

**A-Engrossed**  
**House Bill 2364**

Ordered by the House April 15  
Including House Amendments dated April 15

Sponsored by Representative FAHEY (Pre-session filed.)

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

*[Before its sale to third party, requires owner of residential dwelling facility to give tenants 20 days to form tenants committee and to give any tenants committee right of first refusal. Makes other procedural amendments to conducting facility sales.]* **Amends requirements and deadlines for sales of manufactured dwelling facilities. Amends statutory damages owed for violations by sellers and requires plaintiffs to share damages with Manufactured Dwelling Parks Account.**

**A BILL FOR AN ACT**

Relating to sales of residential dwelling facilities; amending ORS 90.842, 90.844 and 90.846.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 90.842 is amended to read:

90.842. (1) An owner of a facility shall give written notice of the owner's interest in selling the facility before the owner markets the facility for sale or when the owner receives an offer to purchase that the owner intends to consider, whichever occurs first.

(2) The owner shall give the notice required by subsection (1) of this section to:

(a) All tenants of the facility; or

(b) A tenants committee, if there is an existing committee of tenants formed for purposes including the purchase of the facility and with which the owner has met in the 12-month period immediately before delivery of the notice.

(3) The owner shall also give the notice required by subsection (1) of this section to the Housing and Community Services Department **in the manner prescribed by the department by rule.**

(4) The notice must include the following:

(a) The owner is considering selling the facility.

(b) The tenants, through a tenants committee, have an opportunity to compete to purchase the facility.

(c) In order to compete to purchase the facility, within [10] **15** days after delivery of the notice, the tenants must form or identify a single tenants committee for the purpose of purchasing the facility and notify the owner in writing of:

(A) The tenants' interest in competing to purchase the facility; and

(B) The name and contact information of the representative of the tenants committee with whom the owner may communicate about the purchase.

(d) The representative of the tenants committee may request financial information described in ORS 90.844 (2) from the owner within the [10-day] **15-day** period.

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (e) Information about purchasing a facility is available from the Housing and Community Ser-  
2 vices Department.

3 **SECTION 2.** ORS 90.844 is amended to read:

4 90.844. (1) Within [10] **15** days after delivery of the notice described in ORS 90.842, if the tenants  
5 choose to compete to purchase the facility in which the tenants reside, the tenants must notify the  
6 owner in writing of:

7 (a) The tenants' interest in competing to purchase the facility;

8 (b) The formation or identification of a single tenants committee formed for the purpose of pur-  
9 chasing the facility; and

10 (c) The name and contact information of the representative of the tenants committee with whom  
11 the owner may communicate about the purchase.

12 (2) During the [10-day] **15-day** period, in order to perform a due diligence evaluation of the op-  
13 portunity to compete to purchase the facility, the representative of the tenants committee may make  
14 a written request for the kind of financial information that a seller of a facility would customarily  
15 provide to a prospective purchaser.

16 (3) Of the financial information described in subsection (2) of this section, the owner shall pro-  
17 vide the following information within [seven] **14** days after delivery of the request by the tenants  
18 committee for the information:

19 (a) The asking price, if any, for the facility;

20 (b) The total income collected from the facility and related profit centers, including storage and  
21 laundry, in the [12-month period immediately] **calendar year** before delivery of the notice required  
22 by ORS 90.842;

23 **(c) The total operating expenses for the facility paid by the owner or landlord in the**  
24 **calendar year before delivery of the notice required by ORS 90.842;**

25 [(c)] **(d)** The cost of all utilities for the facility that were paid by the owner in the [12-month  
26 period immediately] **calendar year** before delivery of the notice required by ORS 90.842;

27 [(d)] **(e)** The annual cost of all insurance policies for the facility that were paid by the owner,  
28 as shown by the most recent premium;

29 [(e)] **(f)** The number of homes in the facility owned by the owner; and

30 [(f)] **(g)** The number of vacant spaces and homes in the facility.

31 (4) The owner may:

32 (a) Designate all or part of the financial information provided pursuant to this section as confi-  
33 dential.

34 (b) If the owner designates financial information as confidential, establish, in cooperation with  
35 the representative of the tenants committee, a list of persons with whom the tenants may share the  
36 information, including any of the following persons that are either seeking to purchase the facility  
37 on behalf of the tenants committee or assisting the tenants committee in evaluating or purchasing  
38 the facility:

39 (A) A nonprofit organization or a housing authority.

40 (B) An attorney or other licensed professional or adviser.

41 (C) A financial institution.

42 (c) Require that persons authorized to receive the confidential information:

43 (A) Sign a confidentiality agreement before receiving the information;

44 (B) Refrain from copying any of the information; and

45 (C) Return the information to the owner when the negotiations to purchase the facility are

1 completed or terminated.

2 (5) Within [15] **45** days after delivery of the financial information described in subsection (3) of  
3 this section, or within [15] **45** days after the end of the [10-day] **15-day** period described in subsection  
4 (1) of this section when the representative of the tenants committee does not request financial in-  
5 formation under subsection (2) of this section, if the tenants choose to continue competing to pur-  
6 chase the facility, the tenants committee must:

7 (a) Form a corporate entity under ORS chapter 60, 62 or 65 that is legally capable of purchasing  
8 real property or associate with a nonprofit corporation or housing authority that is legally capable  
9 of purchasing real property or that is advising the tenants about purchasing the facility in which  
10 the tenants reside.

11 (b) Submit to the owner a written offer to purchase the facility, in the form of a proposed pur-  
12 chase and sale agreement, and either a copy of the articles of incorporation of the corporate entity  
13 or other evidence of the legal capacity of the formed or associated corporate entity to purchase real  
14 property.

15 (6)(a) The owner may accept the offer to purchase in the tenants committee's purchase and sale  
16 agreement, reject the offer or submit a counteroffer.

17 (b) If the parties reach agreement on the purchase, the purchase and sale agreement must  
18 specify the price, due diligence duties, schedules, timelines, conditions and any extensions.

19 (c) If the tenants do not act as required within the time periods described in this section and  
20 ORS 90.842, if the tenants violate the confidentiality agreement described in this section or if the  
21 parties do not reach agreement on a purchase, the owner is not obligated to take additional action  
22 under ORS 90.842 to 90.850.

23 **SECTION 3.** ORS 90.846 is amended to read:

24 90.846. (1) During the process described in ORS 90.842 to 90.850, the parties shall act in a  
25 commercially reasonable manner, **which includes a duty of the owner of the facility to consider**  
26 **in good faith any offer from the tenants or an entity formed by or associated with the ten-**  
27 **ants and to negotiate with the tenants or the entity in good faith.**

28 (2) Except as provided in ORS 90.848, before selling a facility to an entity that is not formed  
29 by or associated with the tenants, the owner of the facility must give the notice required by ORS  
30 90.842 and comply with the requirements of ORS 90.844.

31 (3) A minor error in providing the notice required by ORS 90.842 or in providing the financial  
32 information required by ORS 90.844 does not prevent the owner from selling the facility to an entity  
33 that is not formed by or associated with the tenants and does not cause the owner to be liable to  
34 the tenants for damages or a penalty.

35 (4) During the process described in ORS 90.842 to 90.850, the owner may seek, or negotiate with,  
36 potential purchasers other than the tenants or an entity formed by or associated with the tenants.

37 (5) If the owner does not comply with requirements of this section and ORS 90.842 and 90.844,  
38 in a substantial way that prevents the tenants from competing to purchase the facility, the tenants  
39 may:

40 (a) Obtain injunctive relief to prevent a sale or transfer to an entity that is not formed by or  
41 associated with the tenants when the owner has not caused an affidavit to be recorded before the  
42 sale or transfer pursuant to ORS 90.850[.]; **or**

43 (b) Recover [*actual damages or twice the rent from the owner for each tenant, whichever is*  
44 *greater*] **10 percent of the sale price of the facility.**

45 **(6) Upon an award of damages under subsection (5)(b) of this section, the Department**

1 **of Justice becomes a judgment creditor as to 50 percent of the award and the prevailing**  
2 **party becomes a judgment creditor for the remaining 50 percent of the award. Any recovery**  
3 **of the Department of Justice's share of the award shall be deposited into the Manufactured**  
4 **Dwelling Parks Account under ORS 456.579, after deducting the Department of Justice's**  
5 **costs of collection.**

6 **(7) Within seven days following a judgment award under subsection (5)(b) of this section,**  
7 **the prevailing party shall provide written notice of the award to the Department of Justice.**

8 ~~[(6)]~~ **(8)** If a tenant misuses or discloses, in a substantial way, confidential information in vio-  
9 lation of a confidentiality agreement described in ORS 90.844, the owner may recover actual dam-  
10 ages from the tenant.

11 ~~[(7)]~~ **(9)** The Housing and Community Services Department shall prepare and make available  
12 information for tenants about purchasing a facility.

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