

RENTER'S HANDBOOK ON EVICTION EXPUNGEMENTS

Have you had an eviction filed against you? Has that eviction record been a barrier in your search for housing? Have you settled for substandard housing or less-than-ideal rental terms and conditions as a result? If you answered yes to any of these questions, there may be a solution available to you.

Renters in the Oregon can erase old eviction records under certain circumstances for free. In Oregon, landlords cannot consider certain eviction records when a tenant is applying for housing, including eviction judgments older than 5 years, eviction cases where the tenant won, and eviction cases where the tenant and the landlord came to an agreement and the tenant followed all of the terms of that agreement. However, those records are still visible to landlords when they look up a tenant's background, and they could end up having a negative impact on a tenant's ability to find good, stable housing. Some issues a tenant might run into could include a higher security deposit, higher rent, or even an outright denial of their housing application.

This law is meant to address those issues by erasing qualifying eviction records from public view. This means that when a prospective landlord looks up your background in the future, they should find no record that an eviction was ever filed against you. When they ask if you've ever been evicted, you can safely answer "no" and trust that it won't hurt your chances of getting into housing.

This packet contains the following:

- Information about what eviction records qualify for being erased or set aside (called an "expungement")
- Information about the steps a tenant needs to take in order to have an eviction record expunged
- Information about where to get legal help

WHAT EVICTION RECORDS ARE ELIGIBLE FOR EXPUNGEMENT?

Unfortunately, not all eviction records can be expunged. The law allows for tenants to expunge three types of eviction records. If you know that you have an eviction record that you want expunged, but you don't know whether it qualifies, you can visit the circuit court where the eviction was filed to ask to review the court documents.

You qualify for expungement if:

1. You lost the eviction case, but the final court judgment is from at least five (5) years ago and you don't owe any money that was awarded to the landlord as part of the judgment;
2. You and the landlord came to an agreement, and you complied with all of the terms of that agreement and the case was dismissed;
 - Typically, the landlord will have filed a Declaration of Noncompliance with the court and would have been served with a Judgment of Restitution if you failed to comply with any of the terms of an agreement.
 - Unlike eviction record #1, there is no time threshold for this type of eviction record—the record can be expunged as soon as the case is dismissed.
3. You won and the case was dismissed, regardless of whether it happened before or after the trial
 - Unlike eviction record #1, there is no time threshold for this type of eviction record—the record can be expunged as soon as the case is dismissed.

STEPS TO EXPUNGE AN EVICTION RECORD

- ❖ Step 1: Gather information and necessary documentation
 - Information about the eviction (i.e. the case number, what the outcome was, when that judgment was entered, etc.)
 - Information about the landlord
 - Get the Motion to Set Aside Residential Eviction Judgment paperwork
- ❖ Step 2: Fill out the Motion
- ❖ Step 3: Serve your landlord with a copy of the Motion
- ❖ Step 4: File the paperwork with the court
- ❖ Step 5: Wait for a response from the landlord
 - Your landlord can either object to the Motion or not.
 - Your landlord has 30 days (33 days if you mailed the paperwork to them) to file their Objection with the court.
 - If your landlord files an Objection, the court will set a date for a hearing in front of a judge.
 - If your landlord does not file an Objection with the court, the court will determine whether the record is eligible for expungement.
- ❖ Step 6: Attend the court hearing (if the landlord filed an Objection with the court)
- ❖ Step 7: The record is erased
 - Once the eviction judgment is expunged, you can safely answer “no” when asked if you’ve ever had an eviction filed against you.
 - You should receive a copy of the order granting your motion to set aside and seal (expunge) the eviction record, however you may want to follow up by calling the court clerk to check whether the expungement was granted.

Step 1: Gather all necessary information and documentation

Before you can fill out the Motion to have the eviction record(s) expunged, you should gather all information related to that eviction record.

You will need:

- ❖ Your name and address
 - Note: Each tenant listed on the eviction case must request an expungement. If only one tenant requests an expungement, the case will stay in the public record for all the other tenants listed until those tenants file their own expungement request.

- ❖ The name and address of your landlord or management company
 - If you don't remember this information, it should be in the paperwork you received from the court when the eviction was filed against you.
 - If your eviction case happened long ago, the contact information you had for the management company may no longer be correct. In order to get the most up-to-date contact information for the management company, you can search their name on the Secretary of State's website:
<https://sos.oregon.gov/business/pages/find.aspx>

- ❖ Any documentation from the eviction case
 - These will provide you with information necessary to fill out the Motion to expunge the record (case number, landlord's information, the date the judgment was entered into, etc.).
 - If you no longer have any of those documents, you can visit the court where the eviction was filed to get them.
 - It is especially important that you have a copy of the eviction judgment and/or the stipulated agreement you signed with the landlord (if any). Those two pieces of documentation will help you determine whether the record is eligible for expungement.

- ❖ Finally, you need the court forms to fill out
 - You can go to the court to get a copy of the forms
 - You can go online and print out the forms or fill them out online at:
<https://www.courts.oregon.gov/forms/Pages/landlord-tenant.aspx>
 - To fill them out online, click the iForm link under the subheading "Eviction Set-Aside".

Step 2: Fill out the Motion

Once you have your forms, it's time to fill them out. If you're doing this online, set aside a few minutes of uninterrupted computer time.

On page 10 of this packet, you will find a sample Motion to Set Aside Residential Eviction Judgment that shows you how to fill it out. Below are the steps of how to fill out the Motion to Set Aside Residential Eviction Judgment in more detail:

1. Starting on Page 1, on the top of the form where it says "FOR THE COUNTY OF ____" enter the county where the eviction was originally filed.
2. On the left side of the Motion, enter the name of your landlord or the property management company, where it says "Plaintiff (Landlord or Agent)."
 - a. You should use the same name the Landlord used when they filed the eviction against you.
3. Below that, enter your full name where it says "Defendant (Tenant or Occupant)."
4. On the right side of the Motion, where it says "Case No.", enter the case number for the eviction case you are looking to expunge.
 - a. This number can be found on the court documents you received when the eviction was filed. If you don't have those documents, visit the court to get them.
5. Under the subheading titled "MOTION" where it says "I am a defendant in this case (*name*)", enter your full name.
6. Under the subheading titled "DECLARATION", you will see various checkboxes. Next to these checkboxes are descriptors for the various eviction judgments that are eligible for expungement. Check the box next to the type of eviction judgment that you are requesting be expunged.
 - a. If you don't remember the result of your eviction case, look at the judgment or order signed by the judge.
 - b. If the judge found in favor of you, the Defendant, or if there was a General Judgment of Dismissal not related to a stipulated agreement, you should check the first box. This would usually happen if the landlord did not show up at court or if the landlord agreed to voluntarily dismiss the case against you.
 - c. If the judgment says that the judge found in favor of the Plaintiff(s), you should check the second box.
 - i. If the judge ruled that you had to pay the landlord money as part of the eviction judgment AND you paid the amount owed, you should check the indented box that says you "satisfied any money awards ordered in the

judgment.” If you were not required to pay your landlord any money as a result of the eviction case, you can leave this box blank.

- ii. If you checked the second box, you must also check the second box below it and write the date that the judgment was entered. This is often the date that the judge signed the eviction judgment. *This date must be at least five years ago.*
 - d. If your eviction resulted in a General Judgment of Dismissal after you made a written agreement with your landlord at court, you should check the box next to “stipulation (agreement).”
 - i. If you check the box for “stipulation (agreement)” you must also check the box below which says, “I have satisfied all terms of the agreement and satisfied any money required.”
7. Next, go to page 2. At the top, you must sign and date to indicate that the information contained in page 1 is accurate to the best of your knowledge. Make sure to also fill in your address and contact information.
8. Below that, you will find Certificate of Mailing, which leads us to our next step....

Step 3: Serve your landlord with a copy of the Motion

To “serve” means to make sure that your landlord gets a copy of the paperwork that you will be filing with the court. The expungement process cannot move forward unless your landlord is served. Calling, emailing, or texting the landlord to tell the landlord about the Motion doesn’t count.

Though there are multiple ways to serve a landlord, the easiest way is to simply mail a copy of the Motion via First Class Mail to the address the landlord used in the eviction case you are requesting be expunged. It is also a good idea to get a Certificate of Mailing from the post office to prove that you mailed it when you say you did.

- You will notice that there is a third page attached to the Motion, which is titled “Objection to Motion to Set Aside Residential Eviction Judgment”. This document is for your landlord to fill out if they wish to object to the expungement. While there is no requirement that you mail this to them with the Motion, it is best to do so to expedite the process. Make sure to leave it blank.

Once you’ve mailed the Motion and Objection to your landlord or property management company, make sure to fill out the Certificate of Mailing that is included with the Motion. The Certificate of Mailing tells the court the date that you served the landlord.

The landlord will have 33 days from the date the Motion is mailed to file an objection with the court, so mark your calendar!

Step 4: File the paperwork with the court

Once you've filled out the Motion and the Certificate of Mailing, you need to file the paperwork with the court. Make sure that this gets done in the same county in which the eviction was originally filed.

The court cannot charge you for filing a request to expunge an eviction record.

Step 5: Wait for a response from the landlord

If the landlord does not file an Objection with the court respond within 33 days, the court will decide whether or not the record is eligible for expungement. Some things the court will consider are:

- The amount of time that has passed between the eviction judgment and the filing of the Motion for expungement (remember that 5-year threshold for eviction cases that you lost)
- Whether you followed the terms of the stipulated agreement
 - If a Declaration of Noncompliance was filed in the record for that eviction case, that might indicate that you didn't follow the terms of the agreement, which would make the record ineligible for expungement.
- Whether the case was dismissed
 - Some tenants who thought they qualified for expungement because they complied with the terms of their stipulated agreement, have had their expungement motions denied because the date of dismissal on their agreement had not yet passed. For that reason, it is best to wait till you've received notice from the court that the case was dismissed before filing a Motion for expungement.

If the court rules that the eviction is eligible for expungement, all record of that eviction case will be erased and it will be treated as if it never happened. Hooray!

Step 6: Attend the Court Hearing

If the landlord files an Objection, the court will schedule a hearing. You will get papers from the court letting you know the date and time of the hearing. You should also get a copy of the Objection, which should say why the landlord opposes the expungement.

If your address changes after you file your initial paperwork with the court, be sure that you let the court know your new address.

- You can call the court to tell them about the change in address. Make sure that you have your case number ready.
- You can also write to the court. Make sure to put your case number on any letter that you send to the court.

If for any reason you can't go to court on the date and time scheduled, let the court know right away and ask for a new court date.

At the court hearing, a judge will consider whatever argument your landlord has for objecting to the expungement of the eviction record, as well as any response you may have to their objection.

It is important that you prepare prior to the date of the hearing.

- Make a list of what you need to prove to show that your eviction is one of the three types of eviction records that can be expunged and the evidence that you will use to prove it.
- For example, if the Objection form your landlord filed says that you didn't pay money that you were ordered to pay as part of the eviction judgment or stipulated agreement, you'll want to come prepared with any documentation you have to prove otherwise (receipts, bank statements, written communications with the landlord, etc.).
- Keep whatever documentation you have organized, and make sure to bring it with you to the hearing.

General guidelines for the hearing:

- Stay calm
- Be polite
- Don't accuse anyone of lying
- Never interrupt the judge

Once the judge has heard from both sides, the judge will make a decision. If the judge agrees with the landlord's objection and determines that your eviction record is not eligible for expungement, your motion will be denied and the eviction record will remain.

Step 7: The record is erased

If the judge decides that the eviction record in question is eligible for expungement or if no Objection was filed by the landlord, the court will erase all record of that eviction case and it will be treated as if it never happened. Hooray!

This means that if a prospective landlord should ever ask you if you've ever been evicted, you can now safely answer "no".

SAMPLE

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF The county where the eviction case
you want to erase was filed

Landlord Property, Inc.

Case No: The case number for the eviction
case you want to erase

Plaintiff (Landlord or Agent)

v.

Tanya T. Tenant

MOTION TO SET ASIDE RESIDENTIAL EVICTION JUDGMENT

Defendant (Tenant or Occupant)

MOTION

I am a Defendant in this case (name): Tanya T. Tenant

I ask the court to set aside the judgment and seal the record of the case

STATEMENT OF POINTS AND AUTHORITIES

Oregon Laws 2019 chapter 351 § 2 requires the court to grant a motion to set aside a judgment and seal the official record of a residential eviction case if the judgment was for restitution of property and entered 5 years before the motion to set aside is filed and all terms including any money award are satisfied; if the judgment was stipulated to by the parties and all terms including any money award are satisfied; or if the case was dismissed.

DECLARATION

The judgment I ask to set aside was a judgment of:

- dismissal in my favor (I was not ordered to leave the property)
- restitution in Plaintiff's favor (I was ordered to leave the property)
 - I have satisfied any money awards ordered in the judgment
 - Judgment was entered on (date): _____ which is more than 5 years before this Motion was filed
- stipulation (agreement)
 - I have satisfied all terms of the agreement and paid any money required

Check this box if you lost the eviction case (the judge found in favor of the landlord, otherwise known as the plaintiff).

If the judge ruled that you had to pay the landlord money as part of the eviction AND you paid it all, check here. If you were not required to pay the landlord money, leave this box blank.

If you checked the second box, you must also check here. Fill in the date that the judgment was entered.

If you checked the box that says "stipulation (agreement)", you must also check this box.

I hereby declare that the above statements are true to the best of my knowledge and belief. I understand they are made for use as evidence in court and I am subject to penalty for perjury.

Date of Signing
Date

Tanya T. Tenant
Signature

Tanya T. Tenant
Name (printed)

123 Home Street Portland, OR 97220 (503) 123-4567
Address City, State, ZIP Phone

Certificate of Mailing

The landlord will have 33 days from this date to file an objection with the court, so mark your calendar!

I certify that on (date): was mailed to the landlord. I placed a true and complete copy of this *Motion and Declaration* and a blank *Objection to Motion to Set Aside Residential Judgment* form in the United States mail to Plaintiff at (plaintiff's address): 456 Property Avenue, Portland, OR 97220

Date of Signing
Date

Tanya T. Tenant
Defendant (signature)

Tanya T. Tenant
Defendant Name

Though there are multiple ways to serve a landlord, the easiest method is to simply mail a copy of the Motion via First Class Mail to the address the landlord used in the eviction case you are requesting be expunged.

It is also a good idea to get a Certificate of Mailing from the post office to prove that you mailed the Motion when you say you did.

Though you are not required to mail this form to the landlord, it's best to do so to expedite the process.

Make sure to leave it blank!

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

Plaintiff (Landlord or Agent)

v.

Defendant (Tenant or Occupant)

Case No: _____

**OBJECTION TO
MOTION TO SET ASIDE
RESIDENTIAL EVICTION
JUDGMENT**

OBJECTION

(Must be filed with the court within 30 days of service of the Motion)

I am a Plaintiff in this case (name): _____

I object to the court setting aside judgment in this case and sealing the case record because:

- Judgment was entered less than 5 years before the *Motion* was filed
- The following judgment terms have not been satisfied (*explain*):

Another reason: _____

I hereby declare that the above statements are true to the best of my knowledge and belief. I understand they are made for use as evidence in court and I am subject to penalty for perjury.

Date

Signature

Name (printed)

Address

City, State, ZIP

Phone

LEGAL HELP

- For free legal assistance for low-income individuals, you can call Legal Aid Services of Oregon. In Multnomah, Clackamas, Hood River, Wasco, or Sherman county, you can call Legal Aid at 503-224-4086. For resources for other Oregon locations, visit <http://oregonlawhelp.org/resource/oregon-legal-aid-offices>
- Legal services are only available to people whose income is at or below 125% of the federal poverty level, which you can check at <https://aspe.hhs.gov/poverty-guidelines>. (For one person in 2020, the income limit is \$15,950 per year.) However, you may be able to qualify if you have other expenses. If you qualify for public assistance – SNAP, TANF, or SSI – you probably qualify for legal services.
- If your income is too high to qualify for legal services, you can contact the Oregon State Bar’s lawyer referral service at 800-452-7636.
- A list of attorneys who represent low income tenants is included at the end of this packet. There is also information and assistance available to help you represent yourself in court. For more information, go to your county law library or visit <http://www.courts.oregon.gov/help/Documents/civiltrialbrochure.pdf>

LIST OF LANDLORD-TENANT ATTORNEYS

Jane L. Moisan
971.258.1292
PeoplesLawProject@gmail.com

David Lawrence
503.295.3651
dlawrencelegal@gmail.com

Troy Pickard
503.592.0606
troy@portlanddefender.com

Scott Staab
503.929.9262
skstaab@yahoo.com

Ann Witte
503-477-4690
awitteatty@gmail.com

Harry Ainsworth
503-417-0476
hainsworth03@yahoo.com