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April 13, 2020

Re: An open letter to manufactured home owners and manufactured home community owners regarding home sales and lease transfers

Dear Home Owners and Community Owners:

One of the duties of the Office of the Manufactured Housing Ombudsperson (“MHO”) is to provide information to both manufactured home owners and manufactured home community owners about their rights and responsibilities under the law. 81 *Del. Laws* ch. 280 § 101 (2018). The Manufactured Homes and Manufactured Home Communities Act, Chapter 70 of Title 25 of the Delaware Code (“Chapter 70”), contains a provision allowing home owners who are selling their homes to transfer their leases to the people who buy their homes. The MHO has seen several instances where there has been confusion as to the rights and responsibilities of home sellers, home buyers, and community owners regarding this process. For this reason, the MHO is providing this open letter to explain the process in the hope that it will help prevent confusion and conflicts in the future.

The analysis in this letter is the opinion of the Office of the Manufactured Housing Ombudsperson. It is not formal opinion from the Department of Justice and is not binding upon the Department or any division or unit thereof. This letter is provided as a courtesy to inform community owners of some of their rights and responsibilities under the law.

Anyone with questions or concerns regarding the contents of this letter is welcome to contact the MHO at manufactured.housing@delaware.gov. Please be aware that the MHO, as part of the Department of Justice, is unable to provide legal advice to individuals. Within this limitation, we will be happy to answer questions and provide whatever other resources or assistance that we can.

Parties Involved:

There are three parties and two distinct transactions involved when home owners in manufactured home communities decide to sell their home. Because parties have multiple roles (e.g., the person purchasing the home is, at various times, the prospective purchaser, the prospective tenant, and the home owner), this letter uses the following nomenclature at all stages to avoid confusion:

- **Community Owner:** The Community Owner is the owner of the community. The landlord.
- **Seller:** The Seller is the initial owner of the home who decides to put the home up for sale. If there is a lease transfer, the Seller is the transferor (the person who gives the lease to the Buyer).
- **Buyer:** The Buyer is the person (or people) who purchases the home from the Seller. If there is a lease transfer, the Buyer is the transferee (the person who accepts the lease from the Seller). For the purposes of this letter, we assume that the buyer intends for the home to remain in the community.

Manufactured Home Sale and Lease Transfer:

Note: The following is a summary of the home sale and lease transfer provisions in Chapter 70 and is designed to give parties a better understanding of the overall process. It is not intended to be a detailed analysis of every possible situation. Parties should always consult the Delaware Code and may wish to consult with attorneys prior to moving forward with a home sale or lease transfer.

Step 1: Seller's Notification to Community Owner

When a Seller plans to sell, convey, or transfer (collectively "sell") a manufactured home in a manufactured home community, the Seller must inform the Community Owner in writing at least three weeks before the scheduled sale. *25 Del. C. § 7013(c)*. The notification is only required once the Seller and Buyer have agreed to terms of the sale. This notification must include the name and address of the Buyer as well as the agreed sale price and terms. A failure to provide proper notification is grounds for termination of the Seller's lease. *Id.*

Step 2: Community Owner's Right to Purchase

The Seller's notice to the Community Owner triggers the Community Owner's right to purchase the manufactured home at a price one percent greater than the contract price and under the same terms at which the Seller was going to sell the home to the Buyer. *25 Del. C. § 7013(c)(1)*. The Community Owner must notify the Seller within five business days of receiving the Seller's notice if it intends to exercise this right. *25 Del. C. § 7013(c)(3)*. Settlement must be within 14 days of the Community Owner's notice to the Seller of its intent to exercise its right. *25 Del. C. § 7013(c)(4)*.

Certain transfers are exempt from the Community Owner's right to purchase the property, including foreclosure sales and transfers to family members. *See 25 Del. C. § 7013(c)(5)*.

Step 3: Buyer's Application for Residence

The Community Owner may require a Buyer to complete an application package and must evaluate the Buyer using the same criteria that are used for all other potential tenants. 25 *Del. C.* § 7013(b)(2). The Community Owner must provide written notice as to whether Buyer has been approved or rejected from the community within 15 days of receiving the completed application package. 25 *Del. C.* § 7013(b)(4). If the Community Owner rejects the Buyer, it must provide the Buyer with the specific eligibility requirement that was not satisfied and the grounds for the rejection. 25 *Del. C.* § 7013(b)(3).

Step 4: Seller's Decision Whether to Transfer Lease

If the Buyer is accepted as a tenant by the Community Owners, and if the home meets the community's written standards for retention in the community, 25 *Del. C.* § 7013(b)(1), the Seller has the choice to transfer the existing lease to the Buyer or to terminate the lease and have the Buyer enter a new lease with the Community Owner. 25 *Del. C.* § 7013(d). The Buyer and Community Owner are bound by the Seller's election. Nothing in the law prohibits a Buyer from making the transfer of the existing lease a condition of the agreement to purchase the home from the Seller, but the Buyer has no right to demand that the Community Owner transfer the existing lease if the Seller does not elect to transfer it.

Step 5: Buyer's Lease After Sale of Home

If the Seller does not transfer the existing lease to the Buyer, the Buyer must enter into a new lease with the Community Owner and is treated identically to any other new home owner entering the community.

If the Seller transfers the existing lease to the Buyer, the Community Owner must execute the transfer. Thereafter, the Buyer steps into the shoes of the Seller and has all the same rights that Seller would have had if Seller had not sold the home. This rent and date of lease renewal are the same. The lease will automatically renew at the end of the lease term, 7009(c), and any rent increases are subject to the provisions of the Rent Justification Act. 25 *Del. C.* §§ 7050-7056. The Community Owner cannot require the Buyer to sign a new lease at the expiration of the lease term because the Community Owner could not have required the Seller to sign a new lease if Seller had not sold the home.

Conclusion:

The MHO hopes that this letter clarifies the rights and responsibilities of Buyers, Sellers, and Community Owners regarding home sales and lease transfers in manufactured home communities. The MHO is available to address questions or concerns about this letter or other matters by email at manufactured.housing@delaware.gov. Additional information is available on our website at <https://attorneygeneral.delaware.gov/fraud/cpu/manuhousing/>.

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Sincerely,

/s/Brian S. Eng

Brian S. Eng
Deputy Attorney General
Manufactured Housing Ombudsperson