconsistent. As a precaution, designate the end of the monthly term as your termination date. Send the public housing authority a copy of any termination notice at the same time you give the notice to your tenant.

### For-cause terminations

If the rental agreement requires you to establish a breach in order to terminate, use a for-cause notice. Fixed-term tenancies require a for-cause notice to terminate prior to the ending date. Subsidized housing usually requires cause to terminate. In some situations your goal may be to encourage a change of conduct, and you may opt to give a for-cause notice, in the hope that conditions will improve and eviction will be unnecessary.

Avoid using a for-cause notice if you are not required to. Compared to a no-cause notice, a for-cause notice exposes you to many more opportunities for error.

The for-cause notice must specify the acts and omissions that constitute the breach. ORS 90.392(1). A proper specification should describe who is involved and what was done when and where, so that someone unfamiliar with the situation—e.g., a judge—can tell exactly what conduct was a violation. A specification which merely cites the statute, rule, or lease provision that was violated probably does not specify an act or omission. It must state that the rental agreement will terminate on a designated date not less than 30 days after delivery. If the tenant can cure the violation the notice must so state and describe at least one cure acceptable to the landlord and designate the date by which the tenant must cure. If mailed, both the termination date and cure date must be extended.

If the violation can be cured by a change in conduct, repairs, payment of money, or otherwise, the rental agreement does not terminate if the tenant cures by the designated date. The tenant may provide a different cure than the one designated by the landlord. Tenant advocates argue that all violations, no matter how serious, can be cured.

Prior to 2005, tenants had 14 days to cure all violations. Landlords believed 14 days was too long for some violations. The 14-day cure period, they argued, permitted bad conduct, like a loud party or threatening behavior, to continue as long as it ended before 14 days had run. This was described as a "party-on" problem.

The party-on problem was addressed in 2005 by allowing a landlord to require an immediate cure for violations that are separate and distinct acts or omissions and are not ongoing. For these violations, you have an option to demand the tenant cure immediately.

Conduct that is constant or ongoing is not subject to the immediate-cure requirement. Some examples of ongoing conduct are when the tenant has added an unauthorized roommate or left a junked sofa in the front yard or a dead car in the parking lot or failed to mow the grass. In these cases, the tenant gets the full cure period.

Conduct does not have to be strictly continuous in order to be constant. There are some kinds of violations that are repeated so often or regularly that they should be considered to be continuous and therefore not subject to the immediate-cure requirement—for example, a young child who bangs on the upstairs apartment floor every morning upon arising.

You can still use the 14-day cure period, both for continuous and discontinuous violations. If a tenant commits a discontinuous violation you can still give the longer cure period, whether because you want to allow more time or because you are not sure a judge will agree a violation is discrete/discontinuous and not ongoing/continuous.

If the tenant does not cure the violation, the rental agreement terminates as provided in the notice.

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## Guide to FED court

*Continued from page 11*

If substantially the same violation recurs within six months, the landlord can give a ten-day notice. The tenant does not have a right to cure this subsequent violation. A landlord may not terminate a rental agreement under this subsection if the only violation is a failure to pay the current month's rent. ORS 90.392(5).

### 24-hour terminations for outrageous conduct

You can terminate a tenant with 24 hours' written notice if there is serious threat of substantial personal injury, infliction of substantial personal injury, conduct that creates a serious risk of substantial personal injury, substantial injury to a neighbor living in the immediate vicinity, some types of false information, or an act which is outrageous in the extreme.

An act is outrageous in the extreme if a reasonable person in that community would consider it so offensive or such a high risk to others that immediate action is required. Serious misconduct involving an elderly, disabled, or otherwise vulnerable person could be outrageous conduct. Only one reported case has considered the scope of outrageous conduct. *Portland Mobile v. Wojtyna*, 85 Or 368 (1987). The tenant's son whacked the manager over the head with a hockey stick.

Review ORS 90.396 before giving a 24-hour notice. This article is only a summary and does not include all the information you will need. Few tenants are able to vacate in 24 hours. Anticipate that you will be filing an FED. Talk to the witnesses. Be prepared to go to trial.

### How do you serve a termination notice?

There are three methods for the delivery of a termination notice.

#### Personal delivery

When the notice is served personally, time runs from delivery. Most rental agreements list the names of the tenants. Avoid delivering a notice to someone not listed as a tenant. Trial judges have dismissed cases because the notice was delivered to a babysitter, visitor, young child, or other non-tenant.

#### First-class mail

Do not use certified or registered mail, or any other form of mail that may delay or hinder actual delivery of mail to the recipient. ORS 90.100(14).

Delivery by first-class mail requires you to extend the time by an additional three days, ending at midnight on the last day. ORS 90.155(2). This makes a 72-hour notice at least six days and a 24-hour notice four days. As a precaution, say in the notice that midnight means the end of the day.

It is wise to add an extra day, to factor in a possible delay in mailing or processing by the post office.

For proof of mailing, get a "certificate of mailing" from the post office. Do not confuse the recommended certificate of mailing with certified mail, which is prohibited.

#### Mail and attachment

Mail and attachment must be authorized by the rental agreement. See ORS 90.155(1)(c). If authorized, mail and attachment permits you to tape a notice onto the door, send a copy by first class mail, and avoid adding an additional three days. Deadlines must be extended to 11:59 p.m.. ORS 90.160(2). Rental agreements that are not drafted for use in Oregon will not include the required authorization. Before considering mail and attachment read ORS 90.155(1)(c) and the rental agreement. Be certain the rental agreement contains the required language and that it has been completed correctly. These requirements are not intuitive, and inexperienced landlords often make mistakes.

#### Which method of service should you use?

Personal delivery is fastest but requires personal contact with the tenant, who may evade you or be hard to find. Personal delivery may provoke an uncomfortable confrontation.

Mail and attachment avoids tracking down your tenant, avoids a confrontation, and avoids the three-day extension required for mail delivery. However, it is most frequently done wrong and carries the greatest risk of a fatal defect. Avoid mail and attachment.

First-class mail, when combined with a certificate of mailing from the post office, exposes the least risk of error. The additional three-day delay is less expensive than the cost when you discover at trial that your notice is defective. You'll be paying your tenant's court costs and attorney fees and your own court costs, and will have to start the eviction all over again. With small or inexperienced landlords, first-class mail should be the preferred method of service.

#### What is waiver?

If you accept rent with knowledge of a violation or accept performance that varies from the terms of the rental agreement, you may find that you have waived the right to terminate for unpaid rent. ORS 90.412.

To avoid triggering waiver, do not accept partial payments without a signed payment plan for the unpaid balance. The plan must specify the date and time the rent will be paid.

To avoid waiving the right to terminate for breaches other than non-payment, give your termination notice before accepting rent in three subsequent months. ORS 90.312(2)(a).

You have ten days to return a rent payment to avoid a waiver. ORS 90.412(3)(a)

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## Guide to FED court

*Continued from page 12*

### How does FED court work?

The court supplies forms for FED summons and complaint. You will need a copy of your termination notice. The court schedules a first appearance at least eight days after you file. In Multnomah County, FED courts convene every day at 9:00 a.m. in room 120. In Washington and Clackamas counties, they are at 8:30 a.m.

### Who can file?

An FED complaint must be signed by the plaintiff or an attorney representing the plaintiff, or verified by an agent or employee of the plaintiff, or an agent or employee of an agent of the plaintiff. ORS 105.124(2).

An FED must be brought in the name of a person entitled to possession as plaintiff. The plaintiff may appear in person or through an attorney. When ORLTA applies, the plaintiff may also appear through a non-attorney who is an agent or employee of the plaintiff or an agent or employee of an agent of the plaintiff. ORS 105.130(4).

### Why should I include "all others" as a defendant?

Your local sheriff may refuse to remove an occupant not listed as a defendant to the FED. Including "and all other occupants" or similar designation should overcome the sheriff's objection.

### Tender of rent into court

When an FED is for nonpayment of rent, tenants have an opportunity to pay rent into court. Payment of rent into court gives the tenant a substantial advantage. After trial, if any rent due the landlord can be paid from funds tendered into court, the tenant retains possession, and in the absence of bad faith will be entitled to attorney fees. In other words, in most cases, if the tenant pays, you lose. On the other hand, if the court orders payment and the tenant fails to comply, tenant counterclaims get dismissed—in which case you will probably win. ORS 90.370.

The court will accept your tenant's tender by credit card. Friends or family may lend the money. Do not request or agree to payment into court unless you are certain your tenant will be able to comply.

### Counterclaims

Tenants can raise any counterclaim arising out of the rental agreement or ORLTA. Most other counterclaims are prohibited. ORS 105.132.

Frequent counterclaims are for habitability violations (ORS 90.320) and abuse of access (ORS 90.322).

### Settlement

Most FEDs are settled with a stipulated agreement. Agreements may include a move-out date, a payment plan, and other conditions. Payment plans are limited to six months' duration and may only include three months of rent accruing after the agreement is entered. ORS 105.145.

If the agreement is complied with, the case will be dismissed and will not appear as an FED judgment against the tenant. ORS 105.146. Future landlords are prohibited from refusing to rent to a tenant because of a dismissed FED.

If the tenant fails to comply, you are normally entitled to immediate restitution. You must file a declaration of noncompliance. The tenant

has an opportunity to demand a hearing to contest the noncompliance. Hearings are scheduled quickly. ORS 105.147.

### What do I do after I get a judgment of restitution?

First, file a "notice of restitution." The notice gives the tenant a deadline to move out. The deadline must be at least four days after the notice is served, normally by taping on the door. ORS 105.151.

If the tenant fails to vacate by the deadline, file a "writ of restitution," often called a "lock out." The writ directs the sheriff to remove the defendants. Normally the sheriff will make an appointment to meet you at the premises. Be prepared to change the locks and, if your tenant is present, to serve an abandoned-property notice.

### What do I do with abandoned property?

Before disposing of any abandoned tenant property, you must give an abandoned-property notice. ORS 90.425. If you dispose of property without giving a proper notice, you lose any claim for unpaid rent and for any damage that was not deliberate. You will owe the tenant double the value of the property. ORS 90.425(17). See ORS 90.425(5) for what must go in an abandoned-property notice and ORS 90.425(4) for how to serve it.

### Where can I get forms?

Do not download rental agreements, termination notices, or abandoned-property notices from the Internet. Do not buy them from Office Depot, OfficeMax, or any other national distributor. They will not comply with Oregon law. Appropriate forms for Oregon are available from landlord trade groups and from Stevens-Ness, 916 SW Fourth Ave., Portland, OR 97204.

Avoid drafting your own rental agreement. The legislature will probably make it obsolete every two years.

Most preprinted termination notices provide for all three alternative service methods, making the notices confusing and inviting error. It is better to designate one method of service and draft a clear and simple notice.

Consider using the notices on page 14 that are designed specifically for service by mail. ■

Sample Form

**Termination Notice for Non Payment of Rent  
Service by Mail**

To: \_\_\_\_\_  
\_\_\_\_\_

Your rent has not been paid and is more than seven days past due. You must either pay or vacate.

Month(s) unpaid \_\_\_\_\_

Amount to pay \$ \_\_\_\_\_ 1.

Deadline Midnight on \_\_\_\_\_ 2.

Make your payment to \_\_\_\_\_

Payment is timely if received or mailed by the deadline. Midnight is at the end of the day.

If you fail to either pay the amount demanded in this notice or vacate by the deadline, your tenancy will terminate and an eviction will be filed against you in court.

Date: \_\_\_\_\_  
\_\_\_\_\_

- 1. Include only rent, not late fees, unpaid deposits, or other charges.
- 2. This notice is intended to be delivered by first class mail only. The deadline must be at least six days (72 hours plus three days) from mailing, ending at midnight. Best practice is to add seven days from mailing. Mail at the post office and get a certificate of mailing.

Sample Form

**Landlord's Termination Notice Without Cause  
Service by Mail**

To: \_\_\_\_\_  
\_\_\_\_\_

This is a termination notice. You must vacate by \_\_\_\_\_

Oregon's Residential Landlord and Tenant Act permits us to terminate your tenancy with 30 days notice. It is not necessary to show you have done anything wrong or that you have violated your rental agreement.

If you fail to vacate by the deadline, we intend to file an eviction against you in court.

Date: \_\_\_\_\_  
\_\_\_\_\_

- 1. Must be at least 30 days. If the notice is mailed, add four days, for a total of 34 days. When mailing, use only first class mail, not registered or certified. For proof of mailing, ask the post office for a certificate of mailing.

## How do you remove a person who is not a tenant?

By Dady K. Blake, Attorney at Law

Frank Wall's article on page 10 discusses the removal of tenants from a residence. However, elder law attorneys often represent clients in situations in protective proceedings and estates where there is no landlord-tenant relationship. These situations typically involve a relative who is freeloading and just won't leave.

Under ORS 105, an FED action can be used to remove a non-tenant occupant, including "tenants at will," "tenants at sufferance," and employees; but this must be done carefully. If a landlord-tenant relationship is asserted and one does not exist, the owner could end up paying the occupant's attorney fees under FED's loser-pays rules. Also see *In re Eoonuk*, 151 Or App 27 (1997) rev den 326 Or 389 (1998), in which the court was asked by the conservator to determine if occupants were "tenants at will."

There are two primary ways for a party with standing<sup>1</sup> to remove non-tenants outside of FED court. Ejectment is the most common action. In some counties a "motion to show cause" may be used.

Where available, a motion to show cause is efficient and fast. In Multnomah, Clackamas, and Washington counties, probate departments have been receptive to the motion to show cause, which provides a quick turnaround time to get an order with a sheriff's writ of assistance. If the relative does not appear in court, it is generally a fairly straightforward matter to get the order and have a sheriff remove the unwilling party. However, if the relative does show up at the show-cause hearing, expect to have the judge schedule an evidentiary hearing.

The more common procedure across the state is an action for ejectment. This is like any other complaint in that the opposing party is personally served a summons with a 30-day notice period to answer, without the summary process available in FED or a show-cause motion. That said, attorneys who use the ejectment action have in some cases been able to expedite the process with a request for summary judgment or another summary procedure.

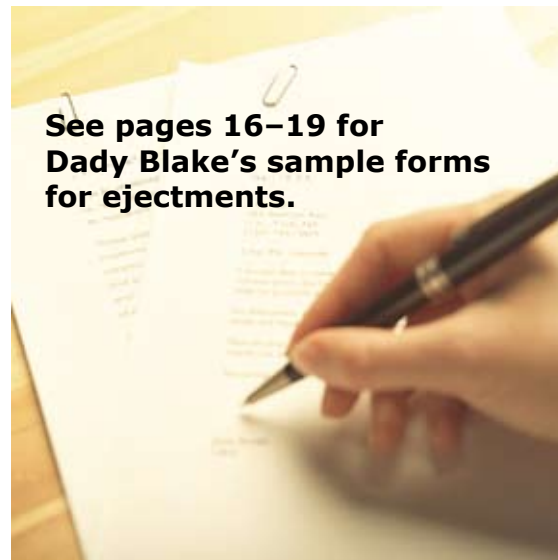
Bottom line: Be aware that there are differences between counties, so check first. ■

### Footnote

1. A conservator, trustee, agent under power of attorney, or personal representative where property is owned by the principal would have authority to remove tenants and non-tenants.



*Dady K. Blake has been practicing elder law since 1994. Her practice is located in Southeast Portland and focuses on guardianship and conservatorship law for adults.*



**See pages 16–19 for Dady Blake's sample forms for ejectments.**

*Sample Form*

**ORDER TO VACATE PROPERTY/WRIT OF ASSISTANCE**

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
IN THE COUNTY OF MULTNOMAH  
Probate Department

**In the Matter of the  
CONSERVATORSHIP OF**  
\_\_\_\_\_  
**(An adult)**

)  
)  
)

**No.** \_\_\_\_\_  
**Order to Vacate Property and  
Granting Writ of Assistance**

THIS MATTER came before this hearing on \_\_\_\_\_, the conservator and its counsel being in attendance before the Honorable Judge \_\_\_\_\_, the occupants \_\_\_\_\_, not in attendance, and on the Motion and Affidavit [or Statement] of the conservator for an Order directing that occupants vacate property and a writ of assistance to be issued to peace officers requesting those peace officers to assist conservator in entering the protected person's residence and supervising the departure of occupant(s) from residence. The court has considered the conservator's motion and affidavit filed herein, and the court being fully advised makes this order.

Now, therefore, IT IS ORDERED that

1. OCCUPANT, and all other occupants at \_\_\_\_\_ are ordered to vacate premises; and
2. A writ of assistance shall be issued to any peace officer, directing peace officers to assist the conservator in entering protected person's residence located at \_\_\_\_\_; and supervising occupant \_\_\_\_\_, and any others occupying \_\_\_\_\_, in vacating the premises.

Dated, \_\_\_\_\_

\_\_\_\_\_  
Circuit Judge

Submitted by:

\_\_\_\_\_  
ATTORNEY FOR CONSERVATOR:



Sample Form

MOTION SHOW CAUSE AND STATEMENT OF CONSERVATOR

IN THE CIRCUIT COURT OF THE STATE OF OREGON
IN THE COUNTY OF \_\_\_\_\_
Probate Department

In re Conservatorship

of \_\_\_\_\_ ) NO. \_\_\_\_\_
PROTECTED PERSON ) Show Cause Order, Motion, &
Affidavit [or Statement]

To: occupants

Based upon the Motion and Affidavit of CLIENT herein, and good cause appearing,
IT IS HEREBY ORDERED that you appear before this Court on
[DAY OF WEEK, DATE] at 8:45 o'clock a.m. in Room \_\_\_(Judge \_\_\_\_\_) of the
Multnomah County Courthouse, 1021 SW Fourth Avenue, Portland, Oregon 97204, and show
cause, if any exists, why the Court should not order you to do the following:

- 1. Vacate property owned by protected person and located at \_\_\_\_\_
2. Issue writ of assistance to Sheriff Dept. to aid in ejecting OCCUPANTS from this property.

DATED, \_\_\_\_\_

Circuit Judge

It is so moved.
Dated, \_\_\_\_\_ 200\_\_

Attorney for Conservator

STATEMENT OR AFFIDAVIT OF CONSERVATOR

I, \_\_\_\_\_, being first sworn, depose, and say:

- 1. \_\_\_\_\_ is the conservator herein.
2. The protected person's former residence was \_\_\_\_\_ (hereinafter "residence")
and the protected person is the sole legal owner in fee simple of this property.
3. The conservator has requested and obtained the authority of the court to sell residence.
4. OCCUPANT currently lives in protected person's residence. No persons pay rent or
otherwise compensate the protected person; they are not considered "tenants." The home is in
very bad condition.
5. OCCUPANT has refused to leave the home; she has denied the conservator and its
employees access to the home and access to the protected person's possessions. The conservator
has been unable to accurately assess the protected person's assets and safeguard those assets from
OCCUPANT and others.

Dated, \_\_\_\_\_

CONSERVATOR

[NOTARY STATEMENT OR OATH BEFORE SIGNATURE]

Sample Form

WRIT OF ASSISTANCE

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH
PROBATE DEPARTMENT

In the Matter of the
CONSERVATORSHIP OF

Protected Person.

No. \_\_\_\_\_

WRIT OF ASSISTANCE

TO THE SHERIFF OF MULTNOMAH COUNTY,

In this cause, the court ordered OCCUPANT, and all occupants of the residence located
at \_\_\_\_\_ to vacate this premises immediately. This order is dated
\_\_\_\_\_ and attached as Exhibit "A." This order also directed that this Writ of
Assistance be issued to you.

THEREFORE, IN THE NAME OF THE STATE OF OREGON: You are commanded that
upon receiving this writ, you shall enter the Property and eject, forcibly, if necessary, all persons
holding any part of the Property against the Conservatorship of \_\_\_\_\_, and that
you place the conservator \_\_\_\_\_ in full, peaceable, and quiet possession of the
property, from time to time maintaining and defending such possession according to the intent of
the judgment of this court.

DATED, \_\_\_\_\_

By: \_\_\_\_\_

Clerk

Sample Form

**EJECTMENT COMPLAINT**

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF \_\_\_\_\_

|                           |   |               |
|---------------------------|---|---------------|
| <u>OUR CLIENT</u> _____ ) | ) | No. _____     |
| Plaintiff, )              | ) |               |
| v. )                      | ) | COMPLAINT FOR |
| <u>OCCUPANTS</u> _____ )  | ) | EJECTMENT     |
| Defendant. )              | ) |               |

Plaintiff alleges:

1.

Plaintiff is the owner in fee simple and entitled to the possession of the following described real property:

[PROVIDE LEGAL DESCRIPTION AND ADDRESS]

2.

Defendant wrongfully withholds possession of the real property from plaintiff to plaintiff's damage in the sum of \$\_\_\_\_\_.

3.

The value of the rents and profits of the real property is \$\_\_\_\_\_ per month and by reason of the wrongful withholding of the real property by defendant, plaintiff has been deprived of the rent since \_\_\_\_\_ to plaintiff's damage in the sum of \$\_\_\_\_\_.

WHEREFORE, plaintiff demands judgment against the defendant:

- (a) That plaintiff is the owner in fee simple of the real property.
- (b) That plaintiff is entitled to possession of the real property.
- (c) For damages in the sum of \$\_\_\_\_\_ for withholding possession.
- (d) For plaintiff's costs and disbursements.

DATED: \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Attorney for Plaintiff

May 15, 2009 in Eugene

# Elder Law Section to sponsor sixth UnCLE program

By Mark M. Williams, UnCLE Program Chair



The Elder Law Section is again sponsoring a unique program that offers elder law practitioners the opportunity to get together for a day-long session of brainstorming, networking, and the exchange of ideas and forms. The sessions will be small-group discussions of topics, moderated by elder law attorneys willing to share their experiences. There will be no formal speakers, but there will be time to ask questions and learn from our peers. The program is modeled on the highly successful NAELA UnProgram, and this is the sixth time for our local version. The program has received very high ratings from attendees and may be the best educational opportunity available to us. Despite its title, the Oregon State Bar granted five general CLE credits for the last program.

The program will be held on Friday, May 15, 2009, from 8:00 a.m. to 5:00 p.m., and includes a full buffet breakfast, lunch, and post-program reception. The venue is the Eugene Hilton, 66 East 6<sup>th</sup> Avenue, Eugene.

Do not miss this chance to mix and mingle

with your peers in the elder law community and discuss substantive issues and the nuts-and-bolts of practice. The full-day program is intended to get us away from our offices and to enable colleagues from all parts of the state to have reasonable access. Attendance is limited to 75 Elder Law Section members. Registration is \$100, including two meals and a no-host reception.

Register for the program by using the form below or contacting the Oregon State Bar order desk at 800.452.8260, ext. 413, or 503.684.7413. Registration is limited to the first 75 to call, and last year the program sold out more than a week in advance.

Cancellation requests must be received at least 48 hours prior to the start of the seminar to qualify for a refund. Cancellations are subject to a \$50 fee. Hotel reservations: 800.937.6660 or [www.eugene.hilton.com](http://www.eugene.hilton.com) or fax 541.342.6661.

Please contact me if you have any questions: Mark M. Williams: 541.343.8060 or [mark@oregonlegalteam.com](mailto:mark@oregonlegalteam.com). ■

## Seminar Registration

Name: \_\_\_\_\_ Bar Number: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

### Three Ways to Register:

Registrations and orders will not be processed without payment. (Registration Fee: \$100)

1. PHONE: 503-684-7413, or toll-free in Oregon at 800.452.8260, ext. 413
2. FAX this form with VISA or MasterCard number: 503.968.4456
3. MAIL this form with check: Oregon State Bar, CLE Service Desk; PO Box 231935; Tigard, OR 97281-1935

### All information below required when paying by credit card

Credit Card Number: \_\_\_\_\_ Exp. Date: \_\_\_\_\_

Name on Credit Card (Please Print): \_\_\_\_\_

Credit Card Billing Address: \_\_\_\_\_

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## Resources for elder law attorneys

### Upcoming events

#### OSB Elder Law Section "unCLE" Program May 15, 2009

Eugene Hilton

See page 20 for information.

#### Medicare Set-Asides and Special Needs Trusts: What Every Injury Litigator Needs to Know

OSB CLE seminar

May 8, 2009/9:00 a.m. to 4:30 p.m.

Oregon State Bar Center, Tigard

*Impending changes to Medicare Secondary Payer reporting requirements raise issues for personal injury litigators regarding Medicare set-aside arrangements.*

[www.osbarcle.org](http://www.osbarcle.org)

#### Practical Law Office Solutions and Technology Fair for Sole Practitioners and Small Firms

OSB CLE seminar

May 8, 2009/9:00 a.m. to 4:30 p.m.

Wilsonville Holiday Inn

[www.osbarcle.org](http://www.osbarcle.org)

#### Planning with Retirement Benefits

NAELA Telephonic Elder Law Training Prgrm.

May 20, 2009/11:00 a.m. to 12:30 p.m.

[www.naela.org](http://www.naela.org)

#### Estate Planning in a Low Interest Rate Environment

OSB CLE Quick Call

May 26, 2009/ 10:00 a.m. to 11:00 a.m.

Via telephone

[www.osbarcle.org](http://www.osbarcle.org)

#### Avoiding Fraudulent Transfers in Asset Protection Planning

OSB CLE Quick Call

May 28, 2009/ 10:00 a.m. to 11:00 a.m.

Via telephone

[www.osbarcle.org](http://www.osbarcle.org)

#### Life Care Planning Tools and Techniques

NAELA Telephonic Elder Law Training Prgrm.

June 17, 2009/11:00 a.m. to 12:30 p.m.

[www.naela.org](http://www.naela.org)

### Elder Law Section Web site

[www.osbar.org/sections/elder/elderlaw.html](http://www.osbar.org/sections/elder/elderlaw.html)

The Web site has useful links for elder law practitioners, past issues of the *Elder Law Newsletter*, and current elder law numbers.

### Elder Law Section electronic discussion list

All members of the Elder Law Section are automatically signed up on the list, but your participation is not mandatory.

#### How to use the discussion list

Send a message to all members of the Elder Law Section distribution list by addressing it to: [eldlaw@lists.osbar.org](mailto:eldlaw@lists.osbar.org). Replies are directed by default to the sender of the message *only*. If you wish to send a reply to the entire list, you must change the address to: [eldlaw@lists.osbar.org](mailto:eldlaw@lists.osbar.org) — or you can choose "Reply to all."

### Free software reads documents aloud

Although its main function is to display portable document format (PDF) files, the free Adobe Reader software ([www.adobe.com/products/reader](http://www.adobe.com/products/reader)) has a "read aloud" feature that can audibly recite the contents of many PDF files. To hear it for yourself, open a PDF file, go to the View menu and activate the feature from the Read Out Loud submenu. Susan Ford Burns reports, "I just tested it with a contract I wrote and it is amazingly functional. This might be useful in having a completely 'unrelated' person read wills, etc., to clients who are unable to read them due to vision issues." ■

## Medicare savings program change

The income standards for the Medicare savings programs (QMB/SMB/SMF) increased on March 1, 2009.

### New QMB standards

| No. in need group | QMB    | SMB     | SMF     | QMB-DW  |
|-------------------|--------|---------|---------|---------|
| 1                 | \$ 903 | \$1,083 | \$1,219 | \$1,805 |
| 2                 | 1,215  | 1,457   | 1,640   | 2,429   |
| 3                 | 1,526  | 1,831   | 2,060   | 3,052   |
| 4                 | 1,838  | 2,205   | 2,481   | 3,675   |
| 5                 | 2,150  | 2,579   | 2,902   | 4,299   |
| 6                 | 2,461  | 2,953   | 3,323   | 4,922   |
| 7                 | 2,773  | 3,327   | 3,743   | 5,545   |
| 8                 | 3,085  | 3,701   | 4,164   | 6,169   |
| 9                 | 3,396  | 4,075   | 4,585   | 6,792   |
| 10                | 3,708  | 4,449   | 5,006   | 7,415   |
| Each add'l person | 312    | 374     | 421     | 624     |

# Important elder law numbers

as of January 1, 2009

|   |  |
|---|--|
| <b>Supplemental Security Income (SSI) Benefit Standards</b> | Eligible individual.....\$674/month<br>Eligible couple .....\$1,011/month  |
| <b>Medicaid (Oregon)</b>                                    | Long term care income cap.....\$2,022/ month<br>Community spouse minimum resource standard ..... \$21,912<br>Community spouse maximum resource standard .....\$109,560<br>Community spouse minimum and maximum monthly allowance standards .....\$1,750/ month; \$2,739/ month<br>Excess shelter allowance ..... Amount above \$525/ month<br>Food stamp utility allowance used to figure excess shelter allowance .....\$379/ month<br>Personal needs allowance in nursing home .....\$30/ month<br>Personal needs allowance in community-based care .....\$152/ month<br>Room & board rate for community-based care facilities..... \$523.70/ month<br>OSIP maintenance standard for person receiving in-home services..... \$675.70<br>Average private pay rate for calculating ineligibility for applications made on or after October 1, 2008 .....\$6,494/ month |
| <b>Medicare</b>   | Part B premium ..... \$96.40/ month*<br>Part B deductible ..... \$135/year<br>Part A hospital deductible per spell of illness.....\$1,068<br>Part D premium: Varies according to plan chosen..... average is \$35/ month<br>Skilled nursing facility co-insurance for days 21-100 .....\$133.50/ day<br>* A person whose income is more than \$85,000/year will pay a higher premium.  |



## Newsletter Board

The *Elder Law Newsletter* is published quarterly by the Oregon State Bar's Elder Law Section, Penny Davis, Chair. Statements of fact are the responsibility of the authors, and the opinions expressed do not imply endorsement by the Section.

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