

TESTIMONY IN SUPPORT OF HB 3007
Before the House Human Services and Housing Committee
March 20, 2013

Submitted by John VanLandingham
Lane County Legal Aid & Advocacy Center

Outline of HB 3007, the Resident Opportunity to Purchase Bill

1. A landlord or owner who wishes to sell his or her manufactured home park or floating home marina must offer the residents of the facility an opportunity to compete to purchase the facility, Section 4 (1),

* UNLESS the owner has received an unsolicited offer from someone to buy the facility. Section 5; defined in Section 3 (2), (3).

2. For an unsolicited offer which the owner intends to consider, the owner must give written notice to the residents of the offer along with an estimate of the value of the facility. But the owner has no duty to negotiate with the residents or to delay accepting the unsolicited offer. The owner may accept the unsolicited offer “immediately.” Section 5 (3).

3. An owner who wishes to sell and who does not have an unsolicited offer must give written notice to the residents of the facility that the owner wishes to sell and that the law requires the owner to offer the facility for sale to the residents before selling to other buyers. Section 4 (4), (5).

* There is no prohibition on an owner soliciting other buyers during this period, and using their offers to compare to whatever the residents offer.

4. The residents have 30 days after the owner’s notice to

- a. Give written notice of their interest in buying the facility;
- b. Designate one or more representatives to negotiate with the owner;
- c. Form a corporate entity or associate with a nonprofit, housing authority, or housing consultant for assistance in evaluating the purchase; AND
- d. Incur some cost in evaluating the purchase.

Section 4 (6).

5. If the residents make a written request for it, the owner must give the residents what is known as a broker’s package, during this first 30 day period, so that the residents can evaluate the purchase: the price the owner is asking, 3 years of income and expense data, 5 years of capital improvements, the capitalization rate,

and current vacancies.

* This information would be part of any serious discussion of a sale, with anyone.

* This information need not be site or space specific, if an owner were concerned about residents comparing rent levels.

Section 4 (8).

6. An owner may require the residents to treat this information as confidential, so that it may only be shared with the residents' consultant and any lenders or professionals. This obligation continues as long as the owner wishes. Section 5 (9).

* If the residents intentionally or recklessly disclose confidential information, the owner is no longer required to comply with the Section 4 duty to allow the residents the opportunity to purchase the facility. Section 6 (4).

7. If the residents fail to do those things required during the first 30 day period -- see #4 above -- the owner's duty to negotiate with the residents ends. Section 4 (2) (a).

8. After the first 30 day period, the residents have another 20 days or a total of 50 days after the owner's notice to submit a written purchase offer AND reach an agreement in principle with the owner. Section 4 (11).

9. If the residents fail to do those things required during the second period -- see #8 above -- the owner's duty to negotiate with the residents ends. Section 4 (2) (a).

10. If the residents and the owner reach agreement on a sale, the residents have another 50 days (for a total of 100) to complete final arrangements. Section 4 (2).

11. Both sides have a duty to act in good faith under current law, ORS 90.130. Section 4 (12).

12. The owner must provide the residents with the "same opportunity to purchase the facility that the owner would provide to any other bona fide purchaser in an arms length transaction." Section 4 (12) (a). (Same as current law, ORS 90.820.)

13. The owner may reject an offer from the residents for any lawful reason. Section 4 (12) (b).

* That would include that the owner thinks the facility is worth more than the residents offered. There is no duty on an owner to give the residents a break on the price.

14. The owner is not required to sell the facility to anyone and may withdraw the facility from the market. Section 4 (12) (c), (d).

15. If the residents fail to meet the above obligations or the owner rejects their final offer, the owner is released from any duty to negotiate with the residents. Section 4 (13).

16. If the owner fails to comply with these requirements, the residents may recover the greater of \$10,000 or 10 percent of the sales price up to \$100,000, unless the noncompliance is technical in nature and does not prevent the residents from competing to purchase the facility. Section 6 (1), (2).

17. If the residents act in bad faith to prevent a sale by the owner, the owner may recover from the residents the owner's actual damages. Section 6 (3).

18. Certain transfers or sales are exempted, such as sales within a partnership. Same as current law (ORS 90.820 (4)), though updated. Section 7.

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Current Oregon law already requires manufactured home park and floating home marina landlords to notify residents prior to a sale and to negotiate a possible sale to the residents. ORS 90.760, 90.800 to 90.840.

Unfortunately, both landlords and residents acknowledge that these laws do not work well.

1. ORS 90.760 allows an undefined tenants' association to give written notice to the landlord of its interest in getting notice if the landlord lists the facility (the park or marina) for sale.

PROBLEM: Apparently this notice from the tenants' association is good forever, even if ownership of the facility changes.

2. ORS 90.810 requires a landlord to give to a tenants' association written notice of a listing or a written offer to buy within 10 days.

PROBLEM: An offer to buy is different from a listing. Are both covered by the landlord-notice requirement? A landlord may be required to give notice even if no tenants' association requested notice under ORS 90.760.

PROBLEM: No description of what must be in the notice.

3. ORS 90.820 requires a landlord to "negotiate in good faith with the [tenants'] association . . . and provide the association . . . an opportunity to purchase the facility as the owner would any bona fide third party potential purchaser."

PROBLEM: This duty is completely open-ended; there is no limit on this duty or on how long the landlord must negotiate.

PROBLEM: This duty would apply even if the landlord has received a time-sensitive unsolicited offer.

PROBLEM:: The landlords' own lawyer has viewed this provision as essentially being a right of first refusal.

4. ORS 90.820 allows a tenants' association to trigger the good-faith-duty-to-negotiate by giving the landlord a written notice within 14 days that the association is "interested in purchasing the facility."

PROBLEM: Nothing more is required of the tenants' association than a

written expression of interest. Tenants who wish to delay the landlord's sale can do so within having to invest anything or doing anything further.

5. PROBLEM: There is no penalty for a landlord who fails to comply with these requirements or a tenant who acts in bad faith to delay a sale.

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