

COMPARISON OF CURRENT LAW WITH HB 4038A

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Current Oregon law (adopted in 1989) already requires manufactured home park landlords/owners to notify park residents prior to a sale to another owner and to negotiate a possible sale to the residents. ORS 90.760, 90.800 to 90.840. Unfortunately, both landlord and tenant advocates recognize that the current law is seriously flawed and doesn't work for either side. HB 4038A fixes those problems.

1. Under **current law**, it is unclear whether and to whom an owner must give notice of the owner's interest in selling the park, or what that notice must say.

- a. ORS 90.760 allows an undefined tenants association to give notice to the owner of its interest in buying the park before the owner considers selling; that notice then obligates the owner to notify the association before selling the park. Apparently, this notice is good forever, even if the tenants die/move or if there is a different owner. No-one keeps track of these notices. And tenants generally do not think about buying their park until there is some indication that the owner wants to sell, so they don't give the advance notice to the owner.
- b. ORS 90.810 appears to require notice from the owner even if the tenants have not previously notified the owner of their interest in purchasing the park.

HB 4038A amends the law to require an owner to give notice to all tenants, without advance registration, or, if there is an active tenant group with which the owner has met during the past 12 months, to that group only, whenever the owner is interested in selling or has received an offer to buy which the owner is considering. And it defines what must be in the notice. And it requires that a copy go to the Oregon Housing & Community Services Department. And it provides a safe harbor for minor errors in giving the notice. Sections 1, 3(3).

2. Under **current law**, owners are required to negotiate in good faith with the tenants and in addition to give the tenants a 14 day right of first refusal to buy the park. ORS 90.820.

a. This duty on the owner to negotiate with the tenants is completely open-ended, with no time limit. There is no clear ending date. And there is nothing which would allow an owner to seek and negotiate with other buyers during the tenant negotiations.

b. Owners strongly dislike the concept of a right of first refusal. On the other hand, tenants think that 14 days isn't enough time.

c. There is no provision regarding what steps the tenants must take in the negotiations or what financial information an owner must share with the tenants in the negotiations and no provision making shared financial information confidential, and no provision providing a remedy to owners if tenants violate a confidentiality duty.

d. This duty would apply to an owner even if the owner has a time-sensitive offer from another buyer.

e. "Good faith" is not the right duty to apply in a commercial real estate transaction.

HB 4038A removes the right of first refusal language, imposes specific timelines (10 days for the tenants to indicate interest in competing to purchase and another 15 days to make an offer), specifies what financial information must be shared and authorizes a confidentiality requirement and provides a remedy including damages if tenants violate the duty to keep the financial information confidential, and replaces "good faith" with "commercially reasonable manner." It allows the owner to seek and negotiate with other buyers during these periods. It addresses tenant responsibilities within each of the two time periods. It explicitly exempts purchase offers from buyers with 1031 tax-exchange time pressures. And it includes specific language about the owner's right to reject the tenant's offer and releasing the owner from further obligations. Sections 2, 3, 4(1)(h), and 10 (amending ORS 90.820 to make it apply only to marinas).