



July 2014



This New Law Affects Your Rentals! The Housing Choice Act of 2013 Went Into Effect July 1st

By **Jim Straub**, ORHA Legislative Director

The Housing Choice Act of 2013, otherwise known as the "Section 8 Bill," went into effect on July 1, 2014 and could potentially affect all landlords in Oregon. Make sure you know your rights and responsibilities under this new law. The Housing Choice Act:

- Includes federal rent subsidies and other local, state, and federal assistance under the state's source of income protections.
- No landlord will be forced to accept Section 8 under this law, but no landlord will be able to refuse to rent to someone solely because their income is a Section 8 voucher. In other words, a landlord may not refuse to rent to an applicant or tenant, or treat an applicant or tenant differently from others, because their source of income is a Section 8 voucher or other form of housing assistance.
- Oregon landlords do not have to change who they rent to. They are not required to change their screening criteria, including their income threshold required to rent their properties. If they would not have rented to someone who did not meet their screening criteria before this law goes into effect, chances are they will not have to rent to them now. How they view their Section 8 voucher as income is the real difference here.
- There is a Housing Choice Landlord Guarantee Fund to help protect landlords. This is a fund for

landlords who sustained damages to their rental properties by Section 8 tenants. Landlords may make a claim to be reimbursed for the cost of damages from this fund as long as the damages exceeded normal wear and tear, the landlord obtains a court judgment, and the cost of claimed damages was more than \$500 and less than \$5,000. The Housing Choice Advisory Committee will help ensure that the fund is being managed as intended.

Oregon Housing and Community Services agency has now published the final version of the Housing Choice Landlord Guarantee Fund rules. Additionally, they have a nice toolkit for landlords that includes summary information about the program, as well as the forms you'll need to file a claim with the program and to request information about whether a tenant is repaying their claim.

RULES: http://www.oregon.gov/ohcs/pdfs/public_notices/813-360-Administrative-Rule-Housing-Choice.pdf

TOOLKIT: http://www.oregon.gov/ohcs/Pages/css_housing_choice_landlord_guarantee_assistance.aspx

As always, if you have questions, contact your local ORHA organization for more information.

FREQUENTLY ASKED QUESTIONS

Source of Income Discrimination; Section 8 Federal Rent Assistance/ Housing Choice Vouchers

DRAFT: JULY 10, 2014

1. *What is the new Oregon law regarding Section 8 and source of income protection?*

Oregon law has long prohibited discrimination in rental or for-sale housing (including advertising the sale or rental of housing) on the basis of protected class status, including race, religion, national origin, sex, marital or familial status, and source of income. Prior to passage of HB 2639 in 2013, the "source of income" category explicitly **excluded** federal rent assistance, which primar-

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ily refers to the Section 8 Housing Choice Voucher program, which meant that Oregon landlords could refuse to rent to applicants, or even to consider them, just because they had a Section 8 voucher. HB 2639, passed under the leadership of House of Representatives Speaker Tina Kotek, removes that exception and explicitly states that federal or any other housing assistance is **included** in the source of income protection. Oregon Revised Statute 659A.421. Here's a link to the bill: <https://olis.leg.state.or.us/liz/2013R1/Downloads/MeasureDocument/HB2639/Enrolled>.

What does this mean, for landlords and tenants? Landlords cannot refuse to rent to an applicant, or treat an applicant or tenant differently, because the applicant is using a Section 8 voucher or other rental housing assistance. Nor can landlords advertise “no Section 8.” Landlords can still screen and reject any applicant for past conduct and ability to pay rent, including those with a Section 8 voucher.

When does the new law become effective? July 1, 2014.

Does it only cover Section 8 Housing Choice Vouchers? No. The new law provides protection for applicants or purchasers of housing with any local, state, or federal rent/housing assistance. Because the most common rental housing assistance program is the federal Section 8 Housing Choice Voucher program, much of the information about the new law in this FAQ and elsewhere refers to that program.

2. How does the Section 8 program work?

The purpose of the program is to help low income people find decent, safe, affordable housing, by relying on their own initiative to find the best bargain in the safest neighborhoods with good schools and close to shopping and employment, and while supporting private landlords, rather than by building often dense new housing which risks concentrating poverty.

Low income Oregonians apply to their local public housing authority (“PHA”) for a Section 8 voucher. Demand for vouchers is much greater than the supply, so there is usually a long waiting list. PHAs will screen applicants for past criminal conduct; only people who pass that screening test will qualify for a voucher. Eligibility is limited to very low income folks; most must have incomes be-

low 30 percent of the area median income; almost 80 percent of voucher holders in Oregon make less than \$15,500/year for a family of four. Voucher holders may be families with children, seniors (18 percent), people with disabilities (44 percent), or single adults. There are about 33,600 households with vouchers in Oregon, housed by 12,800 Oregon landlords.

When a person gets a voucher, the PHA does an orientation about how to use it. The person then has a certain period – usually 60 days – to find a rental unit that has a rent amount within the allowed level (“fair market rent”), that meets the HUD Housing Quality Standards in an inspection by the PHA, and that the landlord is willing to rent to the person/applicant. The landlord and tenant enter a written rental agreement, and the landlord enters a contract with the PHA. The tenant pays 30 percent of his/her income toward rent; the PHA pays the balance.

Unless noted otherwise, normal Oregon residential landlord/tenant law applies.

What does the name, Section 8, refer to? The section of the federal law which created the HCV program is Section 8 of the Housing Act of 1937, 42 United States Code Sec. 1437f.

What happens at first? When an applicant with a voucher contacts a landlord about a unit for rent, the applicant will have already been determined by the PHA to be eligible to use the voucher, and will have been given information about allowable rent levels. As with any rental application, the landlord should give the applicant an application and describe the screening criteria. The landlord screens the tenant as with any other applicant. The applicant should give the landlord the forms required by the PHA for the HCV program. If the applicant meets the landlord's criteria, the landlord signs the forms and returns them to the PHA, either electronically (with some more wired PHAs, like Home Forward in Multnomah County) or via the tenant/applicant. The PHA will contact the landlord to schedule an inspection. Once the papers are signed and the unit passes inspection (see below), the tenancy begins and both the tenant and the PHA pay the landlord.

Is the PHA a party to the rental agreement between the landlord and the tenant? No, but there is a required contract between the landlord and the PHA, called the

Housing Assistance Payment contract, which lists the landlord's rights and responsibilities. It becomes a part of the rental agreement between the Section 8 tenant and the landlord.

What is the PHA's responsibility to the landlord under the lease and the HAP contract? Does the PHA guarantee the tenant's performance? The PHA's obligation is to pay the subsidized portion of the rent. The PHA does not guarantee the tenant's performance. (But see the discussion below about the Landlord Guarantee Program Fund.) Note also that failure by a Section 8 tenant to pay the tenant's portion of the rent or to comply with rules regarding maintenance of the property can lead to termination of the tenant from the Section 8 program.

What happens if the PHA terminates the tenant from the Section 8 program? If the PHA terminates the tenant from the HCV program, the landlord and tenant may choose to continue the tenancy at the market or unsubsidized rent. The PHA will stop paying its share of the rent, but will give written notice to the landlord first, generally of at least 30 days; it will continue to pay its share of the rent during the notice period. The tenant may contest the termination in an administrative procedure with the PHA; if that happens, the PHA also will continue to pay rent.

Does HUD or the PHA limit the rent charged? What is Fair Market Rent? A landlord can charge whatever rent the landlord wishes, so long as that rent amount does not vary based on the source of the tenant's income or on another protected class. Some rent levels will be too high for use with a Section 8 voucher. HUD sets a Fair Market Rent amount, varied by the number of bedrooms, for every county in the country, based on Census data and rent surveys; it is meant to reflect the amount, for that area, that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. The FMR limits how much subsidy the PHA will pay: Generally, the PHA will pay the difference between the total rent, up to the FMR for that bedroom size, and 30 percent of the tenant's income, with the exception that the tenant can pay up to 40 percent of income at the beginning of a tenancy. For example,

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if the FMR for a 2-bedroom unit is \$1,000 per month and the tenant's income is \$600, the tenant would pay 30 percent or \$180 and the PHA would pay \$820 of the rent. If the actual rent for a unit were less than the FMR max, the PHA would pay less. If it is more than the FMR, the PHA won't pay more but the tenant can pay more, up to 40 percent of income, in this case, \$240, which would allow the tenant to rent a unit at \$1,060 (the PHA's \$820 plus the tenant's \$240). But if the rent is above \$1,060, in this example, the unit is ineligible for use with a voucher. Obviously, this is complicated, and some applicants may not understand their limits; landlords and applicants should seek clarity over allowable rent levels and who pays what by contacting their local PHA.

Landlords can and do choose to lower their rents to make them eligible for use with a voucher, but they are not required to. A landlord who raises the rent just for the purpose of making it ineligible for the voucher program would be in violation of the new law.

Does the PHA or HUD regulate the amount of security deposit a landlord can charge? HUD rules provide that a PHA may prohibit a landlord from charging a deposit that is greater than the local private market practice or greater than the landlord charges non-Section 8 tenants. The new state law also prohibits landlords from charging a special or higher deposit just because the applicant is using a Section 8 voucher. Keep in mind that there is a landlord guarantee fund, of up to \$5,000, which also acts like a deposit to cover landlord costs/damages. (See more about the fund below.)

May a landlord require pre-payment of a last month's rent deposit in addition to a security deposit? A landlord may require a last month's rent deposit, although the landlord should only require a Section 8 tenant to pay a last month's rent deposit equal to the tenant's portion of the rent, since the PHA will be paying the balance.

3. What are Public Housing Authorities?

PHAs are public bodies created under Oregon law, found in ORS chapter 456. Any city or county may create one. Currently there are 22 PHAs serving all 36 counties. The federal Housing Act of 1937 called for the creation of local housing authorities, and most states immediately adopted laws authorizing them.

Initially PHAs built and operated, with federal money, public housing projects in which the housing subsidy is attached to the unit, not to the tenant. Some PHAs also have built and now own rental properties pursuant to modern subsidized housing programs. Today all of the PHAs administer a Section 8 Housing Choice Voucher program, in which the subsidy goes with the tenant. As public bodies, PHAs have boards (often the board of the local county commission, plus two public housing residents) and meet in public. Some also do community service programs, such as weatherization and energy assistance.

What is the PHA relationship to HUD?

PHAs are state entities, not federal. Among other things, PHAs administer federal housing programs, such as Section 8, under contract with HUD, and they are paid a fee (generally accepted as not being adequate) by HUD to do so. HUD, through a Congressional appropriation, pays the Section 8 rent assistance subsidy to the PHA, which passes it along to the landlord.

Are all PHAs the same? Most PHAs operate under the same HUD rules, but Portland's Home Forward has been designated a "Moving to Work PHA," which gives it more flexibility regarding some HUD rules.

Sources that describe the rules/operation? From the HUD web site: http://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8.

The Oregon PHA statutes: https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors456.html.

4. What are the positives for a landlord in renting to a Section 8 tenant?

- Many Section 8 tenants are good, long-lasting residents.
- Greater pool of applicants.
- Allowable HUD rent may be higher than the landlord might otherwise get.
- Reliable source of rent payments on a regular monthly schedule.
- The Landlord Guarantee Program Fund.
- Social goals: Dispersing poverty, greater opportunity for safe neighborhoods near good schools and employment, diversity of income and race, helping needy families with children, seniors, and those with disabilities.

5. Are there negatives for landlords?

- Some landlords do not want to have a relationship with a federal program, or deal with the resulting paperwork. The new law means that landlords cannot rely on this reason to reject otherwise eligible applicants with Section 8 vouchers.
- As with all tenants, rich or poor, some Section 8 tenants are good and some are not.
- See issues below.

Notes Regarding the Issues Discussed

Below: Landlord and tenant advocates and PHA representatives worked with Speaker Kotek in the drafting of HB 2639 to address concerns that all sides have with this change to the law in Oregon. Clearly there are still some rough spots. Those advocates and representatives have been working since the passage of the bill and continue to work on trying to address the remaining concerns. The bill creates an advisory committee of equal numbers of representatives from the three areas to work with the Oregon Housing & Community Services Department to address these and other issues that might arise in the future. [ADD LINK HERE.]

Also, while landlords are typically taught to treat every applicant and tenant the same, in order to avoid discrimination claims, this new law may suggest using a more individualized approach in some cases, rather than a standardized rule, for example, with the income-times-rent issue discussed below. Fair housing law does not prevent that; in fact, fair housing law encourages individualized analyses, for example, with reasonable accommodation requests.

6. ISSUE: Lease term: Fixed term tenancy versus month to month. Must a landlord accept a Section 8 applicant with a required initial one-year lease?

With exceptions described below, HUD requires that the initial lease or rental agreement term for Section 8 tenancies be for one year; after that initial term, the tenancy term automatically reverts to month-to-month. Landlords typically prefer month-to-month rental agreements because either side can terminate the tenancy with a no-cause notice, which makes evicting a tenant easier. Note

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that HUD rules used to require for-cause only terminations even in month-to-month tenancies, but that is no longer the case.

HB 2639 requires PHAs to, consistent with federal law, facilitate landlord participation in the Section 8 program by using leases with terms that are customary for that type of unit in that community.

HUD rules allow PHAs to accept initial lease terms of less than one year, if they find that such leases are customary in the community and that shorter terms improve housing opportunities for tenants. Several Oregon PHAs currently accept less than one year leases, some allowing 6-month leases, others month-to-month. Other PHAs are considering that change. Still others feel that one year leases are customary for their communities.

The lease term policy will be set on the local level by the PHA. If a PHA's analysis, as described above, is that one year initial leases are required, landlords who reject Section 8 applicants on that basis run the risk of that rejection being treated as a violation of the law.

7. ISSUE: Rent: Are landlords required to lower their standard rents to make their apartments eligible for Section 8?

No; see the discussion in # 2 above.

Can a landlord refuse a Section 8 applicant because the landlord doesn't accept "split payments" – rent payments from the tenant plus from another source, here the PHA/HUD? No. That would mean that no Section 8 applicant would ever be eligible for that landlord's units. Oregon law already protects landlords from the risk of waiver in accepting Section 8 payments from a PHA; see ORS 90.414 (1).

Can a landlord apply a multiplier criteria, such as requiring that an applicant have a certain income greater than the rent level, such as three times the rent? Yes, although there is some disagreement about what the landlord would multiply. The statute now explicitly allows a landlord to screen for an applicant's "inability to pay rent." It would seem, then, that any criteria involving ability to pay rent must refer only to the applicant's portion of the rent. In the example described in #2 above, the applicant's share of the rent is \$180; three times that rent obligation would require income of \$580, while the applicant's actual income is \$600,

so that the applicant meets the criteria.

If the multiplier is applied to the total rent amount, not to the amount that the Section 8 tenant pays, no Section 8 applicant would ever qualify. In the example above, that would mean the applicant's income would have to be at least \$3,000, an income which would likely make the applicant ineligible for Section 8.

The issue becomes more complex if the applicant's income is zero, in which case the PHA will pay all of the applicant's rent. Three times zero is zero, so such an applicant would still meet the criteria. Some landlords express concern that an applicant with zero income couldn't pay for utilities or food or other necessities, making that applicant risky in terms of likelihood of paying rent; they may want to require some sort of minimum income. Tenant advocates note in response that the statute only refers to screening regarding "an inability to pay the rent," which is satisfied if the voucher covers all of the rent. And the risk with requiring a minimum income is that it overlooks that applicants may have other sources of income which, under HUD rules, don't count as income toward determining rent levels, such as earned income disregards, and may receive other forms of assistance, such as utility allowances or assistance or food stamps.

And note, again, that the Landlord Guarantee Program Fund will cover unpaid rent.

And as with everything involving concern about discriminatory treatment, a landlord must apply admission criteria evenly and not just to block Section 8 applicants.

What are the landlord's remedies if the tenant doesn't pay his/her share of the rent? As with any tenant, a landlord can use regular Oregon law to evict a Section 8 tenant who does not pay his/her portion of the rent.

8. ISSUE: Screening: Can a landlord still screen Section 8 applicants?

Absolutely. HB 2639 (1) amends ORS 659A.421 (2) (a) (A) and (B) to expressly authorize landlords to screen all applicants for past conduct and inability to pay rent, consistent with fair housing law. As is already the law, landlords should treat all applicants equally.

Does the PHA also screen Section 8 voucher holders? Yes, but only for eligibil-

ity in the program. Landlords should not rely on that. PHAs are not responsible for voucher holders.

9. ISSUE: Delay in leasing up.

As noted in the answer to #2 above, besides the landlord screening the applicant, the PHA must approve the rental unit, too, both for rent level and for housing quality. The PHA does the latter by scheduling an inspection of the rental unit. An informal survey of Oregon PHAs indicates that the average time to schedule and conduct an inspection ranges from 3 to 14 days. Federal laws say that PHAs cannot take more than 15 days. In some cases, the inspection delay may be because the applicant or the landlord is slow in returning the paperwork to the PHA; in others, it may be because the PHA has too few staff or too big a geographic area to cover.

A PHA cannot begin paying its share of the rent until after the rental unit passes the PHA inspection and the HAP contract is signed between the landlord and the PHA. This means that a landlord can't collect rent for that period; the longer the wait, the longer the landlord goes without rent. In markets where there are more rental vacancies, this may not be an issue, especially for shorter waits. But it is an issue in tight rental markets with lots of qualified applicants.

This is one of the areas where advocates and PHAs are working hard to improve, as HB 2639 requires, with PHAs sharing best practices and some foundations considering grants to PHAs to make the process electronic.

How long must a landlord wait for a PHA inspection before rejecting the Section 8 applicant? The answer is, "It depends." It depends on how long the wait is, and who is responsible for the delay, and whether there are other eligible non-Section 8 applicants seeking that unit, and what the financial impact of the wait and the lost rent revenue is to that particular landlord: If that landlord has many units, the loss of some rent revenue would not be as harmful as it would be to a landlord with only a few units. Again, this requires an individualized analysis. A landlord cannot reject all Section 8 applicants in all cases just because of a concern that the inspection time will take too long.

Can a landlord require the applicant to pay a deposit to secure a rental unit during the wait for the PHA in-

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pection, under ORS 90.297? Possibly, but the landlord would have to approve the applicant first, which poses some risk to the landlord before the PHA approves the rental unit. And the landlord and applicant would have to enter a special written agreement regarding the deposit. As discussed in regard to other issues, a landlord would have to do this with all applicants who require any delay in approval.

10. ISSUE: What if the PHA's initial/move-in inspection results in a requirement that the landlord make some repairs before the unit can be approved?

The PHA inspection is for HUD's Housing Quality Standards, as required by HUD regulation at 24 Code of Federal Regulations Part 982. Here's a link to a HUD FAQ about the HQS: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_9143.pdf.

The 13 areas covered by the HQS are very similar to Oregon's habitability requirements for all rental housing. See ORS 90.320. In most cases, an HQS violation would also be a violation of ORS 90.320. As a result, landlords cannot reject a Section 8 applicant because the PHA inspection finds an HQS violation, unless it is for something not also covered by ORS 90.320 and which would be a significant burden on the landlord to fix. An example of an HQS violation which is not also covered by ORS 90.320 and which could be expensive to correct is peeling lead paint. Anecdotaly, Oregon PHAs report that few rental units fail an HQS inspection.

11. What about other inspections?

The PHA must do an annual HQS inspection during the tenancy. These inspections benefit the landlord by alerting the landlord to physical problems with the unit. If during the annual inspection the PHA finds a problem, there is a process (written notice to both landlord and tenant) and reasonable time line for correcting an HQS violation. If the tenant caused the violation, the PHA will require the tenant to make the correction or else the PHA will terminate the voucher. If the landlord is responsible and doesn't make the correction, after a reasonable period, the PHA may abate the rent subsidy or even terminate the HAP contract. The PHA has some discretion with regard to these actions.

12. Are there types of rental units that are not eligible for occupancy by someone with a Section 8 voucher?

Not many – college dorms and nursing homes. Section 8 voucher holders can use their vouchers with single room occupancy units, congregate care and group homes, cooperatives, shared housing, and manufactured homes where the tenant rents both the manufactured home and the space for the home. And, with PHA approval, Section 8 can even be used by people who own their manufactured home and rent the space.

13. Are there types of housing projects that are not eligible?

Yes, generally speaking, those where the resident is already benefitting from a significant rent subsidy which is attached to the unit and not to the tenant, such as public housing projects, HUD-subsidized projects, Rural Development (formerly Farmer's Home) projects, and project-based Section 8 projects. 24 CFR 982.352.

Section 8 vouchers may be used with projects financed under the federal Low Income Housing Tax Credit Program.

14. What happens if a landlord violates the new law? How is it enforced?

As a result of HB 2639, discrimination on the basis of source of income – against an applicant or tenant because they have a Section 8 housing choice voucher or other rental housing assistance – is now treated under Oregon law the same as discrimination against people who are Catholic or Black or Irish. Someone who thinks that a landlord has violated the law may sue in an Oregon court. Or they may seek help from the Fair Housing Council of Oregon, which can help get a lawyer or can sue on their behalf. <http://www.fhco.org/>. Or they may file a complaint with the Oregon Bureau of Labor and Industries, BOLI, which enforces fair housing laws in Oregon. Here's a link to an explanation of BOLI's complaint process: http://www.oregon.gov/boli/CRD/Pages/C_Crcompl.aspx. By law, BOLI may assess a penalty of up to \$11,000 for a first violation of fair housing law; penalties increase for additional violations. ORS 659A.855.

15. How does the Housing Choice Landlord Guarantee Fund Program work?

HB 2639 creates a fund to compensate landlords who incur losses – primarily property damages or unpaid rent – as a result of renting to a Section 8 voucher holder. The fund is administered by the Oregon Housing & Community Services Department. To submit a claim against the fund, a landlord will need to obtain a court judgment – Circuit Court, Small Claims Court, or Justice Court – from the county where the rental property is located. The judgment must be for damages resulting from the Section 8 tenancy, and those damages must have been incurred after the effective date of HB 2639, July 1, 2014 (although the tenancy could have begun before that date). Any damages must have been caused by the voucher holder's occupancy, must exceed normal wear and tear, and must be more than \$500. Claims are limited to \$5,000. Claims must be submitted to OHCS within one year after the judgment is final (meaning any appeals have been resolved or the appeal period has run). OHCS is required to make the responsible Section 8 tenant repay any amounts paid out of the fund, although OHCS may waive that requirement for good cause, and OHCS must offer the tenant a reasonable payment plan. The rules for the Housing Choice Landlord Guarantee Fund Program are available on the web site of the Oregon Housing & Community Services Department, at http://www.oregon.gov/ohcs/pdfs/public_notices/813-360-Administrative-Rule-Housing-Choice.pdf.

16. What should you do if you have questions or problems with this?

If you are a landlord, you should talk to one of the three landlord trade groups. If you are a tenant, you should talk to the Community Alliance of Tenants (in the Portland area only) or to the Fair Housing Council of Oregon or to your local legal services office (see www.oregonlawhelp.org for a link to legal resources). And you can always talk to the members of the HB 2639 advisory committee. And to your local PHA.

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Forms Manual Complete!

By **Michael Steffen**, ORHA President

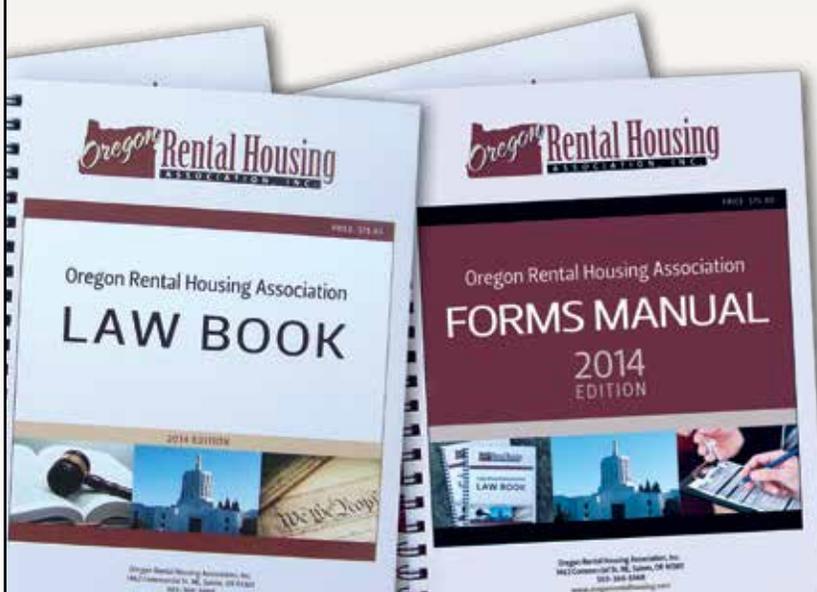
We are pleased to announce that the forms manual is complete and in printing. The new version is updated to reflect all of the many recent forms enhancements and looks great! Please contact the office to order copies.

In other news:

- *The Housing Choice Act of 2013*, commonly known as the "Section 8 Bill" is law effective July 1st. This act affects all rentals, so please pass the word to your members that they must comply. Jim Straub's article does a great job of outlining the program and rules. We have also included an FAQ section to help members understand their responsibilities. Additional updates will be provided as conditions warrant.
- Legislative planning continues, so please send information to Jim Straub concerning those issues your members would like to see addressed related to landlord-tenant issues. Remember that silence suggests happiness with the status quo, so if you are not happy with something, please let us know.
- The updated Landlord Tenant law book is available and looks great. Please contact Maren to order.
- We are considering developing training sessions associated with The Housing Choice Act of 2013. Please contact the office if you are interested in training of this kind.
- The education committee is working on developing short seminar outlines and power points for use by member associations to provide in house training. Please let the office know if your group is interested in particular subjects and we will do our best to see that they are included.
- Remember to check the website for information on local events, training sessions and relevant news items. The site continues to evolve and we anticipate regular updates to content.

Next ORHA
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