

Enrolled
House Bill 2216

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CHAPTER

AN ACT

Relating to manufactured dwellings; creating new provisions; and amending ORS 90.100, 90.120, 90.512, 90.514, 90.516, 90.518 and 646.402.

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

SECTION 1. ORS 90.100 is amended to read:

90.100. Subject to additional definitions contained in this chapter that apply to specific sections or parts thereof, and unless the context otherwise requires, in this chapter:

(1) "Accessory building or structure" means any portable, demountable or permanent structure, including but not limited to cabanas, ramadas, storage sheds, garages, awnings, carports, decks, steps, ramps, piers and pilings, that is:

- (a) Owned and used solely by a tenant of a manufactured dwelling or floating home; or
- (b) Provided pursuant to a written rental agreement for the sole use of and maintenance by a tenant of a manufactured dwelling or floating home.

(2) "Action" includes recoupment, counterclaim, setoff, suit in equity and any other proceeding in which rights are determined, including an action for possession.

(3) "Applicant screening charge" means any payment of money required by a landlord of an applicant prior to entering into a rental agreement with that applicant for a residential dwelling unit, the purpose of which is to pay the cost of processing an application for a rental agreement for a residential dwelling unit.

(4) "Building and housing codes" include any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit.

(5) "Conduct" means the commission of an act or the failure to act.

(6) "Dealer" means any person in the business of selling, leasing or distributing new or used manufactured dwellings or floating homes to persons who purchase or lease a manufactured dwelling or floating home for use as a residence.

(7) "Domestic violence" has the meaning given that term in ORS 135.230.

(8) "Drug and alcohol free housing" means a dwelling unit described in ORS 90.243.

(9) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. "Dwelling unit" regarding a person who rents a space for a manufactured dwelling or recreational vehicle or regarding a person who rents moorage space for a floating home as defined in ORS 830.700, but does not rent the home, means the space rented and not the manufactured dwelling, recreational vehicle or floating home itself.

(10) "Essential service" means:

(a) For a tenancy not consisting of rental space for a manufactured dwelling, floating home or recreational vehicle owned by the tenant and not otherwise subject to ORS 90.505 to 90.840:

(A) Heat, plumbing, hot and cold running water, gas, electricity, light fixtures, locks for exterior doors, latches for windows and any cooking appliance or refrigerator supplied or required to be supplied by the landlord; and

(B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.320, the lack or violation of which creates a serious threat to the tenant's health, safety or property or makes the dwelling unit unfit for occupancy.

(b) For a tenancy consisting of rental space for a manufactured dwelling, floating home or recreational vehicle owned by the tenant or that is otherwise subject to ORS 90.505 to 90.840:

(A) Sewage disposal, water supply, electrical supply and, if required by applicable law, any drainage system; and

(B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.730, the lack or violation of which creates a serious threat to the tenant's health, safety or property or makes the rented space unfit for occupancy.

(11) "Facility" means:

(a) A place where four or more manufactured dwellings are located, the primary purpose of which is to rent space or keep space for rent to any person for a fee; or

(b) A moorage of contiguous dwelling units that may be legally transferred as a single unit and are owned by one person where four or more floating homes are secured, the primary purpose of which is to rent space or keep space for rent to any person for a fee.

(12) "Facility purchase association" means a group of three or more tenants who reside in a facility and have organized for the purpose of eventual purchase of the facility.

(13) "Fee" means a nonrefundable payment of money.

(14) "First class mail" does not include certified or registered mail, or any other form of mail that may delay or hinder actual delivery of mail to the recipient.

(15) "Fixed term tenancy" means a tenancy that has a fixed term of existence, continuing to a specific ending date and terminating on that date without requiring further notice to effect the termination.

(16) "Floating home" has the meaning given that term in ORS 830.700. As used in this chapter, "floating home" includes an accessory building or structure.

(17) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(18) "Hotel or motel" means "hotel" as that term is defined in ORS 699.005.

(19) "Informal dispute resolution" means, but is not limited to, consultation between the landlord or landlord's agent and one or more tenants, or mediation utilizing the services of a third party.

(20) "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building or premises of which it is a part. "Landlord" includes a person who is authorized by the owner, lessor or sublessor to manage the premises or to enter into a rental agreement.

(21) "Landlord's agent" means a person who has oral or written authority, either express or implied, to act for or on behalf of a landlord.

(22) "Last month's rent deposit" means a type of security deposit, however designated, the primary function of which is to secure the payment of rent for the last month of the tenancy.

(23) "Manufactured dwelling" means a residential trailer, a mobile home or a manufactured home as those terms are defined in ORS 446.003 (26). "Manufactured dwelling" includes an accessory building or structure. "Manufactured dwelling" does not include a recreational vehicle.

[24] *"Manufactured dwelling park" has the meaning given that term in ORS 446.003.*

[25] (24) "Month-to-month tenancy" means a tenancy that automatically renews and continues for successive monthly periods on the same terms and conditions originally agreed to, or as revised by the parties, until terminated by one or both of the parties.

[26] (25) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

[27] (26) "Owner" includes a mortgagee in possession and means one or more persons, jointly or severally, in whom is vested:

(a) All or part of the legal title to property; or

(b) All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

[28] (27) "Person" includes an individual or organization.

[29] (28) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

[30] (29) "Prepaid rent" means any payment of money to the landlord for a rent obligation not yet due. In addition, "prepaid rent" means rent paid for a period extending beyond a termination date.

[31] (30) "Recreational vehicle" has the meaning given that term in ORS 446.003.

[32] (31) "Rent" means any payment to be made to the landlord under the rental agreement, periodic or otherwise, in exchange for the right of a tenant and any permitted pet to occupy a dwelling unit to the exclusion of others. "Rent" does not include security deposits, fees or utility or service charges as described in ORS 90.315 (4) and 90.510 (8).

[33] (32) "Rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under ORS 90.262 or 90.510 (6) embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises. "Rental agreement" includes a lease. A rental agreement shall be either a week-to-week tenancy, month-to-month tenancy or fixed term tenancy.

[34] (33) "Roomer" means a person occupying a dwelling unit that does not include a toilet and either a bathtub or a shower and a refrigerator, stove and kitchen, all provided by the landlord, and where one or more of these facilities are used in common by occupants in the structure.

[35] (34) "Screening or admission criteria" means a written statement of any factors a landlord considers in deciding whether to accept or reject an applicant and any qualifications required for acceptance. "Screening or admission criteria" includes, but is not limited to, the rental history, character references, public records, criminal records, credit reports, credit references and incomes or resources of the applicant.

[36] (35) "Security deposit" means any refundable payment or deposit of money, however designated, the primary function of which is to secure the performance of a rental agreement or any part of a rental agreement, but does not mean a fee.

[37] (36) "Sexual assault" has the meaning given that term in ORS 147.450.

[38] (37) "Squatter" means a person occupying a dwelling unit who is not so entitled under a rental agreement or who is not authorized by the tenant to occupy that dwelling unit. "Squatter" does not include a tenant who holds over as described in ORS 90.427 (4).

[39] (38) "Stalking" means the behavior described in ORS 163.732.

[40] (39) "Statement of policy" means the summary explanation of information and facility policies to be provided to prospective and existing tenants under ORS 90.510.

[41] (40) "Surrender" means an agreement, express or implied, as described in ORS 90.148 between a landlord and tenant to terminate a rental agreement that gave the tenant the right to occupy a dwelling unit.

[42] (41) "Tenant" means a person, including a roomer, entitled under a rental agreement to occupy a dwelling unit to the exclusion of others, including a dwelling unit owned, operated or controlled by a public housing authority. "Tenant" also includes a minor, as defined and provided for in ORS 109.697. As used in ORS 90.505 to 90.840, "tenant" includes only a person who owns and occupies as a residence a manufactured dwelling or a floating home in a facility and persons residing with that tenant under the terms of the rental agreement.

[43] (42) "Transient lodging" means a room or a suite of rooms.

[(44)] **(43)** “Transient occupancy” means occupancy in transient lodging that has all of the following characteristics:

- (a) Occupancy is charged on a daily basis and is not collected more than six days in advance;
- (b) The lodging operator provides maid and linen service daily or every two days as part of the regularly charged cost of occupancy; and
- (c) The period of occupancy does not exceed 30 days.

[(45)] **(44)** “Vacation occupancy” means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:

- (a) The occupant rents the unit for vacation purposes only, not as a principal residence;
- (b) The occupant has a principal residence other than at the unit; and
- (c) The period of authorized occupancy does not exceed 45 days.

[(46)] **(45)** “Victim” means a person who is the subject of domestic violence, sexual assault or stalking. “Victim” includes a parent or guardian of a minor who is the subject of domestic violence, sexual assault or stalking.

[(47)] **(46)** “Week-to-week tenancy” means a tenancy that has all of the following characteristics:

- (a) Occupancy is charged on a weekly basis and is payable no less frequently than every seven days;
- (b) There is a written rental agreement that defines the landlord’s and the tenant’s rights and responsibilities under this chapter; and
- (c) There are no fees or security deposits, although the landlord may require the payment of an applicant screening charge, as provided in ORS 90.295.

SECTION 2. ORS 90.120 is amended to read:

90.120. (1) The provisions of ORS 87.152 to 87.212, 91.010 to 91.110, 91.130, 91.210 and 91.220 do not apply to the rights and obligations of landlords and tenants governed by this chapter.

(2) Any provisions of this chapter [which] **that** reasonably apply only to the structure that is used as a home, residence or sleeping place [shall] **do** not apply to a manufactured dwelling, recreational vehicle or floating home where the tenant owns the manufactured dwelling, recreational vehicle or floating home but rents the space on which it is located.

(3) The provisions of ORS 90.505 to 90.840 apply only if:

- (a) The tenant owns the manufactured dwelling or floating home;
- (b) The tenant rents the space on which the dwelling or home is located; and
- (c) **Except as provided in subsection (4) of this section,** the space is in a facility.

(4) ORS 90.512, 90.514, 90.516 and 90.518 apply to a converted rental space as defined in ORS 90.512 regardless of whether the converted rental space is in a facility.

[(4)] **(5)** Residential tenancies for recreational vehicles and for manufactured dwellings and floating homes that are not subject to ORS 90.505 to 90.840 shall be subject to ORS 90.100 to 90.459. Tenancies described in this subsection include tenancies for:

- (a) A recreational vehicle, located inside or outside of a facility, if the tenant owns or rents the vehicle;
- (b) A manufactured dwelling or floating home, located inside or outside of a facility, if the tenant rents both the dwelling or home and the space; and
- (c) A manufactured dwelling or floating home, located outside a facility, if the tenant owns the dwelling or home and rents the space.

SECTION 3. ORS 90.512 is amended to read:

90.512. As used in **this section and** ORS 90.514, **90.516** and 90.518:

(1) “Buyer” has the meaning given that term in ORS 72.1030.

(2) “Converted rental space” means a rental lot that is located in a subdivision created as provided under ORS 92.010 to 92.190.

[(2)] **(3)** “Improvements” has the meaning given that term in ORS 646.400.

[(3)] *“Provider” means a contractor licensed under ORS chapter 701 who adds improvements to a manufactured dwelling park.*

(4) “Manufactured dwelling park” means any place where four or more manufactured dwellings are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent or lease space or keep space for rent or lease to any person for a charge or fee paid or to be paid for the rental or lease or use of facilities or to offer space free in connection with securing the trade or patronage of the person.

(5) “Provider” means a contractor, manufactured dwelling dealer or landlord that is licensed under ORS chapter 701 and that contracts with a buyer for improvements to be made to a manufactured dwelling site in a manufactured dwelling park or to a converted rental space.

[4] (6) “Statement of estimated costs” means a written list of the charges, fees, services, goods and accessories that a provider knows or should know are associated with the making of an improvement contracted by the provider and the total estimated cost to the buyer for the improvement.

SECTION 4. ORS 90.514 is amended to read:

90.514. (1) Before a prospective tenant signs a rental agreement for space in a manufactured dwelling park **or for a converted rental space**, the landlord must provide the prospective tenant with a written statement that discloses the improvements that the [park] **landlord** will require under the rental agreement. The written statement must be in the format developed by the Attorney General pursuant to ORS 90.516 and include at least the following:

(a) A notice that the tenant may select **and contract directly with a contractor to be** the provider of an improvement.

(b) Separately stated and identifiable information for each required improvement that specifies:

(A) The dimensions, materials and finish for improvements to be constructed;

(B) The installation charges imposed by the landlord and the installation fees imposed by government agencies;

(C) The system development charges to be paid by the tenant; and

(D) The site preparation requirements and restrictions, including, but not limited to, requirements and restrictions on the use of plants and landscaping.

(c) Identification of the improvements that belong to the tenant and the improvements that must remain with the [*manufactured dwelling park*] **space**.

(2) Except as provided in ORS 41.740, a written statement provided under this section is considered to contain all of the terms relating to improvements that a prospective tenant must make under the rental agreement. There may be no evidence of the terms of the written statement other than the contents of the written statement.

SECTION 5. ORS 90.516 is amended to read:

90.516. The Attorney General, by rule, shall adopt a model written statement for use by manufactured dwelling park **and converted rental space** landlords pursuant to ORS 90.514.

SECTION 6. ORS 90.518 is amended to read:

90.518. [(1) *A provider hired to make improvements shall give the buyer of the provider’s services a statement of estimated costs for the improvements contracted by the provider prior to the date that the manufactured dwelling is delivered to a manufactured dwelling park.*]

(1) A provider shall give the buyer a statement of estimated costs for all improvements to be made under a contract between the buyer and the provider. The provider shall deliver the statement of estimated costs to the buyer before work commences on any of the improvements covered by the contract.

(2) If a provider fails to give a statement of estimated costs or knowingly fails to give a complete statement of estimated costs, a buyer who does not have actual notice of the total cost for an improvement and suffers an ascertainable loss due to the failure by the provider may bring an action to recover the greater of actual damages or \$200.

(3) Except as provided in ORS 41.740, a statement of estimated costs given under this section is considered to contain all of the terms of the [*agreement between the buyer and the provider hired to make improvements*]. There may be no evidence of the terms of the statement of estimated costs other

than the contents of the statement of estimated costs.] contract between the buyer and the provider. The contents of the statement of estimated costs are the only admissible evidence of the terms of the contract between the buyer and the provider.

SECTION 7. ORS 646.402 is amended to read:

646.402. (1) A manufactured dwelling dealer who sells a manufactured dwelling shall use a purchase agreement form that complies with this section and rules adopted in accordance with ORS 646.404.

(2) The purchase agreement shall include the base price and a written itemization that clearly and conspicuously discloses the retail prices of the following, if not included in the base price:

(a) Manufactured dwelling options that are ordered by the buyer.

(b) The amount of any refundable or nonrefundable administrative or processing fees paid to or collected by the dealer and the circumstances under which the fees may be returned to the buyer.

(c) The amount of any earnest money paid and the circumstances under which the earnest money may be returned to the buyer.

(d) Improvements provided by the dealer, or by a third party at the request of the dealer, to the extent known to the dealer at the time of sale. The written itemization of improvements under this paragraph excuses the *[provider making the improvements from compliance with ORS 90.518 (1).]* **dealer from providing the buyer with a separate statement of estimated costs under ORS 90.518 for those itemized improvements.**

(e) All loan fees and credit report fees paid to or collected by the dealer to obtain financing for the buyer's purchase of the manufactured dwelling and the circumstances under which the fees may be returned to the buyer.

(f) Alterations and upgrades to the manufactured dwelling made by the dealer or by a third party at the request of the dealer.

(g) Goods and services provided by the dealer, or by a third party at the request of the dealer, that are not otherwise disclosed pursuant to this section.

(h) Registration and other charges for transferring title to the manufactured dwelling.

(i) The extended warranty contract, if any.

(j) Delivery, installation or site access costs that are not otherwise disclosed pursuant to this section, if any.

(3) The purchase agreement form must be accompanied by a list, provided by the Department of Justice, of governmental consumer protection agencies having jurisdiction over manufactured dwelling issues.

(4) Failure of a manufactured dwelling dealer to use a purchase agreement form that complies with this section and rules adopted in accordance with ORS 646.404 is an unlawful practice under ORS 646.608.

(5) Except as provided in ORS 41.740, a purchase agreement is considered to contain all of the terms of the contract between the buyer and the manufactured dwelling dealer. No evidence of the terms of the contract may be presented other than the contents of the purchase agreement. As used in this subsection, "contract" does not include a retail installment contract or loan agreement entered into as part of a purchase transaction.

SECTION 8. ORS 646.402, as amended by section 81, chapter 655, Oregon Laws 2003, is amended to read:

646.402. (1) A manufactured dwelling dealer who sells a manufactured dwelling shall use a purchase agreement form that complies with this section and rules adopted in accordance with ORS 646.404.

(2) The purchase agreement shall include the base price and a written itemization that clearly and conspicuously discloses the retail prices of the following, if not included in the base price:

(a) Manufactured dwelling options that are ordered by the buyer.

(b) The amount of any refundable or nonrefundable administrative or processing fees paid to or collected by the dealer and the circumstances under which the fees may be returned to the buyer.

(c) The amount of any earnest money paid and the circumstances under which the earnest money may be returned to the buyer.

(d) Improvements provided by the dealer, or by a third party at the request of the dealer, to the extent known to the dealer at the time of sale. The written itemization of improvements under this paragraph excuses the *[provider making the improvements from compliance with ORS 90.518 (1).]* **dealer from providing the buyer with a separate statement of estimated costs under ORS 90.518 for those itemized improvements.**

(e) All loan fees and credit report fees paid to or collected by the dealer to obtain financing for the buyer's purchase of the manufactured dwelling and the circumstances under which the fees may be returned to the buyer.

(f) Alterations and upgrades to the manufactured dwelling made by the dealer or by a third party at the request of the dealer.

(g) Goods and services provided by the dealer, or by a third party at the request of the dealer, that are not otherwise disclosed pursuant to this section.

(h) Fees for the issuance or updating of an ownership document.

(i) The extended warranty contract, if any.

(j) Delivery, installation or site access costs that are not otherwise disclosed pursuant to this section, if any.

(3) The purchase agreement form must be accompanied by a list, provided by the Department of Justice, of governmental consumer protection agencies having jurisdiction over manufactured dwelling issues.

(4) Failure of a manufactured dwelling dealer to use a purchase agreement form that complies with this section and rules adopted in accordance with ORS 646.404 is an unlawful practice under ORS 646.608.

(5) Except as provided in ORS 41.740, a purchase agreement is considered to contain all of the terms of the contract between the buyer and the manufactured dwelling dealer. No evidence of the terms of the contract may be presented other than the contents of the purchase agreement. As used in this subsection, "contract" does not include a retail installment contract or loan agreement entered into as part of a purchase transaction.

SECTION 9. The amendments to ORS 90.100, 90.120, 90.512, 90.514, 90.516 and 90.518 by sections 1 to 6 of this 2005 Act apply to contracts for improvement that are entered into on or after the effective date of this 2005 Act. The amendments to ORS 646.402 by sections 7 and 8 of this 2005 Act apply to purchase agreements entered into on or after the effective date of this 2005 Act.

Passed by House March 1, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate April 27, 2005

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President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State