



## OTTEN JOHNSON ALERT

# Selling and Buying a Colorado Mobile Home Park: Compliance with CRS § 38-12-217

October 2023 • [Seth B. Weiland](#)

Starting in 2020, [CRS § 38-12-217](#) (the “**Statute**”) required an owner of a manufactured home park (a “**Park**”) to give owners of manufactured homes located in the Park (each a “**Home Owner**”) notice of the Park owner’s (an “**Owner**”) intent to sell the Park and an opportunity to submit a competing offer to purchase the Park (a “**Competing Offer**”).

In October 2022, the Statute was revised to impose additional obligations on Owners and provide additional rights to Home Owners. These revisions require Owners to change their strategy for selling Parks and require potential Park buyers to underwrite the additional time and costs associated with buying a Colorado Park.

Ottens Johnson Robinson Neff + Ragonetti PC attorneys have been monitoring the regulations, case law, and agency guidance arising from these revisions over the last year. Below is a summary of the major changes to the Statute based on the October 2022 revisions and related regulations and agency guidance. To date, there is no case law directly interpreting the Statute.

- The most impactful change to the Statute is that Home Owners now have 120 days after receiving an Owner’s notice of intent to sell the Park (the “**Competing Offer Period**”) to submit a Competing Offer and obtain an offer for financing to purchase the Park. Prior to the Statute’s revisions, the Competing Offer Period

was only 90 days. The Statute continues to allow the Competing Offer Period to terminate early, if at least 50% of the Home Owners residing in the Park waive their right to submit a Competing Offer (provided, an Owner cannot seek these waivers until the date that is 90 days after the Owner has provided the Home Owners with its notice of intent to sell). The Statute continues to require a consensus from at least 51% of the Home Owners before a Competing Offer can be made.

- The Statute continues to allow the Home Owners to assign their right to submit a Competing Offer to a local or state government (each a “**Public Entity**”) or a nonprofit with expertise related to housing for the purpose of continuing the Park, but now provides more details affecting the assignment process. For example, the Statute now tolls the Competing Offer Period from the date the Home Owners offer the assignment to the Public Entity or nonprofit until the date the Public Entity or nonprofit accepts or rejects the proposed assignment (not to exceed 90 days). The Statute now provides that if an assignment to a Public Entity occurs, the Public Entity’s right to submit an offer to purchase the Park expires 120 days after an Owner sends the Public Entity the terms of an acceptable offer for the sale of the Park (i.e. the Competing Offer Period is extended for 120 days after the Public Entity receives the terms of an acceptable offer from the Owner). The Statute now requires an Owner to sell the Park to the Public Entity, if the Public Entity submits an offer to purchase the Park during the Competing Offer Period, as extended, containing the same terms, or economically substantially identical terms, as contained in the Owner’s acceptable-offer and the Public Entity commits to purchasing the park within 120 days after a purchase agreement is executed.
- An Owner’s obligation to provide notice of its intent to sell the Park to Home Owners (a “**Notice**”) is now triggered by more events than previously required. An Owner still must provide a Notice to the Home Owners (among other groups listed below) within 14 days after any trigger event and each new Notice will create a new Competing Offer Period, except in limited situations described below. The following list contains the major Notice trigger events, but is not an exhaustive list of all trigger events contained in the Statute.

Notice trigger events include the following:

- An Owner signs a contract with a real estate broker to list the Park for sale or a contract with a potential buyer’s broker related to a potential sale of the Park;
- An Owner signs a letter of intent to sell the Park or an option agreement to sell the Park;
- An Owner accepts an earnest money deposit from a potential buyer;

- An Owner responds to a potential buyer's due diligence request for the Park;
- An Owner provides an Owner signed property disclosure form for the Park to a potential buyer;
- An Owner lists the Park for sale;
- An Owner makes a conditional acceptance of an offer for the sale or transfer of the Park; or
- An Owner takes any other action demonstrating an intent to sell the Park.

The Statute now provides an exception for when an Owner is required to provide a subsequent Notice due to an additional trigger event. The exception is that if a Notice has been provided and another trigger event occurs within the 60-day period after the Notice has been provided and there are no material changes to the identity of the potential buyer, the time when the Park is listed for sale, or the price or other terms of an acceptable offer to an Owner, then no new Notice is required. In situations where this exception applies, the current Competing Offer Period continues to run.

- Each Notice must now be in both English and Spanish. Besides providing a Notice to Home Owners, the Statute still requires a Notice also be provided to the municipality in which the Park is located, the Colorado Department of Local Affairs, Division of Housing, and any Park residents' association. In addition, the Statute now requires a Notice be emailed to all Park residents (both Home Owners and home renters), if an Owner has their email addresses.
- An Owner is still required to review a Competing Offer in good faith, however, the Statute now provides requirements to meet the good faith standard. For example, an Owner must now respond to a Competing Offer within 7 days after receipt of the Competing Offer. If the Competing Offer is rejected, then the Owner's response to the Home Owners must now include an explanation for rejection and what terms must be included in a subsequent Competing Offer for the Owner to potentially accept it.
- The Statute now expressly provides that if an Owner violates the Statute, the Owner can be liable for a fine in an amount not to exceed 30% of the greater of the Park's actual sale price or listing price. In addition, litigation seeking injunctive relief or other remedies may be pursued, and in some cases the sale of the Park can be potentially unwound.

Otten Johnson Robinson Neff + Ragonetti PC lawyers represent sellers and buyers of manufactured home parks in Colorado and across the Country. The firm's attorneys are well equipped to assist sellers and buyers in navigating the Statute during the sale process.

Note: This article supplements [Practical Tips for Selling and Buying a Colorado Mobile Home Park under CRS § 38-12-217](#) written by Seth B. Weiland and published in July 2021.

Otten Johnson attorneys in our [Real Estate](#) practice group have substantial experience with development and governmental agreements. For more information on this Otten Johnson Alert or for help evaluating your current situation, contact any of the attorneys in the Real Estate or Land Use practice groups. For a listing, [click here](#).

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