

MANDATORY MEDIATION AND INFORMAL DISPUTE RESOLUTION IN OREGON

Manufactured Home, Marinas and Floating Homes

State legislation requires manufactured home park and floating homes landlords to amend Rental Agreements to provide for a Mandatory Mediation Policy (Oregon Revised Statute 90.767). The policy must include an explanation of the process and format for mediation and provide information on mediation services available. Statute currently calls for establishment of an “Informal Dispute Resolution”, commonly referred to as voluntary mediation. Both aspects of mediation are viable; however, mandatory mediation compels parties to meet at least once and suspends any court action until completion of the mandatory mediation.

1. How to Initiate Mediation or Informal Dispute Resolution

Mediation may be initiated by a Landlord, a Tenant or Group of Tenant. Either party may contact the mediation services available through: (a) park manager, (b) Local Community Dispute Resolution Center (CDRC), or (c) Manufactured Homes, Marina and Floating Homes Communities Resource Center (MMCRC) hotline: 1-800- 453-5511 (Toll Free in Oregon) or email: mcrc@oregon.gov or the MMCRC Website.

2. Disputes Eligible for Mandatory Mediation

- Those between the landlord and one or more tenants, initiated by any party.
 - Those between more than one tenant as initiated by the landlord.
 - Information dispute resolution, disputes between two tenants, initiated by either party.
- Consistent with statute, upon intake the CDRC will determine the eligibility of an issue for mediation (reference Section 6 below).

3. Good Faith Efforts

Participants must make good faith effort to: (a) schedule a mediation within 30 days after initiation; (b) attend and participate; and (c) cooperate with reasonable requests of the mediator.

Mandatory mediation only: If a party refuses to participate in good faith in mandatory mediation with another party, or uses mediation to harass another party, the other party: (a) has a defense to a claim related to the subject of the dispute for which mediation was sought; and (b) is entitled to damages of one month’s rent against the party.

4. Effect of Filing for Mandatory Mediation

Between the commencement and conclusion of the mediation:

- If the request for mandatory mediation is made before the landlord files a Forcible Entry

and Detainer, Oregon Revised Statute 90.767 calls for a “stay” or “toll” (suspension) of any related court action until conclusion of the mandatory mediation.

- A party may not file a court action over the dispute until conclusion of the mandatory mediation; (c) tenant has continuing duty to pay rent; and (d) landlord’s receipt of rent does not constitute a waiver under Oregon Revised Statute 90.412(2).

5. Matters Subject to Mandatory Mediation

Except as provided in Section 6, below, the following disputes are eligible for mediation: (a) landlord or tenant compliance with the rental agreement or Oregon Revised Statute Chapter 90 (Oregon landlord/tenant statutes); (b) landlord or tenant conduct within the Park; and (c) rule changes initiated under Oregon Revised Statute 90.610.

6. Matters Not Subject to Mandatory Mediation

Unless specifically provided for in a mediation policy established under this section, or agreed to by all parties, no party may initiate mediation for:

- (a) Facility closures consistent with ORS 90.645 or 90.671.
- (b) Facility sales consistent with ORS 90.842 to 90.850.
- (c) Rent increases consistent with ORS 90.600.
- (d) Rent payments or amounts owed.
- (e) Tenant violations alleged in a termination notice given under ORS 90.394, 90.396 or 90.630 (8).
- (f) Violations of an alleged unauthorized person in possession in a notice given under ORS 90.403.
- (g) Unless initiated by the victim, a dispute involving allegations of domestic violence, sexual assault or stalking or a dispute between the victim and the alleged perpetrator.
- (h) A dispute arising after the termination of the tenancy, including under ORS 90.425, 90.675 or 105.161.

7. Confidentiality

Subject to Oregon Revised Statute 36.220 (confidentiality of mediation communications and agreements), all communications between the parties and mediator are strictly confidential and may not be used in any legal proceedings.

8. Limitations on Mandatory Mediation Process

Participation in mediation does not require any party to: (a) reach an agreement on any or all issues submitted; (b) participate in more than one mediation session; (c) participate for an unreasonable length of time in a mediation session; or (d) waive or forego any legal rights or remedies.

9. Designees for Parties

Any party may designate any other person, including a non-attorney (“Designee”), to represent the interests of that party provided that the Designee has complete written

authority to bind that party to any resolution of the dispute reached in mediation. The Designee shall be equally bound by all rules of the mediation, including confidentiality.

10. Resolution/Nonresolution

The mediator shall notify Oregon Housing and Community Services whether a dispute was resolved, but may not disclose the contents of any resolution.