



Manufactured Housing Communities of Oregon
MHCO.ORG Office: 503-391-4496
mhcochuck@comcast.net

**Eugene 'Registered Guard' Article
MHCO's Response
How Not to Conduct Consignment/Sale of Resident's Home
In a Manufactured Home Community**

By Phil Querin
MHCO Legal Counsel
May 7, 2018

The March 18, 2018 Eugene Register-Guard carried a distressing article about several elderly residents of a local park who claim to have been swindled by one or more persons affiliated in some way with the landlord, a large national company out of Chicago.

The purpose of this article is not to pre-judge the landlord or any of the persons or entities in the report. They are assumed to be innocent. Rather, the purpose is to let community members know that they are not without remedies, and to remind them that they must speak up, rather than suffer in silence.

First, beware of the statute of limitations. That is the law that essentially says claims not timely brought in court will lapse after a specified period of time. One law that must be remembered is the Unlawful Trade Practices Act, which is a very consumer-friendly set of Oregon laws. However, it carries a one-year statute of limitations which commences when one knows or reasonably should know, that their legal rights have been violated.

General tort law, e.g. for a violation of personal rights, such as fraud, misrepresentation, and deceit, etc. have a minimum of two years. If contractual rights are involved, the period is six years.

Also, Oregon also has a series of statutes relating to elder abuse. It too, is a consumer friendly set of laws, and severe in its consequences.

And lest critics seize on this unfortunate story as an example of the manufactured housing industry unable to police its own, that is not the case. In 2015, ORS 90.680 (*Sale of dwelling or home on rented space*) was extensively amended by HB 3016 to prevent several of the alleged abuses addressed in this article. Here is a summary of that law¹:

Consignments. First, it gave a name to the process; “consignment”. It is defined as follows: “...an agreement in which a tenant authorizes a landlord² to sell a manufactured dwelling or floating home on behalf of the tenant who owns the dwelling or home in a facility that is owned by the landlord and for which the landlord receives compensation.”

Second, ORS 90.680 had always made clear that the landlord is prohibited from denying a tenant (a) the right to sell their home on the space, or (b) to remove the home from the space solely on the basis of the sale. Nor may the landlord require as a condition of a tenant’s occupancy, that if marketed for sale, the home must be consigned through the landlord.

The rules permitting consignments detail several requirements:

1. The landlord must be licensed to sell dwellings under ORS 446.661 to 446.756 which regulates dealers and dealer licensing.
2. The consignment contract, which must be in writing, may not exceed 180 days, unless the extension is also confirmed in writing;
3. The contract must include the following information:
 - (a) The estimated square footage of the dwelling or home;

¹ MHCO published a summary of the new law in 2016, when it went into effect.

² ORS 90.100(24) defines a “landlord” as: “...the owner, lessor or sublessor of the dwelling unit or the building or premises of which it is a part. “Landlord” includes a person who is authorized by the owner, lessor or sublessor to manage the premises or to enter into a rental agreement.”

- (b) The make, model, year, vehicle identification number and license plate number, if known;
 - (c) The offering price of the dwelling or home;
 - (d) Whether lender financing is permitted;
 - (e) Whether the transaction is intended to be closed through a state-licensed escrow;³
 - (f) All existing and known liens, taxes and other charges encumbering the dwelling or home must be identified and paid as a condition of the tenant conveying marketable title to the prospective buyer;
 - (g) The method of marketing the sale of the home to the public (e.g. posting of signs in the community; advertising on the Internet, or through publications in newspapers, etc.);
 - (h) The form and amount of compensation to the landlord (e.g. a fixed fee, a percentage of the gross sale price, etc.) Note: If the form of compensation is a fixed fee, the contract shall state the amount; and
4. For the purpose of determining the net sale proceeds due to the tenant, the method and order by which the gross proceeds will be applied to pay off liens, taxes, actual costs of sale, landlord compensation and other closing costs must be set forth.
 5. Within 10 days after a sale, the landlord is to pay the tenant their share of the sale proceeds and provide them with a written accounting for the sale proceeds.
 6. The landlord may not charge a commission or fee, however designated, or otherwise retain a portion of the sale proceeds unless the landlord has acted as a representative for the seller pursuant to a written consignment contract.

Miscellaneous. HB 3016 also made several changes to ORS 90.680 relating to the tenant’s right to sell their home on site. The pre-2015 law already prohibited landlords from denying tenants the right to place “for sale” signs on or in the home, and prescribed that landlords rules regarding size, placement and character of the signage must be “reasonable”.

However, the bill added the following requirements:

³ Escrow is a valuable resource here, as it will provide professional third party accounting of the funds, and make sure title is transferred, liens are paid, and the transaction is properly documented.

1. If the landlord advertises a home for sale in the community, the tenants are permitted to post their signage in a similar manner and location.
2. Landlords may not knowingly make false statements to prospective purchasers about the quality of a tenant's home.⁴
3. Note that landlords are permitted to sell homes to prospective purchasers on more favorable prices and terms than those offered by tenants.

ORS 90.710 provides that any person aggrieved by a violation of 90.680 has a cause of action against the violator for any damages sustained as a result of the violation or \$200, whichever is greater. If a person violates ORS 90.680 three or more times within a 24-month period, a person aggrieved thereby has a cause of action against the violator for any damages sustained as a result of the third or subsequent violation or \$500, whichever is greater.

Note, however, that the statute of limitations for all violations of Oregon's residential landlord-tenant act, is only one year. Accordingly, similar to violations under the Unlawful Trade Practices Act, time to take action is critical.

Plugging the Holes. It is important to note that the conduct reported in the news article occurred well before ORS 90.680 was beefed up in 2016. Based solely upon my reading, had the acts complained of occurred today, they would have constituted potential violations of that statute. For example, the following holes are plugged:

1. A written consignment agreement is now required, outlining the duties of the consignor, and rights of the seller, including such things as the form of compensation for the consignor.
2. Now the consignor must be licensed, and would become subject to ORS 446.661 to 446.756, and the administrative rules of the Oregon Department of Consumer and Business Services⁵; that does not appear to have been the case with the on-site manager/regional manager named in the article. Plus, having a licensee gives the DCBS further power to sanction.⁶

⁴ In other words, landlords are not to bad-mouth a tenant's home in an effort to steer prospective purchasers to their inventory.

⁵ <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=2136>

⁶ ORS 446.741 (Suspension, revocation or cancellation of license). Sections (l)(i), (j), and (k) contain sanctions for licensees who engage in the conduct alleged to have occurred, where a person engages in the following:

(i) Employs a device, scheme or artifice to defraud or engage in an act, practice or course of business that operates or would operate as a fraud or deceit.

3. A written accounting of the proceeds must now be provided, thus avoiding what was alleged in the article, which claimed that the homes were sold for much higher prices than reported to the owners, with the seller retaining undisclosed proceeds.

However, as is often the case, regardless of how well it is written, the law cannot always prevent abuses, such as a licensed consignor, within the 180-day period, intentionally delaying a sale in order to encourage the tenant to drop the price and eventually sell to the manager or related party. However, until it appears that ORS 90.680, in its present form, is actually being abused, I would avoid the temptation of fixing something legislatively that has not yet posed a problem.⁷

The take-away here is that community residents must be vigilant not only for their own protection, but their neighbors, as well.

Of course, the above laws relate to private rights of action; the State of Oregon itself has enforcement powers that include actions under the Unlawful Trade Practices Act. The Oregon Department of Justice administers this law.

Next, what came to mind in reading the article was the law of “*respondeat superior*”. This is a fancy law school term imposing liability on companies for the conduct of their employees. If an employee injures someone either negligently or intentionally, the employer has, in most cases, liability. Why? Because of the public policy that companies and employers in the business of providing goods and services, have the ability to insure against such misconduct. It is simply a “cost of doing business” to the employer, who can recoup the expense in the cost of goods and services.

In the article, it appeared that the Chicago company attempted to distance itself from its regional manager whose conduct was allegedly the subject of resident complaints. Ostensibly, the company said this person – who was no longer affiliated with it – was an “independent contractor”. The inference was that since the regional manager was an independent contractor, and not an employee,

(j) Knowingly makes an untrue statement of a material fact or omits from a statement a material fact that would make the statement not misleading in light of the circumstances under which the dealer makes the statement.

(k) Makes or files or causes to be made or filed with the director a statement, report or document that the dealer knows is false in a material respect or matter.

⁷ And given the plethora of other laws regarding elder abuse and unlawful trade practices, it is likely that existing consumer laws would also apply.

respondeat superior didn't apply – in other words, the company was not responsible (read: “liable”) for the conduct of the person(s) that allegedly caused harm.

For this company, as most companies, the “independent contractor” safe harbor, doesn't exist. It's a bit surprising that a large national company allegedly said this, since the argument has little merit, and is easily disproven.

It is noteworthy that the type of conduct alleged in the article is not confined to manufactured housing communities. It is endemic to all situations in which seniors live and work; there will always be those whose moral compass falls short of true north.

However, as noted above, protections do exist. Although, several of the persons interviewed for the article expressed concern about hiring an attorney, there are legal services, such as Legal Aid, that can provide assistance. There are also, law firms specializing in elder care matters. There are firms that set low rates, and/or, will secure attorney fees from the other side.

In the case covered by the Register-Guard, I cannot help but believe there are a bevy of private firms, as well as Legal Aid, and the Oregon Department of Justice, who are available and ready to help.

And to the resident who did not want the stress of bringing a claim, let me suggest that the more egregious a case is, the quicker it will be settled by the defense attorneys. Their interest is for the matter to get out of the public spotlight, and the only way to make that happen is to settle as quickly as possible. Cases such as these rarely see the inside of a courtroom.

Lastly, as noted above, the take-away is for everyone who learns of a senior being taken advantage of, to provide compassionate assistance and direction to available legal resources, so the victim knows there are others out there who can and will help. In the case reported by the Register-Guard, there were already plenty of laws in place – and even more today, including a beefed-up version of ORS 90.680. We just need to do a better job in getting the word out.