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Model Manufactured Home Community Stability and Preservation Act

A Model Law to Give Resident
Homeowners in Manufactured Home
Communities the Opportunity to
Purchase Their Communities

**By Carolyn Carter and
Odette Williamson**

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TABLE OF CONTENTS

SECTION 1. Title	4
SECTION 2. Legislative Findings	5
SECTION 3. Definitions	6
SECTION 4. Notice to Residents of Proposed Sale, Lease, or Transfer	8
SECTION 5. Proposed Purchase Agreement by Resident Homeowner Group	9
SECTION 6. Duty to Consider a Resident Homeowner Group’s Proposed Purchase Agreement	10
SECTION 7. Proposed Purchase Agreement That Matches Third-Party Offer	11
SECTION 8. Financing and Closing	12
SECTION 9. Assignment	12
SECTION 10. Subsequent Offers	13
SECTION 11. Exemptions	13
SECTION 12. Enforcement	14
SECTION 13. Recordation in the Registry of Deeds	15
SECTION 14. Interpretation and Severability	16
<i>Sample Tax Incentive Provisions For Sale of A Manufactured Home Community to the Homeowners</i>	16
MANUFACTURED HOME COMMUNITY ZONING FAIRNESS ACT	18
SECTION 1. Zoning Notice	18

SECTION 1. Title

This Act shall be known as the Manufactured Home Community Stability and Preservation Act.

Commentary

This model law is intended to act as a template for state laws giving owners of homes in manufactured home communities the opportunity to purchase the land on which their homes sit. Resident ownership of manufactured home communities is a proven method of stabilizing, improving, and preserving this important yet threatened form of affordable housing.

Residents of manufactured home communities are uniquely vulnerable because, unlike any other form of housing, they own their homes but not the land on which their homes sit. As a result, they are vulnerable to unaffordable rent increases, disinvestment, and closure due to a change of use for the property, which can result in loss of the home. Traditionally, these communities have been locally owned and managed, but in recent years they have been targeted by regional and national investment conglomerates.

Opportunity to purchase laws give homeowners in manufactured home communities the opportunity to buy the land on which their homes sit. Typically the homeowners do so by incorporating a cooperative or similar organization that takes title to the land. (The exact form of the organization will depend on state law). The homeowners are members of the cooperative organization, and elect its governing board, which typically hires an independent, third-party property management company, approves budgets, and sets overall policies. Homeowners then rent their lots from the co-op organization, with a non-terminating lease.

Opportunity to purchase laws represent an appropriate balancing of the rights of the owners of manufactured homes and the owners of the land on which their homes sit. These laws do not require the community owner to sell the land, but only to give the homeowners an opportunity to purchase it if the community owner decides to sell it. Purchase opportunity laws ensure that the community owner receives the same market-set price for the property, whether it is sold to the residents or a third-party buyer.

Once a manufactured home community is resident-owned, the homeowners—and the community at large—know that their homes are secure. The danger of closure of the community, leaving hundreds of families without housing and creating a local affordable housing crisis, is gone. With stable land tenure, the manufactured home becomes a true asset for a family and a means to build wealth. The stable land tenure and stable rent that come with resident ownership also provide the groundwork for residents to secure mainstream mortgage financing for the purchase, replacement, or improvement of their homes.

Experience has shown that, when residents own their manufactured housing community, they invest in their homes and the property. Income from rent goes directly to expenses and capital improvements. They repave the roads, replace or repair systems ensuring clean drinking water and safe sanitation, repair and repaint outbuildings, and add landscaping and amenities. The enhanced manufactured housing community benefits the community at large. Being able to make decisions about the community also increases civic engagement and reduces societal conflict.

This model law is based in large part on laws in Colorado, Massachusetts, New Hampshire, Oregon, Rhode Island, and Vermont that have successfully fostered resident ownership. It is broken into

multiple sections, but could, as a technical drafting matter, be framed as a single statute with multiple subsections.

SECTION 2. Legislative Findings

The legislature finds that:

(1) Manufactured home communities provide a significant source of homeownership opportunities for [state] residents, and over _____ [state residents] live in these communities.

(2) Manufactured homes represent the largest source of unsubsidized affordable housing, both in the state and nationwide, and are an effective way to meet the state's affordable housing needs. Manufactured home communities are often a key source of workforce housing, an essential part of the local economy.

(3) Many homeowners in manufactured home communities are low-income households and senior citizens and are particularly in need of reasonable housing security.

(4) Unlike any other form of housing in the United States, homeowners in manufactured home communities own their home but not the land upon which it sits. This unique configuration can leave homeowners in manufactured home communities vulnerable to unaffordable rent increases, disinvestment in the community's infrastructure such as roads, water and sewer systems, and drainage, and even closure of the community.

(5) If a manufactured home community closes, relocation of the home is often impossible, forcing homeowners to abandon their homes and lose their investment in them.

(6) Many manufactured home communities are well-maintained, with affordable rents, and the community owner has no plans to close the community. However, there is currently great market pressure on manufactured home communities, with large multi-state investors buying them up.

(7) Resident ownership of manufactured home communities is a proven and successful strategy for preserving and improving manufactured home communities. Hundreds of resident-owned communities, spread across the country, are currently thriving. In New Hampshire, a state with an effective purchase opportunity law, 146 manufactured home communities—over 30% of the 425 to 450 in the state—are resident-owned.

(8) Given that, in a commercially-owned community, the homeowners' rents will cover the community owner's operating expenses, debt service, and profit, the residents are almost by definition able to afford to purchase the community. However, they are rarely given the opportunity to do so—even though they have the greatest interest in securing the land on which their homes sit.

(9) To give residents a meaningful opportunity to purchase the land on which their homes sit, they must be given advance notice that the community owner is considering an offer to sell the community, and a period of time to incorporate a cooperative or similar organization and put together their own proposed purchase agreement. Forty years of experience in states with effective opportunity to purchase statute demonstrates that homeowners can take these steps very expeditiously.

(10) When residents own their manufactured home community, they--and the community at large--know that their homes are secure. The danger of closure of the community, leaving hundreds of

families without housing, creating a community affordable housing crisis, and straining local community resources, is gone. The residents keep the rents affordable, resulting in markedly lower monthly rents over time as compared to commercially-owned communities.

(11) With stable land tenure, a manufactured home becomes a wealth-building asset for a family. When residents own their manufactured housing community, they invest in their home and the property. Income from rent goes directly to expenses and capital improvements. They repave the roads, replace or repair systems ensuring clean drinking water and safe sanitation, repair and repaint outbuildings, and add landscaping and amenities. The enhanced manufactured housing community benefits the community at large. Being able to make decisions about the community also increases civic engagement and reduces societal conflict.

(11) Stable land tenure and stable rent that come with resident ownership also provide the groundwork for residents to secure mainstream mortgage financing for the purchase, replacement, or improvement of their homes.

(12) Granting homeowners a right to notice and an opportunity to purchase reaches an appropriate balance between two ownership interests—ownership of the home, and ownership of the land on which the home sits. Purchase opportunity laws ensure that the community owner receives the same market-set price for the property, whether it is sold to the residents or a third-party buyer.

Commentary

Legislative findings are customary in some but not all states. For example, a 2008 Washington bill that, among other things, created a tax exemption for resident purchases included a series of findings. Courts may turn to the legislative findings when interpreting or applying a statute.

SECTION 3. Definitions

For purposes of this Act:

(a) “Community owner” means the owner of a manufactured home community.

(b) “Family member” of a homeowner or a community owner who is an individual shall mean the owner’s spouse, a child, parent, or grandparent of the owner or the owner’s spouse, or a descendant of any such person, and shall include all such persons, whether of the whole or the half blood and whether related by blood or adoption.

(c) “Manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on a site, is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. Such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the U.S. Department of Housing and Urban Development and complies with the standards established under the Manufactured Home Construction and Safety Standards Act, 42 U.S.C. §§ 5401 et seq. For purposes of this Act, the term shall include mobile homes, defined as structures that meet the preceding definition but were

manufactured prior to June 15, 1976 and do not conform to the standards established by the U.S. Department of Housing and Urban Development under the Manufactured Home Construction and Safety Standards Act, 42 U.S.C. §§ 5401 et seq. Neither the term manufactured home nor mobile home shall include any self-propelled recreational vehicle.

(d) “Manufactured home community” or “community” means any real property on which two or more lots or spaces are offered for rent or lease for the placement of manufactured homes and in which the primary use of the community or the manufactured home section thereof is residential.

(e) “Manufactured home owner” or “homeowner” is a person who owns a manufactured home in a manufactured home community.

(f) “Resident homeowner group” means any organization, group, or association, formal or informal, including a corporation or cooperative, that consists of resident owners of manufactured homes in the manufactured home community and is governed by and open to all owners of manufactured homes who occupy the home and live in the community. A resident homeowner group may allow resident owners of homes in the manufactured home community to become members even though their homes do not meet the definition of “manufactured home” in subsection (c) of this section. A resident homeowner group may designate an agent to act on its behalf.

Commentary

General. *This section provides definitions of certain terms used in the model law. Most states already have definitions for general terms such as “manufactured home community.” However, the drafter should make sure that any existing definitions are appropriate in the context of an opportunity to purchase statute.*

In some states, state law refers to manufactured home communities by some other term, such as “mobile home parks” or “mobile manufactured home parks.” In those states, if the existing definition is appropriate in the context of a purchase opportunity statute, the existing term should be substituted for “manufactured home community” in this model law.

Family member. *The term “family member” is used in this Act for two purposes. First, the Act treats a manufactured home as owner-occupied when it is occupied either by the homeowner or by a family member of the homeowner. Second, Section 11(a)(1) exempts intra-family transfers from the purchase opportunity required by the Act. The definition of “family member” provides a broad, uniform definition for both purposes. It includes the owner’s spouse plus parents, grandparents, children, aunts, uncles, nieces, nephews, and cousins of the owner and the owner’s spouse. Because it also includes descendants of these relatives, it also extends to, for example, grandchildren, great-nieces, great-nephews, and first cousins once removed. In the alternative, in some states there is a statute that includes a closed list of which family members inherit property when a person dies without a will, and it may be possible to replace this definition with a cross-reference to that statute.*

Manufactured home. *This definition parallels that in the federal Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. § 5402(6). The third sentence of the definition makes it clear that owners of homes built prior to the adoption of the HUD Code (often referred to as “mobile homes”) have the same purchase opportunity rights as owners of newer homes. It may be possible to replace this definition with a cross-reference in states that already have a definition of “manufactured home,” although if such a definition is incorporated by reference the state should make sure that it includes both homes built to the HUD Code and homes that were built before that Code was adopted.*

Resident homeowner group. This definition allows a group to permit membership by owners of homes in the community that do not meet the definition of manufactured home. For example, some manufactured home communities have a mixture of manufactured homes (built to the HUD Code) and modular homes (built to the local housing code). A resident homeowner group that is made up of the resident owners of both types of homes qualifies under this definition.

SECTION 4. Notice to Residents of Proposed Sale, Lease, or Transfer

(a) If a community owner receives an offer for the sale, lease, or transfer of the community that the community owner intends to accept, the community owner shall, at least 90 days before making a final unconditional acceptance of such offer, give notice:

- 1) to each resident household in the manufactured home community by certified mail with return receipt requested, by first class mail with tracking, and by delivery to each manufactured home on the property;
- 2) by certified mail with a return receipt requested and by first class mail with tracking to:
 - i) the [state housing finance agency and/or other state agency that should get the notice];
 - ii) the housing authority for the area where the manufactured home community is located;
 - iiiv) the [manufactured home community licensing body or the entity that enforces health and safety standards for manufactured home communities] for the area where the manufactured home community is located.

(b) The notice required by subsection (a) shall include:

- 1) a statement advising the recipient of the intended sale, lease or other transfer of the community,
- 2) a statement of the homeowners' rights under this section and the deadlines for exercising such rights, and
- 3) the price, terms and conditions of any offer the community owner has conditionally accepted or plans to accept concerning the community, or a copy of such offer or purchase contract. In the case of a proposed sale of more than one manufactured home community, or a manufactured home community and one or more other non-related properties, in a single transaction, the notice shall state both the aggregate price and the price of the manufactured home community in which the homeowners receiving the notice reside. .

c) Within five days after receipt of a notice required by this section, the [state housing finance agency or other state agency that should get the notice] shall post it on its website or make it available to any individual or organization that requests it.

d) A community owner may accept an offer for the sale, lease or transfer of the community before giving the notice required by this section and the purchase opportunity required by sections 5 through 8 as long as the purchase agreement is conditioned upon providing that notice and purchase opportunity.

Commentary

Time Periods: *A realistic time period for the homeowners to present a proposed purchase agreement, and then to close on the purchase, is essential if an opportunity to purchase is to be a reality rather than an empty promise. The goal is to balance the community owners' right to a timely sale and the homeowners' right to a reasonable amount of time to learn of the intended sale and execute and perform on a purchase contract that adheres to that standard timeframe. This model law proposes 90 days for the residents to present a proposed purchase agreement, and then (in section 8) 90 additional days to complete due diligence on the property, secure a financing commitment, and close. These time frames are consistent with those for similar commercial real estate transactions in most states. However, each state will have norms regarding commercial real estate purchase contracts where due diligence, financing contingencies, survey, titling, and other closing details will prevail. Typically these details are governed by the executed purchase agreement, whether for a resident purchase or a third-party purchase.*

The more than 40 years of experience in states such as New Hampshire, Vermont, Massachusetts, Rhode Island, and, more recently, Colorado and Oregon, demonstrate the ability of homeowners to both execute and perform on standard commercial real estate contracts within standard timeframes. ROC USA, LLC, the largest facilitator of resident homeowner purchases of manufactured home communities in the country, reports a 98% contract to closing success rate.

Community owners usually want the ability to bind the potential third-party buyer to a contract, so that they are not in danger of losing the sale if the homeowners do not buy the community. The model law explicitly provides that the community owner may enter into a purchase agreement that is conditioned on giving the residents the required notice and purchase opportunity.

State agency's role: *It is very helpful for the state agency that receives a copy of the notice to make it available to non-profit organizations that can help the resident homeowners determine whether to propose a purchase agreement for the community. This enables the organization to reach out to the homeowners and inform them of the technical assistance they can provide, and speeds the process along for all parties concerned. Subsection (c) gives a state agency two alternatives to make the notice available. It can either post copies of the notices on its website, or provide a copy of the notice to individuals or non-profits that request it, within a certain number of days of receipt.*

Triggering Events: *This model law requires notice and an opportunity to purchase upon a single triggering event: the community owner's receipt of an offer that the community owner intends to accept. Notice upon other occasions is of far less use to the residents, and may even impair the opportunity to purchase. For example, a requirement that the community owner give notice upon listing the community with a real estate agent is relatively ineffective, since few manufactured home communities are sold that way. A requirement of notice when the community owner "intends to sell" the community is imprecise and is also likely to be premature, causing both the residents and the community owner to spend time and resources making and evaluating offers when a sale is merely a possibility.*

SECTION 5. Proposed Purchase Agreement by Resident Homeowner Group

a) No later than the ninetieth day after a notice complying with section 4 is mailed, a resident homeowner group, including a group formed after the issuance of such notice, may deliver, in writing, a proposed purchase agreement for the manufactured home community to the manufactured home community owner, along with a statement that the owners of more than fifty percent of the

manufactured homes in the community that are occupied by the homeowner or a family member of the homeowner support submitting the proposed purchase agreement. A homeowner may indicate support for proposing a purchase agreement by signing a petition or any other document that so states.

b) If the community owner does not receive a proposed purchase agreement in writing from a resident homeowner group during the 90-day period provided by section 4, the community owner has no further duties under this Act with respect to the proposed sale, lease, or transfer of the manufactured home community.

Commentary

This section gives the homeowners 90 days to form a resident homeowner group and deliver a proposed purchase agreement in writing to the community owner. Ninety days may seem like an insufficient time period for the homeowners to take all these steps, but the experience in other states demonstrates that it is entirely realistic.

Any proposed purchase agreement must have the approval of the owners of more than fifty percent of the manufactured homes in the community that are occupied by the homeowner or a family member of the homeowner. The homeowners must indicate their support in writing, but a petition or any other document that indicates that the signatory supports the proposal is sufficient.

This section also makes it explicit that, if the homeowners do not present the community owner with a proposed purchase agreement by the ninetieth day, the community owner has no further obligations under this Act with respect to the proposed sale of the community, and may proceed to finalize the sale to the third-party offeror.

SECTION 6. Duty to Consider a Resident Homeowner Group's Proposed Purchase Agreement

If a resident homeowner group or its assignee or agent delivers a proposed purchase agreement in writing to the manufactured home community owner in compliance with section 5, the manufactured home community owner shall consider the group's proposed purchase agreement and negotiate with the group in good faith to determine whether a mutual agreement can be reached to enable the group to purchase the community. The duty of good faith includes a duty to make the same information available to a resident homeowner group that the community owner has or would have provided to another prospective purchaser. If the manufactured home community owner rejects the resident homeowner group's proposed purchase agreement, the community owner must provide a good faith reason in writing to the group within three days of the date of rejection.

Commentary

This provision requires the community owner to consider a proposed purchase agreement that the residents present, and negotiate in good faith with them. This is an extremely modest approach. It does not require a community owner to sell a community to the residents and is not a "right of first refusal" (see the Commentary to section 7 below).

Yet, despite its modesty, this approach has been highly effective. As of 2020, Vermont had converted 64 of its 238 communities—27%—to either resident or non-profit ownership under a statute that merely requires the community owner to consider the residents' proposed purchase agreement and negotiate in good faith with them. In neighboring New Hampshire, with a similar law, 146 manufactured home

communities—over 30% of the 425 to 450 in the state—are resident-owned.

Even though the requirements of this provision are exceptionally modest, they are necessary in order to make resident ownership a reality. In state after state, resident ownership takes off only when a statute giving the residents a specific purchase opportunity is enacted. The New England states demonstrate this: in each of the four New England states--Massachusetts, New Hampshire, Rhode Island, and Vermont--that had an effective resident purchase opportunity law that applied whenever a manufactured home community was being sold, over 20% of the communities were resident-owned by late 2022. In Connecticut and Maine, which did not have such laws until mid-2023, the percentage was 1.6% (3 out of 180 communities) in Connecticut and 3.4% (10 out of 344 communities) in Maine.

SECTION 7. Proposed Purchase Agreement That Matches Third-Party Offer

If a resident homeowner group or its assignee or agent delivers a proposed purchase agreement to the community owner in compliance with section 5, and its proposed purchase agreement matches the price and substantially the same terms and conditions as the offer the community owner has conditionally accepted or plans to accept, the group shall have the right to purchase the manufactured home community at the price, terms, and conditions stated in its proposed purchase agreement, and this section shall apply rather than section 6. No community owner shall unreasonably refuse to enter into or unreasonably delay the execution or closing on a purchase agreement with a resident homeowner group which has proposed a bona fide purchase agreement to meet the price and substantially equivalent terms and conditions of an offer for which notice is required to be given pursuant to section 4.

Commentary

Several states give residents not just a purchase opportunity but a right to purchase a manufactured home community if they match the price and at least the essential provisions of the third-party offer. For example, Massachusetts gives residents the right to purchase their community if they give the community owner a proposed purchase agreement that is “substantially equivalent” to the third-party offer. Such a right is often called a right of first refusal and is the most efficient and effective way to foster resident ownership.

A right of first refusal provides predictability and certainty for both homeowners and community owners. Community owners receive the exact price they were seeking, and the right of first refusal increases the speed and efficiency of the entire process.

Right of first refusal laws are not a novel idea. For example, § 4-112 of the Uniform Condominium Act, a model law drafted by the Uniform Law Commission for adoption by the states, gives apartment renters a right of first refusal to buy their unit if the building is being converted to condos. Manufactured home owners have an even stronger case for a right of first refusal, as their homes, not just their furniture and personal belongings, are located on the land.

Some states give residents only a purchase opportunity, not a right of first refusal. Granting a right of first refusal when the resident homeowners’ offer matches the third-party offer greatly enhances the effectiveness of a law and is the best approach for all parties. It creates a bright-line standard and a very efficient process, while always ensuring that the community owner receives the price the community owner wants. However, a law that includes a right of first refusal should always be coupled with a purchase opportunity that requires the community owner to consider any proposed purchase agreement presented by the residents and negotiate in good faith with them, as set forth in section 6

of this model law. That provision is essential in case there are some terms in the third-party offer that are difficult for the residents to match. In addition, if there is any disagreement about whether the terms and conditions of the residents' proposed purchase agreement are "substantially the same" as the third-party offer, section 6 will require the parties to negotiate in good faith.

SECTION 8. Financing and Closing

A community owner shall not reject a proposed purchase agreement solely on the basis of its inclusion of a financing contingency. If a resident homeowner group and the community owner enter into a purchase agreement for the community, the resident homeowner group shall have 90 days from the date of the agreement to arrange all necessary financing, and a commercially reasonable time to close on the sale. If the group fails to arrange all necessary financing during this 90-day period, or such longer period as the parties may agree to, or fails to close on the sale in compliance with the purchase agreement executed by the parties, the community owner has no further duties under this Act with respect to the proposed sale, lease, or transfer of the manufactured home community. No community owner shall unreasonably delay the execution of, or closing on, a purchase agreement with a resident homeowner group.

Commentary

Most agreements between a commercial entity and a community owner for sale of the community allow a time period to finalize financing details, complete due diligence, and close on the sale. A period of approximately 90 days for arranging financing is typical, with the closing date usually set by the purchase agreement. This provision thus incorporates standard commercial practices. Since a resident homeowner group can typically arrange financing and close on the sale just as quickly as a commercial buyer, selling to the homeowners does not result in a longer period for closing.

Failure of a resident homeowner group to close on a sale is extremely uncommon. The homeowners living in a manufactured home community are highly committed buyers. Unlike a commercial buyer, they will not be tempted to abandon a purchase in favor of some other manufactured home community—they are interested in just one community, the one where they live. Community owners who sell to the homeowners report that closings go very smoothly.

SECTION 9. Assignment

A resident homeowner group that has rights under this Act may, at its election, assign such rights to the municipality in which such group is located, a housing authority located in such municipality, an agency of the state, or a nonprofit organization, including a special purpose entity, for the purpose of continuing the use of the property as a manufactured home community. Upon assignment, the assignee shall be entitled to exercise the rights that this Act grants to the assignor resident homeowner group.

Commentary

Sometimes a non-profit affordable housing organization or a governmental entity may be prepared to purchase a community as a way of preserving it as affordable housing. The operation of the community may be structured so that the homeowners have a significant voice in decision-making and gain many of the benefits of ownership. This section is intended to allow the homeowners the option

of assigning their rights under the statute to a non-profit organization or government entity in this situation.

SECTION 10. Subsequent Offers

If a community owner provides the notice and purchase opportunity required by this Act but it does not result in a purchase agreement between the community owner and a resident homeowner group, and the community owner then receives an offer at a different price or with different terms and conditions that the community owner intends to accept, the requirements of this Act shall apply separately to that subsequent offer.

Commentary

This section is intended to prevent a community owner from evading the Act by entering into a purchase agreement at an inflated or non-market supported price or with onerous terms and conditions, but then, after the residents' purchase opportunity expires, selling the community to the third-party buyer at a lower price or more easily matched terms and conditions. Without a provision like this, the Act could easily become a dead letter.

SECTION 11. Exemptions

a) This Act shall not apply to:

- 1) A sale, lease or transfer to a family member of the community owner or to a trust, the beneficiaries of which are family members of the community owner;
- 2) A transfer by gift, devise or operation of law;
- 3) A sale, lease or transfer by a partnership or a limited liability company to one or more of its partners or members, between joint tenants or tenants in common, or by a business entity to a subsidiary or affiliate of such entity;
- 4) A lease of a lot within the manufactured home community to a person who will live in a manufactured home on such lot;
- 5) A conveyance of an interest in the community that is incidental to the financing of such community; or
- 6) A sale or transfer pursuant to eminent domain.

b) The exclusions set forth in this section shall not carry over to any subsequent resale, lease or transfer of a community unless such subsequent resale, lease or transfer independently meets the criteria set forth in subsection (a) of this section.

c) To qualify for an exemption under this section, a transaction must not be made in bad faith, must be made for a legitimate business purpose or a legitimate familial purpose consistent with the exemptions listed in subsection (a) of this section, and must not be made for the primary purpose of avoiding the opportunity-to-purchase provisions set forth in this section.

(d) A manufactured home community owner shall not accept or conditionally accept an offer for the sale, lease, or transfer of the community unless its price, terms, and conditions are universal and applicable to all potential buyers, nor shall such owner accept or conditionally accept an offer that contains any provision penalizing the owner for entering into a purchase agreement with a resident homeowner group.

Commentary

This section sets forth exemptions from the model law's purchase opportunity requirement.

Intra-family transfers. *The first two exemptions--subsections (a)(1) and (2)--exempt intra-family transfers and transfers that occur because of inheritance. "Family" is broadly defined in the definition section to include a wide range of relatives.*

Intra-business transfers. *The third exemption--subsection (a)(3)--exempts a variety of sales, leases, and transfers that do not amount to a meaningful change in ownership, but just affect the configuration of the existing owners. For example, a sale of a community by a business entity to a subsidiary or affiliate is primarily just a change in the form of ownership. Reshuffling of ownership interests among existing members of a partnership or limited liability company or among tenants in common is another example.*

These exemptions are not intended to provide an avenue for evasion of the duty to give homeowners a purchase opportunity. A partnership's sale of a community to an outside investor who was made a partner shortly before the sale is an example of an evasion that would fall outside this exemption.

Transfers of partial interests that do not disturb ownership. *The fourth and fifth exemptions--for a lease of an individual lot and for a transfer of an interest in the community that is incidental to financing (i.e. a mortgage on the community)--are included in order to avoid any ambiguity. The statute is not aimed at these routine transfers of partial interests.*

Eminent domain. *The final exemption is for transfers pursuant to eminent domain. If a government entity is taking the land pursuant to eminent domain, the community owner does not have the ability to consider a proposed purchase agreement from the residents.*

Subsequent sales. *The exemptions in subsection (a) are worded to apply just to the sale, lease or transfer in question, not to subsequent sales, leases, or transfers. The purpose of subsection (b) is simply to make this limitation explicit.*

Evasions. *Unfortunately, there have been examples of attempts to evade purchase opportunity laws. Subsections (c) and (d) of this section are intended as a general anti-evasion provisions.*

SECTION 12. Enforcement

a) The attorney general and the [local official] for the [county/municipality/township] where a manufactured home community is located shall have authority to enforce this Act and may seek an injunction, damages, restitution, and other legal and equitable relief.

b) A community owner who sells, leases, or transfers a community and fails to comply with this Act shall be liable to the resident homeowner group in the amount of \$100,000 or 20 percent of the total sales price, whichever is greater.

c) A violation of this Act is an unfair or deceptive practice and is a violation of [state deceptive practices statute].

- d) A resident homeowner group may bring an action to enjoin violations of this Act.
- (e) If a resident homeowner group prevails in an action under this section it shall be awarded reasonable attorney fees.
- (f) Lack of knowledge of this Act by a community owner shall not be deemed to be a defense to an action under this section.

Commentary

A right without a remedy is no right at all. Typically, a purchase opportunity will be housed within the state's other manufactured home community laws, which may provide sufficient enforcement mechanisms. This section spells out several additional possible enforcement mechanisms. The alternatives are not mutually exclusive – it would be reasonable for a state to include all of them.

The first is a generic provision giving state and local government the authority to enforce the law. This provision will need to be adapted to refer to the appropriate local governmental official and to dovetail with the existing general enforcement authority that the state's laws already give to state and local government.

The second is a specific monetary incentive, modeled on provisions in Vermont's and New Hampshire's purchase opportunity statutes. For this approach to be an effective enforcement mechanism, the monetary penalties must be set high enough so that buyers and sellers do not treat them just as a cost of doing business.

The third mechanism provides that a violation of the purchase opportunity law is a violation of the state deceptive practices statute. Every state has such a statute, which typically provides for enforcement by the attorney general as well as consumers who are harmed by an unfair or deceptive practice. If there is any ambiguity about whether a violation of this Act would fall within the scope of the state's deceptive practices statute, language should be added to this Act to resolve those ambiguities.

The final mechanism gives residents the critically important right to seek an order enjoining a violation of the Act. Obtaining such an order can stop a violation before it causes irreparable harm, and put a transaction back on track in terms of compliance with the Act.

SECTION 13. Recordation in the Registry of Deeds

- a) A community owner may, as shall be appropriate under the circumstances, record in the registry of deeds of the county in which the community is located an affidavit certifying that:
 - 1) The community owner has complied with the requirements of this section (including a copy of the notice sent to the homeowners of the community); or
 - 2) The sale or transfer of the manufactured home community is exempt from this section pursuant to section 11.
- b) An affidavit filed in accord with subsection (a) shall be presumptive evidence of compliance for purposes of good title in the hands of a bona fide purchaser.
- c) Failure of the community owner to record an affidavit in accord with subsection (a) shall be presumptive evidence of non-compliance with this Act.

d) A resident homeowner group that makes an offer to purchase the community pursuant to section 5 may record notice of the offer having been made in the registry of deeds.

Commentary

This provision is intended to avoid any cloud on title to the community once the community owner has complied in good faith with this Act, or if the sale is exempt. It also enables a resident homeowner group to record the fact that it has made an offer to purchase the community. The reference to “registry of deeds” may need to be customized to reflect the name the state uses for the office where deeds are recorded.

SECTION 14. Interpretation and Severability

a) This law shall be liberally interpreted to achieve its purposes of preserving affordable housing and expanding the opportunities for owners of manufactured homes to purchase the manufactured home community in which their homes are located.

b) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Commentary

It is common for statutes to specify their goals, as a way of guiding courts in interpreting the statutory language. Subsection (a) specifies that the Act is to be liberally interpreted to achieve its purposes of preserving affordable housing and expanding the opportunities for owners of manufactured homes to purchase their communities.

A common provision of state law is that, if some part of a statute is held invalid, the remainder of the statute is unaffected. Subsection (b) provides language to this effect in case a state does not have a generally applicable statute.

Sample Tax Incentive Provisions For Sale of A Manufactured Home Community to the Homeowners

The preceding material represents a comprehensive model law to create an effective pathway for owners of manufactured homes to purchase the communities in which their homes are located. A tax incentive is a helpful addition to a purchase opportunity law, but the many differences in state tax policy make it less suitable for a uniformly-usable model law.

How to frame a tax incentive depends on the type of taxes that a state imposes when a manufactured home community is sold varies from state to state. Some states impose a real estate transfer tax. Others impose an excise tax, calculated as a percentage of the sale price. In addition, the seller’s gain from the sale of the community may be subject to a state income tax. The magnitude of these taxes also varies from state to state.

Instead of a model provision, three sample tax incentives are provided below. Any of these provisions will need to be adapted for the particular state. If the tax incentive provision refers to a “qualified sale,” that term will need to be defined, either in the purchase opportunity law or in the tax law.

Sample real estate transfer tax exemption:

R.I. Gen. Laws § 44-25-2. Exemptions

* * *

(d) The qualified sale of a mobile or manufactured home community to a resident-owned organization as defined in § 31-44-1 is exempt from the real estate conveyance tax imposed under this chapter.

Sample excise tax exemption:

Wash. Rev. Code § 82.45.010. “Sale” defined

* * * *

(3) The term “sale” does not include:

* * * *

(r) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030.

Sample income tax exemption:

Mont. Code Ann. §§ 15-31-163, 15-30-2110

§ 15-31-163. Capital gain exclusion from sale of mobile home park

(1) Any capital gains income realized from the sale or exchange of a mobile home park as defined in 70-33-103 is excluded from adjusted gross income or gross income under chapter 30 or 31.

(2) To qualify for the exclusion under this section, the sale must be made to:

(a) a tenants’ association or a mobile home park residents’ association;

(b) a nonprofit organization under section 501(c)(3) of the Internal Revenue Code that purchases a mobile home park on behalf of tenants’ association or mobile home park residents’ association;

(c) a county housing authority created under Title 7, chapter 15, part 21; or

(d) a municipal housing authority created under Title 7, chapter 15, parts 44 and 45.

(3) A corporation, an individual, a partnership, an S. corporation, or a disregarded entity qualifies for the exclusion under this section. If the exclusion allowed under this section is taken by a partnership, an S. corporation, or a disregarded entity, the exclusion must be attributed to shareholders, partners, or other owners using the same proportion used to report the partnership’s, S. corporation’s, or disregarded entity’s income or loss for Montana income tax purposes.

(4) For the purpose of this section, “tenants’ association” or “mobile home park residents’ association” means a group of six or more tenants who reside in a mobile home park, have organized for the purpose of eventual purchase of the mobile home park, have established bylaws of the association, and have obtained the approval by vote of at least 51% of the residents of the mobile home park to purchase the mobile home park.

(5) Property subject to an income or corporate tax exclusion under this section is not eligible for a property tax exemption under Title 15, chapter 6, part 2, while the property is used as a mobile home park.

§ 15-30-2110. Adjusted gross income

* * * *

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

* * * *

(r) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in [15-31-163].

MANUFACTURED HOME COMMUNITY ZONING FAIRNESS ACT

A zoning notice requirement is another helpful supplement to a comprehensive purchase opportunity law. The model language set forth below could be included as a final section of the Model Manufactured Home Community Stability and Preservation Act, or presented as a stand-alone law.

SECTION 1. Zoning Notice

- a) For purposes of this section, “manufactured home community” has the meaning defined in [insert reference to definition in manufactured home community statutes].
- b) The owner of a manufactured home community shall give written notice to each resident of the community of any application for a change in zoning of the manufactured home community within 5 days after filing for such zoning change with the zoning authority.
- c) Owners of manufactured homes that are sited in a manufactured home community are entitled to all rights under state and local zoning laws and regulations that are extended to owners of land that abuts the real estate parcel that makes up the community.

Commentary

This provision helps preserve manufactured home communities by providing some protection against rezoning of the land, which is often a prelude to closure of the community. It requires manufactured home community residents to be notified of proposed zoning changes affecting the land on which their homes sit, giving them the same right to notice as abutting property owners.

Many states, including Florida, Idaho, and South Carolina, already have a provision along these lines, but other states do not explicitly require manufactured home community residents to be notified. This model provision is designed to be a free-standing addition to the state’s zoning laws, for use in states do not already have such a provision. However, it could also be included as part of a purchase opportunity law.



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