

MEMO

To: House Human Services and Housing Committee

February 5, 2014

From: John VanLandingham, Lane County Legal Aid & Advocacy Center

RE: Additional Information about HB 4038-3

1. Section 1 (2) (a) requires that the park owner give notice of interest in selling the park to “**all tenants** of the park.” Concerns have been raised that this may be a trap for a landlord who, for example, might not be able to find a tenant to give the notice.

Response: That should not be a concern. Under Oregon residential landlord/tenant law, a landlord’s duty is to deliver notice, not to prove that the tenant received the notice. In other words, actual receipt of a notice by a tenant is not required. ORS 90.155 allows a landlord to deliver notice in person, by first class mail (e.g., to the tenant’s manufactured home in the park), or by what’s called nail and mail, mailing a copy and attaching another copy to the front door of the manufactured home. It doesn’t matter whether the tenant is in Tucson and didn’t get the mailed or nailed/mailed notice. In addition, “tenant” has a specific meaning under Oregon residential landlord/tenant law, and only covers people who own the MH and live in it in the park; it doesn’t include absentee owners. Also, experience indicates that owners do not have trouble finding tenants to give them rent increase notices. Finally, the November 19 compromise proposal included a safe harbor provision, exempting an owner from minor notice errors. That provision is in Section 3 (3) of the bill.

2. Section 1 (1) requires that an owner give notice of the owner’s interest in selling the park before the owner **markets the park for sale** or when the owner receives an offer that the owner intends to consider. Concerns have been raised that this language is vague and undefined and may be a trap for a landlord who fails to give notice.

Response: It is true that these terms are undefined, although I think that all of us understand what it means to “market” a piece of property for sale, and whether one is or is not marketing something. But the main point here is that these decisions – whether the owner is interested in selling the park, or markets it, or intends to consider an offer – are all subjective, and entirely up to the owner’s discretion. He or she alone can and will decide whether there is an offer worth considering or whether he or she is ready to sell. Only once the owner decides that he or she wishes to sell does the owner have to give the notice. If the owner never makes that entirely discretionary decision, no notice is required. Put another, more specific way – see Section 3 (2) of the bill – the owner cannot sell the park without complying with these provisions, including giving the notice first. There would be no liability for noncompliance here unless or until an owner sells without either giving the notice or filing the affidavit provided in Section 5 when the sale or transfer is exempt. Finally, note that one of the guiding concepts behind the November 19 compromise proposal was to simplify these provisions, not over-regulate this transaction, and to follow private market practices. HB 3007 (2013), the proposal which generated significant opposition from owners and which led to the creation of the Interim Work Group, did define terms such as these – at the cost of a much longer and more complicated bill.

3. Explain the exemption in Section 4 (1) (h) for 1031 exchanges.

Response: The purpose here is to exempt the owner from having to give notice to the tenants and comply with the other provisions of this bill (except filing the affidavit provided in Section 5, asserting the exemption) when the owner is considering an offer from a buyer who has sold other real property and needs to buy like property – in this case, the owner’s manufactured home park – within a short period in order to take advantage of the capital gains tax avoidance provided by section 1031 of the federal Internal Revenue Code. Such a buyer has only a short period of time to buy another piece of property. One of the compromises in the bill is to exempt such offers from the notice requirements, since any delay could cause that buyer to look elsewhere. This exemption does not apply to the owner going forward after the owner sells the park to someone who is not doing a 1031 exchange; in this case, even though the owner may wish to make a 1031

exchange, too, by buying another piece of property after selling the park, the owner controls the timing of the transaction and there is not the same risk of losing a time-pressured buyer.

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