

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 129

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Bill B. O'Neill

AN ACT

RELATING TO PROPERTY; PROVIDING RESIDENTS ASSOCIATIONS WITH RIGHTS OF FIRST REFUSAL TO PURCHASE MOBILE HOME PARK PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Mobile Home Park Act is enacted to read:

"~~[NEW MATERIAL]~~ RESIDENTS ASSOCIATIONS--RIGHT OF FIRST REFUSAL--RIGHTS AND DUTIES OF RESIDENTS ASSOCIATION--RIGHTS AND DUTIES OF MOBILE HOME PARK OWNER--LEGAL REMEDY.--"

A. As used in this section:

(1) "alternative offer" means an alternative purchase price or alternative special conditions material to the sale of the park property;

(2) "mailed" means sent by certified mail, return receipt requested;

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 (3) "owner" means a mobile home park owner;
2 and

3 (4) "park property" means the portion of a
4 mobile home park that the owner is selling.

5 B. If residents want to exercise their right of
6 first refusal to purchase park property, they must first form a
7 residents association that is incorporated under the laws of
8 New Mexico.

9 C. Except as otherwise provided in this section,
10 upon reaching a decision to sell park property, the owner shall
11 provide notice to the residents association of the owner's
12 intent to sell and the association's right of first refusal to
13 purchase the park property. Except as provided in Subsection R
14 of this section, the park property shall not be sold to another
15 purchaser, at any time, at any price or terms, without first
16 having been offered at the same price or terms to the residents
17 association.

18 D. If a mobile home park does not have a residents
19 association, the owner shall provide notice to each resident of
20 the owner's intent to sell park property and provide the
21 residents thirty days to establish a residents association to
22 exercise the right of first refusal to purchase park property.

23 E. The notice to the residents association or the
24 residents shall state:

25 (1) that the owner has decided to sell park

.179501.1

underscoring material = new
[bracketed material] = delete

1 property;

2 (2) the price and any special conditions
3 material to the sale of park property;

4 (3) other significant and material
5 information, including operating expenses, capital improvements
6 and other relevant costs related to the park property; and

7 (4) that the association has ninety days from
8 the date of the mailing of the notice to respond to the offer.

9 F. The residents association shall respond to the
10 owner in writing to the notice by mail within ninety days. The
11 response must clearly indicate whether the residents
12 association:

13 (1) intends to accept the purchase price and
14 the special conditions material to the sale of park property as
15 described in the notice of the right of first refusal;

16 (2) does not accept the purchase price or the
17 special conditions material to the sale of park property as
18 described in the notice of the right of first refusal, but
19 intends to submit an alternative offer; or

20 (3) has no interest in purchasing park
21 property and does not intend to proceed any further in the
22 transaction.

23 G. If the residents association has not responded
24 within sixty days after receiving notice, it shall be deemed to
25 have notified the owner that the association has no interest in

.179501.1

underscoring material = new
[bracketed material] = delete

1 purchasing park property.

2 H. An alternative offer for the sale of park
3 property from the residents association remains valid for
4 thirty days from the date of the mailing of the alternative
5 offer unless the alternative offer is withdrawn by the
6 association in writing and mailed to the owner. A notice to
7 withdraw an alternative offer shall require approval by the
8 members of the residents association pursuant to its bylaws.

9 I. The owner may propose a counteroffer to the
10 alternative offer made by the residents association for the
11 sale of park property.

12 J. The owner shall not sell park property at or
13 less than the price offered in the residents association's
14 alternative offer during the sixty days from the date the
15 association mailed the alternative offer unless the alternative
16 offer is withdrawn by the association. A notice to withdraw an
17 alternative offer shall require approval by the members of the
18 residents association pursuant to its bylaws.

19 K. The owner may accept an offer that is higher
20 than the original price or the alternative price, if any,
21 offered by the residents association without further obligation
22 to the association, unless there are significant and material
23 changes in terms and conditions. However, the residents
24 association shall be given ten business days to match the
25 higher offer under the following circumstances:

.179501.1

underscoring material = new
[bracketed material] = delete

1 (1) the higher offer is less than forty
2 million dollars (\$40,000,000) and the association's alternative
3 price is within six percent of the offer; or

4 (2) the higher offer is forty million dollars
5 (\$40,000,000) or greater and the association's alternative
6 price is within four and one-half percent of the offer.

7 L. If the residents association has decided to
8 purchase park property, the owner and the association shall
9 negotiate in good faith for the sale of the park property to
10 the association.

11 M. If the residents association gives written
12 notice by mail to the owner within ninety days that the
13 association intends to purchase park property at the owner's
14 specified price, along with any special conditions material to
15 the transaction, or if the owner agrees to sell park property
16 at the alternative offer provided by the association, or at a
17 price negotiated by the owner and the association, the
18 association has an additional thirty days to formalize the
19 agreed price, terms and conditions into a contract of sale.
20 The thirty-day period shall not be used to renegotiate the
21 price, terms or conditions agreed to during the ninety-day
22 period unless mutually agreed to in writing. Failure of the
23 residents association to formalize a contract of sale during
24 the thirty-day period following an agreement of price, terms
25 and conditions terminates the association's right of first

.179501.1

underscoring material = new
[bracketed material] = delete

1 refusal to purchase park property.

2 N. Upon a formalized contract of sale being signed
3 by both parties, the change of ownership of park property shall
4 be completed within ninety days; provided that the completion
5 date may be extended beyond the ninety-day period if both
6 parties agree to an extension. An agreement to extend the
7 completion date shall be in writing and signed by both parties
8 to the transaction.

9 O. The transaction for the sale of park property
10 from the owner to the residents association shall be completed
11 within eighteen months of the receipt by the association of the
12 owner's notice of intent to sell unless both parties agree to
13 an extension. An agreement to extend the completion date shall
14 be in writing and signed by both parties to the transaction.

15 P. If, for any reason except default by the owner,
16 the owner and the residents association do not complete the
17 sale within the ninety-day period or before the expiration of
18 the extension period agreed to in writing and signed by both
19 parties, the right-of-first-refusal obligations of the owner to
20 the association are terminated, and the owner may sell park
21 property to a third party at the price offered in the right of
22 first refusal, at a higher price or at a lower price.

23 Q. A resident or owner who suffers financial injury
24 or damages by reason of any conduct in violation of the
25 provisions of this section may sue in district court. Upon a

.179501.1

underscored material = new
[bracketed material] = delete

1 showing that the provisions of this section have been violated,
2 the court may award damages and order injunctive relief and
3 shall award the cost of the suit, including reasonable attorney
4 fees. Where the court finds that the party charged with
5 violating this section has acted willfully, the court may award
6 treble damages to the party complaining of the violation.

7 R. An owner is not required to give notice of
8 intent to sell or extend a right of first refusal to a
9 residents association under the following circumstances:

10 (1) a bank, mortgage company or other
11 mortgagee has foreclosed on park property and the mortgagee is
12 selling park property at a foreclosure sale or is selling park
13 property after having purchased park property at a foreclosure
14 sale;

15 (2) the sale of park property is to a family
16 member of the owner, or to a trust, the beneficiaries of which
17 are family members of the owner, or the sale is to a family
18 member who is included within the line of intestate succession
19 if the owner dies intestate;

20 (3) the sale is by a partnership to one or
21 more of its partners;

22 (4) the sale is between joint tenants or
23 tenants-in-common;

24 (5) the sale is by gift, devise or operation
25 of law;

.179501.1

underscoring material = new
~~[bracketed material] = delete~~

1 (6) the sale is pursuant to eminent domain;

2 (7) the sale is to a person that holds any
3 direct or indirect ownership interest in park property; or

4 (8) the sale is an exchange of park property
5 for other real property under Section 1031 of the Internal
6 Revenue Code of 1986, as amended, or another provision of the
7 Internal Revenue Code that allows for exchanges or tax-free
8 exchanges, regardless of whether the exchange also involves the
9 payment of cash or other consideration.

10 S. Where the residents association's right of first
11 refusal has expired and a resident with children still
12 attending school has not vacated the park property, if required
13 to vacate park property, the resident shall be permitted to
14 remain in the resident's mobile home space until one week after
15 the end of the school year or, if a resident's child will
16 participate in the child's school graduation ceremony at the
17 end of the school year, one week after the graduation ceremony,
18 whichever is later."