

HB 4038A Detailed Summary (2/17/2014)

Manufactured Home Park Opportunity to Purchase Compromise

Chuck Carpenter and Phil Querin, Manufactured Housing Communities of Oregon
John VanLandingham, Lane County Legal Aid & Advocacy Services

1. **Ten-Day Notice to Tenants**. A park owner shall send a written notice to the tenants and to the state housing agency if the owner intends to market the park for sale, or when the owner receives an offer of purchase that the owner intends to consider, whichever occurs first. *Sections 1(1), 3(2)*

The written notice must inform tenants that: *Section 1(4)*

- a. The owner is considering selling the park.
- b. The tenants have an *opportunity to compete* to buy the park.
- c. The tenants have 10 calendar days to notify the owner in writing that (*Sections 1, 2*):
 - i. They are interested in competing to buy the park;
 - ii. They must designate a representative to communicate with the owner; and
 - iii. They may request certain financial information from the owner about the park.
- d. The Oregon Housing and Community Services Department has information regarding park purchase.

The notice must be sent to ALL tenants unless there is in place an active park purchase committee (or an existing committee such as a Committee of Seven whose responsibilities include considering park purchase) and the owner had met with them during the prior 12 months. "Active" is demonstrated by the within-past-12-months meeting. If there is such a committee, the owner may just give the notice to it. *Section 1(2)(b)*

2. **Park Owner Right to Seek Other buyers**. Throughout this process, the park owner may seek and/or negotiate with other buyers. *Section 3(4)*
3. **Financial Information**. Within the 10 day notice period, the tenants' designated contact person may make a written request for financial information customarily provided by a seller to a purchaser so that the tenants can evaluate a purchase. The park owner is to provide the following financial information within 7 days following receipt of the request. *Section 2(2), (3)*
 - a. Asking price, if there is one;

- b. Income (lump sum, not by space) – including any park-related profit centers (e.g., storage, laundry);
 - c. Annual park-covered utility expenses;
 - d. Annual insurance expense (most recent premium);
 - e. The number of park-owned homes; and
 - f. Current vacancies.
4. **Confidentiality.** The park owner may designate the financial information “confidential.” The owner and the tenants may agree on a list of permissible transferees of this information, e.g., an associated nonprofit, the purchase committee attorneys, tax advisors, lenders, etc. They can be required to sign a confidentiality agreement and to return the information to the park owner intact at the conclusion of negotiations or termination of purchase efforts. The tenants have the right to review the information provided, but it may not be copied, in whole or in part. *Section 2(4)*
5. **Purchase Offer.** Within 15 calendar days following receipt of the owner’s financial information, if the tenants wish to compete to purchase the park, they must (*Section 2(5)*):
- a. Form a corporate entity capable of purchasing the park, or associate with a nonprofit corporation or housing authority capable of purchasing the park or of providing park purchase assistance and advice.
 - b. Submit a written offer to purchase the park in the form of a purchase and sale agreement (“PSA”) together with a copy of the filed corporate articles or other verification of legal capacity to purchase and hold title.
6. **Owner’s Options.** *Section 2(6)*
- a. The owner may accept the tenants’ offer, submit a counter-offer with different terms, or reject the offer.
 - b. If the parties reach agreement on the purchase, the terms of the deal, including offer price, due diligence duties, schedules, timelines, conditions and any extensions, must be spelled out in the PSA.
7. **Termination of Park Owners’ Duty to Negotiate Further.** The owner’s duty to negotiate further ends (*Section 2(6)(c)*):
- a. If the tenants fail to act as required within the initial 10 day period following the landlord’s notice of intent to market the property;
 - b. If the tenants fail to form the purchase entity and/or fail to submit the PSA within the 15 day period following receipt of the landlord’s financial information;

- c. If the tenants violate the confidentiality agreement; or
 - d. If the parties fail to reach agreement on the terms of a deal.
8. **Noncompliance by the Owner.** *Section 3(3), (5)*
- a. Minor errors regarding the notice or the financial information do not cause liability or prevent the sale of a park;
 - b. Injunctive relief is allowed if prior to transfer to a bona fide purchaser; damages only for substantial violations which prevented the tenants from competing to purchase.
9. **Noncompliance by the Tenants.** *Sections 2(6)(c), 3(6)*
- a. If the tenants fail to perform or violate the confidentiality agreement, the owner has no further duty under these provisions;
 - b. If a tenant misuses or discloses, in a substantial way, confidential information in violation of the confidentiality agreement, the owner may recover actual damages from the tenant.
10. **Overall standards.** The owner and the purchase committee, including all park tenants, must act in a commercially reasonable manner at all times. *Section 3(1)*
11. **Exemptions.** Retains the exemptions in current law, ORS 90.820 (4), with a clarification regarding 1031 tax-free exchanges and the addition of transfers to a charitable trust. *Section 4*
12. **Purchaser Protection.** If a park owner records an affidavit of compliance with these provisions, a purchaser may rely on that affidavit and the sale cannot be set aside. *Sections 3(5)(a), 5(2),(3),*
13. **Removes Current 14 Day Right of First Refusal Language.** In ORS 90.820 (2). *Section 10*
14. **Miscellaneous:**
- a. Technical amendments to separate the purchase provisions for marinas from the new ones for parks. Current law applies to both, and this bill only applies to park purchases. *Sections 6, 8, 9, 10, 11, 12*
 - b. Technical amendments and cross references: *Sections 7, 13, 14, 15, 16, 17*
 - c. Makes the new provisions part of the current series. *Section 19*
 - d. Applies to sales on or after the effective date, which is 91 days after sine die. *Sections 18, 20*