

***No on HB 3007! by Loren Landau***

House Bill 3007 is flawed legislation which has several negative and potentially far reaching implications not only to the manufactured housing industry but to basic private property rights within Oregon. HB 3007 provides for the right of first refusal for tenants in manufactured housing communities should an owner desire to sell. In real estate, the right of first refusal is exclusively a right that is paid for or acquired upon purchasing other property. No property owner would willingly give a right which restrains the free exchange of their property without consideration. The right of first refusal presupposes the holder of the right is a ready and willing buyer. Further, the right usually provides a very short timeframe for the holder to exercise their right so as not to overly burden the Seller if the holder of the right has no intent or ability to acquire the property. In the case of HB 3007, the tenants represent neither a ready or willing buyer. While there are some tenants who desire to acquire their parks and have the ability to do so through the help of CASA of Oregon, ROC USA or a host of other groups, many tenants don't want to own the land their home is located on. They moved into a manufactured housing community with the full knowledge they were leasing the land without the right of first refusal. They desired affordable community living where they are not tasked with rule enforcement or the potential for large capital investments.

HB 3007 will restrain the exchange of properties by both deterring other investors to come into the marketplace and delaying the sales process to block out a large group of investors who are typically willing to pay the highest price, those being investors in a 1031 exchange. The bill itself recognizes the financial hardship it represents to owners due to the fact the only "penalty" for bad faith dealings on the part of tenants is the ability of the landlord to move forward without the constraint of the bill. The problem is bad faith on the part of the tenants would be very hard to define and even harder to quantify. Unfortunately for the owners, they are typically individuals who have invested large sums of money and possess assets that can easily be identified. HB 3007 could give nefarious attorney's the ability to extract up to \$100,000 (the large majority of manufactured housing communities sell for over \$1MM) because if an owner is sued for bad faith but simply wants to put the transaction behind them the owner, like every prudent businessperson, will weigh the cost of defense against a settlement regardless of whether they are right or not. There is no ability to countersue to gain attorney's fees and certainly the tenants would be a difficult group to collect any award from if successful. Even if the owner could quantify a cost associated with bad faith on the part of tenants is it even reasonable to think she could recover it without incurring large legal fees especially if the owner has sold the property?

HB 3007 was written without a clear understanding of the sales process and timing. The majority of manufactured housing community sales involve bank financing as opposed to private sales contracts between the buyer and seller. Certainly 100% of any tenant purchase transactions would require financing. In today's lending market, the typical sales transaction takes over 100-120 days from the date of mutual acceptance to close. HB 3007 does not require the tenants to even approach the landlord with an offer until 50-days after notification by the owner. If the offer were presented and accepted within the first week of notification, it would still be virtually impossible to close within 100 days. The landlord would almost be compelled to reject any offer on the basis of the buyer/tenants inability to close in a timely manner. Having been involved with successful sales of parks to tenants,

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time from mutual acceptance to closing has been a constraint for every successful tenant purchase transaction in Oregon or Washington. There hasn't been a tenant purchase close within 100-days from the date of mutual acceptance of a price much less the presentation of the offer.

Beyond the timing issue, there is the misunderstanding about the due diligence process. The large majority of the conventional offers are made and mutual acceptance is reached based on the marketing package provided by a broker or a property owner. It is not until there is mutual acceptance (the date both parties agree to price and sales structure) where the due diligence process begins and the actual financial information is provided to the Buyer of a property so the assumptions which went into the offer can be verified. HB 3007 requires, at the request of a tenant (tenants is not defined so we can assume a single tenant could make the request) within 30-days following proper notice by the owner, the owner would be required to provide to all of the tenants private financial information. Unlike a conventional sale where usually a single copy of financial information is provided to a buyer, HB 3007 would require the owner to give EVERY tenant their financials which not only represents a great cost of money and time but also put the owner in a very awkward situation of sharing with a large population very personal information. Many times the personal financial information of owners is blended with other holdings. I think it is fair to say EVERY individual would feel uncomfortable providing personal, detailed financial information to anyone much less to a large group who have not yet demonstrated the desire or ability to acquire the property. Again, the bill does not require at this point in the process the tenants to have presented an offer or reached an agreement with the owner. The tenants do not even put up earnest money or demonstrate the financial ability to close.

Beyond the needless delay of a sale at the cost of the property owner, HB 3007 creates a hostile environment for the current owner and any future owners. Assuming a single or multiple tenants have conformed to the 30- and 50-day notices and an acceptable offer has not been reached between the owner and the tenants, the owner can freely solicit other offers. However, any owner now gets to deal with the prospect of a group of tenants who, at the least, have been stirred up by the fear and anxiety caused by the process forced on the group by HB 3007 and who may have been provided financial information about the property. Tenants who may have wanted to try to acquire the park would be at odds with those tenants who didn't share that desire. Most current sales happen with little if any disruption to the tenants. Owners do not want to put this stress on tenants. However, HB 3007 would require even an unsolicited offer be disclosed to the tenants including the price. It seems the intent of the bill is to put a wedge between owners and tenants as opposed to trying to create a working relationship.

If, as HB 3007 intends, more tenants acquire parks, it will be done at a great financial cost and risk to tenants. Tenant purchases are highly leveraged ventures that typically involve large increases in the rent paid by tenants. Tenant purchases have typically required well over 100% loan to value financing due to the loan costs and transaction fees charged in combination with very little down payment on the part of the tenants. Because a large majority of manufactured housing communities are occupied by the elderly or individuals with limited financial means, the increased debt will be borne by some of the most

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vulnerable in society. The last several years have shown us the folly of zero or negative equity transactions. In addition, the tenants run the increased risk of not having the necessary funds to perform costly capital improvements which can and will come up.

HB 3007 is a legislative solution looking for a problem. In the state of Oregon, the tenants have been able to successfully acquire communities where the large majority of the tenants desire to be involved in the transaction and the landlords desire to work with the tenants within a reasonable timeframe. There have been many examples of tenants acquiring their parks in Oregon without HB 3007 being in existence. There have also been several cases where tenants have been presented with the opportunity to acquire their property but have not elected to do so. I know of no case where a clear majority of tenants have been willing to acquire the park at market price in a timely manner but have been denied the opportunity. With the tax benefits in Oregon, owners have been incentivized to pursue tenant sales. HB 3007 would force tenants and owners alike into a process neither may want. The legislature rightly has put in place laws which deter the closure of parks for redevelopment. The authors of the bill have stated they want tenants to have an equal opportunity with any other buyer to acquire the property yet no other qualified buyer would be given the rights the tenants would have under this bill.

Manufactured housing is one of the few if not the only form of private affordable housing existing today which is not subsidized by the government. To the contrary, manufactured housing communities in most cases pay utilities, development fees, taxes, management and other expenses at a rate equal to or greater than individual homeowners. Despite this fact the industry has been able to provide affordable housing because the tenant and landlord share in the investment of private homeownership. I urge you to vote against HB 3007. It is bad legislation for tenants, landlords and private property owners in general.

*Written by Loren Landau, Owner Woodburn Mobile Estates and Commonwealth Real Estate Services, the largest fee-based property management company serving manufactured housing communities in Washington and Oregon.*