

Enrolled
House Bill 2364

Sponsored by Representative FAHEY; Representatives CAMPOS, GRAYBER, HOLVEY, KOTEK, MARSH, NATHANSON, SOLLMAN, WILLIAMS, Senators GOLDEN, MANNING JR (Presession filed.)

CHAPTER

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.

(e) Information about purchasing a facility is available from the Housing and Community Services Department.

SECTION 2. ORS 90.844 is amended to read:

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

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

(b) The formation or identification of a single tenants committee formed for the purpose of purchasing the facility; and

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

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

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

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

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

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

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

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

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

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

(4) The owner may:

(a) Designate all or part of the financial information provided pursuant to this section as confidential.

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

(A) A nonprofit organization or a housing authority.

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

(C) A financial institution.

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

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

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

(C) Return the information to the owner when the negotiations to purchase the facility are completed or terminated.

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

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

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

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

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

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

SECTION 3. ORS 90.846 is amended to read:

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

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

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

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

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

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

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

(6) Upon an award of damages under subsection (5)(b) of this section, the Department of Justice becomes a judgment creditor as to 50 percent of the award and the prevailing party becomes a judgment creditor for the remaining 50 percent of the award. Any recovery of the Department of Justice's share of the award shall be deposited into the Manufactured Dwelling Parks Account under ORS 456.579, after deducting the Department of Justice's costs of collection.

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

[(6)] **(8)** If a tenant misuses or discloses, in a substantial way, confidential information in violation of a confidentiality agreement described in ORS 90.844, the owner may recover actual damages from the tenant.

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

Passed by House April 26, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 3, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State