

March 30, 2001



ATTORNEY GENERAL'S RECOMMENDATIONS RELATING TO MANUFACTURED HOUSING

SUBMITTED BY ATTORNEY GENERAL HARDY MYERS

**BASED ON THE WORK OF THE
MANUFACTURED HOUSING TASK FORCE**

March 30, 2001

The process that helped develop the recommendations in this report reminds us of several heartening elements of public life in Oregon.

The impetus for the process began with a series of searching articles by *The Oregonian*. That series illustrated the value that a challenging, probing, and independent free press can have in spurring public and private institutions to reexamine their practices.

Over 150 Oregonians from all walks of life answered my invitation to participate in the work of the Manufactured Housing Task Force. These people, for whose help I am profoundly grateful, gave many hours of their time to the process. Their willingness to serve illustrates that a heart of public service beats strongly among our fellow citizens.

Finally, I know that passions run high on some of the issues that the Task Force discussed. Nevertheless, members of the Task Force did an outstanding job hewing to rules of principled debate.

Several recommendations in this report have broad support among Task Force members and the larger interests many of the members represent. But we did not strive for a false consensus on any of the issues the Task Force considered. The recommendations in this report are mine. They all are informed by the Task Force's hard work even if not all Task Force members support every recommendation.

Sincerely,

HARDY MYERS
Attorney General

Executive Summary

Manufactured homes provide affordable housing for many Oregonians. Many other Oregonians support families on the wages earned in the manufacture and sale of these structures.

Government and private industry must fundamentally change if the promise of affordable housing in a manufactured home is to remain an option. In this report, based on the work of a Task Force of approximately 150 Oregonians who volunteered their time between September 2000 and February 2001, I make recommendations for change in three categories.

Sales Transactions (pages 6 - 12). Problems sometimes arise between buyers of manufactured homes and those who make or sell those homes. Consumers need to have a better understanding of what they are getting for their money. Sellers need to be held accountable for false or misleading statements or omissions. In addition to increasing the resources allocated to enforcement of existing laws and regulations, the government should require the people who sell manufactured homes to be licensed.

Financing of Purchases (pages 13 - 19). Sellers need to provide better information about the nature of the financial obligations that consumers undertake when they finance the purchase of a manufactured home. Some lending practices confuse or mislead consumers, or result in consumers

undertaking unrealistic financial burdens. These practices should be subjected to increased governmental regulation.

Relations Between Tenants and Management/Owners of Parks (pages 20 - 23). Manufactured homes are not “mobile” in any realistic sense. This means that tenants confronted with rent increases or objectionable policies have fewer options than tenants of apartments or “stick-built” homes. One approach to rebalancing this relationship is to make it easier for tenants to purchase the parks in which they live. Another is to increase tenant access to the courts.

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SALES TRANSACTIONS INVOLVING MANUFACTURED HOME PURCHASES

Consumers have many challenging choices to make in the course of purchasing a manufactured home. Many transactions are trouble-free.

But consumer problems do occur. The Sales Transactions Subgroup of the Task Force considered issues relating to manufactured home advertising; representations made by dealers and salespeople regarding the quality of homes and the quality or benefits of services provided; park packages; licensing of and educational standards for dealers and salespeople; disclosure to consumers during the sales transaction; and the roles various state agencies play in regulating the industry and enforcement of law violations.

The Sales Transactions Subgroup was lead by Cheryl Pellegrini, Attorney in Charge of the Financial Fraud/Consumer Protection Section of the Department of Justice (DOJ).

Finding No. 1: Manufactured homes are thought of as real estate by buyers but are regulated by the Driver and Motor Vehicle Services Division (DMV) of the Oregon Department of Transportation (ODOT).

This accurately reflects the perception of many consumers. If a manufactured home is placed on property owned by the consumer, it meets the DMV exemption for “detitling.” If detitled, the home is treated as real property for tax purposes, and transactions involving the sale of the home are regulated by the Real Estate Agency. If a home is placed on rented property, however, it retains its status as a titled vehicle, is treated as personal property for tax purposes, and transactions involving the sale are regulated by DMV (titling and registration).

There are a number of state agencies in addition to DMV that regulate different aspects of the manufactured housing industry. For example, the Building Codes Division of the Department of Consumer and Business Services (DCBS) inspects homes at the factory during the manufacturing process, and either it or a local building official inspects the home again after it is sited. The Construction Contractors Board (CCB) licenses and regulates the contractors who provide park packages. The CCB also licenses dealers. DOJ, through enforcement of the Unlawful Trade Practices Act (UTPA), prosecutes dealers and salespeople who make misrepresentations to consumers in the course of sales transactions. The Real Estate Agency regulates brokers and agents who resell manufactured homes placed on property owned by the homeowner. The Division of Finance and Corporate Securities of DCBS regulates mortgage brokers who provide financing for some types of manufactured home purchases.

Clarifying for consumers the role that each agency plays would greatly benefit consumers and would dispel the perception that the industry operates in a largely unregulated sphere.

RECOMMENDATIONS RELATING TO FINDING NO. 1:

- Title companies should be educated about the distinction between a manufactured home that is exempt from DMV registration requirements versus one that is not.

This could be accomplished by developing a checklist-type summary of the subject areas each regulates, services and remedies offered by each agency to consumers, and the information needed to contact an agency.

Finding No. 2: Unlike real estate salespeople, manufactured homes salespeople are not licensed or regulated by any state agency.

Dealers of manufactured homes are licensed as motor vehicle dealers and, as such, are regulated by ODOT. People who sell real estate are licensed by the Real Estate Agency. But the people who interact most with consumers in the course of a manufactured home transaction – the sales staff employed by a dealer – are not themselves licensed by any state or local agency.

RECOMMENDATIONS RELATING TO FINDING NO. 2:

- Create a Legislative Interim Task Force to develop a proposal for licensing of salespeople, and to consider whether dealers should be licensed and regulated in a different manner than they are currently. The Interim Task Force would be charged with determining how – not whether – the licensing of salespeople was to be accomplished. Issues to be considered by the Interim Task Force would include:
 - (1) Whether the same agency should license both dealers and salespeople in much the same manner as the Real Estate Agency licenses brokers and agents, with expansion of the types of transactions licensees may conduct to include the sale of used homes located in parks in addition to those placed on owned lots.
 - (2) Whether the licensing agency should have authority to set standards of conduct.
 - (3) Whether there should be educational requirements for salespeople, and whether the licensing scheme should include a competency examination covering certain substantive areas such as: financing, construction, homeowner responsibilities, dealer/manufacturer responsibilities, government rules and regulations, park packages, land/home packages, fraud, and tax consequences of home ownership.
 - (4) Whether licensing of salespeople and dealers should be subsumed under the authority of an existing state regulatory agency, such as DMV or the Real Estate Agency.
 - (5) Alternatively, whether licensing should be handled by a self-regulating state licensing board, possibly funded by license fees, which would set standards of practice, minimum qualifications, educational requirements, and which would have administrative authority to discipline handle consumer complaints and discipline.

Finding No. 3: Manufactured home dealers who employ salespeople are licensed by DMV.

The group noted that DMV oversight includes the titling and registration of manufactured homes. Existing law permits DMV to take enforcement action against licensees who seriously endanger public health or safety.

RECOMMENDATIONS RELATING TO FINDING NO. 3:

- See Finding No. 2 and associated recommendations.
- Expand DMV’s authority to require dealers to submit to a background and criminal history check as a condition of licensure.

Finding No. 4: Some buyers/tenants do not understand what they should receive or are paying for in the site improvements known as a “park package.”

As part of the agreement to rent space in a particular manufactured home park, tenants must pay for improvements such as a driveway, carport, skirting, gutters, awnings, deck, shed, building permit fees, and systems development charges. These improvements are commonly known as the “park package.”

Not all park packages contain the same items. Additionally, park owners consider certain items included in the park package to be an improvement to the site that cannot be removed if the tenant moves the home out. Items considered to be a site improvement may vary from park to park.

RECOMMENDATION RELATING TO FINDING NO. 4:

- Require the provider or seller of a park package to provide the buyer an itemized list of:
 - items included in the park package with a description of each that includes, at a minimum, dimensions and materials used to construct and finish the item;
 - items required by ORS 90.510 that are not included in the park package;
 - items in the park package considered to be a site improvement that remain with the real property if the tenant moves out of the park;
 - items in the park package that are owned by the tenant; and total cost of the park package.

Finding No. 5: State agencies with some enforcement authority over sales practices, including DMV and DOJ, seem to lack the staff or time to enforce existing laws like the UTPA or applicable ODOT regulations.

Industry members in the subgroup asserted in particular that more vigorous enforcement of a DOJ rule against tying the availability of scarce spaces to purchase of a new home from a particular dealer could have deterred future violations.

RECOMMENDATIONS RELATING TO FINDING NO. 5:

- Make investigation and prosecution of unlawful conduct involving the sale of manufactured homes a DOJ priority.
- Amend the Unlawful Trade Practices Act to give manufactured home dealers and construction contractors the ability to initiate an action to stop perceived illegal practices by other dealers, regardless of whether consumers have complained about the practice of the dealer.
- Increase the number of enforcement officers or compliance officers and investigators to perform random transaction audits to ensure compliance with regulations.

Finding No. 6: Verbal statements by some salespeople may be inconsistent with written disclosure forms presented to consumers as part of the sales transaction.

Free markets depend on the free flow of *accurate* information between the buyer and seller. Standardized disclosure forms can help consumers obtain the key information they need to make an informed choice. These forms could also be a partial antidote against oral misrepresentations made by salespeople.

RECOMMENDATIONS RELATING TO FINDING NO. 6:

- Create a single form that clearly and conspicuously discloses that the material terms of the sale are ONLY those contained in the written contract.

- Require the dealer to present this form to the buyer to read and sign before execution of a written contract.

Finding No. 7: Some dealers or their sales agents may make false or deceptive claims in order to secure a sale.

This finding raises some of the same issues as Finding No. 6. In addition, there is a perception that advertising for manufactured homes, although subject to the UTPA, is largely unregulated.

RECOMMENDATIONS RELATING TO FINDING NO. 7:

Adopt advertising rules for manufactured homes sales pursuant to the Attorney General’s rulemaking authority under the UTPA, ORS 646.608(1)(u).

Finding No. 8: Manufactured homes are built and sited to different code standards than “site-built” homes.

This finding reflects a perception by some that the difference in code standards for manufactured homes somehow results in an inferior quality home.

RECOMMENDATIONS RELATING TO FINDING NO. 8:

- Require more uniformity in the inspections of manufactured homes. The Building Codes Division should exercise its rulemaking authority to specify what is to be inspected.
- Require local building inspectors or the Building Codes Division to issue a Certificate of Occupancy after inspecting the home.

Finding No. 9: In some instances, the delivered home did not meet the expectations of the buyer. In some of those instances, the dealer and the manufacturer have not solved the problem to the buyer’s satisfaction.

Implementing the recommendations related to Findings Nos. 1-8 should result in a decrease in the number of complaints arising as a result of a conflict between what consumers believed they were purchasing and what they actually received. To address remaining complaints, the group contemplated some sort of dispute resolution process that was accessible, economical and fast.

The Manufactured Housing Improvement Act of 2000¹ contemplates creation of a dispute resolution program to provide for timely resolution of disputes between manufacturers, retailers, and installers of manufactured homes as to the responsibility for the correction and repairs of defects reported within one year of installation. States are to submit a plan for implementing the program within five years of the effective date of the Act (12/27/00).

RECOMMENDATION RELATING TO FINDING NO. 9:

- DOJ should work with the appropriate state agencies to facilitate the development and submission of Oregon’s dispute resolution program plan.

¹ American Homeownership and Economic Opportunity Act of 2000, Title VI, Section 610 PL106-569

FINANCING OF MANUFACTURED HOME TRANSACTIONS

The Financing Subgroup of the Task Force was lead by Assistant Attorney General Gene Ebersole and Financial Investigator Art Ebelmesser, both members of DOJ's Financial Fraud/Consumer Protection Section. This subgroup considered issues relating to the process of financing a manufactured home.

The financing transaction overlaps the sales transaction in that the dealer often provides or arranges financing for the sale. The process often becomes confusing as the consumer suffers from either a lack of disclosure of necessary information or from trying to process an overwhelming amount of information that is not presented in any meaningful sequence.

Finding No. 10: Consumers who purchase a manufactured home do not always receive meaningful disclosures of all costs associated with the purchase.

The purchase of a manufactured home necessarily involves associated costs (for example, loan fees, system development charges [SDCs], park packages) that can more than double the cost of the manufactured home itself. Consumers who purchase a manufactured home do not always receive meaningful disclosures of associated costs.

RECOMMENDATION RELATING TO FINDING 10:

- Adopt a "Uniform Purchase and Sales Contract" UPSC for the sale of a manufactured home whether the home is sited inside or outside a manufactured home park. The UPSC should require a dealer to make clear and conspicuous disclosures, placed in a meaningful sequence, which include but are not limited to the following:
 - (1) A written itemization of the cost of all goods and services, provided by the dealer or by a third party on the behalf of the purchaser, that are included in the manufactured home's cash sales price or in the amount financed. Such disclosures include a listing of all items such as required fees, permits, SDCs, park packages, space rent in a park which is paid in advance, and other goods or services that are not normally listed on a manufacturer's invoice but are included in the cash sales price or in the amount financed.
 - (2) The amount of any refundable or non-refundable fees and the amount of any down payment and the circumstances under which the fees or down payment may be returned to the purchaser.
 - (3) A written itemization, based upon a good faith estimate, of the cost of all goods and services that are not included in the cash sales price or in the amount financed but that may be required to situate a manufactured home on land or in a park. Such disclosures include all items that are not normally listed on a manufacturer's invoice and are not included in the cash sales price or in the amount financed.
 - (4) A written itemization, based upon a good faith estimate, of all fees and costs required to qualify for or to obtain financing for a manufactured home when the dealer assists the buyer in obtaining financing in close connection to the sale. Such disclosures include any loan fees, closing costs, and any lender to dealer or lender to broker participation, which are passed on to the purchaser or included in the cost of the loan.

- (5) A listing of consumer agencies, including government consumer protection agencies having jurisdiction, which a consumer could contact as a resource as to any question a consumer may have about the UPSC.
- Give DOJ or DCBS authority to adopt by rule a form of contract complying with the requirements of this recommendation.

Finding No. 11: Consumers are often faced with an overwhelming amount of information.

Consumers are often faced with an overwhelming amount of information in a high-pressure sales environment without the opportunity to fully comprehend the transaction they are entering into. A cooling off period would give a consumer the time needed to ensure an informed decision.

RECOMMENDATIONS RELATING TO FINDING NO. 11:

- Provide consumers with a three-day right of rescission modeled after the Home Solicitation Sales Act, ORS 83.710 et seq.
- Grant DOJ rulemaking authority to specify the form of the notice of intent to rescind.

Finding No. 12: Initial cost estimates are often much lower than actual costs.

Consumers who purchase manufactured homes often discover that initial cost estimates of goods and services required to situate a manufactured home on land or in a park given by a dealer at the time of purchase is much lower than the costs included in the loan.

RECOMMENDATION RELATING TO FINDING NO. 12:

- Require dealers to provide a reconciliation of good faith estimates included in the UPSC to the final loan when the loan is made in close connection to the sale of the home. The reconciliation includes, but is not limited to, reconciliation of Housing and Urban Development estimated closing costs to the final loan.

Finding No. 13: Consumers are often unaware of the various financing options and interest rates that are offered by a dealer.

RECOMMENDATION RELATING TO FINDING NO. 13:

- Require dealer disclosure of all financing programs/options offered by the dealer for which the consumer qualifies when the dealer assists the buyer in obtaining financing in close connection to the sale of the home. The disclosure should include, but not be limited to, conventional and non-conventional loan programs offered by the dealer and the applicable interest rates and terms.

Finding No. 14: Consumers often lack the knowledge needed to purchase a manufactured home.

Consumers often lack the knowledge needed to purchase a manufactured home they can afford or to finance the home on terms they readily understand.

RECOMMENDATIONS RELATING TO FINDING NO. 14:

- Require dealers to provide a brochure or a video to consumers who are about to enter into their first home purchase. The information provided would be similar to the first time buyer program of the Federal National Mortgage Association (Fannie Mae) and would cover such subjects as budgeting for monthly payments, basic loan terms and provisions, and negotiating a purchase.
- Require an appropriate agency to develop and promote first-time buyer education programs that can be added to high school curriculums relating to personal finance.

Finding No. 15: “Predatory” lending practices exist.

Predatory tactics in manufactured home lending are primarily employed by unscrupulous dealers who assist a consumer in obtaining financing in close connection to the sale of a manufactured home. The consumer may be forced to pay more than was necessary to obtain a loan or make higher than necessary payments. The end result is a home that the consumer cannot afford or cannot readily sell and frequently ends with repossession of the home.

RECOMMENDATIONS RELATING TO FINDING NO. 15:

- Amend ORS 646.006 to include reference to "predatory lending, as defined in [new section]" as another example of "unconscionable conduct."
- In a separate section of ORS Chapter 646, create a definition of "predatory tactics in manufactured home transactions." The definition should include the following as examples of conduct falling within its scope:
 - (1) *Steering* – This violation occurs when the dealer steers the consumer to a high cost/fee loan product that is designed for a less creditworthy borrower. An example is "steering" an "A" credit borrower who qualifies for a loan at 8% interest with a 2% loan fee to a loan program designed for "C" credit borrowers with an interest rate of 14% and a 5% loan fee. Another example is steering the consumer to a loan with a short-term balloon payment feature that allows the dealer or lender to collect an additional fee when the loan is refinanced.
 - (2) *Requiring non-essential insurance* – This violation occurs when the dealer or lender, to generate a commission to the dealer, falsely represents that a consumer is required to purchase credit life insurance, credit disability insurance, or an extended warranty from the dealer or lender as a condition of the loan.
 - (3) *Less than complete application* – This violation occurs when the dealer supplies a lender with less than the consumer's full employment, income, or credit history in order to charge the consumer the higher points or fees applicable to a sub-prime loan.
 - (4) *Teaser rate loan* – This violation occurs when the initial interest rate is low, then contractually increases to a variable or fixed rate that is more than 6% above the equivalent constant maturity Treasury bill rate. The loan often does not have a rate cap or the consumer must pay a substantial prepayment penalty to refinance the loan at a lower rate.
 - (5) *Dealer participation* – This violation occurs when the dealer or broker charges a yield spread premium that is funded from the artificially inflated cost of a consumer's loan and the spread is not disclosed to the consumer.
 - (6) *Teaser payment loans* – This violation occurs when the monthly loan payments increase at a later date beyond the consumer's ability to pay and the dealer or lender has not conducted a good faith analysis of the consumer's anticipated income stream (i.e., the

consumer's monthly payment is \$300 per month the first year, then increases to \$750, and there has been no effort to determine whether the consumer can afford the higher payment).

- (7) *Balloon payments* – This violation occurs when the consumer does not have a readily identifiable source with which to make the payment and to avoid losing the home, must either (a) pay a prepayment penalty, (b) refinance at a higher interest rate, or (c) pay additional fees.
 - (8) *Payment packing* – This violation occurs when the dealer misrepresents higher monthly payments to buyers in order to facilitate the sale of products or services or to represent that services such as credit insurance, warranties, or alarm systems are included or provided for "free" with the purchase.
 - (9) *Repeated refinancing* – This violation occurs when the borrower is provided with a short-term loan, such as a construction loan, and is required repeatedly to refinance the loan for additional fees or costs without receiving a material benefit.
 - (10) *Spurious open end loans or creative lending packages* – This violation occurs when the intent of the dealer or lender is to avoid making the comprehensive disclosures required by consumer protection statutes.
- Make the following amendments to the specified statutes:
 - (1) Amend ORS 636.638 to allow for a private right of action for predatory tactics.
 - (2) Amend ORS 646.605 to add the definition for a loan that occurs "in close connection to the sale of goods" by using the definition contained in ORS 83.850.
 - (3) Amend ORS 646.608 (k) to ensure that the UTPA applies to a lender when false or misleading representations are made in close connection to the sale of goods².

² The intent of this change is to bring loans in which the dealer arranges financing within the purview of the UTPA. The following scenario is provided as an example: If the dealer; (a) assists the buyer in completing a dealer supplied credit application, then (b) submits the application to a lender, then (c) completes lender supplied loan forms, then (d) arranges for the borrower to sign the forms at the dealer's office, then (e) receives a commission or kickback from the lender, the loan would be within the UTPA. The provisions would not apply when a consumer seeks a loan independent of the dealer.

RELATIONS BETWEEN TENANTS AND MANAGEMENT/OWNERSHIP OF PARKS

A third subgroup of the Task Force addressed Tenant/Park Relationships. It was chaired by Peter Shepherd who began his Task Force work as Special Counsel to the Attorney General and was appointed Deputy Attorney General on January 2, 2001.

Finding No. 16: Existing legal and financial structures prevent tenants from acquiring control of the parks in which they live.

On 44 occasions in recent history, groups of tenants have unsuccessfully tried to purchase the manufactured home parks in which they live. At present, there is no advantage for park owners to sell to tenants as opposed to any other buyer. Moreover, economic and practical business barriers exist that tend to make it difficult or even impossible for these sales to take place. The barriers include: tenants' inability to meet or beat the market price; tenants' lack of financial and legal expertise; tenants' inability to secure financing rapidly enough to meet owners' needs; and lenders' reluctance to deal with tenants' associations.

RECOMMENDATIONS RELATING TO FINDING NO. 16:

- Eliminate the Oregon capital gains tax on the gain from a manufactured home park sale when the sale is to:
 - (1) A nonprofit corporation that will hold the park in trust for the tenants; or
 - (2) Any legal entity consisting of or including a majority of the tenants who reside in the park at the time of sale.
- Create public nonprofit corporation to acquire parks, hold them in trust for tenants, and sell them to tenants when the tenants have secured the necessary financing. Creation of the corporation should include the following:
 - (1) Appropriation of state general funds to seed the operation.
 - (2) A board of directors appointed by the Governor. Two members should be selected from among those nominated by tenants' associations, two from among those nominated by owners of manufactured home parks, and three from among those nominated by the Director of the Department of Consumer and Business Services.
 - (3) An authorization to purchase manufactured home parks, hold the parks in trust for the tenants until qualified tenant association can finance the ultimate purchase from the corporation, and to transfer a given park to tenants in any form of ownership – e.g., as cooperative, limited equity housing cooperative, planned unit development, conversion to subdivision, or any other form of ownership; and to collect rents, hire staff, execute contracts and do anything else necessary to carry out its responsibilities. During the time that it holds the park, the corporation would be subject to all requirements of law applicable to any other park owner.
 - (4) Authorization to sell a given park to any buyer if the tenants do not complete the purchase within 36 months of the date the corporation acquires the park.

Finding No. 17: Manufactured home owners cannot easily or economically move from one park to another.

When a manufactured home is placed in a manufactured home “park” – a development designed for such homes -- the rules applicable to that placement typically require the owner of the home to pay for features that connect the home to utilities, shelter the homeowner’s vehicles, or beautify the neighborhood. As discussed earlier in this report, these features collectively are called the “park package.” They may total more than \$20,000.

Tenants who move out of the park will sell their home in place to a new buyer or move the home itself to a new location. If the new location is a park, the tenant will probably have to pay a contractor for a new park package. Some of the value of the old park package is left at the previous park for the benefit of the tenant’s former landlord.

The primary value left behind is in the form of systems development charges assessed against the tenant as part of the park package. When a new tenant moves another home into the space vacated by the former tenant, the owner of the park does not have to pay another systems development charge.

RECOMMENDATIONS RELATING TO FINDING NUMBER 17:

- Require park landlords to disclose to prospective tenants all one-time charges for moving into a space, including but not limited to, the dollar value of any systems development charges that are being assessed against the tenant as part of a park package.
- At the time the tenant moves out of the property, require the park landlord to pay the tenant a sum equal to the value of the previously disclosed one-time only charges.

Finding No. 18: Many tenants object to rent increases.

DCBS provides mediation of certain disputes arising between residents of manufactured home parks and the landlords. Disputes about rent may be considered if they arise in the course of other disputes. But if the dispute is *only* about the amount of a rent increase, then the mediators will not take up the matter. Mediation would provide a forum in which landlords and tenants could discuss rent increases.

RECOMMENDATION RELATING TO FINDING NO. 18:

- Require mediators to consider disputes about the magnitude of a rent increase.

Finding No. 19: Many tenants believe that they have no realistic recourse to the remedies of the landlord-tenant act.

ORS 90.710 sets out the legal remedies for certain violations of ORS Chapter 90 related to manufactured homes. Advocates for tenants told the Task Force that a power imbalance exists between tenants and landlords in part because an individual tenant is probably far less able to bear the consequences of bringing and losing a case for violation of the law than a landlord is for resisting a meritorious claim.

In addition, many tenant/participants in the Task Force expressed fear of retaliation if they pursued rights or remedies given them under law.

RECOMMENDATIONS RELATING TO FINDING NO. 19:

- Amend ORS 90.710 to give standing to any incorporated nonprofit association of tenants that includes at least one member who both resides in the park and was aggrieved by the alleged violation. The association would be subject to all the same defenses as an individual plaintiff, and would be exposed to the possibility of paying attorney fees if the landlord prevailed.

- Amend ORS 90.765, which prohibits certain forms of retaliatory conduct by the landlord in a manufactured home park, to permit award of punitive damages for violation of the statute.

Finding No. 20: Local land-use procedures unnecessarily limit conversions from parks to subdivisions.

ORS 197.307 *et seq.* restrict in various ways the power of local governments to limit the placement of manufactured homes. Those statutes, however, do not address unreasonable constraints on manufactured home park conversions into subdivisions or planned unit developments.

RECOMMENDATION RELATING TO FINDING NO. 20:

- Prevent local jurisdictions from placing unreasonable constraints on the conversion of an existing manufactured home park into either a subdivision or a planned unit development.

SPECIAL SECTION ON RENT JUSTIFICATION/CONTROL

The park relationship subgroup was sharply and irrevocably divided on the wisdom or effect of government-imposed limitations on the rent charged by park owners. To facilitate a discussion of the issue, the group did reach a common understanding of the phrase “rent justification.” The term means “containing excessive rent increases.”

Conceptually, the term “contain” is understood by proponents of rent justification to describe a process that is triggered by a proposed rent increase that exceeds a specified threshold. Landlords would have unfettered discretion to raise rents up to the rate of increase specified as the threshold. A landlord seeking to increase rent at a rate in excess of the threshold could do so, but only after following a dispute resolution process that included discussions with tenants. Under the process, a judge could make the final determination of whether a landlord would be permitted to increase rents at a rate exceeding the threshold. Proponents of rent justification suggest that the threshold be established in law by a formula that includes reference to the consumer price index plus a fixed amount of increase. Proponents hope that this system will dampen upward pressure on rent.

The subgroup listed some of the arguments for and against rent justification. Opponents and proponents agreed on little during this spirited discussion.

Proponents suggest that rent justification laws would limit the increase in rent in a marketplace in which the ordinary forces of supply and demand favor the landlord. Manufactured home park landlords are uniquely favored (in comparison to other landlords), according to this view, because park residents are locked into place by the virtual impossibility of moving their home to another park. The rent justification procedure is alleged to increase the amount of beneficial communication between tenants and the park management. The value of homes owned by tenants would be preserved if rent justification were in place, according to proponents, because homes are more attractive to buyers when rents are low. Finally, rent justification would tend to stabilize the rate of increase in rents and thus allow tenants to better plan for their financial future.

Opponents advanced a number of reasons to support their position. Some opponents spoke to the alleged unfairness of controlling rents for one class of housing – manufactured homes in parks – while rents for apartments or manufactured homes not located in parks would not be controlled. Opponents asserted that rent justification would cause the owners of parks to shift investment away from parks and park maintenance into other uses. Under this view, rent justification would result in construction of fewer new parks, cause park maintenance to be deferred or foregone, and would lead to closure of parks in favor of uses that would then have a higher return on investment. Finally, opponents alleged that the establishment of a threshold would guarantee that every landlord would increase rents every year up to, but not beyond the threshold. Landlords would respond in this way, opponents alleged, because the landlord could not be sure that any increase in a future year would be approved in an amount sufficient to cover increases that had been foregone in prior years.

Because of genuine uncertainty about the costs versus benefits of applying rent justification to the setting of manufactured home park rents, this report does not ally DOJ with that action. At this time, as noted earlier, the Attorney General recommends an expanded role for DCBS mediation in fostering landlord-tenant discussion about specific rent increase disputes and, in turn, an increased possibility of an agreed resolution.