

CHAPTER 63
FORMERLY
SENATE SUBSTITUTE NO. 1 FOR
SENATE BILL NO. 33
AS AMENDED BY
SENATE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO MANUFACTURED HOMES AND MANUFACTURED HOME COMMUNITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 70, Title 25 of the Delaware Code as follows:

SUBCHAPTER III

§7040 Purpose.

Manufactured housing has become a vital source of affordable housing in Delaware, particularly as a homeownership opportunity for low-income households who otherwise would likely not be able to move into homeownership. In recent years Delaware has experienced a difficult economic climate which has resulted in a crisis in affordable housing availability. Additionally, manufactured home owners make substantial and sizeable investments in their manufactured homes. Once a manufactured home is situated on a manufactured housing community site, the difficulty and cost of moving the home gives the community owner disproportionate power in establishing rental rates. The continuing possibility of unreasonable space rental increases in manufactured home communities threatens to diminish the value of manufactured home owners' investments. Through this subchapter, the General Assembly seeks to protect the substantial investment made by manufactured home owners, and enable the State to benefit from the availability of affordable housing for lower income citizens, without the need for additional State funding. The General Assembly also recognizes the property and other rights of manufactured home community owners, and seeks to provide manufactured home community owners with a fair return on their investment. Therefore, the purpose of this subchapter is to accommodate the conflicting interests of protecting manufactured home owners, residents and tenants from unreasonable and burdensome space rental increases while simultaneously providing for the need of manufactured home community owners to receive a just, reasonable and fair return on their property.

§7041. Definitions.

The definitions contained in §7003 of this title shall apply to this subchapter. Unless otherwise expressly stated, if a word or term is not defined under §7003, it has its ordinarily accepted meaning or means what the context implies.

§7042. Rent Justification.

(a) A community owner may raise a home owner's rent for any and all twelve-month periods governed by the rental agreement in an amount greater than the average annual increase of the Consumer Price Index For All Urban Consumers in the Philadelphia-Wilmington-Atlantic City area ("CPI-U") for the most recently available preceding thirty-six month period provided the community owner can demonstrate the increase is justified for the following conditions:

(1) The community owner, during the preceding twelve month period, has not been found in violation of any provision of Chapter 70 that threatens the health or safety of the residents, visitors or guests that persists for more than 15 days, beginning from the day the community owner received notice of such violation; and

(2) The proposed rent increase is directly related to operating, maintaining or improving the manufactured home community, and justified by one or more factors listed under § 7042(c).

(b) The Delaware State Housing Authority shall monitor the CPI-U and report to the Authority findings and recommendations relevant to the cost of rent in manufactured home communities in Delaware.

(c) One or more of the following factors may justify the increase of rent in an amount greater than the CPI-U:

(1) The completion and cost of any capital improvements or rehabilitation work in the manufactured home community, as distinguished from ordinary repair, replacement and maintenance;

(2) Changes in property taxes or other taxes within the manufactured home community;

(3) Changes in utility charges within the manufactured home community;

(4) Changes in insurance costs and financing associated with the manufactured home community;

(5) Changes in reasonable operating and maintenance expenses relating to the manufactured home community including, but not limited to, costs for water service, sewer service, septic service, water disposal, trash collection, and employees;

(6) The need for repairs caused by circumstances other than ordinary wear and tear in the manufactured home community.

(7) Market rent. For purposes of this section, market rent means that rent which would result from market forces absent an unequal bargaining position between the community owner and the home owners. In determining market rent, relevant considerations include rents charged by comparable manufactured home communities in the applicant's competitive area. To be comparable, a manufactured home community must offer similar facilities, services, amenities and management.

(8) The amount of Rental Assistance provided by the community owner to the home owners under 25 Del C 7021A.

A community owner shall not incorporate the cost of a civil penalty, criminal fine, or litigation related costs for rent related proceedings into rent charged under any circumstance.

§7043 Rent Increase Dispute Resolution

(a) A community owner shall give written notice to each affected home owner and to the Home Owners Association, if one exists, and to the Delaware Manufactured Home Relocation Authority (the Authority), at least 90 days prior to any increase in rent. The notice shall identify all affected home owners by lot number, name, group or phase. If the affected homeowners are not identified by name, the community owner shall make the names and addresses available to any affected home owner or Home Owners Association upon request.

(b) If the proposed rent increase exceeds the CPI-U, the Authority shall schedule a meeting between the parties at a mutually-convenient time and place to be held within 30 days from the mailing of the notice of the rent increase, to discuss the reasons for the increase. At the meeting the community owner shall, in good faith, disclose all of the material factors resulting in the decision to increase the rent. The community owner shall disclose financial and other pertinent documents and information supporting the reasons for the rent increase. The parties may agree to extend or continue any meetings required by this section.

(c) If the meeting fails to resolve any dispute, either party may, within thirty (30) days from the conclusion of the final meeting, petition the Authority to appoint a qualified arbitrator to conduct non-binding arbitration proceedings. The Authority shall select an arbitrator who is a member of the Delaware Bar with appropriate training

in alternative dispute resolution. The Authority may select an arbitrator from the list of arbitrators maintained by the Superior Court of the State of Delaware, or by soliciting applicants for a list maintained by the Authority, or through another method which the Authority, in its discretion, has determined will be sufficient to result in the selection of an appropriate arbitrator. The tenants and the landlord must each pay \$250.00 to the Delaware Manufactured Home Relocation Trust Fund to be applied to the arbitrator's fee. The Authority shall pay all direct arbitration costs in excess of the \$500.00 collected from the homeowners and community owner. All other costs shall be the responsibility of the respective parties. The arbitration must be held within sixty (60) days from the date of the petition.

(d) The Delaware Uniform Rules of Evidence shall be used as a guide by the arbitrator for admissibility of evidence submitted at the arbitration hearing.

(e) Unless waived by all parties, testimony will be under oath or affirmation, administered by the arbitrator.

(f) Testimony shall be transcribed and shall be considered a written record.

(g) The arbitrator will render a decision employing the standards set forth in §7042 of this chapter.

(h) The Arbitrator will render a written decision within fifteen (15) days of the conclusion of the arbitration hearing.

(i) The home owners will be subject to the rent increase as notified; however, if the rent increase is not approved through the process provided in this section, the community owners shall rebate the increase.

§7044. Appeal.

The community owner, the home owners association, or any affected home owner may appeal the decision of the arbitrator within 30 days of the date of issuance of the Arbitrator's decision. The appeal shall be to the Superior Court in the county of the affected community. The appeal shall be on the record without a trial de novo.

§7045. Penalties.

A community owner who raises a home owner's rent more than the annual average increase of the CPI-U for the preceding thirty-six month period without having obtained approval of the Authority shall be required to immediately reduce the rent to the amount in effect before the unauthorized increase and rebate the unauthorized rent collected to the homeowners with interest. The Department of Justice shall have authority over this section.

§7055. Exemption.

(a) Resident owned communities shall be exempt from the provisions of this Subchapter.

(b) Any deed subject to lease community shall be exempt from the provisions of this subchapter. A deed subject to lease community is a community wherein each homeowner has a deed subject to lease recorded with the Recorder of Deeds, has a long term lease of at least 40 years duration where the lease includes specific rent increases, and wherein each home is of modular construction.

Section 2. Amend § 7021A(b), Title 25 of the Delaware Code as follows:

§7021A. Lot Rental Assistance Program.

(b) The homeowner, tenant, and other residents may not be recipients of any other rental assistance funding.

Section 3. If any provision of this Act or the application thereof to any person or circumstances held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application; and to that end, the provisions of this Act are declared to be severable.

Section 4. Amend Chapter 70, Title 25, section 7007(b)(2) by deleting "60" and substituting in lieu thereof "90."

Section 5. Amend Chapter 70, Title 25, section 7011(c) by making insertions as follows:

“(4) facilitate the initial meeting between the homeowners and landowner and select an arbitrator pursuant to section 7043.”

Section 6. This Act shall be effective for all leases expiring on or after November 30, 2013.

Approved June 30, 2013