



December 4, 2019

**Sent via email to [Andres.Oswill@portlandoregon.gov](mailto:Andres.Oswill@portlandoregon.gov) and [Matthew.Tschabold@portlandoregon.gov](mailto:Matthew.Tschabold@portlandoregon.gov) and by first class mail**

Andres Oswill and Matthew Tschabold  
Portland Housing Bureau  
421 SW 6th Avenue, Suite 500  
Portland, OR 97204

Dear Mr. Oswill and Mr. Tschabold

Thank you for this opportunity to provide additional input to the rulemaking process for Portland’s FAIR Ordinances. It would be accurate to characterize rulemaking to date as inadequate to allow for the practical implementation of the ordinance.

If PHB wants to give housing providers the tools they need to be in substantial compliance, many material contradictions between the FAIR ordinance and existing government statutes, regulations, and guidelines must be fully addressed and reconciled.

At a macro level, The Housing Bureau has the responsibility to fully contextualize and clarify the multiple conflicts with the existing rules that have been in place for decades, including:

- Oregon Landlord Tenant Act, Chapters 90 and 105
- Oregon Real Estate Rules and Regulations (OAR 863 Division 25, ORS 696, etc.)
- HUD Guidance on Screening, Individualized Assessments, and Reasonable Accommodation
- Federal Fair Housing Law

The FAIR Ordinances impact nearly every function of property management. The rulemaking process has not yet addressed how the rules and forms will be updated over time, and how those updates will be communicated to housing providers. Further, with such complicated new requirements, as demonstrated by the attached Screening Criteria Flow Chart prepared by the office of Commissioner Eudaly, the Ordinances do not address how penalties can be reduced or eliminated for honest or inadvertent mistakes that are unknowingly made while housing providers are attempting to act in good faith. The net effect could be to penalize housing providers for unintentional “foot faults”.

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**Deborah Imse**  
[deborah@multifamilynw.org](mailto:deborah@multifamilynw.org)

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For example, where, in the rule making as proposed, would a housing provider go to find an answer to the following questions:

- A landlord goes to the PHB web page to clarify if they are required to use a rent to income ratio of 2.0 or 2.5, which depends on whether the rent is above or below a rent that is “affordable to a household earning 80% of the area median income and with a housing burden of 30%”. PHB publishes the Maximum Monthly Rent **including utilities**. Should the landlord use the published number, or risk severe penalties by calculating the number that includes rent alone?
- Neighbors complain about an unauthorized barking dog that’s not subject to a pet agreement. Landlord gives the tenant a 10-day termination notice for the pet violation, also offering to admit the pet on a pet agreement, and the tenant subsequently elects to remove the dog and correct the notice. Although a very perfunctory action, the landlord has overlooked the requirement of providing “a written accounting to the Tenant of the Tenant’s Rent payment history that covers up to the prior 2 years of tenancy, as well as a fully completed Rental History Form available on the Portland Housing Bureau website.” The penalty for failing to comply with any of the requirements of 30.01.097 upon the issuance of a notice to terminate is double the amount of the Tenant’s Security Deposits, reasonable attorney fees, and costs. If the security deposit is \$950, and this is treated as one instances of non-compliance for each form, is it correct that the landlord would potentially be penalized in **excess of \$3,800** for issuing a valid pet notice?
- Administrative Rules State: “If the Tenant disputes the updated Condition report, the Tenant and the landlord may attempt to obtain third-party validation of the updated condition or pursue a claim and judgement in the court.” This reflects a fundamental misunderstanding of the function of the court system. Is there a mechanism to petition the court to render a judgement on a non-monetary “unit condition report” dispute less than 1 month into a tenancy? There is currently no business model for objective individuals to do 3<sup>rd</sup> party inspections at a reasonable cost.
- **See attached component list** for an 8 X 10 Bathroom. What level of detail, and in what format, should landlords use to identify fixtures, appliances, equipment or personal property in the Rental Agreement, so if damaged, they can apply security deposits in a manner fully consistent with the ordinance? Will all such components throughout the rental unit be subject to the depreciation chart which is to be provided by PHB?

Practical methods of compliance, clear delineation of actions that will result in penalties, and a clear explanation for the legitimate business purpose for carrying out these new tasks will aid in achieving widespread compliance. Additional and well detailed rulemaking or clarification may be necessary in all of the following areas:

- Modifications/Fee Management Contracts
- Advertising practices
- Advertising on online platforms
- Notice publication
- Open application periods
- Refusal to process rules
- Evaluation process
- Application record keeping
- Limits on accepting valid applications
- Redefining adult applicants
- Citizenship rules
- I.D. Rules


- Non-governmental ID requirement
- Acceptance of expired documents
- “Rules for Residency”
- Wait list procedures
- Order of processing rules
- 365-day rule, refuse to screen
- 8-hour rule, early application
- 48-hour acceptance period
- 2-week acceptance communication
- 2 successive 24-hour period rule
- 25% markup rule, screening
- 10% markup rule, screening
- 30-day appeal right
- 3-month approval, waiving fee
- Tenant Self-certification of screening status
- Exemptions from processing rules
- Supplemental Evidence
- Communication of Determination
- Application forms
- Application processes
- Accessibility Definitions
- Screening charges
- Criteria for residency rules
- Low Barrier Criteria Definition
- Landlords screening criteria Definition
- General Screening Process Rules
- Disclosure of Financial Responsibility
- Guarantor Rules
- Guarantor screening criteria
- Guarantor agreement time limit
- Conditional Approvals
- Arrest Rules
- Pending charges rules
- Conviction/no longer illegal
- Juvenile justice system conviction
- Court mandated prohibitions
- Credit score rules
- Property damage limits
- Chapter 13 Bankruptcy rules
- Medical Debt
- Vocational training Debt
- Dismissed action to recover possession
- Failure to appear exception
- Applicant Preference Policies
- Reasonable Accommodation
- Individualized Assessments
- Requirement to enter rental agreement
- Non-applicant tenant
- Applicant tenant
- Disclosure of Mobility Disability
- Disclosure of Disability Status
- Pre-emption of agreement to execute
- Security Deposit amounts
- Security Deposit Installment Payments
- Bank Deposit process security deposit
- Rules on security deposit reporting
- Disbursement of interest/security deposits
- Annual security deposit reporting
- Financial institution reporting
- New timeframe for deposit accounting
- Routine maintenance rule
- End of tenancy inspection rule
- 24-hour final inspection notice
- Depreciation policy
- Depreciation schedule
- Warranty rule
- Comprehensive general liability rule
- Component Itemization Rules
- Cost of painting
- Cost of cleaning
- Flooring repairs
- Condition report timing
- Disputing condition reports
- Third-Party validation of condition
- Baseline Condition
- Unresolved dispute rule
- Required photo documentation
- Labor cost rules
- Metropolitan hourly wage rates
- Notice of Security Deposit Rights
- Notice of Tenant Right to Accommodation
- Notice of tenant rights, statement
- Description of Screening process
- Limitations on reference check information
- Legal Aid services disclosure
- Oregon State Bar disclosure

- 2 year tenant rent payment history
- Rental History Form
- Last month's rent rule
- Written notice of denial
- Accessory Dwelling Unit Rule
- Primary residence rule
- Principal residence rule
- Loan requirement exception
- \$250 Damages provisions
- Double Security Deposit Damages

Thus far, the rulemaking falls far short of describing a usable framework that a housing provider can successfully implement on a practical basis. Housing providers are speculating how certain rules will be applied and are very concerned about the costs and penalties associated with this new framework. For example, the Ordinance does not address what to do with existing security deposits when enacted. It is not possible for housing providers with existing security deposits on account to be in full compliance, as they will not have gone through any of the steps required by the Ordinance at the start of the tenancy.

Should PHB neglect to address all the above and provide adequate instruction and time to modify existing and long-established procedures, housing providers will be unjustly penalized. As currently presented, the proposed rules will make reasonable, timely and economical compliance virtually impossible.

Very truly yours,

A handwritten signature in black ink that reads "Deborah Imse". The signature is written in a cursive, flowing style.

Deborah Imse  
Executive Director  
Multifamily NW

## 8 X 10 Bathroom component list

60" Enameled cast iron soaking tub

Fiberglass 1-piece Tub surround (New)

Shower Mixer valve, chrome (rem)

Drain Pop Up (orig)

Shower curtain brackets (rem)

Curved shower curtain rod (rem)

Shower curtain clips (New)

Shower curtain (New)

Vanity countertop (Orig.)

Vanity backsplash (rem)

Vanity Cabinet (Orig)

Self rimming porcelain Sink (rem)

2 handle bathroom sink faucet (Orig.)

Sink pop up drain assembly (orig.)

P-trap (Orig.)

2 Angle Stops, sink hot/cold (rem)

2 Angle stop escutcheons (rem)

2 Faucet line connectors (rem)

Wall mounted vanity mirror (rem)

4-light bathroom fixture, Nickel (rem)

4- LED lights (NEW)

20 Amp GFCI outlet (NEW)

Wallplate for GFCI (New)

2 brushed nickel towel bars (rem)

TOTO 1.7 GPF Toilet (orig)

Fluidmaster Fill Valve (NEW)

Flapper valve assembly (NEW)

Wax ring gasket (NEW)

Toilet flange assembly (old)

Toilet Angle stop valve (new)

Toilet angle stop escutcheon (remodel)

Floor vinyl – 80 sq. ft. (NEW)

Cove Base – 36 linear feet (NEW)

Subfloor leveling underlayment (new)

Plywood subfloor-80 sq. ft.

Sheetrock and tape (original)

Orange Peel texture (original)

Latex Paint (New)

Ventilation Fan and Light Fixture (rem.)

Ventilation Fan LED Light (new)

Single Pole Light Switch (original)

Single Pole Light Switch, Fan (rem)

Double Toggle Wallplate (new)

Double Hung, double pane window

Window casing

Six panel door

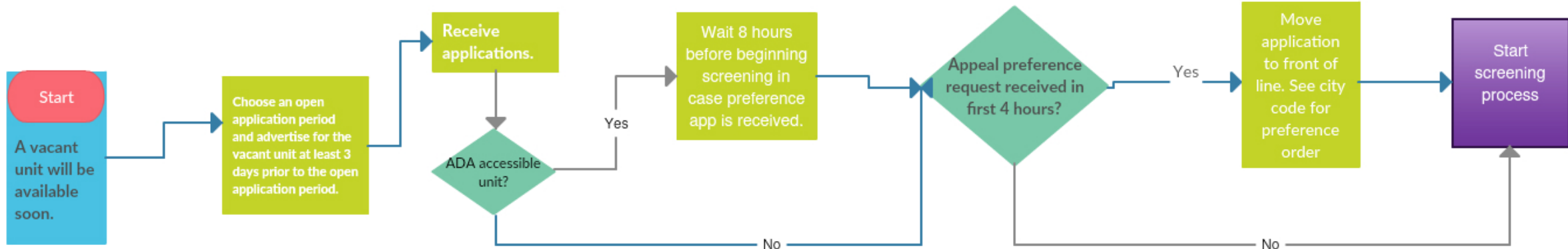
Door casing

3 nickel hinges

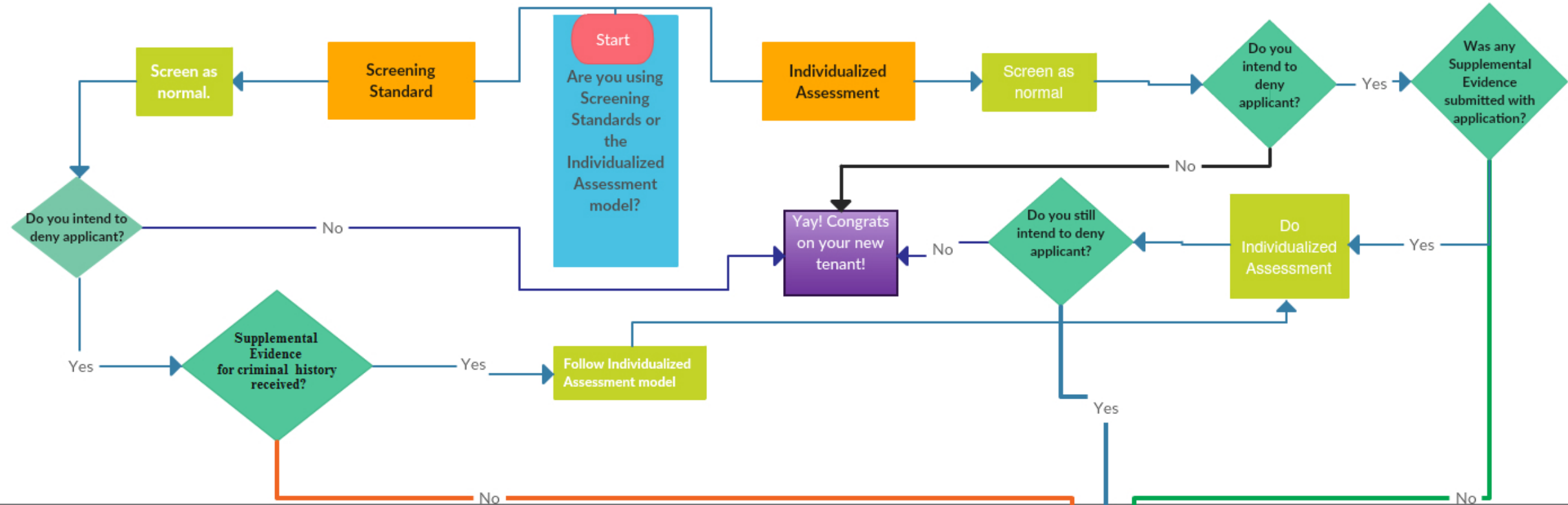
Threshold floor molding

# SCREENING CRITERIA FLOW CHART

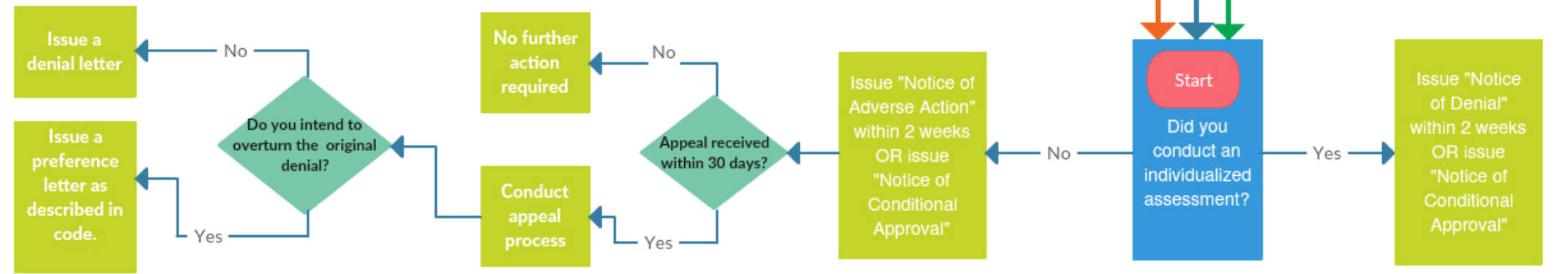
Application



Screening



Denial



## Draft Permanent Administrative Rule

# Rental Housing Application and Screening

### General Comments:

- **Residential Landlord and Tenant Law** – Rulemaking should contextualize **and carefully explain** the application of the FAIR Ordinance within Oregon Landlord Tenant Law, so housing providers operating in Portland can reference one authoritative source to ensure compliance and avoid penalties. The Fair Ordinance introduced complex exceptions to nearly every customary management function.
- **HUD Guidance** – FAIR varies from HUD’s guidance on Individualized Assessments, and Reasonable Accommodation.
- **Real Estate Regulations, Property Management Agreements** – Rulemaking provides no guidance on amending existing in-place property management agreements to comply with FAIR.

### Specific Comments:

- **Real Estate Regulations, Client Trust Accounts** – The FAIR’s Security Deposit Ordinance conflicts with long established rules for Client Trust Accounts overseen by the Oregon Real Estate Agency. For example, if a Licensee followed the timeframe outlined in 30.01.087 B. 1., the Licensee would be in violation of OAR 863-025-0065 (4) and subject to investigation and potential disciplinary action by Real Estate Commissioner. Further, the FAIR ordinance preempts rules on security deposit interest, and how the funds must be held during the period of the tenancy.
- **Early Application** - The 8-hour penalty for early application needs to be clarified. Administrative rules do not address **the** order of priority for in-person applications, mailed applications, e-mailed applications, online applications, and other methods of applying.
- **Trespass** – Rulemaking should clarify the interaction of ORS 164.245 (trespass rules) and right to apply 365 days after problem tenancy. Rules as presently written could force housing providers to allow former residents who were formerly trespassed due to DV issues back onto the property, thereby possibly endangering DV victims.
- **Mandatory Execution of Rental Agreement** - Administrative rules do not address the pre-emption of the agreement to execute a rental agreement, defined in the ORS.
- **Applicant Identification** - Administrative rules do not provide guidance on handling applicant identification. Need to define the standard for “reasonable verification of identity.”
- **Individualized Assessments** - Rules do not address denied the instances where applicants refuse to give additional personal information (in the interest of personal privacy) for the individualized assessments. Rules do not clarify the individualized assessment process, and conflict on the HUD Memo on IA. The Ordinance implies that an Individualized Assessment is not required if the landlord uses the Low-Barrier Criteria, and is mandatory if using the landlord’s own criteria, if more restrictive. The HUD Memo suggests that an applicant can have an Individualized Assessment upon their request, regardless of criteria, and does not subject them to

## I. Purpose and Scope

Under PCC 30.01.086 Landlords in the City of Portland are required to adhere to additional requirements, beyond federal and state law, related to the application and screening process for rental housing. These administrative rules provide additional clarification and requirements for several subsections of PCC 30.01.086.

## II. Definitions

- A. **Accessible Dwelling Unit** means a Dwelling Unit that qualifies as a “Type A Unit” pursuant to the Oregon Structural Building Code and ICC A117.1.
- B. **Applicant** means a person applying to reside in a Dwelling Unit. When there are multiple persons who will reside in common within a Dwelling Unit, Applicant shall refer in common to those members of the household who intend to contribute financially to payment of the Rent and to sign the lease or Rental Agreement.

Definition of “Applicant” is **too** arbitrary, as any adult can redefine their status by stating that they don’t “intend to contribute financially.” Can a landlord re-screen if the status of **an individual tenant’s** changes?

- C. **Dwelling Unit** has the meaning given in PCC 33.910.030, as amended from time to time, and not by ORS 90.100 unless otherwise specified.
- D. **Landlord** has the meaning given in ORS 90.100, as amended from time to time.
- E. **Open Application Period** means the start of the date and time the Landlord will begin processing applications.

The Open Application Period definition appears to be referencing when Landlord will begin accepting applications, not processing them. Processing implies screening, which is done later.

- F. **PHB** means the Portland Housing Bureau.
- G. **Rent** has the meaning given in ORS 90.100, as amended from time to time.
- H. **Rental Agreement** has the meaning given in ORS 90.100, as amended from time to time.
- I. **Tenant** has the meaning given in ORS 90.100, as amended from time to time.

### III. Notice of Dwelling Unit Availability

- A. If a Landlord is advertising for availability (**typo: insert “of”**) more than one Dwelling Unit in the same building at the same time, the Landlord can fulfill the requirements of PCC 30.01.086.C.1 by:

To avoid confusion, use the phrase “same property” rather than “same building.” LIHTC properties have individual BIN (building identification numbers) and account for units by building.

1. Publishing notices for rental of the available Dwelling Units through a combined notice that specifies the following:
  - A. The number of Dwelling Units available;
  - B. The range of number of bedrooms in the available Dwelling Units;
  - C. The range of available Dwelling Unit sizes;
  - D. The range of Rents for available Dwelling Units;
  - E. When the Landlord will begin to process applications;
  - F. A description of the factors the Landlord will consider in evaluating Applicants if the Landlord intends to charge a screening fee; and
  - G. Whether the available units are Accessible Dwelling Units.

F. **Need to** Clarify if “A description of factors” the same as a “Criteria for Residency”?

### IV. Verifiable and Repeated Rental Agreement for Application Evaluation

The above title needs to be corrected. The word “Violations” is missing.



A. A Landlord owning Dwelling Units within the City of Portland, may refuse to process the application of an Applicant who has verifiable repeated Rental Agreement violations with this Landlord if the most recent violation occurred within 365 days before the Applicant's submission date under the following circumstances:

1. Rental Agreement violations are repeated and verifiable when:

- A. At least 3 violations have occurred, where each violation occurred within 1 year of another, and the most recent violation occurred within 365 days before the Applicant's submission date;
- B. All 3 violations of the Rental Agreement are material and severe in nature.
- C. The Tenant received notice of each violation in writing at the time of each violation; and
- D. Each violation was not dismissed nor resulted in a general judgment for the Applicant before the Applicant submitted the application.

A definition of "material and severe in nature" is needed. Would a hate crime be considered material and severe?

V. Responsibility PHB is responsible for managing and implementing this rule.

VI. History

Date adopted: TBD

## Draft Permanent Administrative Rule

# Rental Housing Security Deposits

### Administrative Rules for Rental Housing Security Deposits

- **Real Estate Regulations, -Client Trust Accounts** – The FAIR’s Security Deposit Ordinance conflicts with long established rules for Client Trust Accounts overseen by the Oregon Real Estate Agency. (OAR 863 Division 25, ORS 696)
- **ORLTA** – Rules to not clarify the sections where FAIR preempts ORLTA with respect to handling of security deposits and move-out charges. (ORS 90.300 (7) (a))
- **Real Estate Regulations, Property Management Agreements** – Rulemaking provides no guidance on amending existing in-place property management agreements to comply with FAIR.
- **Actual Costs Reasonably Incurred** – Rulemaking provides no guidance on reconciling ORS 90.300 (7) (b) with the FAIR Ordinance.
- **Timeframes for Move-Out Accounting** – Rulemaking should clarify FAIR timeframes for processing Move-out accounting (including 31 days, 30 days, and “as soon as practicable, but it no event later”) which conflict with Oregon law.
- **Clarification of Penalties** - Penalty for omitting a notice in FAIR Screening is \$250, whereas in Fair Security Deposit, it is twice the Security Deposit.
- **Security Deposit Notice of Rights** – Rulemaking has not created this form.

### Purpose and Scope

Under PCC 30.01.087 Landlords in the City of Portland are limited in how much they can collect for a Security Deposit and must follow supplemental requirements on how funds can be withheld for repairs and replacements. The code also outlines requirements on the process for documenting and maintaining the Dwelling Unit Condition Report, holding a Security Deposit in a separate bank account, and providing notices of rights and Rent payment histories. These administrative rules provide additional clarification and requirements for several subsections of PCC 30.01.087.

### II. Definitions

A. **Condition Report** is a form provided by the Landlord, noting the condition of all fixtures, appliances, equipment, and personal property listed in the Rental Agreement, and noting damage.

B. **Depreciation Schedule** means the most recent version of the Fixture, Appliance, Equipment, and Personal Property Depreciation Notice 30.01.087.C.1 published by PHB in accordance with PCC 30.01.087.

C. **Dwelling Unit** has the meaning given in ORS 90.100, as amended from time to time

D. **Landlord** has the meaning given in ORS 90.100, as amended from time to time.

E. **PHB** means the Portland Housing Bureau.

F. **Rental Agreement** has the meaning given in ORS 90.100, as amended from time to time.

G. **Security Deposit** has the meaning given in ORS 90.100, as amended from time to time.

H. **Tenant** has the meaning given in ORS 90.100, as amended from time to time.

### III. Condition Reports

A. If the Landlord disputes the Condition Report, the Tenant and the Landlord must attempt to obtain third-party validation of the condition of the Dwelling Unit. If third party validation of the condition of the Dwelling Unit is unsuccessful, and the Landlord does not pursue a claim and judgement in the court, the Tenant's Condition Report shall establish the baseline condition of the Dwelling Unit.

Rulemaking does not address the following:

- What standards is “*must attempt to obtain?*” Is the burden equally on the Landlord and tenant? Why are both attempting to obtain separate validation?
- How can a Landlord pursue a claim and judgement in court at the outset of the tenancy?
- There are no third-party inspectors for condition reports, other than Section 8 unit inspectors. That will be a new industry.
- Who bears the cost of the inspection, tenant or landlord?
- 

1. The third party should be a neutral party, and not an established associate or family member of the Landlord or the Tenant.

Would the landlord be required to use different third parties after each time an association has been established?

2. The Landlord and the Tenant are encouraged to independently document the condition of the Dwelling Unit. Documentation should note the date of documentation and condition of items that could be contested.

Landlord and Tenant should be encouraged to collaboratively agree to the condition report, both at the outset and end of the tenancy. What if both use independent assessments, and they vary? Independent documentation is a recipe for conflict.

3. Should a claim and judgement in the court be pursued, the prevailing party is entitled to reasonable attorney fees and court costs.

This process does not currently exist. How would you establish a prevailing party in a non-monetary dispute over apartment condition before move-in?

B. The Landlord shall update the Condition Report to reflect all repairs and replacements impacting the Dwelling Unit during the term of the Rental Agreement that the Landlord intends to apply against the Tenant Security Deposit. The Landlord shall provide the updated Condition Report to the Tenant.

1. Updated Condition Reports must describe:
  - a. The repair or replacement date(s);
  - b. The damage being repaired or replaced; and
  - c. The cost of the repair or replacement.
2. Replaced items should be noted along with the item purchase date, item condition, and depreciated value.

If the Tenant disputes the updated Condition report, the Tenant and the Landlord may attempt to obtain third-party validation of the updated condition or pursue a claim and judgement in the court. **IV. Security Deposit Withholdings**

Most landlords maintain records of the “Service Requests” or “Maintenance Requests.” Does the actual, original signed condition report have to be updated each time a service request is completed?

This implies that the Condition Report must be revised each time maintenance is done. Each time a replacement is done, a tenant can call for independent validation of the repair?

A. A Landlord may only apply Security Deposit funds for the repair and replacement of those fixtures, appliances, equipment, or personal property that are identified in the Rental Agreement and to which a depreciated value is attached in accordance with the Depreciation Schedule published by PHB.

How does the rulemaking address the following examples:

1. a tenant's pet ruined flooring through to the subfloor, and the landlord had to replace pet damaged subfloor, **is it true** that the landlord would not be able to charge for the subflooring if it was not itemized with a depreciable value.
2. Common Area damages are not addressed – can a landlord in Portland deduct common area damages from a security deposit?
3. The rule appears to prohibit the use of security deposits for anything other than repairs and replacements.

The Oregon Statute provides a clear and simple standard:

- ORS 90.300 (7) (a) The landlord may claim from the security deposit only the amount reasonably necessary:
- (A) To remedy the tenant's defaults in the performance of the rental agreement including, but not limited to, unpaid rent; and
  - (B) To repair damages to the premises caused by the tenant, not including ordinary wear and tear.

B. A Landlord may provide documentation reasonably acceptable to a Tenant demonstrating why a different calculation is justified for a fixture, appliance, equipment, or personal property.

Will the education being provided by PHN (**PHB?**) include a component for educating tenants on the concept of depreciable assets. Per the proposed rules, it appears that A landlord can no longer establish a policy, as the standard is "reasonably acceptable to a Tenant."

1. Documentation must include:

- a. The current value of the fixture, appliance, equipment, or personal property;
- b. An explanation of why a value derived from the Depreciation Schedule is inapplicable for the fixture, appliance, equipment, or personal property; and
- c. A justification of the repair or replacement cost of the fixture, appliance, equipment, or personal property has been calculated or determined.

How does the rulemaking address:

1. What if a landlord does not know the age of an item?
2. How do you charge services (such as a plumber visit address a tenant caused clog) to the tenant on the security deposit?
3. How do you address tenant-caused wall damage in terms of depreciation?
4. Other potential charges not addressed: Deducting key charges, abandoned goods removal, abandoned goods storage, trash removal, carport/garage damage or trash removal, window screen repair, excessive maintenance time, unpaid fees.

V. **Responsibility** PHB is responsible for managing and implementing this rule.

## VI. History

Date adopted: TB