

House Bill 4038

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Human Services and Housing)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies provisions that establish process for tenants of manufactured dwelling park to purchase park.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tenant purchase of residential facility; creating new provisions; amending ORS 90.760,
3 90.800, 90.810, 90.820, 90.830 and 456.579; and prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) An owner of a manufactured dwelling park shall give written notice of**
6 **the owner's interest in selling the park before the owner markets the park for sale or when**
7 **the owner receives an offer of purchase that the owner intends to consider, whichever occurs**
8 **first.**

9 (2) The owner shall give the notice required by subsection (1) of this section to:

10 (a) All residents of the park; or

11 (b) A resident committee, if there is an existing committee of residents formed, in whole
12 or in part, for the purpose of purchasing the park and with which the owner has met during
13 the previous 12 months.

14 (3) The owner shall also give the notice required by subsection (1) of this section to the
15 Office of Manufactured Dwelling Park Community Relations of the Housing and Community
16 Services Department.

17 (4) The notice must include the following:

18 (a) The owner is considering selling the park.

19 (b) The tenants have an opportunity to compete to purchase the park.

20 (c) In order to compete to purchase the park, within 10 days after delivery of the notice,
21 the tenants must notify the owner in writing of:

22 (A) The tenants' interest in competing to purchase the park; and

23 (B) The name and contact information of a representative of the tenants with whom the
24 owner may communicate about the purchase.

25 (d) The tenants may request certain financial information from the owner within the
26 10-day period.

27 (e) Information about purchasing a manufactured dwelling park is available from the
28 Office of Manufactured Dwelling Park Community Relations of the Housing and Community
29 Services Department.

30 **SECTION 2. (1) Within 10 days after delivery of the notice described in section 1 of this**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 2014 Act, if the tenants wish to compete to purchase the manufactured dwelling park, the
2 tenants must notify the owner in writing of:

3 (a) The tenants' interest in competing to purchase the park; and

4 (b) The name and contact information of a representative of the tenants with whom the
5 owner may communicate about the purchase.

6 (2) During the 10-day period, the tenants may request that the owner provide financial
7 information necessary to perform a due diligence evaluation of the opportunity to compete
8 to purchase the park. The financial information is the information that a seller of a park
9 customarily would provide to a prospective purchaser and must include:

10 (a) The asking price for the park, if there is one;

11 (b) The total income collected in the previous 12 months from the park and related profit
12 centers, including storage and laundry;

13 (c) The cost of all utilities paid by the owner for the park in the previous 12 months;

14 (d) The annual cost of all insurance policies paid by the owner for the park, as shown by
15 the most recent premium;

16 (e) The number of homes in the park owned by the owner; and

17 (f) The number of current vacant spaces and homes in the park.

18 (3) The owner shall provide the financial information described in subsection (2) of this
19 section within seven days after delivery of the tenants' request.

20 (4) The owner may:

21 (a) Designate all or part of the financial information provided as confidential.

22 (b) If the owner designates financial information as confidential, establish, with the
23 tenants' representative, a list of persons with whom the information may be shared by the
24 tenants, including any of the following persons that are either seeking to purchase the park
25 on behalf of the tenants or assisting the tenants in evaluating or purchasing the park:

26 (A) A nonprofit organization or a housing authority.

27 (B) An attorney or other licensed professional or adviser.

28 (C) A financial institution.

29 (c) Require that persons authorized to receive the confidential information:

30 (A) Sign a confidentiality agreement before receiving the information;

31 (B) Refrain from copying any of the information; and

32 (C) Return the information to the owner when the negotiations to purchase the park are
33 completed or terminated.

34 (5) Within 15 days after delivery of the financial information, if the tenants wish to con-
35 tinue competing to purchase the park, the tenants must:

36 (a) Form a corporate entity capable of purchasing the park or associate with an existing
37 nonprofit corporation or housing authority that is capable of purchasing the park or advising
38 the tenants about purchasing the park.

39 (b) Submit to the owner in writing an offer to purchase the park, in the form of a pro-
40 posed purchase and sale agreement, and either a copy of the articles of incorporation of the
41 purchasing entity or other evidence of the legal capacity of the purchasing entity to enter
42 into a purchase and sale agreement.

43 (6) The owner may accept the offer to purchase in the tenants' purchase and sale
44 agreement, reject the offer or submit a counteroffer.

45 (7) If the parties reach agreement on the purchase, the purchase and sale agreement

1 must specify the price, due diligence duties, schedules, timelines, conditions and any exten-
 2 sions.

3 (8) If the tenants do not act as required within the time periods described in this section
 4 and section 1 of this 2014 Act, or if the parties do not reach agreement on a purchase, the
 5 owner has no further duty under sections 1 to 3 of this 2014 Act.

6 **SECTION 3.** (1) Under sections 1 to 3 of this 2014 Act, the parties must act in a com-
 7 mercially reasonable manner.

8 (2) Except as provided in section 4 of this 2014 Act, before selling a manufactured dwell-
 9 ing park to a third party, the owner of the park must give the notice required by section 1
 10 of this 2014 Act and comply with the requirements of section 2 of this 2014 Act.

11 (3) A minor error in providing the notice required by section 1 of this 2014 Act or in
 12 providing the financial information required by section 2 of this 2014 Act does not prevent
 13 the owner from selling the park to a third party and does not cause the owner to be liable
 14 to the tenants for damages or a penalty.

15 (4) During the process described in sections 1 to 3 of this 2014 Act, the owner may seek,
 16 or negotiate with, potential purchasers other than the tenants.

17 (5) The owner may allow more than the minimum time periods or waive requirements
 18 applicable to tenants under section 2 of this 2014 Act.

19 (6) If an owner does not comply with requirements of sections 1 to 3 of this 2014 Act in
 20 a substantial way that prevents the tenants from competing to purchase the park, the ten-
 21 ants may:

22 (a) Obtain injunctive relief, preventing a sale to a third party if the sale has not been
 23 completed to a bona fide purchaser; and

24 (b) Recover damages or twice the rent from the owner for each tenant, whichever is
 25 greater.

26 (7) The Office of Manufactured Dwelling Park Community Relations of the Housing and
 27 Community Services Department shall prepare and make available information for tenants
 28 about purchasing a manufactured dwelling park.

29 **SECTION 4.** The requirements of sections 1 to 3 of this 2014 Act do not apply to:

30 (1) Any sale or transfer to a person who would be included within the table of descent
 31 and distribution if the owner of the manufactured dwelling park were to die intestate.

32 (2) Any transfer by gift, devise or operation of law.

33 (3) Any transfer by a corporation to an affiliate. As used in this paragraph, "affiliate"
 34 means any shareholder of the transferring corporation, any corporation or entity owned or
 35 controlled, directly or indirectly, by the transferring corporation or any other corporation
 36 or entity owned or controlled, directly or indirectly, by any shareholder of the transferring
 37 corporation.

38 (4) Any transfer by a partnership to any of its partners.

39 (5) Any conveyance of an interest in a park incidental to the financing of the park.

40 (6) Any conveyance resulting from the foreclosure of a mortgage, deed of trust or other
 41 instrument encumbering a park or any deed given in lieu of a foreclosure.

42 (7) Any sale or transfer between or among joint tenants or tenants in common owning
 43 a park.

44 (8) An exchange under section 1031 of the Internal Revenue Code, or any other exchange,
 45 of a park for other real property, whether or not the exchange also involves the payment

1 **of cash or other boot, for a purchaser from the owner.**

2 **(9) The purchase of a park by a governmental entity under that entity's powers of emi-**
 3 **nent domain.**

4 **(10) A transfer to a charitable trust.**

5 **SECTION 5.** ORS 90.760 is amended to read:

6 90.760. (1) A tenants' association or a [facility] **marina** purchase association may give written
 7 notice to the landlord of a [facility] **marina** in which some or all of the members of the
 8 [associations] **association** reside as tenants requesting that the [associations] **association** be noti-
 9 fied, by first class mail to no more than three specified persons and addresses for each association,
 10 in the event the [facility] **marina** becomes subject to a listing agreement for the sale of all or part
 11 of the [facility] **marina**.

12 (2) If an association requests notice pursuant to subsection (1) of this section, the landlord shall
 13 give written notice to the persons and addresses designated in the request as soon as all or any
 14 portion of the [facility] **marina** becomes subject to a listing agreement entered into by or on behalf
 15 of the owner.

16 **SECTION 6.** ORS 90.800 is amended to read:

17 90.800. (1) The State of Oregon encourages affordable housing options for all Oregonians. One
 18 housing alternative chosen by many Oregonians is facility living.

19 **(2) The Legislative Assembly finds that:**

20 **(a) Many facility residents would like to join together, alone or in cooperation with an as-**
 21 **sociated entity, to purchase the facility in which [they] the residents live in order to have greater**
 22 **control over the costs and environment of their housing. [The Legislative Assembly also finds that]**

23 **(b) Current market conditions place residents at a disadvantage with other potential investors**
 24 **in the purchase of facilities.**

25 [(2)] **(3) It is the policy of the State of Oregon to encourage facility residents to participate in**
 26 **the housing marketplace by [insuring] ensuring that technical assistance, financing opportunities,**
 27 **notice of sale of facilities and the option to purchase facilities are made available to residents who**
 28 **choose to participate in the purchase of a facility.**

29 [(3)] **(4) [The] One purpose of ORS [90.100, 90.630,] 90.760, 90.800 to 90.840, 308.905, 446.003,**
 30 **456.579 and 456.581 is to strengthen the private housing market in Oregon by encouraging all**
 31 **Oregonians to have the ability to participate in the purchase of housing of their choice.**

32 **SECTION 7.** ORS 90.810 is amended to read:

33 90.810. (1) A [facility] **marina** owner shall notify, as described in ORS 90.760, the tenants' asso-
 34 ciation and a [facility] **marina** purchase association within 10 days of receipt of:

35 (a) Any written offer received by the owner or agent of the owner to purchase the [facility]
 36 **marina** which the owner intends to consider; or

37 (b) Any listing agreement entered into, by the owner or agent of the owner, to effect the sale
 38 of the facility.

39 (2) The notice required by subsection (1) of this section shall be mailed to any association and
 40 [facility] **marina** purchase association.

41 **SECTION 8.** ORS 90.820 is amended to read:

42 90.820. (1) Within 14 days of delivery by or on behalf of the [facility] **marina** owner of the notice
 43 required by ORS 90.760 (2) or 90.810, a tenants' association or [facility] **marina** purchase association
 44 may notify the owner of the facility in which the tenants reside by certified mail or personal service
 45 at the address disclosed to the tenants under ORS 90.305 (1)(a) that the association, or a tenants'

1 association supported nonprofit organization, is interested in purchasing the [facility] **marina**.

2 (2) Upon delivery of the notice required by subsection (1) of this section, the [facility] **marina**
 3 owner shall negotiate in good faith with the association or organization and provide the association
 4 or organization an opportunity to purchase the [facility] **marina** as the owner would any bona fide
 5 third party potential purchaser. During the 14-day period following the delivery of a notice to the
 6 [facility] **marina** owner under subsection (1) of this section, the tenants' association, [facility]
 7 **marina** purchase association or tenants' association supported nonprofit organization has a right
 8 of first refusal for any offer or agreement by the [facility] **marina** owner to sell the [facility]
 9 **marina**.

10 (3) A [facility] **marina** purchase association or tenants' association actively involved in negoti-
 11 ations with a [facility] **marina** owner may waive or reduce the time periods for notice described in
 12 this section. A [facility] **marina** purchase association or tenants' association may authorize a
 13 tenants' association supported nonprofit organization to waive notice on behalf of the association.

14 (4) This section, ORS 90.760 (2) and 90.810 do not apply to:

15 (a) Any sale or transfer to a person who would be included within the table of descent and
 16 distribution if the [facility] **marina** owner were to die intestate.

17 (b) Any transfer by gift, devise or operation of law.

18 (c) Any transfer by a corporation to an affiliate. As used in this paragraph, "affiliate" means
 19 any shareholder of the transferring corporation, any corporation or entity owned or controlled, di-
 20 rectly or indirectly, by the transferring corporation or any other corporation or entity owned or
 21 controlled, directly or indirectly, by any shareholder of the transferring corporation.

22 (d) Any transfer by a partnership to any of its partners.

23 (e) Any conveyance of an interest in a [facility] **marina** incidental to the financing of the
 24 [facility] **marina**.

25 (f) Any conveyance resulting from the foreclosure of a mortgage, deed of trust or other instru-
 26 ment encumbering a [facility] **marina** or any deed given in lieu of a foreclosure.

27 (g) Any sale or transfer between or among joint tenants or tenants in common owning a
 28 [facility] **marina**.

29 (h) Any exchange of a [facility] **marina** for other real property, whether or not the exchange
 30 also involves the payment of cash or other boot.

31 (i) The purchase of a [facility] **marina** by a governmental entity under that entity's powers of
 32 eminent domain.

33 **SECTION 9.** ORS 90.830 is amended to read:

34 90.830. [(1) A facility owner may at any time record, in the County Clerk Lien Record of the county
 35 where a facility is situated, an affidavit in which the facility owner certifies that:]

36 [(a) With reference to an offer by the owner for the sale of the facility, the owner has complied with
 37 the provisions of ORS 90.820;]

38 [(b) With reference to an offer received by the owner for the purchase of the facility, or with ref-
 39 erence to a counteroffer that the owner intends to make, or has made, for the sale of the facility, the
 40 owner has complied with the provisions of ORS 90.820;]

41 [(c) Notwithstanding compliance with the provisions of ORS 90.820, no contract for the sale of the
 42 facility has been executed between the owner and a facility purchase association, tenants' association
 43 or tenants' association supported nonprofit organization;]

44 [(d) The provisions of ORS 90.820 are inapplicable to a particular sale or transfer of the facility
 45 by the owner, and compliance with those subsections is not required; or]

1 *[(e) A particular sale or transfer of the facility is exempted from the provisions of this section and*
 2 *ORS 90.820.]*

3 **(1) At any time, a facility owner may record, in the County Clerk Lien Record of the**
 4 **county in which a facility is situated, an affidavit in which the facility owner certifies that:**

5 **(a) The facility owner has complied with the requirements of:**

6 **(A) ORS 90.760, 90.810 and 90.820 with reference to an offer by the facility owner for the**
 7 **sale of the marina.**

8 **(B) Sections 1 to 3 of this 2014 Act with reference to an offer by the facility owner for**
 9 **the sale of a manufactured dwelling park.**

10 **(b) The facility owner has complied with the requirements of:**

11 **(A) ORS 90.760, 90.810 and 90.820 with reference to an offer received by the facility owner**
 12 **for the purchase of a marina or to a counteroffer the owner has made or intends to make.**

13 **(B) Sections 1 to 3 of this 2014 Act with reference to an offer received by the facility**
 14 **owner for the purchase of a manufactured dwelling park or to a counteroffer the owner has**
 15 **made or intends to make.**

16 **(c) The facility owner has not entered into a contract for the sale of the facility to the**
 17 **tenants or a tenant-associated entity.**

18 **(d) ORS 90.760, 90.810 and 90.820 do not apply to a particular sale or transfer of the**
 19 **marina.**

20 **(e) Sections 1 to 3 of this 2014 Act do not apply to a particular sale or transfer of the**
 21 **manufactured dwelling park.**

22 *(2) [Any party acquiring an interest in a facility, and any and all title insurance companies and*
 23 *attorneys preparing, furnishing or examining any evidence of title,] **The following parties** have the*
 24 *absolute right to rely on the truth and accuracy of all statements appearing in the affidavit **de-***
 25 ***scribed in this section** and are *[under no obligation]* **not obligated** to inquire further as to any*
 26 *matter or fact relating to the facility owner's compliance with the provisions of **ORS 90.760, 90.810***
 27 ***and 90.820:***

28 **(a) A party that acquires an interest in a facility.**

29 **(b) A title insurance company, or an attorney, that prepares, furnishes or examines evi-**
 30 **dence of title.**

31 **(3) It is the purpose and intention of this section to preserve the marketability of title to facil-**
 32 **ities, and, accordingly, the provisions of this section shall be liberally construed in order that all**
 33 **persons may rely on the record title to facilities.**

34 **SECTION 10.** ORS 456.579 is amended to read:

35 456.579. (1) There is established separate and distinct from the General Fund an account to be
 36 known as the Mobile Home Parks Purchase Account. Except as otherwise provided by law, all
 37 moneys appropriated or credited to the Mobile Home Parks Purchase Account are appropriated
 38 continuously for and shall be used by the Director of the Housing and Community Services Depart-
 39 ment for the purpose of carrying out the duties and responsibilities imposed upon the Housing and
 40 Community Services Department under ORS *[90.100, 90.630,]* 90.760, 90.800 to 90.840*[, 308.905,*
 41 *446.003]* and 456.581 and this section. Interest earned on the account shall be credited to the ac-
 42 count.

43 (2) Except for loans provided in ORS 90.840, the account described in subsection (1) of this
 44 section shall not be connected to or commingled in any way with the funds described in ORS
 45 456.720.

1 (3) For the purpose of carrying out the provisions of ORS [*90.100, 90.630,*] 90.760, 90.800 to
2 90.840[, *308.905, 446.003*] and 456.581 and this section, the Housing and Community Services De-
3 partment may seek funds from sources other than that described in ORS 308.905 (1). Such funds shall
4 be credited to the Mobile Home Parks Purchase Account.

5 **SECTION 11. This 2014 Act takes effect on the 91st day after the date on which the 2014**
6 **regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

7
