

Senate Bill 933

Sponsored by Senator PROZANSKI

SUMMARY

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

Requires Real Estate Commissioner to adopt program to relieve pecuniary loss of landlord liable to tenant due to mismanagement by or dishonest conduct of real estate property manager.

Permits landlord to claim reimbursement for pecuniary loss of tenant deposit due to mismanagement by or dishonest conduct of real estate property manager.

Grants immunity to landlord and any person who gives information to commissioner relating to claim filed with commissioner.

Establishes Tenant Deposit Security Fund.

Requires real estate property managers to pay annual fee. Authorizes commissioner to determine amount of fee.

Takes effect on 91st day after adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tenant deposits; creating new provisions; amending ORS 696.270 and 696.490; and pre-
3 scribing an effective date.

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

5 **SECTION 1. Sections 2 to 6 of this 2017 Act are added to and made a part of ORS 696.010**
6 **to 696.495.**

7 **SECTION 2. As used in sections 2 to 6 of this 2017 Act:**

8 (1) "Dwelling unit" has the meaning given that term in ORS 90.100.

9 (2) "Landlord" means the owner, lessor or sublessor of a dwelling unit or the building or
10 premises of which it is a part.

11 (3) "Tenant Deposit Security Fund" means the fund established under section 6 of this
12 2017 Act.

13 **SECTION 3. (1) The Real Estate Commissioner shall develop and implement a program**
14 **to relieve or mitigate pecuniary losses incurred by landlords found liable to tenants as the**
15 **result of mismanagement by a real estate property manager or the dishonest conduct of a**
16 **real estate property manager in the management of tenant deposits. The program must**
17 **provide for:**

18 (a) Carrying out the provisions of sections 4 and 5 of this 2017 Act;

19 (b) Administering the Tenant Deposit Security Fund; and

20 (c) Making payments from the fund to reimburse pecuniary losses incurred by landlords
21 and costs and expenses of administering the fund.

22 (2) The commissioner may adopt rules to implement and carry out the program.

23 **SECTION 4. (1) Upon the filing of a claim by a landlord claiming a pecuniary loss payable**
24 **from the Tenant Deposit Security Fund, the Real Estate Commissioner or the**
25 **commissioner's designated representative shall establish that:**

26 (a) The person named in the claim as the real estate property manager whose dishonest
27 conduct or mismanagement caused the loss was serving in a capacity as a manager of the

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

1 property where the tenant resided at the time of the landlord's pecuniary loss;

2 (b) The landlord's pecuniary loss arose from the person's dishonest act or mismanage-
3 ment of a deposit paid by a tenant of the landlord; and

4 (c) The tenant whose deposit is the subject of the claim succeeded in a cause of action
5 against the landlord for a claim asserted under ORS chapter 90.

6 (2) At any time after a claim is filed by a landlord under subsection (1) of this section,
7 the commissioner may compel by subpoena the person named in the claim as the real estate
8 property manager whose dishonest conduct or mismanagement caused the pecuniary loss,
9 the tenant or any other person having knowledge of the matter, to appear for the purpose
10 of giving testimony, and may compel by subpoena the production of records and documents
11 pertinent to the claim. The subpoena shall have the same force and effect as in a civil action
12 in the circuit court, and may be enforced by order of the circuit court for the county in
13 which the person was served.

14 (3) Any landlord who has filed a claim with the commissioner for reimbursement from
15 the Tenant Deposit Security Fund, or any person who has given information to the com-
16 missioner about a proposed or pending Tenant Deposit Security Fund claim is immune from
17 civil liability for such acts.

18 (4) The Real Estate Agency, its officers and employees are immune from civil liability in
19 the performance of their duties relative to proposed or pending Tenant Deposit Security
20 Fund claims.

21 **SECTION 5.** (1) Except as provided in this section, reimbursement from the Tenant De-
22 posit Security Fund is discretionary with the Real Estate Commissioner or the
23 commissioner's designee.

24 (2)(a) Except as provided in paragraph (b) of this subsection, the commissioner may not
25 authorize payment unless the conditions specified in section 4 (1) of this 2017 Act have been
26 found to exist.

27 (b) The commissioner may, in the commissioner's sole discretion, waive one or more of
28 the conditions specified in section 4 (1) of this 2017 Act in cases of extreme hardship or
29 special and unusual circumstances.

30 (3) The Real Estate Agency is subrogated, in the amount that a landlord's claim is re-
31 imbursed from the Tenant Deposit Security Fund, to:

32 (a) All rights and remedies of the landlord against the real estate property manager
33 whose dishonest conduct or mismanagement caused the loss, against the estate of the real
34 estate property manager or against any other person liable for the loss.

35 (b) All rights and remedies of the tenant against the real estate property manager whose
36 dishonest conduct or mismanagement caused the loss, against the estate of the real estate
37 property manager or against any other person liable for the loss.

38 (c) All rights and remedies of the tenant against the landlord who filed the claim with
39 the commissioner.

40 **SECTION 6.** (1) The Tenant Deposit Security Fund is established in the State Treasury,
41 separate and distinct from the General Fund. The fund consists of:

42 (a) Transfers by the Real Estate Commissioner from other funds of the Real Estate
43 Agency;

44 (b) Voluntary contributions and payments by real estate property managers under ORS
45 696.270;

1 (c) Claims recovered under section 5 of this 2017 Act; and

2 (d) Investment earnings, interest and other income earned by the Tenant Deposit Security Fund.

3
4 (2) All moneys in the Tenant Deposit Security Fund are appropriated continuously to the Real Estate Agency for the program described in section 3 of this 2017 Act.

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6 **SECTION 7.** ORS 696.270 is amended to read:

7 696.270. (1) The maximum fees described in this section may be charged by the Real Estate Agency. Actual fees shall be prescribed by the Real Estate Commissioner with approval of the Oregon Department of Administrative Services. This section applies to the following fees:

8 [(1)] (a) For each licensing examination applied for, \$75.

9 [(2)] (b) For each real estate broker's, principal real estate broker's or real estate property manager's license, \$230.

10 [(3)] (c) For each renewal of a real estate broker's, principal real estate broker's or real estate property manager's license, \$230.

11 [(4)] (d) For each notification of the opening or closing of a registered branch office of a real estate broker or principal real estate broker, at times other than the time of issuing or renewing the broker's license, \$10.

12 [(5)] (e) For each change of name or address of a broker on the records of the agency, \$10.

13 [(6)] (f) For each duplicate license, when the original license is lost or destroyed and affidavit made thereof, \$20.

14 [(7)] (g) For each transfer of a real estate broker's, principal real estate broker's or real estate property manager's license within the same license category, \$10.

15 [(8)] (h) For the renewal of a real estate broker's, principal real estate broker's or real estate property manager's inactive license, \$110.

16 [(9)] (i) For the reactivation of a real estate broker's, principal real estate broker's or real estate property manager's inactive license, \$75.

17 [(10)] (j) In addition to the renewal fee, for late renewal, \$30.

18 [(11)] (k) For a temporary license issued under ORS 696.205, \$40, and for an extension thereof, \$40.

19 [(12)] (L) For initial registration of a business name, \$230.

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21 (2)(a) An individual holding a real estate property manager's license shall pay an annual fee calculated by the number of dwelling units, as defined in ORS 90.100, managed by the real estate property manager, as prescribed by the commissioner with approval of the department.

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23 (b) The commissioner shall require payment of annual fees under paragraph (a) of this subsection for the purpose of maintaining the Tenant Deposit Security Fund established under section 6 of this 2017 Act.

24
25 **SECTION 8.** ORS 696.490 is amended to read:

26 696.490. (1) There is established in the General Fund of the State Treasury the Real Estate Account. Except as provided in section 6 of this 2017 Act, all moneys, fees and charges collected or received by the Real Estate Agency shall be deposited in the account.

27 (2) The moneys in the Real Estate Account are continuously appropriated for the payment of the expenses of the agency in carrying out the provisions of ORS 92.305 to 92.495, 94.803, 94.807 to 94.945, 100.005 to 100.910, 100.990, 696.010 to 696.785, 696.800 to 696.870 and 696.995.

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29 **SECTION 9.** (1) Sections 2 to 6 of this 2017 Act and the amendments to ORS 696.270 and

1 **696.490 by sections 7 and 8 of this 2017 Act become operative on January 1, 2018.**

2 **(2) The Real Estate Agency may take any action before the operative date specified in**
3 **subsection (1) of this section that is necessary to enable the agency or the Real Estate**
4 **Commissioner to exercise, on and after the operative date specified in subsection (1) of this**
5 **section, all of the duties, functions and powers conferred on the agency or the commissioner**
6 **by sections 2 to 6 of this 2017 Act and the amendments to ORS 696.270 and 696.490 by sections**
7 **7 and 8 of this 2017 Act.**

8 **SECTION 10. This 2017 Act takes effect on the 91st day after the date on which the 2017**
9 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

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