

JOINT SENATE/HOUSE INTERIM COMMITTEE ON JUDICIARY

May 22, 2018

Comments regarding the hearing topic, Concerns and Practices Involving the sale of Manufactured Homes

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Background

1. The issue of a resident homeowner selling a manufactured home (“MH”) in a park is complicated.

a. MHs in parks can range in price/value from \$5,000 to more than \$100,000.

b. Residents have equity in their MHs and hope to recover that equity if and when they sell their MH, just as stick-built homeowners do.

c. A MH is worth a great deal more if the purchaser can keep the MH in the park (called an in-place sale) and become a tenant. It is very expensive to move a MH, costing tens of thousands of dollars, there are few vacant spaces to move a MH to in another park, and many older MHs are not structurally sound for moving.

d. Park owners – landlords – have a right, and a responsibility, to screen prospective purchasers/tenants before approving them as tenants. That screening typically includes the capacity to pay the space rent and the likelihood that the prospective purchaser will comply with park rules.

e. Park owners often sell MHs in their parks, either MHs that they own or on behalf of others, such as tenants. Landlords say that their primary source of income is from space rents, not sales of MHs, so they are eager to get new tenants into vacant MHs or spaces.

f. Together these factors mean that park landlords and tenants may be in competition in selling MHs in a park. This competition can lead to bad conduct or suspicion of bad conduct.

2. Oregon law, in ORS 90.680, a part of the Oregon Residential Landlord and Tenant Act, has long provided some guidance regarding this competition, and the rights of a tenant and of a landlord regarding sales and purchasers. See the next section.

3. In 2014 I assisted Rep. Nancy Nathanson in meeting with residents of Falcon Wood Village in Eugene, to discuss concerns about alleged bad conduct by the manager of the park regarding MH sales. I took those concerns to the Manufactured Housing Landlord/Tenant Coalition, where the tenant and landlord representatives there negotiated some statutory changes which became part of the coalition's 2015 bill, HB 3016, sponsored by Rep. Nathanson. That bill passed, and went into effect on January 1, 2016.

4. There have been new and recent allegations of bad conduct regarding MH sales at Falcon Wood Village between 2010 and 2013. I know nothing more about the facts than what's included in the March 18 Eugene Register-Guard story and in the emails and letters of Falcon Wood Village resident James Houston. I would characterize those allegations as consisting of the following bad conduct:

a. That the park manager agreed to sell MHs for several tenants who were under economic pressure to sell the MH and, in doing so, the manager misrepresented the value of the MH to the tenant, failed to make a good faith effort to find a buyer during the period of the sales agreement after which the MH was given to the manager or the manager bought the MH on the cheap, and the manager then quickly found a buyer at a much greater price, paying the tenant a small amount and keeping most of the sale proceeds.

b. That the manager unfairly restricted sales by real estate agents on behalf of tenants, including by applying stricter admission criteria for purchasers or by delaying approval of purchasers in those situations.

c. That the manager concealed the transactions.

d. That the manager committed elder abuse.

Here's what Oregon law provided before the adoption of HB 3016, in ORS 90.680:

1. A park landlord may not prevent a tenant from selling a MH in place or require a selling tenant to remove the MH because of the sale.
2. A landlord may not charge a tenant a fee for the sale of a MH unless the landlord has acted as an agent for the tenant pursuant to a written contract.
3. A landlord may not prohibit tenants from placing "for sale" signs on or in the MH. Any landlord rules regarding the size, placement, and character of such signs must be reasonable.
4. If a prospective purchaser wishes to leave the MH on the space and become a tenant, the selling tenant must give the landlord ten days' written notice, the purchaser must submit a completed and accurate application subject to the landlord's approval prior to moving in, and the purchaser must pay all back amounts owned by the selling tenant.
5. The landlord has a certain period to accept or reject the purchaser's application. The landlord may not reject a purchaser unreasonably.
6. A landlord may not reject a purchaser or require that a purchaser remove a MH because of the MH's age, size, or style.
7. A landlord who violates ORS 90.680 may be sued for actual damages or \$200, whichever is greater. ORS 90.710.

Here's what HB 3016 added to Oregon law:

1. A landlord may not require a tenant to sell the tenant's MH only through the landlord.
2. A landlord may not apply screening criteria that are substantially different for a tenant's purchaser than the landlord applies to a purchaser from the landlord. The same is true if the park allows subletting.
3. A landlord may not knowingly make false statements about the quality of a tenant's MH to a purchaser.

4. If the landlord sells MHs within the park, a selling tenant may advertise the sale of the tenant's MH by posting signs in a similar manner and location.

5. A landlord may only sell a MH for a tenant if the landlord and the tenant enter a written consignment agreement that specifies at a minimum:

a. The duration of the contract, which cannot exceed 180 days without a written extension;

b. The size of the MH and the make, model, year, VIN, and license plate number, if known;

c. The offering price;

d. Whether lender financing is permitted;

e. Whether escrow is required;

f. All liens, taxes, and other charges that must be paid by the purchaser;

g. The method that the landlord will use to market the MH, such as signs posted in the park, internet ads, and/or newspaper ads;

h. The form and amount of compensation to the landlord, such as a fixed fee (and the amount) or a percentage of the sale; and

i. The manner of applying the sale proceeds to liens, costs, landlord compensation, and other closing costs.

6. A landlord must pay the tenant the tenant's share of any sale proceeds and provide a written accounting within ten days of a sale.

7. A landlord may only sell a MH for a tenant if the landlord is licensed to sell MHs with DCBS under ORS 446.661 to 446.756 (which include penalties for fraudulent conduct).

8. The penalty for a violation of ORS 90.680 is increased from a minimum of \$200 to a minimum of \$500 if the landlord violates the law three or more times within a 24 month period.