Oregon Park Owners Alliance

Representing Owners of Mobilehome Parks and Manufactured Housing Communities in Oregon

HB 4038-3: Clarifying and substantive amendments are necessary

Current law requires mobilehome park tenants to form and incorporate an entity to purchase their park. If a tenant entity exists, the park owner knows who to deal with in a manner similar to the commercially viable sale of property to non-tenants.

Proponents of HB 4038 seek to enable tenants to enter into purchase negotiations without first forming an entity.

1. **There is no requirement that "the tenants" form a single organization or entity that is open to all tenants and that in a democratic manner selects one or more persons who are contacts for, or representatives of, all tenants.**
   - On the first day after giving notice, the park owner could be faced with multiple groups of tenants each professing to represent some or all tenants.
   - It is not uncommon for factions to exist within a mobilehome park (as in any community or group of people). Having to deal with several individuals or groups professing to be interested in the purchase but having no authority to speak on behalf of all tenants will be burdensome, confusing, and unproductive for all.
   - HB 4038 does not require the tenants to form an entity until the 25th day. Therefore, there is no "designated contact person" on the first day the tenants receive notice from the park owner, and it could be as long as 25 days before someone is designated.
   - No wording in Sections 1 or 2 of the bill provides any method for the tenants to select a designated contact person or representative. There is no restriction on persons self-anointing themselves as contact persons or representatives of all the tenants.

2. **The term "the tenants" apparently refers to "all tenants of the park" as used in Section 1(2)(a). It should be limited to tenants who own homes and reside in the park.**
   - Due to the economic recession, in many instances park owners have rented homes to tenants. It is also not uncommon to find homes that are owned by outside non-resident investors.
   - HB 4038 should be applicable only to persons who own and occupy a manufactured home or mobilehome and have established a tenancy for a space within the manufactured community.
   - HB should not apply to persons who rent homes from the park owner or who occupy recreational vehicles (travel trailers or motorhomes) that are not permanently sited in the community.

3. **A written offer to purchase the park must include evidence of the financial ability of the corporate entity to purchase the property.**
   - Section 2(5)(b) requires evidence of the "legal capacity" of the corporate entity submitting a written offer.
   - The written offer must also include evidence that the corporate entity has the financial ability to enter into a transaction and not simply be a shell corporation.

4. **Vague terms used in HB 4038 make it the "Tenant-Landlord Attorneys' Full Employment Act"**
   - A park owner has said repeatedly over the last five years that he is sick of over-regulation and is going to sell and get out of the business. But he has taken no action to do so. Shouldn't he call his attorney to find out if what he has said evidences his "interest" in selling his parks "before [he] markets the parks for sale" and therefore requires notice be given to the tenants?
   - If the same park owner receives an unsolicited offer because of his comments, does he have to immediately notify the tenants merely because he has received it? If thinks reads the offer about it (i.e., "considers" the offer) doesn't the park owner have to ask his attorney to tell him at what point receipt and review of an offer becomes "considering" it? "Considering" is not the same as "responding" or "negotiating" to an offer.
   - Without a requirement in Section 2(5)(b) that the tenants' written offer must include evidence of financial ability, tenants will argue the statute only requires evidence of the legal capacity of the entity. It would be imprudent for the park owner to enter into negotiations or a contract with a party that does not have the financial ability to complete the transaction. The park owner's attorney and the tenants' attorney will run up bills arguing whether "the parties are acting in a commercially reasonable manner."

5. **HB 4038 should not apply to any transfer by a limited liability company to any of its members.**
   - Section 4(1)(d) exempts "any transfer by a partnership to any of its partners" from the Act.
   - Since the enactment of the Oregon Limited Liability Company Act, most mobilehome park purchases have been made by LLCs, and partnerships have converted to LLCs. HB 4038 must recognize that this has occurred. Members of LLCs should be treated the same as partnerships.

6. **No obligations are placed on third-party entities or persons acting on behalf of the tenants and leading the park owner to believe the tenants or the third party have the capability to complete a transaction.**

7. **HB 4038 should be limited to parks that are not more than 50 spaces.**
   - Typically, the parks that have been converted into cooperative ownership have been less than 50 spaces.
   - In almost every case, a park converted to tenant ownership has required a State-funded grant of $600,000 that does not have to be repaid. There are insufficient State funds for acquisitions of larger properties, and the absence of a pre-existing tenant purchase entity would be unwieldy in a large park.

8. **The effective date of the Act should be January 1, 2015.**
   - Ninety-one days is insufficient time to educate park owners and tenants on a new statute, especially since it represents a major change in direction from what the law has been for more than a decade. A date-certain effective date will be more efficient and better assure understanding of and compliance with the Act.