

House Bill 2364

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 **as introduced**.

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.

A BILL FOR AN ACT

1
2 Relating to sales of residential dwelling facilities; amending ORS 90.842, 90.844, 90.846, 90.848,
3 90.849, and 90.850.

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

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

6 90.842. (1) An owner of a facility shall give written notice of the owner's interest in selling the
7 facility before the owner markets the facility for sale or when the owner receives an offer to pur-
8 chase that the owner intends to consider, whichever occurs first.

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

10 (a) All tenants of the facility; *[or]*

11 (b) A tenants committee, if there is an existing committee of tenants formed for purposes in-
12 cluding the purchase of the facility and with which the owner has *[met in the]* **had contact with**
13 **in the previous** 12-month period *[immediately before delivery of the notice.];*

14 **(c) An entity formed or associated with by the tenants committee under ORS 90.844 (5)**
15 **with which the owner has had contact with in the previous 12-month period; and**

16 *[(3)]* **(d)** *[The owner shall also give the notice required by subsection (1) of this section to]* The
17 Housing and Community Services Department.

18 *[(4)]* **(3)** The notice must **state that** *[include the following]:*

19 (a) The owner is considering selling the facility.

20 (b) The tenants, through a tenants committee, *[have an opportunity to compete to]* **may** purchase
21 the facility.

22 (c) *[In order to compete]* To purchase the facility, within *[10]* **20** days after delivery of the notice,
23 the tenants must form or identify a single tenants committee for the purpose of purchasing the fa-
24 cility and *[notify the owner in writing of:]*

25 *[(A) The tenants' interest in competing to purchase the facility; and]*

26 *[(B) The name and contact information of the representative of the tenants committee with whom*
27 *the owner may communicate about the purchase]* **provide notice to the owner under ORS 90.844**
28 **(1).**

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

31 (e) Information **for tenants** about purchasing a facility is available from the Housing and

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 Community Services Department **pursuant to ORS 90.846.**

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

3 90.844. (1) Within [10] **20** days after delivery of the notice described in ORS 90.842, if the tenants
4 [choose to compete] **intend** to purchase the facility in which the tenants reside, the tenants must
5 notify the owner in writing of:

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

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

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

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

15 [(3)] **(2) Within 10 days after delivery of the notice under subsection (1) of this section,**
16 **the owner shall deliver to the tenants committee:** [Of the financial information described in sub-
17 section (2) of this section, the owner shall provide the following information within seven days after
18 delivery of the request by the tenants 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 before delivery of the notice required by ORS 90.842;

22 (c) The cost of all utilities for the facility that were paid by the owner in the 12-month period
23 immediately before delivery of the notice required by ORS 90.842;

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

26 (e) The number of homes in the facility owned by the owner; and

27 (f) The number of vacant spaces and homes in the facility.

28 [(4)] **(3)** The owner may:

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

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

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

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

38 (C) A financial institution.

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

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

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

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

44 **(4) If an owner has received timely notice from a tenants committee under subsection**
45 **(1) of this section, the owner may not make or accept a purchase offer for the facility unless**

1 **the owner first makes a binding offer in writing to sell the facility to the tenants committee**
 2 **at an equal or lower price and on substantially similar terms and:**

3 **(a) The tenants committee rejects the offer; or**

4 **(b) Sixty days have passed and the tenants committee has not accepted the offer.**

5 (5) *[Within 15 days after delivery of the financial information described in subsection (3) of this*
 6 *section, or within 15 days after the end of the 10-day period described in subsection (1) of this section*
 7 *when the representative of the tenants committee does not request financial information under sub-*
 8 *section (2) of this section, if the tenants choose to continue competing to purchase the facility,]* **Before**
 9 **accepting an offer made under subsection (4) of this section or making an offer,** the tenants
 10 committee must[.]

11 *[(a) Form a corporate]* **form an** entity under ORS chapter 60, 62, **63** or 65 that is legally capable
 12 of purchasing real property, or associate with a nonprofit corporation or housing authority that is
 13 legally capable of purchasing real property or that is advising the tenants about purchasing the fa-
 14 cility in which the tenants reside,[.]

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

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

21 *[(b)]* **(6)** If the *[parties]* **owner and the tenants committee** reach agreement on the purchase,
 22 the purchase and sale agreement must specify the price, due diligence duties, schedules, timelines,
 23 conditions and any extensions.

24 *[(c) If the tenants do not act as required within the time periods described in this section and ORS*
 25 *90.842, if the tenants violate the confidentiality agreement described in this section or if the parties do*
 26 *not reach agreement on a purchase, the owner is not obligated to take additional action under ORS*
 27 *90.842 to 90.850.]*

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

29 90.846. (1) During the process described in ORS 90.842 to 90.850, the parties shall act in a
 30 commercially reasonable manner.

31 (2) Except as provided in ORS 90.848, before selling a facility to an entity that is not formed
 32 by or associated with the tenants, the owner of the facility must give the notice required by ORS
 33 90.842 and comply with the requirements of ORS 90.844.

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

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

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

43 (a) Obtain injunctive relief to prevent **or set aside** a sale or transfer *[to an entity that is not*
 44 *formed by or associated with the tenants when the owner has not caused an affidavit to be recorded]*
 45 **unless the owner has recorded an affidavit under ORS 90.850** before the sale or transfer *[pur-*

1 *suant to ORS 90.850].*

2 (b) Recover actual damages or twice the rent from the owner for each tenant, whichever is
3 greater.

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

7 (7) The Housing and Community Services Department shall prepare and make available infor-
8 mation for tenants about purchasing a facility.

9 **SECTION 4.** ORS 90.848 is amended to read:

10 90.848. (1) With regard to a sale or transfer of a facility, ORS 90.842, 90.844 and 90.846 do not
11 apply to:

12 (a) Any sale or transfer to an individual who would be included within the table of descent and
13 distribution if the owner of the facility were to die intestate.

14 (b) Any transfer by gift, devise or operation of law.

15 (c) Any sale or transfer by a corporation to an affiliate.

16 (d) Any sale or transfer by a partnership to any of its partners.

17 (e) Any sale or transfer of an interest in a limited liability company to any of the limited li-
18 ability company's members.

19 (f) Any conveyance of an interest in a facility incidental to the financing of the facility.

20 (g) Any conveyance resulting from the foreclosure of a mortgage, deed of trust or other instru-
21 ment encumbering a facility or any deed given in lieu of a foreclosure.

22 (h) Any sale or transfer between or among joint tenants or tenants in common owning a facility.

23 (i) Any sale or transfer in which the facility satisfies the purchaser's requirement to make a
24 like-kind exchange under section 1031 of the Internal Revenue Code.

25 (j) Any purchase of a facility by a governmental entity under the entity's powers of eminent
26 domain.

27 (k) Any transfer to a charitable trust.

28 **(L) Any sale or transfer from an individual to a partnership or entity in which the more**
29 **than 10 percent of the equity is owned by the individual.**

30 **(m) The sale of a facility if:**

31 **(A) The tenants or tenants committee does not act timely as required by ORS 90.842 or**
32 **90.844;**

33 **(B) The tenants or tenants committee violates the confidentiality agreement under ORS**
34 **90.844; or**

35 **(C) The tenants or tenants committee withdraws from, terminates or breaches a sales**
36 **agreement entered into under ORS 90.844.**

37 (2) As used in this section, "affiliate" means any shareholder of the selling or transferring cor-
38 poration, any corporation or entity owned or controlled, directly or indirectly, by the selling or
39 transferring corporation or any other corporation or entity owned or controlled, directly or indi-
40 rectly, by any shareholder of the selling or transferring corporation.

41 **SECTION 5.** ORS 90.849 is amended to read:

42 90.849. (1) In addition to providing notice as required by ORS 90.842, upon sale of a facility un-
43 der ORS 90.842 to 90.850 or upon any sale, transfer, exchange or other conveyance of a facility de-
44 scribed in ORS 90.848, the owner shall give notice of the conveyance to the Housing and Community
45 Services Department stating:

- 1 (a) The number of vacant spaces and homes in the facility;
- 2 (b) If applicable, the final sale price of the facility;
- 3 (c) The date the conveyance became final; and
- 4 (d) The name, address and telephone number of the new owner.

5 (2) Upon receipt of a notice under ORS 90.655 (1) or 90.842 [(3)] (2) or subsection (1) of this
6 section, the department shall make available on a website any public information contained in the
7 notice and shall deliver the information to any person who has requested copies in a manner pre-
8 scribed by the department.

9 **SECTION 6.** ORS 90.850 is amended to read:

10 90.850. (1) A facility owner may present for recordation, in the County Clerk Lien Record of the
11 county in which the facility is located, an affidavit in which the owner certifies that:

12 (a) The owner has complied with the requirements of ORS 90.842, 90.844 and 90.846 with refer-
13 ence to an offer **made** by the owner for the sale or transfer of the facility.

14 (b) The owner has complied with the requirements of ORS 90.842, 90.844 and 90.846 with refer-
15 ence to an offer received by the owner for the purchase or transfer of the facility [*or to a counter-*
16 *offer the owner has made or intends to make*].

17 (c) The owner has not entered into a contract for the sale or transfer of the facility to an entity
18 formed by or associated with the tenants.

19 (d) ORS 90.842, 90.844 and 90.846 do not apply to a particular sale or transfer of the facility
20 pursuant to ORS 90.848.

21 **(2) The owner shall mail a copy of the affidavit under subsection (1) of this section to the**
22 **Housing and Community Services Department before or promptly after recording.**

23 [(2)] (3) The following parties have an absolute right to rely on the truth and accuracy of all
24 statements appearing in the affidavit and are not obligated to inquire further as to any matter or
25 fact relating to the owner's compliance with ORS 90.842, 90.844 and 90.846:

26 (a) A party that acquires an interest in a facility.

27 (b) A title insurance company, or an attorney, that prepares, furnishes or examines evidence of
28 title.

29 [(3)] (4) The purpose and intention of this section is to preserve the marketability of title to
30 facilities. Accordingly, the provisions of this section must be liberally construed in order that all
31 persons may rely on the record title to facilities.

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