

Building on a Sound Notification Law

Ken Smith

Introduction

THIS ARTICLE IS AN ATTEMPT to contribute positively to the conversation about manufactured housing in Delaware and its future by gathering in one place points taken from many different discussions which have occurred over a period of time. It concentrates on the manufactured housing notification bill which is currently being considered, and it makes several suggestions regarding changes to improve this legislation. It also places the bill in the broader context of conditions, legal and otherwise, necessary for resident owned communities (ROCs), also known as cooperatives, to survive and flourish.

As residents of manufactured housing are painfully aware, government is almost as uncertain an ally as the market in the attempt to defend themselves from the undesirable consequences of living in investor-owned communities (IOCs). The most dramatic of these is, of course, mass eviction. They “enjoy” an extremely “insecure form of tenure,” as Paul Bradley, Vice President of the New Hampshire Community Loan Fund (NHCLF) faithfully continues to remind us. The remarks which follow are greatly indebted to him and the work of NHCLF. We at DHC take our place in

a long line of local and national groups who have already expressed their gratitude and relief for the pioneering work of the Fund in lovingly devising a network by means of which manufactured housing residents might successfully overcome the ultimate fear of residents of IOCs, the sale of their community by the landlord.

The Market in Delaware Land

While there are several bills affecting the fate of manufactured housing (MH) in Delaware that are up for consideration in this legislative year, perhaps the one that could prove to be most important in the long term is Senate Bill 211, known as the “notification law,” which, with some exceptions, would require the owner of a manufactured home community to notify all tenants 60 days prior to completing any sale or transfer of the community and would facilitate sale to a tenant cooperative association making an offer that equals or exceeds the best third party offer.

The primary concern regarding the genuine effectiveness of such a statute relates to the rapidly escalating market value of land, especially in Sussex County, where the 2000 Census counted 23,817 MH units, out of a total of 38,281 for the state. The

market price of land acts both as the catalyst for potential sales of IOCs, as well as creating conditions which, once a sale is on the horizon, dooms these communities, according to some observers, to becoming less than “affordable” or to disappearing altogether. In the case of Sussex County, especially, these visionaries speak, albeit still quietly, of an upscale leisure and play ground, with affordable housing and other distasteful remnants of hoi polloi banished. To the question, “Banished to where?” they have no answer. Nor does anyone. That is why a measure like SB 211 is so important as another tool to help make the Diamond State a decent state.

While the concern about market value of land is a very real one, it is not necessarily insurmountable and certainly does not prohibit each and every manufactured housing community (MHC) from making the transition to resident ownership. Further, the proposed law can be strengthened from the form first introduced (something which we understand is in process) and can be augmented with other legislation and community efforts to produce progressively better results over time. We will return to this point below.



Development Without Displacement

Manufactured home owners on leased land in this state are asking themselves the question, “Will there be life after the IOC?” In other words, is there any possibility of preventing the community from being sold out from under them to a willing would-be purveyor of big box stores, luxury townhomes, strip malls, or other equally indispensable features of modern life? The notification bill could be one block with which to build an answer to residents’ questions about that communal after-life.

How could the bill be improved?

Cover all sales: The bill should cover all sales of a manufactured housing community except those otherwise specifically exempted.

Notification of the state housing finance agency: One feature which would strengthen the bill would be the inclusion of a requirement that notification of intent to sell go not just to the residents but to a state agency such as the Delaware State Housing Authority. This puts the authorities on notice and is a provision of New Hampshire’s law.

Good faith bargaining with tenants: In addition, the law could emphasize, again following our New Hampshire friends, that the “manufactured housing park owner shall consider any offer received from the tenants or a tenants’ association, if any, and the owner shall negotiate in good faith with the tenants concerning a potential purchase. [emphasis added]”

Compliance: In New Hampshire “[t]he owner of a manufactured housing park who sells or transfers a park and willfully fails to comply with [the law] shall be liable to the tenants in the amount of \$10,000 or 10 percent of the total sales price,” whichever is greater. All property owners there must file an affidavit of compliance, also.

What other legislation would be helpful in bolstering it?

Use of Relocation Trust Authority funds: Manufactured home owners are paying \$1.50 per month into the relocation fund. This money is for use as a palliative at such time as the community may be sold. Broadening the scope of use of these funds to allow

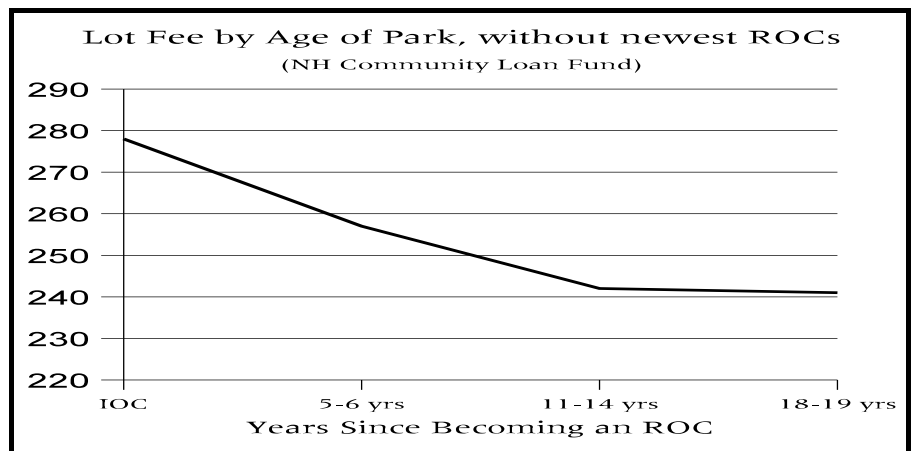
for the accumulated amounts to serve in leveraging purchase option money for a resident-owned community increases their effectiveness and is more in line with the intention of causing the least damage possible to residents while allowing the investor to sell. Conversion to a cooperative does no damage at all and helps to secure the future of the community and each home owner’s tenure. At \$18.00 per year, a community of 100 homes is generating \$1,800 per annum. In ten years, this community would have a significant sum with which to begin the process of conversion. Matching this with the property owner’s contribution to the RTA doubles the sum.

The law regarding this fund and its use should be strengthened to allow saving peoples’ homes and communities, not just salving the conscience of the rest of us as we watch a community be destroyed. Further, any strengthening of the law should be thought through adequately to address such questions as the following. What is the right of a home owner to access RTA funds not contributed by that home owner but by a previous home owner in that community who has left without having accessed the fund? What ceiling is to be put on the collection of funds and would it be adequate to help capitalize home owners’ efforts in one or more communities looking to form a cooperative in response to impending sales? Should not the total amount to be collected in each community not be of direct interest to the home owners in all communities, the more so in proportion to how strongly they feel their community to be “at-risk”? Therefore, should this figure not be one about

which they have not only the keenest interest but also some ability to set the total amount being reserved to eventually save their homes, should need arise? What discretion would the board of the RTA have to make use of accrued interest to aid costly cooperative conversions? (Would additional voluntarily contributions be permitted via the RTA for communities whose members wish to prepare for the worst? Could these be matched by the landlord at all? Or should the members of the Delaware Manufactured Home Owners Association begin talking among themselves and with local banks about beginning to levy such a Community Security Fund on its own?)

Consumer Cooperative Law: At present, there is no provision that we know of for establishing a consumer cooperative in Delaware. Presumably, a cooperative would have a two-step process of organizing as a Delaware corporation and then becoming a nonprofit entity under IRS guidelines. This latter would ensure that the cooperative could not dissolve and make use of the assets for purposes other than a charitable use.

While this process is feasible, it is cumbersome for every cooperative to have to apply for federally recognized nonprofit status. It is unnecessary in New Hampshire, where that state’s law establishes the conditions under which cooperatives can be treated as such without federal regulation. These include the filing of a certificate of organization, a definition of the cooperative form for any incorporated or unincorporated group, and the requirement for a specific distribution of assets upon dissolution.



Moving Toward Security of Tenure

Definition of Manufactured Housing as Real Property: We can not go into this subject at any length here, one which promises to be the most difficult long-term issue for resident-owned communities, as for Delaware manufactured housing as a whole. Suffice it to say, that the manufactured housing unit should be treated as real property, regardless of its attachment to the land.

What additional measures we can take to improve the life-expectancy of MHCs?

The final two elements necessary for establishment and continued well-functioning ROCs, according to the New Hampshire Community Loan Fund, are a source of sufficient subordinate debt capital to allow the community conversion and technical assistance to help the cooperative move to governing itself and managing the park effectively. These are elements that can best be provided by collaboration among the private sector and third sector. Some efforts, still inadequate, by ourselves and others, are being made on these two elements. We need to move ahead more assertively on both, though progress on the other elements will help greatly.

The Delaware Model

The New Hampshire model has been crafted to balance security of tenure

with traditional market values. While the land, once it is under the ROC, is no longer transferrable, the full appreciation of investment of the home owner is allowed. Over time, rents (user fees) tend to decline and resale values to increase. This is the kind of model which would seem to have immense appeal in a state like ours which prides itself on being able to combine good business and compassionate policy.

Recent research by the Carsey Institute of the University of New Hampshire, reveals that ROCs there enjoy decreasing average lot fees over time compared to their rents at point of conversion [see graph]. On a recent visit to New Hampshire to learn more about the New Hampshire model, I visited several cooperatives and learned that more than one ROC is known to vote themselves a month's rent "holiday" at the end of the year when finances permit.

These communities now have secure land, stable fees, improving financing options for their homes, a growth in mortgage loans that has far exceeded that of IOCs, and higher sales prices on the resale market, both generally and on a square-foot basis. At the time of my visit (November 2005), there were 72 resident-owned manufactured home communities in New Hampshire, and I would not be at all surprised to learn that the number

An Empowering Structure for Resident-Owned MH Communities (NHCLF)

Conditions Favorable to the Establishment and Growth of Resident-Owned Communities

- ✓ a resident notification law
- ✓ a provision to incorporate under state law as a nonprofit consumer cooperative
- ✓ a mechanism to make the land non-transferable except to another charitable entity
- ✓ sufficient subordinate debt capital to enable the purchase
- ✓ technical assistance to build self-governance and community operation
- ✓ treating MH as real property

has increased as of this writing in January 2006.

All of these elements could come together to fulfill the goal of "development without displacement," the motto of our colleagues at the Dudley Street Neighborhood Initiative in Boston. This is the importance of a well-formed notification law, supported by the other features discussed here, in creating a model for preserving affordable manufactured housing communities in Delaware.

143rd General Assembly Senate MH-Related Bills

All bills introduced by Senator George Bunting and referred to Senate Agricultural Committee

Senate Bill # 203 ~ Manufactured Housing Installation~ Establishes a new Board to license installers of manufactured housing in Delaware in accordance with new national standards.

Senate Bill # 208 ~ Rent History Disclosure ~ Requires community owners to disclose to each prospective tenant the rents and fees it has charged for a particular lot of interest to the prospective tenant for the five years immediately preceding.

Senate Bill # 209 ~ DE Board of Manufactured Housing ~ Establishes this Board as an body to resolve disputed rules, standards, or rents; designates the composition of the 7-member board and its purpose of dispute resolution; and establishes a process of appeal through the local J. P. Court within 20 days of the date of the Board's decision.

Senate Bill # 210 ~ Rents and Fees ~ Clarifies that the terms "fee" and "charge" may be used interchangeably and that fees include obligations for expenses incurred as a direct result of the tenant's possession, use, or enjoyment of parts of the premises in a manufactured home community other than the rental lot. This Act also clarifies that the term "rent" do not include obligations for the tenant's possession, use, or enjoyment of parts of the premises in a

manufactured home community other than the rental lot..

Senate Bill # 211 ~ Resident Notification ~ Rewrites the provision of Delaware Code relating to the rental or sale of a manufactured home community, requires the owner of the manufactured home community to notify all tenants 60 days prior to completing any sale or transfer of the community. The owner will sell to a tenant cooperative association if its offer is equal to or greater than the best third party offer.

Senate Bill # 212 ~ Rent Justification ~ Expands the rules governing lot rent increases. Existing law simply requires that a community owner provide 60 days written notice of an increase and that only 1 increase may be made per calendar year. In addition to these provisions, this Act requires that rent be reasonable and be related to the operating costs and market conditions associated with maintaining the manufactured home community within which the lot is situated. It mandates the opportunity for home owner and community owner to meet to discuss the reasons for the increase and the possibility of a phase-in of the increase and provides for a home owner or association still not satisfied to petition to the Governor's Council on Manufactured Housing for a mediator.