



www.mhco.org

Manufactured Housing Communities of Oregon

PO Box 12709, Salem, OR 97309

(503) 391-4496

WRITTEN TESTIMONY OF PHILLIP C. QUERIN

**LEGAL COUNSEL FOR MANUFACTURED HOUSING COMMUNITIES OF OREGON
IN OPPOSITION TO HB 4085 (2018)**

Judges already have statutory guidelines when it comes to awarding attorney fees.

ORS 20.075 provides that as to whether to award fees, the court should consider such factors as:

- The conduct of the parties giving rise to the litigation; whether it was reckless, willful, malicious, in bad faith, or illegal;
- The objective reasonableness of the claims and defenses being asserted by the parties.
- Deterrence;
- Objective reasonableness of the parties and attorneys during the proceedings;
- And other appropriate factors the court may consider under the circumstances.

As to the amount of the fees, the court may consider, among other factors:

- Novelty and difficulty of issues involved;
- Time and labor required;
- Customary fees for similar legal services;
- Experience, reputation of the attorney.

In those cases in which a party asserts a claim, counterclaim or defense where there was “no objectively reasonable basis”, judges already have a right to sanction a party for doing so. See, ORS 20.105.

My opposition to HB 4085 is that it gives no latitude to the courts on an issue, i.e. attorney fees, that has historically always been in the court's discretion. It must be remembered that the judge is the one person who has viewed the entire proceeding as a lawyer, and can evaluate the *bona fides* of the parties and their attorneys. This perspective is often reflected in the decision to award – or not to award – attorney fees.

Judges are normally reluctant to ever say a claim or defense had no objectively reasonable basis. The practical effect of HB 4085 is that there would little disincentive for tenant attorneys to turn down even the most tenuous of tenant claims or reject even the most absurd of defenses; in other words, this House Bill would have the effect of opening the door to further litigation - rather than having a prophylactic effect on litigation, which is what the current text of ORS 90.255 now provides.

The decision to award, or not to award, attorney fees has, in my opinion, been the “great equalizer” in tactical decisions by counsel for landlords and tenants, when deciding whether a case should be pursued or not. HB 4085 provides an open invitation to bring tenant claims and defenses under the Landlord-Tenant Act with little or no risk. ORS 90.255, as it currently reads, leaves the issue of attorney fees in the hands of those in the best position to evaluate the parties, their attorneys, and their claims. Changing it to tilt one way or the other is a bad idea.