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Practical Tips for Selling and Buying a Colorado Mobile Home Park under CRS § 38-12-217

July 2021 • [Seth Weiland](#)

In the summer of 2020, multiple revisions to Colorado’s Mobile Home Park Act were enacted into law. From a mobile home park (a “**Park**”) buying and selling perspective, the biggest revision, by far, was the expansion of [CRS § 38-12-217](#) (the “**Statute**”) which now requires a seller of a Park (a “**Seller**”) to provide a number of notices to all mobile home owners in the Park (the “**Tenants**”) related to a proposed sale and provides Tenants with a 90-day window after each notice to submit a competing offer to purchase the Park (unless 50% of the Tenants living in a Park elect in writing not to submit an offer). The Statute requires at least 51% of the Tenants be in support of making an offer before an offer can be made. The Statute does not apply, however, to certain related-party transactions.

Neither the Statute nor the related regulations provide clear practical guidance on how to comply. Since the Statute was enacted a little over a year ago, we have had an opportunity to observe it in operation and now can offer the following practical tips for selling and buying a Colorado Park under the Statute.

Drafting the Purchase Agreement: The Statute prohibits a Seller from making “a final, unconditional acceptance of any offer” to buy a Park until either (a) the Seller has considered in good faith (and rejected) an offer made by the Tenants or (b) the applicable 90-day window for the Tenants to make an offer has expired with no offer being made or no binding commitment for necessary financing being obtained by the

Tenants.

Practical Tip: In order to comply with this requirement, it is becoming customary for a purchase agreement to contain a condition precedent to the Seller's obligation to close, allowing a Seller to terminate the transaction if the Seller is required to accept a Tenants' offer under the Statute. Some buyers eager to purchase a specific Park at a fixed price will negotiate a right in the purchase agreement to have a second opportunity to buy the Park if a Tenants' offer is accepted, but the Tenants fail to actually close.

Sending Notices of Sale: Under a typical Park transaction, the Statute requires a Seller send written notice of the occurrence of **three** events to the Tenants: (1) when a Seller has the "intent" to sell a Park; (2) when a Seller "lists" a Park for sale; and (3) when a Seller "intends to make a final, unconditional acceptance of an offer" to sell a Park. Notices required under (2) and (3) above must be sent within 14 days of the event occurring. In certain situations, all three of these notices can be sent via one notice. These notices must be posted on each mobile home or at the main entry on each home lot and also sent by certified mail. All of the notices must also be sent by certified mail to the city in which the Park is located (or county, if not located in a city). The notices required under (2) and (3) above must also be sent to the Colorado Department of Local Affairs, Division of Housing, and any Park resident association. The Statute lists certain specific items that must be included in the notices. Of particular importance, the notices must contain the terms of an acceptable offer to buy a Park (or the terms under which a Seller is willing to sell a Park).

Practical Tip: When describing the terms of an acceptable offer to buy a Park (or the terms under which a Seller is willing to sell a Park), the more information that can be provided, the better. The Tenants rely on these deal summaries to craft their competing offer. If deal terms are withheld from the Tenants and then a Tenants' offer is rejected for reasons not disclosed to the Tenants, the Tenants may allege a failure to comply with the Statute and demand that the applicable 90-day window to submit an offer start over. Identification of which party will pay brokerage fees and the stipulation of whether a Seller is required to reimburse a buyer for due diligence costs in the event a Park is sold to the Tenants under the Statute, are two examples of deal points we have seen accidentally excluded. While providing the purchase agreement to the Tenants will likely include all deal points (except for potential brokerage fee terms), many Park buyers and Sellers prefer not to include the whole purchase agreement for confidentiality reasons. If not providing the whole purchase agreement (or a redacted version), a thorough deal summary will need to be provided to the Tenants.

Title Insurance: Title insurance companies are requiring evidence of compliance with the Statute in order to issue a title policy to a buyer and buyer's lender without an exception for the Statute. This includes evidence of a Seller's delivery of the compliance affidavit to the Colorado Department of Local Affairs, Division of Housing,

and the city in which the Park is located (or county, if not located in a city), if the Park is not sold to the Tenants.

Practical Tip: While it is a Seller's obligation to fill out and deliver the affidavit, a buyer should make sure their Seller properly fills out and submits this affidavit, so as not to delay a closing because a buyer or lender title policy cannot be issued without the Statute as an exception.

1031 Exchange Timeline: Tenants have a 90-day window after the delivery of each notice described above to submit an offer to purchase a Park. If the Tenants make an offer, then the Seller must negotiate in good faith. If these negotiations lead to the Seller accepting the Tenants' offer, then the Tenants cannot be required to close sooner than 90 days after the end of their last 90-day window to submit an offer.

Practical Tip: Given the various time periods required under the Statute, and the fact that a buyer could lose their right to purchase a Park if the Tenants submit a better offer, parties hoping to use the purchase or sale of a Colorado Park as part of a 1031 or reverse 1031 exchange transaction should consult with their 1031 exchange advisor in detail early, to determine its feasibility.

As with any new statute, developing case law and governmental regulations will shed more light on the nuances of the Statute. The Statute's regulations, while bare, can be found [here](#) (See Rule 8). As the case law and regulations evolve, so too will the practical tips provided in this article. Attorneys at Otten Johnson Robinson Neff + Ragonetti PC are routinely checking for case law and regulation updates.

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