



# Oregon

Governor Kate Brown

## Housing and Community Services

North Mall Office Building  
725 Summer St NE, Suite B  
Salem, OR 97301-1266  
PHONE: (503) 986-2000  
FAX: (503) 986-2020  
TTY: (503) 986-2100  
[www.ohcs.oregon.gov](http://www.ohcs.oregon.gov)

## Report to the 80<sup>th</sup> Legislative Assembly: Manufactured Housing Mandatory Dispute Resolution

September 15, 2020

The Manufactured Communities Resource Center (MCRC) was created at Oregon Housing and Community Services (OHCS) in 1989 by the Oregon Legislature (ORS 446.543) with three main purposes: to provide services and activities to support the improvement of manufactured dwelling park landlord and tenant relationships; to develop and implement a centralized resource referral program for tenants and landlords to encourage voluntary dispute resolution; and to maintain a directory of manufactured dwelling parks. [Senate Bill 586 \(2019\)](#) expanded the scope of MCRC to include mediation services for floating home facilities (including marinas), thus the addition of “M”, becoming the Manufactured and Marina Communities Resource Center (MMCRC).

Additionally, SB 586 introduced the concept of mandatory mediation, compelling landlord and tenants to schedule, within 30 days, engagement at least once with the assistance of qualified mediators to resolve landlord/tenant disputes arising in manufactured dwelling parks and floating home facilities. SB 586 also requires OHCS to establish a Manufactured and Marina Communities Dispute Resolution Advisory Committee (DRAC). The committee is tasked with monitoring the implementation of mandatory mediation and advise OHCS regarding the viability and continuance of mandatory mediation and grants as required by SB 586. The legislation also created funding to support legal representation to lower-income tenants addressing disputes involving legal matters related to marina and manufacture dwelling park living.

Membership in the DRAC currently consists of mediators, tenants, a representative from the Oregon State Tenants Association (OSTA), a Legal Aid attorney and a park manager. OHCS staff oversee coordination of the committee and are currently working to recruit additional landlord representatives.

### **Implementation of SB 586 - *What is going right?***

Mediation is the flagship program of MMCRC, however, all efforts to introduce the nuanced concept of mandatory mediation to tenants and landlords have been hampered by the COVID 19 pandemic and, most recently, wildfires across the state. Nevertheless, volunteers with a broad range of experience have been recruited and listed in Appendix A. COVID 19 precautions required participants to adapt and transition from in-person mediation to remote video conferencing. Community Dispute Resolution Center (CDRC) management and volunteer mediation staff in Lane, Jackson, Marion, Benton, Linn, Multnomah, Washington, Klamath, and Clackamas counties have adapted well to the changing environment (remaining counties have yet to see a mandatory mediation request).



In spite of logistical and capacity challenges posed by the pandemic and wildfires, the few mandatory mediations that took place were successful (30 total, 7 mandatory so far in 2020). One such mediation took place in May 2020, with the first floating home tenant to initiate mandatory mediation with their landlord under ORS 90.767. The tenant reported that they gained valuable insight from the process, including firsthand experience participating in mediation virtually during a pandemic. Ultimately, an agreement was reached between the landlord and tenant, thus avoiding what could have been a costly and time-consuming court case.

In order to assist both landlords and tenants in navigating recent updates to relevant landlord tenant law, OHCS staff have prepared the following three fact sheets: Landlord and Tenant Rights and Responsibilities in Manufactured Dwelling and Floating Home Facilities in Oregon; Mandatory Mediation and Informal Dispute Resolution; and Water and Sewer Utility Charges. These fact sheets are included in the appendix of this report.

Finally, OHCS staff, in conjunction with CDRCs, developed a web-based scheduling form that satisfies statutory requirements around alerting mandatory mediation participants and MMCRC of compliance within the prescribed 30-day scheduling interval for mediation.

### **Implementation of SB 586 - *What are the challenges?***

Education and computer literacy will be an ongoing effort to achieve broader adoption from tenants unaccustomed to digital systems. Addressing this challenge will be all the more important as outreach shifts to virtual platforms in response to COVID 19, which will likely be with us for months if not years.

Key performance indicators normally obtained by written participant evaluations and questionnaires are no longer viable as remote mediations do not lend themselves to simple exchange of documents. Web-based evaluations and questionnaires must be developed instead, and participants need tutorials on how to complete them.

In order to maximize the efficacy of mandatory mediation, extra focus will need to be placed on determining whether issues between landlords and tenants rise to the level of park-wide concerns, which could be addressed through park-wide communication workshops, or whether they are more suitable for mandatory mediation conducted amongst a smaller set of stakeholders.

### **Next Steps—*How can we improve the program?***

In order to further improve the mandatory mediation process, DRAC members plan to focus on the following efforts:

- Identify ways to ensure all stakeholders become more comfortable and experienced with the use of video conferencing technology and web-based tools.
- Create web-based tools to collect key performance indicators and evaluation feedback.



- Develop resources for park-wide communication workshops that can be used for issues that aren't suitable for the mandatory mediation process.
- Develop resources to increase participants' understanding of ORS 90.767 and facilitate communication skills training.



**APPENDIX**

**Appendix A – Dispute Resolution Advisory Committee Members**

**Appendix B – Landlord and Tenant Rights and Responsibilities in  
Manufactured Dwelling and Floating Home Facilities in Oregon**

**Appendix C – Utility Charges for Water and Sewer in Manufactured Housing  
Parks and Floating Home Marinas**

**Appendix D – Mandatory Mediation and Informal Dispute Resolution in  
Oregon**

### **Appendix A: Dispute Resolution Advisory Committee Members**

**Angela Garvin** is a floating home owner in Portland and founder of Floating Home Owners (FHO) which is a group of approximately 60 floating home owners who rent slips on the Columbia and Multnomah Channel from Gresham to St. Helens. She is also the Oregon State Tenants Association (OSTA) Director for Floating Home Communities, and participates in the Manufactured Housing Landlord/Tenant Coalition and the Marina Issues Subcommittee.

**Brian Graunke** is the Director of Mediation & Facilitation at Resolve, a non-profit Community Dispute Center that has been providing services to manufactured home communities and residents in Southern Oregon for many years. Brian joined Resolve in 2001 as a volunteer, before becoming a staff member in 2009. Brian advances mediation statewide as an active member of the Oregon Mediation Association and is a past president Oregon Office of Community Dispute Resolution. Brian holds a B.S. from Central Washington University and has completed advanced trainings in Group Facilitation, Foreclosure Mediation, and Court Connected Mediations.

**Patrick Sponsler** is the Administrator of the Oregon Office for Community Dispute Resolution (OOCDR) and provides grant administration, capacity building, and collaborative process management in support of Oregon's network of community dispute resolution centers across Oregon that help create safer communities, contribute to school success, increase housing security and improve access to justice for all Oregonians.

**Nancy Inglehart** is an executive board member of the Oregon State Tenants Association (OSTA). She is also a mediator with East County Resolutions. She advocates for manufactured housing by serving on the NMHOA board (National Manufactured Home Owners Association), the OHCS-led Manufactured Housing Advisory Committee, and is a member of the Manufactured Housing Landlord/Tenant Coalition

**Heather Wright** is the Executive Director of Neighbor to Neighbor providing mediation services for Marion, Linn and Benton counties. Heather is a strong, proficient leader with extensive non-profit experience, proven management skills, strategic vision, operational implementation and effective follow-through in diverse challenges. She has pioneered several non-profits, serves as a Chaplain, and is passionate about her community. She is a mother of five and grandmother to four. In her spare time, she enjoys serving the homeless and people in need, as well as hiking, reading, music and dance.

**Tera Cleland** is the Mediation Specialist for East County Resolution, City of Gresham. She has a M.S. in Mediation and Applied Conflict Studies from Champlain College in Burlington, VT. Tera is the current President of Resolution Oregon and past president of the Oregon Mediation



Association. Tera is passionate about strengthening communities through the use of mediation and is committed to furthering the field of conflict resolution.

**John VanLandingham** has been an attorney with Lane County Legal Aid (which merged with the Oregon Law Center in 2017) since 1978. John's work focuses on tenant rights — both apartment tenants and MH park tenants — and affordable housing development, through legislative and policy advocacy at the local and state level. John negotiated, drafted, and presented to the legislature a compromise bill from a coalition of apartment landlord and tenant advocates in every legislative session between 1993 and 2016. He did the same for manufactured dwelling park tenants and landlords in every session between 1999 and 2019. In the 2019 legislative session, John negotiated the mandatory mediation laws and the creation of the Dispute Resolution Advisory Committee. John has served on many local and state committees related to housing and land use, including serving on the Oregon Land Conservation and Development Commission for twelve years, including the last seven as Chair.

**Michael O. Whitty** has been an attorney in Oregon since 1968. He worked in private practice as a trial lawyer until he was hired by SAIF Corporation in 1989, where he became the Special Assistant Attorney General with until 2004. Mike has been an OHCS-approved instructor for the required continuing education for manufactured home park owners and managers from 2006 to the present. He conducts twelve classes a year throughout Oregon and has trained managers and owners from over 450 parks.



## **LANDLORD & TENANT RIGHTS AND RESPONSIBILITIES IN MANUFACTURED DWELLING AND FLOATING HOME FACILITIES IN OREGON**

Owning a home in a manufactured dwelling or floating home facility has many advantages, including lower down payment costs, lower maintenance costs and a sense of community. However, there are important economic and legal concerns to consider when becoming a tenant.

Oregon law requires facilities to give copies of the following documents to prospective tenants:

1. Rental Agreement and Facility Rules
2. Statement of Policy
3. A copy of the applicable rules for screening and acceptance of a purchaser. (If you are buying a home in a facility from a current or past tenant, these rules must be listed in the seller's rental agreement)

The landlord must accept or reject the prospective tenant's application within seven (7) days following the day the landlord receives a complete and accurate written application.

- An application is **not** considered complete until the prospective tenant provides all required information and pays the screening fee.
- If the application is rejected, the landlord shall furnish to the seller and prospective purchaser a written statement outlining the reasons for rejection.

### **Read, re-read, and understand the entire rental agreement BEFORE signing!**

- If you sign a rental agreement prior to moving into a facility, the agreement may or may not have an exit clause that allows you to change your mind and cancel the agreement within a specified amount of time.
- Verbal agreements are not the same as signed written agreements. Only the written agreement you sign is binding on you or the landlord.

### **Your tenancy may be legally terminated for:**

1. Failure to pay rent or fees
2. Violation of a facility rule, the law or the conditions of occupancy
3. Facility Closure

You can terminate your tenancy with a 30-day notice. Your landlord can close part or all of the facility with a 12-month notice.

### **Statement of Policy**

This is *not* part of your rental agreement. It summarizes information on things such as facility-provided utilities and services (e.g. trash collection), minimum age criteria, mandatory mediation, and/or the facility's informal dispute resolution policy. The Statement of Policy must also include a 5-year rent history of the space.

## **Rules and Regulations**

These are part of your rental agreement and it is important to understand them before signing the rental agreement. Unless they are legally changed, these are the rules you must follow. For example, the rules may require “quiet” hours or place restrictions on the length of time that visitors can stay. Violations of any rule can result in your eviction from the facility.

## **Rents**

Space rents can and do go up. Rent increases require a 90-day notice. Currently, Oregon statute permits space rent increases within any 12-month period, not to exceed 7% + Consumer Price Index. Your space rent could increase faster than your ability to pay, especially if your income is fixed. If rents go up, you must pay, move, or risk eviction.

## **Buying or Selling a Manufactured or Floating Home**

Whether buying or selling, all transactions must have the approval of the landlord. Usually a ten (10) day notice to the landlord is required. Selling your home may be performed by you, by a licensed realtor, or through consignment by the facility. Residency, regardless of sale or purchase, cannot proceed without the approval of the landlord.

While not mandatory, a licensed home inspection is recommended. A tenant who has received a notice to make repairs may still sell the home, but must provide the buyer with a copy of any outstanding notices prior to a sale. The landlord may require, as a condition of sale/tenancy, that the buyer make the noted repairs within the notice period as long as they are consistent with [ORS 90.632](#), so it is important to understand the condition of the home you are buying. A landlord may not reject an application from a prospective buyer because of the age, size, style or original construction material of an existing dwelling.

**Before any money is transferred, confirm that the facility owner has knowledge of the sale and has given approval!**

Generally, tenants are responsible for the maintenance of their home, landscaping, trees, the space and any other buildings on the space. Read your rental agreement and the facility rules and regulations. Pay attention to the condition of sheds or outbuildings. If purchasing a home from the facility owner, any defects or deficiencies must be resolved within the statute of limitations, which is 12 months.

If you choose to move out and want to sell your home in place, you will have to continue to pay rent, or what’s known as a “storage fee” (usually the same amount as the rent), until it is sold. Remember, the facility owner may put **reasonable** restrictions on buyer eligibility. Any such restrictions must be outlined in your written rental agreement.

## **Rental Agreements**

Most facilities use what is called a “month-to-month” rental agreement (also called a lease or contract). These rental agreements continue indefinitely and can only be terminated “for cause.” Some facilities offer “term” agreements (sometimes called a term lease or contract). These must be for a term of at least two years, and you must be offered a new lease at the end of each term.

Although a lease may give short-term guarantees on rent increases, there is no guarantee that you will be offered the same agreement beyond the expiration of the lease. Each new rental agreement permits the landlord to alter the terms, space rent, and facility rules and regulations that apply to new residents.

*This information is provided for educational purposes only and should not be considered legal advice. You should discuss your concerns with an attorney before buying or selling a home in a manufactured housing park or marina. Please refer to ORS 90.680 for more information.*





## **UTILITY CHARGES FOR WATER AND SEWER IN MANUFACTURED HOUSING PARKS AND FLOATING HOME MARINAS**

This handout describes how, under Oregon law, a landlord of a manufactured home park (“park”) or a floating home marina (“marina”) (collectively referred to as facilities) may recover the cost of providing water and wastewater/storm water utility service to tenants of parks and marinas. “Recover” generally refers to how a landlord bills tenants for that utility service. This handout also describes when and how a landlord may change that method of recovery. And, finally, it describes the rights tenants have when it comes to utility billing.

Unless otherwise stated, these provisions apply equally to park tenancies and marina tenancies. Park tenants own and occupy their manufactured home and rent a space for it in a “park,” defined as four or more spaces for rent for manufactured homes. There are approximately 80,000 manufactured homeowners in approximately 1,000 parks in Oregon. There are approximately 1,500 floating homeowners who rent a slip for their home in approximately 50 marinas, defined as four or more slips, in Oregon.

## 1. GENERAL RULES

a. Under Oregon law, **landlords are required to provide water and wastewater connections** to the homes in parks and marinas, per Oregon Revised Statute (ORS) 90.730 (3) (a) and (c). Some local governments also require provision for disposal of storm water.

b. Landlords are also required to provide a written statement of policy to prospective tenants, describing, among other things, (i) what utilities are available along with who furnishes them and who is responsible for paying for them and (ii) the **policy regarding the method of billing for those utilities**. There must be a written rental agreement attached to the statement of policy, per ORS 90.510.

c. There are multiple possible utilities that a landlord may provide, such as electricity and garbage and cable TV/internet, per ORS 90.315. This **handout only addresses water and wastewater** (what goes down your sink drains and toilets into a sewer or septic system) - in other words, water into the home and water out of the home, along with storm water (rain runoff).

d. Generally, with some exceptions, Oregon law does not allow a landlord to **amend the written rental agreement** without the consent of the tenant. One of those exceptions has to do with water billing, as explained in this handout, per ORS 90.512 (4) (b).

e. The **statutes** governing all this are found in [ORS Chapter 90](#), specifically in ORS sections 90.560 to 90.584.

f. A **landlord violation** of these statutes entitles the tenant to recover the greater of one month's rent or twice the tenant's actual damages per ORS 90.582 (3).

g. This handout does not address billing for water provided by the landlord from a **well** that the landlord owns.

h. **New parks built, or expanded to more than 200 spaces, after June 23, 2011**, must use submeter billing for the new/expanded-over-200 spaces per ORS 90.580 (5). Any park with 200 or more spaces was required to use submeter billing after December 31, 2012, unless the water comes from a well. There is an exception to this requirement for large parks described in ORS 90.578 (3), but it is not outlined in this handout. These rules apply only to parks and not to marinas.

i. Except for conversions from rent-included billing to pro rata billing, a **landlord is not required to test or maintain the water lines** within a tenant's space. See 'CONVERSIONS FROM ONE BILLING METHOD TO ANOTHER' below.

## **2. BILLING METHODS**

A landlord may recover for the cost of providing water/wastewater in one or more of the following billing methods. The landlord may choose any one or more of these (for example, submeters for water billing for a tenant's space combined with pro rata billing for water use in common areas), as long as the landlord describes that choice in written documents given to the tenant at the beginning of the tenancy. After that, there are statutes that govern how a landlord determines the amount of the bill, how the landlord collects the bill, and if and how a landlord may change the water billing method. Those rules are described in this handout.

These are the **allowable billing methods**:

a. **Direct billing**, in which the utility provider provides the utility service directly to the tenant and the provider bills the tenant (for example, electricity or garbage). The landlord has no direct role in providing or billing for the utility service. The relationship is solely between the tenant and the utility provider. This method is rare for water service.

*NOTE: In the remaining billing methods, the **relationship among the water utility provider, the landlord, and the tenant is the same**, but they differ in how the cost is assessed or apportioned. The water utility provider provides water to the park, as measured by a master meter which measures all of the water into the park, and bills the landlord for the cost as measured by that master meter. The landlord has pipes within the park which deliver the water to the space and any common areas and other pipes which take away the wastewater and storm water to a sewer or septic system.*

b. **Rent-included billing**, meaning that the cost of the provision of water and wastewater/storm water service is included in the rent that the tenant pays, just as with most other landlord expenses, such as property taxes and maintenance and management. There is no individual assessment of the cost of the utility. The practical result is similar to pro rata billing, except that the tenant never sees the actual utility charge broken out separate from the rent.

c. **Pro rata billing**, in which the landlord bills the tenant for a portion (pro rata means ‘in proportion’) of the water provider’s charges to the landlord, in equal portions to the tenants. Those portions could be based on the number of occupied spaces (for example, if there are ten spaces with a tenant residing in the manufactured home, each tenant pays one-tenth) or some other reasonable measurement that correlates with consumption or use of the service (for example, the number of occupants in the home

compared to the number of all occupants in the park, since more occupants generally means more water consumed). This is outlined in ORS 90.568.

d. **Submeter billing**, in which the landlord installs a submeter on the water line into the tenant's space or home and measures the actual water consumption by the tenant. The landlord then reads the meter to confirm the tenant's consumption or arranges with a third party company (not the landlord or a company owned by the landlord) to read the meter, probably remotely. Then whichever party read the meter bills the tenant; see 'ADDITIONAL NOTES ABOUT BILLING' below for more information. This process is outlined in ORS 90.572.

e. **Park specific billing**, in which the landlord and the tenants agree to convert from a different billing method to one that a majority of tenants support and that allocates the cost for water and wastewater service fairly among the tenants. The landlord does not collect more from all tenants than the water provider bills to the landlord. The landlord may not include any installation or repair costs to the water infrastructure required by the new billing method. Otherwise, this billing method is entirely up to the landlord and tenants.

### **3. ADDITIONAL INFORMATION ABOUT SUBMETERS**

a. Per ORS 90.562 (5), the **landlord owns and must maintain** the submeter.

b. There is no requirement in Oregon law that a **landlord test** a submeter after installation, per ORS 90.580 (4) and ORS 90.574 (4). In fact, most experts say that failing submeters "read" water consumption "slow," so the tenant's water bill will be lower than it should be.

c. The landlord may **place the submeter** at the point at which the water line enters the space or anywhere within the space, including under the manufactured home, so long as the location does not interfere with the tenant's access to their home.

d. The landlord is responsible for ensuring that the submeter and the water line are adequately insulated or located **to prevent damage from freezing or weather**, per ORS 90.580 (2).

e. While generally a landlord or agents of the landlord, including a meter reading company, must give actual notice before entering the tenant's space, **no notice is required before they enter the space to read the meter** - but only to read the meter at reasonable times between 8 am and 6 pm, and no more than once a month per ORS 90.580 (3).

f. The **submeter bill may include** the following:

i. The **charge for the water into the space**, as measured by the submeter (at a rate no greater than the average rate the water provider charges the landlord);

ii. The charge for **wastewater as a percentage of the water bill**, if the water provider charges for sewer service as a percentage of water provided to the space. The assumption is that there is a correlation between water into the space and (waste) water flowing out of the space. Not all water providers do this;

iii. A pro rata portion of the **water provider's charge for sewer service**, for storm water (rain) and waste water, if not charged by the water provider as a percentage of the water into the space.

iv. A pro rata portion of any **public service charge**, see

ADDITIONAL NOTES ABOUT BILLING below for more information;

v. A pro rata portion of any utility **service to the common areas**, see ADDITIONAL NOTES ABOUT BILLING below for more information;

vi. A pro rata portion of any **base or service charge** billed to the landlord by the water provider, including any tax passed through by the provider; and

vii. A pro rata portion of the **cost to read the submeters** and to bill tenants but only if by a third party service, see ADDITIONAL NOTES ABOUT BILLING below for more information.

#### **4. CONVERSIONS FROM ONE BILLING METHOD TO ANOTHER**

a. **Background:** Conversion is a process by which a landlord may convert the original water billing method to another billing method. Except for park specific billing, a landlord may make this change to the written rental agreement unilaterally, meaning that the tenants have no control over the change, as long as the landlord follows the rules (statutes) described here. As noted earlier, this is unusual for park tenancies, where a landlord cannot make unilateral changes. The legislature changed the law to allow unilateral changes in water billing because recovery in the rent (“rent-included billing”) does not give tenants any control over their water bills and does not encourage water conservation. Many parks were built in the 1970s and 1980s, when water was inexpensive, so landlords simply included the cost to provide water in the rent. Water and wastewater disposal are no longer inexpensive. The most effective and fair way to bill for water is to measure the actual consumption and bill each tenant only for that. (Note that direct billing of a utility is essentially the same as submeter billing.)

Several years ago the Oregon Legislature took steps to encourage landlords to switch from rent-included billing to submeter billing. It was more expensive and complicated than anticipated, so the legislature has allowed landlords to also switch from rent-included billing to pro rata billing; the price signal mechanism is not as clear as with submeters, but it is better than with rent-included billing, and it avoids the capital expenses associated with installing submeters.

b. **Conversion to submeter billing** from either rent-included billing or pro rata billing (ORS 90.574):

i. At least **one month prior** to installing submeters, the landlord must do all of the following:

A. Give the tenants a **written “notice of conversion,”** describing the landlord’s intention to convert the water billing method; the proposed new water billing method (in this case, submeters); the landlord’s reason for the conversion; and the process and schedule for the conversion;

B. Give each tenant a **copy of this handout;** and

C. **Meet with the tenants** to explain the conversion and answer questions, including distributing a sample of the water bill after conversion with an explanation of each entry on the bill.

ii. After all of the above are complete, including the installation of the submeters, but before the landlord begins using submeter billing, the landlord shall treat the first three billing periods (monthly or other) as a **trial period** during which the landlord will continue with the initial billing method (rent-included or pro rata billing) but will give each tenant a mock-up of what the tenant’s bill would be if the billing method were by the submeter. This allows time for the landlord and the tenant to make sure that the



system is working properly before it goes “live” - to see if the meter is reading correctly, the pipes are not leaking, and the landlord or billing service is doing it right.

iii. If the landlord converts to submeters from rent-included billing, at the same time the landlord may convert to **pro rata billing for any common areas**, by including that in the notice required and explaining it at a tenant meeting.

iv. If the landlord converts to submeters from rent-included billing, the landlord must **reduce the rent** to reflect that the cost of water is being billed directly to the tenant and no longer included in the rent. This is not required for conversions from pro rata billing to submeters, since tenants with pro rata billing are already paying the cost of water separately from the rent.

v. The landlord determines **the amount of the rent reduction** by averaging the water and sewer service cost over the 12 months immediately preceding the first live billing using the submeter and applying it to reduce the rent, by a reasonably comparable amount, on a pro rata basis. Before that first live billing, the landlord must implement the required rent reduction and must provide the tenant with written documentation from the water provider showing the landlord’s cost during that 12 month look-back period. A landlord may offset all or part of the required rent reduction against a future rent increase provided in a fixed term rental agreement entered into prior to the notice of conversion.

A. The landlord may, after converting to submeters for the tenant’s space, continue to recover the cost of water service to common areas with the rent-included billing method. If so, then that cost need not be

backed out of the rent (the rent reduction). If the water provider cannot provide an accurate cost for that service, the landlord may assume that the cost of the water service for the common areas is 20 percent of the total amount billed during the 12 month look-back period (ORS 90.574 (8)).

vi. Installing submeters typically requires some **alteration** to the tenant's space, to connect the submeter to the water line where it can measure the tenant's water consumption. If the installation is next to or under the home, there may be alterations to the home itself, for example, the skirting. The landlord must give at least 24 hours actual notice (see ORS 90.725) before entering the space to do this work, and is responsible for restoring the space and the home to the previous condition per ORS 90.562 (5). Please note that landlords are responsible for damage done by their employees or contractors.

vii. The **cost** of the submeter itself (submeters that are accurate, require less maintenance, and can be read remotely are typically more expensive), and the cost to install it, plus any upgrades required to the water delivery system as a result, can be recovered by the landlord in the following ways:

A. By raising the rent; or

B. By imposing a special assessment pursuant to a **special assessment plan** (the "SAP") adopted unilaterally by the landlord. The concept of the SAP is to allow tenants to pay for the submeter installation outside of the rent. Tenants are sometimes concerned that their rent will not go down once the landlord has recovered costs; a separate charge is clearer to tenants. The plan may include only the landlord's actual costs, to be recovered on a pro rata basis from each tenant with payments due no

more frequently than monthly over a period of at least 60 months.

Payments must be stated separately from the water utility charge on the bill. Each tenant is entitled to a copy of the plan at least 90 days before the first payment is due. Payments may not be due before the completion of the installation (meaning when the submeter billing goes live, after the trial billing periods), and must begin within six months of the installation.

Payments must end when the plan ends. Note that the SAP provision is not applicable to marina tenancies.

viii. The landlord must amend the rental agreement to fairly describe the above provisions.

c. **Conversion to pro rata billing** from rent-included billing (also found in ORS 90.574):

i. Note that a landlord cannot switch from submeter billing to pro rata billing, only from rent-included billing, since with submeter billing the tenants will have likely already paid for the submeters, and submeter billing is more fair, since a tenant pays for the tenant's own consumption.

ii. The process for a landlord to convert from rent-included billing to pro rata billing is largely the same as the conversion to submeters, with some differences.

A. The following are the same: The notice to the tenants one month prior to the conversion with the explanation including the process and schedule, the requirement to provide this handout, and the meeting with tenants (b-i above); the conversion for common areas (b-iii above); the rent reduction/one year lookback (b-iv and b-v above); and the requirement to amend the rental agreement to fairly reflect these provisions (b-viii above).

B. The following are not the same as the conversion process to submeters: The trial billing period (b-iii above); the installation issues (b-vi above), and the special assessment plan (b-vii above). These are only applicable to conversion to submeters.

C. There is one additional requirement for the conversion to pro rata billing from rent-included billing that does not apply to the conversion to submeters. To make up for the loss in conservation and fairness achieved with submeters, a landlord who switches from rent-included billing to pro rata billing must also, after the conversion and at least every three years thereafter, test all water lines in the park (within the tenant's space and any common areas). The test results must be made available to tenants, and the landlord must repair any leaks discovered by the testing within a reasonable time. This is outlined in ORS 90.574 (5).

d. **Conversion to park specific billing** from rent-included billing or pro rata billing (ORS 90.584):

i. A landlord may propose to the tenants that they agree on any form of water billing so long as the method allocates the cost for water and wastewater service fairly among the tenants and the landlord does not collect more from the tenants than the utility provider bills the landlord. The landlord also may not include any repair or installation costs necessitated by the new billing method.

ii. Unlike landlord switches to pro rata billing or submeter billing, this is not a unilateral change. A majority of voting tenants must agree to this change, after a vote by ballot. A majority is calculated based on tenants who choose to vote, not a majority of all tenants, and each space gets one vote.

iii. The ballot may include no more than two choices and, if the ballot does include two choices, it must make clear that the tenant can vote yes for only one choice or no for both choices:

A. Conversion to the landlord’s proposed park specific billing method; or

B. Conversion to either pro rata billing or submeter billing (consistent with the rules in this handout).

iv. The landlord must give the notice of conversion described above (b-i-A) at least one month before the vote and must hold the meeting described above (b-i-C) at least one week before the vote.

v. Park specific billing is not available for marina tenancies. Additionally, it is not available for a conversion from submeter billing.

## 5. ADDITIONAL NOTES ABOUT BILLING

a. **Wastewater billing** is typically, but not always, assessed by the water provider as a percentage of the water into the park as measured by the master meter. If the utility provider does not charge for wastewater as a percentage of the water consumed, the provider will usually have a separate flat charge for both waste and storm water – known as sewer service – and the landlord may then pass that cost onto tenants on a pro rata billing basis.

b. With pro rata billing, submeter billing, and park specific billing, the landlord must give each tenant a **written statement or bill** of the amount due - called the “utility or service charge” - and the due date. The notice may be mailed or delivered to the tenant (see ORS 90.155 for the methods and timing for delivery of notices under Oregon law) or, if the rental

agreement provides, it may be sent by “electronic means,” (i.e. email or text). The landlord may combine the utility charge billing with a rent statement, but the two amounts must be stated separately. The due date may be the date of delivery of the utility charge bill, but the utility or service charge is not late until at least seven days later per ORS 90.562 (3).

c. Utility or service charges are **not rent** (ORS 90.562 (4)). A landlord may not use a nonpayment of rent termination of tenancy notice for failure to pay the utility or service charge, but may use a 30-day curable termination notice under ORS 90.630 (given no sooner than the seventh day after the due date). For example, if the due date is the first day of the month, the utility charge would be late on the eighth and the termination notice could be given that day. A landlord may charge a limited late fee for utility or service charges, for a second violation after a warning notice. This is outlined in ORS 90.302 (3) (b) (A).

d. A **landlord may not make a profit** off of the utility or service, nor charge the tenant any of the landlord’s administrative expenses. All of the tenant payments together may not exceed the amount the landlord is charged by the water provider. See ORS 90.568 (4) and ORS 90.572 (3) for more information.

e. With submeter billing only, a landlord may pass through to tenants the **charge by a third party billing company to read the submeters** (often done remotely/electronically) and bill tenants for their usage as measured by the submeter. The billing company may not add any other costs, such as for repairs or collections or inspections, and the landlord must allow tenants to inspect the third party’s billing records.

f. With pro rata or submeter billing, a landlord may add to the utility or

service charge a pro rata portion of any **public service charge** if the rental agreement so allows. A public service charge means a charge imposed by a utility provider or a local government for a municipal service or provision of public resources to the park, such as street maintenance, transit, public safety, and recreational parks – but not including property taxes or license fees. A landlord may unilaterally amend the rental agreement to impose a new or increased public service charge 60 days after providing written notice. The public service charge must be stated separately in the utility or service charge bill as outlined in ORS 90.315 (1) and (4), ORS 90.562 (3), and ORS 90.570.

g. A landlord may add to the billing a pro rata charge for water and waste/storm **water service to common areas** available for tenants’ use, such as a community room or pool. This must be described in the rental agreement separately from a charge for water service to the tenant’s space.

h. With pro rata or submeter billing only, the landlord must **post the facility water bills** in a place accessible to tenants, which may include posting on the Internet. A landlord also must allow a tenant to inspect all billing records over the previous year showing the tenant’s charges for all utility or service charges, not just for water, after a written request and at a reasonable time in either a manager’s office or a location the landlord and tenant agree on.

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*This information is provided for educational purposes only and should not be considered legal advice.*

*Please contact the [Manufactured & Marina Communities Resource Center](#) with any questions:  
Toll free in Oregon – (800) 453-5511 or (503) 986-2145. Email: [mcrc@oregon.gov](mailto:mcrc@oregon.gov)*



## **MANDATORY MEDIATION AND INFORMAL DISPUTE RESOLUTION IN OREGON**

State legislation requires manufactured home park 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 or Tenant. Either party may contact the mediation services available through: (a) park manager, (b) Local Community Dispute Resolution Center (CDRC), or (c) Manufactured & Marina Communities Resource Center (MMCRC) hotline: 1-800-453-5511 (Toll Free in Oregon) or phone: 503- 986-2145 or email: [mcrc@oregon.gov](mailto: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.
- Voluntary informal dispute resolution – those between any two or more 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. It is also considered a winning rebuttal to a lawsuit over that dispute.



#### **4. Effect of Filing for 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 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 Mediation**

- Park closures
- Sales of parks
- Rent increases for periodic tenancies
- Rent payments or amount of rent due
- Unauthorized person in possession under Oregon Revised Statute 90.403
- Unless initiated by the victim, disputes involving domestic violence, sexual assault or stalking or between the victim and the alleged perpetrator
- Termination notices given for: (i) nonpayment of rent; (ii) conduct resulting in 24-hour notice; (iii) three-strikes notice under Oregon Revised Statute 90.630
- Disputes arising after the termination of the tenancy (e.g., under abandonment statutes or service and enforcement of writ of execution and eviction trespass notice).

#### **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 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.