# F.E.D. INFORMATION SHEET

An F.E.D. (Forcible Entry & Wrongful Detainer) is a complaint filed specifically to remove a tenant or other person from a dwelling or piece of property owned or managed by the person filing the complaint. A judgment on a F.E.D., if favorable to the Plaintiff (land-lord), will be for restitution of the premises by a specified date, as well as for the costs of filing and serving the complaint. (To collect delinquent rent or damages a separate Small Claim or Civil Complaint must be filed.)

Before you file a complaint with the court, one of the following notices should be given to the tenant:

a) 24 Hour Notice (personal injury)
b) 24 Hour Notice (substantial damage)
c) 24 Hour Notice (drug or alcohol program of recovery violation)
d) 24 Hour Notice (extremely outrageous act)
e) 24 Hour Notice (unlawful occupant)
f) 72 Hour Notice (nonpayment of rent)
g) 144 Hour Notice (nonpayment of rent)
h) 10 Day or 20 Day Notice (repeat violation)
i) 10 Day Notice (pet violation)
j) 7 Day Notice (week-to-week tenancy-cause)
k) 10 Day Notice (week-to-week tenancy)
l) 30 Day Notice (month-to-month tenancy without stated cause)
m) 30 Day Notice (month-to-month stated cause)
n) Other Notice
o) No Notice

These notices can be purchased from most stationary stores, or the landlord may compose the notice if (s)he includes all the information required by the Oregon Statutes. (Please Note: The Court Clerk cannot give any legal advice, so please do not ask them to check your notice for accuracy.)

Once the notice has been given to the tenant or other person holding the property, and after the time specified in the notice has lapsed, if the property has not been vacated the landlord may file a complaint with the court. The landlord should provide the Court Clerk with the following:

a) Copies of the notice, 3 for one adult tenant and an additional copy for each additional adult tenant.
b) The address of the premises (s)he wishes to regain possession of (if there is no street address, a detailed map will suffice);
c) A separate mailing address for the defendant if appropriate;
d) A check for the filing fee made payable to the State of Oregon;
e) A check for the service fee made payable to the Tillamook County Sheriff.

The Court Clerk will file your complaint, set a court date within 7 judicial days from the date of filing and give you the original summons and copies of the complaint to take to the Sheriff for service on the defendant.

If the tenant moves before the court date, the plaintiff has two options:

1) Go to court on the date specified and request a money award for your costs of filing and service;
2) Contact the Court Clerk and ask that the case be dismissed. This must be followed by a written notification, with your signature, directing the court to dismiss your complaint.

If the tenant does not move, and does not appear in court, the Judge may grant you restitution of the premises, plus costs;

If the tenant does appear in court, he or she will be advised that if the case is to be contested, an answer must be filed, the appropriate answer fee paid, and service of the answer made upon the plaintiff.

If the tenant does choose to file an answer or demurrer, he or she will be advised to fill out an answer form and pay the court fee. The case will then be set for trial at a date and time specified by the Court, not more than 15 days from the date of the first appearance if possible. The Plaintiff will be advised of additional fees to be paid before trial (the additional FED filing fee and the Court trial fee).

Should the tenant decline to answer and/or pay the filing fee, a judgment for restitution may be filed against the defendant. At the Judge's discretion restitution of the premises may either be declared to be immediate within a specified number of days, or by a certain date.

At the trial the Judge will hear testimony and then grant judgment to one of the parties. If the Judge decides in favor of the Defendant (tenant), he may dismiss the case and could grant a judgment for costs and attorney fees against the Plaintiff and for the Defendant. If the judge decides in favor of the Plaintiff, he could award judgment for restitution of the premises (at a time specified by the judge) and a money judgment for costs and attorneys fees against the Defendant and for the Plaintiff.

**ENFORCING A JUDGMENT** (in favor of the landlord)

If the tenant has not moved by the time designated in your judgment, you may have the sheriff serve a “NOTICE OF RESTITUTION”. There is a fee for the clerk to issue the Notice of Restitution. The notice must be served and after the service the defendant will be allowed four days to move out of the premises, including removal of all personal property; and if after the four-day period provided in the notice of restitution the defendant has not vacated the property you may request the clerk issue a “WRIT OF EXECUTION OF JUDGMENT OF RESTITUTION”, which shall direct the sheriff to enforce the judgment by removing the defendant and any other person subject to the judgment, if present, from the premises returning possession of the premises to the plaintiff. Plaintiff is responsible for removing, storing and disposing of any personal property left by the defendant following the removal of the defendant. There is a fee for the clerk to issue the WRIT.

## COLLECTING YOUR COSTS

To collect your filing, service and accruing costs if awarded you may request that the Court Clerk issue any one or more of the following (forms may be obtained at a stationary store):

**You may wish to consult an attorney before attempting to collect your money judgment.**

1) Writ of Garnishment on Wages. You must know the name and address of the debtor's employer. If you believe that the debtor earns a very low salary, you may wish to look at the table to exemptions on the garnishment form before paying the fees for the Writ.
2) Writ of Garnishment of a Bank Account. You must provide the name and address of the bank. The court has a fee to issue a writ and the bank will have their own fee.

**IF YOU HAVE ANY ADDITIONAL PROCEDURAL QUESTIONS, PLEASE CONTACT THE COURT** Tillamook County Circuit Court, 201 Laurel Avenue, Tillamook, OR 97141 (503) 842-2596.

# INFORMATION FOR THE FILING OF AN FED

**What is an FED?**

A court action by a landlord against a tenant to remove the tenant from a rented dwelling (house, apartment, mobile home, mobile home space or floating home).

**Is there anything a landlord must do before filing the FED action?**

Yes. The landlord must serve a written notice on the tenant to vacate the premises. The type of notice, and the period of time by which the landlord may demand that the tenant vacate the premises, is specified by law, ORS, Chapter 105.

**How does a landlord file and FED?**

After delivering a written eviction notice to the tenant, a landlord can file and FED action by completing an FED summons and complaint. The summons and complaint forms are available at your local county courthouse, State Courts Civil Division.

The landlord must submit a copy of the expired written eviction notice with the completed FED summons and complaint to court staff. Upon completion of the forms and payment of fees, a first appearance hearing date and case number will be assigned.

**How is the tenant advised of the FED action?**

The landlord delivers copies of the summons and complaint to be served on the tenant by the civil process office of the sheriff's department. If the landlord wishes, the summons and complaint may be served on the tenant by a private process server, who meets the requirements under Oregon law.

**What happens at first appearance?**

1. If the tenant does not appear at the first appearance, the court will usually issue a judgment of default in favor of the landlord. If the tenant appears but not the landlord, the court will usually dismiss the action. If neither party appears, the case will be dismissed.

    If the landlord obtains a default judgment, a Judgment of Restitution of Premises is entered in the case register. Court costs may be awarded at the time of entry of judgment. Refer to Notice of Restitution of Premises process for next step.

2. If both parties appear, the court will attempt to mediate a settlement between the landlord and the tenant. In some courts, the services of a mediator, a neutral negotiation officer, will be available to facilitate the process.

    If the landlord and tenant reach an agreement, or an agreement is reached with a mediator, the court will issue a judgment or stipulated agreement/order, reciting the terms of the agreement. If tenant fails to comply to the stipulated judgment/agreement/order, refer to Affidavit of Non-Compliance process.

3. If the parties are unable to reach an agreement, the defendant must file an answer pursuant to local court procedures. A trial date is set per statute, upon additional fees being paid by both parties.

At trial, each side will be allowed to present evidence of their claims. Witnesses may be subpoenaed to testify on behalf of either party. Subpoenas should be served well in advance of the trial in accordance with Oregon Rules of Civil Procedure.

The court will issue a judgment based upon either the jury verdict or the judge's decision. Refer to Affidavit of Non-Compliance or Notice of Restitution of Premises.

**What if the tenant does not comply with the stipulated judgment/agreement/order?**
(Affidavit of Non-Compliance Process)

The landlord may file an Affidavit of Non-Compliance. The form is available at the State Courts Civil Division. The landlord shall provide a copy of the original stipulated judgment/agreement/order at the time of filing the Affidavit of Non-Compliance. A Judgment of Restitution of Premises is necessary to continue with this process. Follow local court procedures.

**How to obtain a Notice of Restitution.**(Notice of Restitution Process)

If a Judgment of Restitution of Premises is issued by the court, the landlord shall obtain a Notice of Restitution from the court clerk. Upon completion and issuance of the Notice of Restitution and payment of fees, the landlord shall arrange for service on the tenant. The Notice of Restitution shall order the tenant move out to the premises, including removing all personal property, in no less than four days. After the expiration of the Notice of Restitution, the landlord may apply for a Writ of Execution of Judgment of Restitution, if the tenant remains in possession of the premises.

**What if tenant request a hearing on the Affidavit of Non-Compliance from a stipulated judgment/agreement/order after the Notice of Restitution has been served?**

The court will schedule a hearing. The only issue at the hearing shall be whether the tenant has complied with the stipulated judgment/agreement/order. Any execution will be stayed pending the outcome of the hearing. Following the hearing, the judge's decision will determine further procedures, as necessary, including issuance of the Writ of Execution Judgment of Restitution.

**How to obtain a Writ of Execution.**

The landlord requests a Writ of Execution from the State Courts Civil Division. Upon completion and issuance of the Writ of Execution and payment of fees, the landlord must arrange for service through the county sheriff's department.

**IF YOU ARE A TENANT, IT IS STRONGLY SUGGESTED THAT YOU CONTACT AN ATTORNEY.**