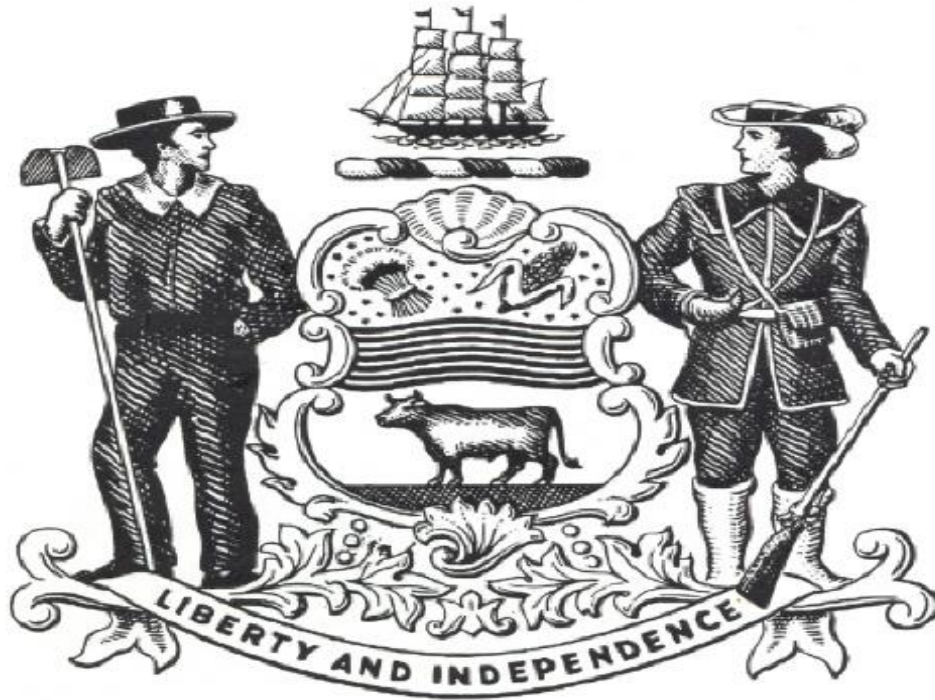

Joint Sunset Committee



Council on Manufactured Housing

2015 Draft Report

February 2015

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A NOTE ABOUT THIS DRAFT REPORT

The information provided in this report is taken from the Joint Sunset Committee Performance Review Questionnaire, as it was completed by the agency under review. When appropriate, the Analyst who prepared this report made minor changes to grammar and the organization of information provided in the questionnaire, but no changes were made to the substance of what the agency reported. Any point of consideration which arose in analyzing the questionnaire and compiling this report are addressed in the section titled Additional Research from the Joint Sunset Analyst. It is the intent of the Analyst to make any substantive changes which may be required, as the result of findings made through the Joint Sunset review processes, in the final version of this report.

The statutes governing and applying to the agency under review are included as Appendixes to this Draft Report. They are included only as a reference for Joint Sunset Committee members, and may not be included in the Final Report.

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AGENCY HISTORY

The Council on Manufactured Housing (“Council”) was established in 1986, before the Division of Consumer Affairs became part of the Department of Justice (“Department”).¹ It is unknown what specific problems existed that lead to the creation of Council, but its purpose— to advise the Consumer Protection Unit regarding manufactured housing related issues – is still relevant today.² In addition, Council is now responsible for portions of the alternative dispute resolution (“ADR”) procedure provided in the Delaware Manufactured Housing Alternative Dispute Resolution Act.³

Council was created in 1986 with the passage of House Bill 680 in the 133rd General Assembly. House Bill 680 provided for the creation of Council in substantially the same form as it appears today.

JOINT SUNSET COMMITTEE REVIEW HISTORY

This is Council’s first Sunset review.

MISSION, GOALS, AND OBJECTIVES

Council’s purpose is to advise the Director of the Consumer Protection Division of the Department of Justice on matters relating to manufactured home owners and tenants, manufactured housing, and manufactured home communities. Council is also responsible for determining whether a dispute between a manufactured home community owner and a tenant or group of tenants should be referred to ADR, pursuant to 25 *Del. C.* § 7001A. Council’s enabling legislation accurately reflects this mission.

Council’s primary goal at this time is to fill all of the member positions with individuals committed to attending meetings, so that a quorum of Council members will be present at meetings to conduct official business.

COMPOSITION & STAFFING OF THE COUNCIL ON MANUFACTURED HOUSING

Composition:

Council’s governing statute requires fourteen members in total.⁴ Twelve are voting members, comprised of six members representing the manufactured housing industry and six members representing persons who live in manufactured homes. All three counties should be represented. In addition to the twelve voting members, a representative of the Consumer Protection Division and a representative of the Department of Justice serve as nonvoting ex officio members. Each member serves a two year term and successively serves for one additional term. Council members serve without compensation. There are no required or special training opportunities available for Council.

There are four vacancies on Council. Vacancies have been continuous since 2011. As memberships expire, Council has not been able to find interest sufficient to fill the vacancies. The Governor’s Office

¹ See page 13 in Appendix C for Council’s governing statute, 29 *Del. C.* § 2519.

² Analyst’s note: Section 5 of House Bill 680 indicates that the Council was created to replace the previously-existing Delaware Manufactured Housing Community Commission. Nothing in the bill, however, indicates the reason for the change.

³ See 25 *Del. C.* §7001A, on page 15 in Appendix D.

⁴ In comparison, the Delaware Manufactured Home Relocation Authority is comprised of six members in total.

is aware of these vacancies and Council has been working with the Governor’s Office since March 2014 to get membership back up to full strength.

The Council *may* recommend that the Governor’s Office remove a member who misses three consecutive meetings. The Council *shall* recommend that the Governor’s Office remove a member who misses six consecutive meetings in a calendar year. No members have been removed for these reasons.⁵

The current Council members are:⁶

	NAME	TERM	COUNTY
1.	John Badger	11/3/11 – 11/3/14 (member since 1/21/11)	Kent
2.	Victoria Deugenio	5/6/14 – 3/18/15	Sussex
3.	Marie Doyle	3/18/14 – 3/18/16	Kent
4.	Susan Hairgrove	5/28/14 – 5/28/16 (member since 8/29/11)	New Castle
5.	Daniel Haldeman	5/29/12 – 5/29/14	Kent
6.	Richard Lemire	7/11/14 – 7/11/16	New Castle
7.	John Morris, Chairperson	11/3/11 – 11/3/11 (member since 10/13/08)	Sussex
8.	Cornelia Northway	3/18/14 – 3/18/16	Sussex
9.	VACANT		
10.	VACANT		
11.	VACANT		
12.	VACANT		

The two nonvoting ex officio members are Jennifer Smolko, Deputy Attorney General, representing the Department of Justice, and Gregory Strong, Deputy Attorney General, representing the Division of Consumer Protection.

Staffing:

Council has sufficient staff assistance. Two staff members from the Department of Justice assist Council. A full time paralegal handles administrative and other necessary related duties. Council members are regularly in contact with the Department of Justice employees that assist Council.

Angela Williams, Paralegal Consumer Protection Division, coordinates meetings and public notice of meetings, attends each Council meeting. Ms. Williams was appointed in August 2014 to take Council meeting minutes.

⁵ Analyst’s note: These provisions are not in Council’s governing statute. See Appendix C.

⁶ Council members’ contact information was included in the JSC Questionnaire and is available upon request.

DUTIES, RESPONSIBILITIES, AND AUTHORITY

When Council is functioning properly, it provides for an open and regular channel of communication between stakeholders in manufactured housing and the Consumer Protection Unit, to allow the Consumer Protection Unit to identify and address problems in an efficient manner. Furthermore, the ADR provision of the manufactured housing code is dependent on a fully functioning Council in order to succeed. The ADR process has the potential to resolve many manufactured housing disputes in a cost effective, efficient manner, and would provide both residents and owners and additional tool to resolve differences.

Council's critical issues, however, are its inability to fill Council member positions or reach a quorum, making it difficult for Council to conduct business.

There are no federal laws or regulations that that guide or affect Council. There are no Attorney General Opinions that affect Council's functioning. There are no rules or regulations applicable to Council regarding compliance with its governing statute. There have been no judicial decisions, executive orders, or other documents that directly impact the Council's functioning.

Council as has not referred any disputes to ADR. Two complaints were presented to Council over the last two years, but there were never sufficient Council members present at the meetings to take any official action with respect to those complaints.

Council has not received any public complaints in the last three years.

Council does not regularly interact with any national organization or government entity, nor is it affiliated with any industry or trade publication.

The following groups are served or affected by the Council's actions:

1. Delaware Manufactured Home Owners Association:
Ed Speraw
PMB 5 24832 John J. Williams Hwy, Unit 1, Millsboro, DE, 19966
302-945-2122; www.dmhoa.org
2. First State Manufactured Housing Association:
1675 S. State St., Suite E, Dover, DE 19901
302-674-5960; www.firststatemha.org
3. Land Lease Homeowners Coalition (LLHC)
120 S. Knights Ln., Camden, DE 19934
302-697-1099
4. National Manufactured Home Owners Association (NMHOA)
P.O. Box 22346, Seattle, WA 98112-0346
206-851-6385; www.nmhoa.org

ENACTED LEGISLATION IMPACTING COUNCIL

Senate Bill 197 in the 136th General Assembly, enacted on July 1, 1991, redesignated the substantive statutory provisions regarding the Council to 29 *Del. C.* § 8825.

Senate Bill 76 in the 139th General Assembly, enacted on July 3, 1997, redesignated the substantive statutory provisions regarding the Council to 29 *Del. C.* § 2519.

Recent legislation passed in the manufactured housing area regarding rent justification has prompted significant questions and complaints from manufactured housing residents and owners.⁷ Council meetings could be used to assist the parties involved in understanding the issues and suggesting appropriate action.

PENDING LEGISLATION

There is no pending legislation that will directly impact the functions or operations of Council.

ADMINISTRATIVE PROCEDURES ACT COMPLIANCE

Council does not promulgate rules or regulations and therefore has no history of Administrative Procedures Act compliance.

FREEDOM OF INFORMATION ACT COMPLIANCE

Council has not received any FOIA-related requests during the last three years, and it has never received complaints that it had violated FOIA. Council meeting agendas are posted at least seven days prior to the scheduled meeting on the Delaware Public Meeting Calendar and at the location of the Council meeting, usually the DELDOT Public Administrative Building located at 800 Bay Road, Dover, Delaware. Meeting minutes are transcribed and posted to the Delaware Public Meeting Calendar, and the public may obtain copies of meeting minutes from the Delaware Public Meeting Calendar website. Council has not conducted an executive session or closed meeting within the last three years.

FISCAL INFORMATION

Council has no fiscal information to report. It does not generate any revenue and has not been audited or evaluated by the State Auditor or any external organizations.⁸

⁷ See page 51 in Appendix E for the statute regarding rent justification, 25 *Del. C.* §§ 7040-45.

⁸ Analyst's note: The legislative history of the bill which created Council indicates that bill originally appropriated \$3,000 to Council, "which amount shall be expended to defray the expenses of the Council." Any funds not used by 1987 were to revert to the General Fund of the State Treasury. House Amendment 1 to House Bill 680 removed the appropriation from the bill, but did not indicate why.

ACCOMPLISHMENTS

Regrettably, Council does not have any recent significant accomplishments, due to the lack of attendance at Council meetings and the inability to reach a quorum and conduct official business.

Council is concerned that the open and regular communication facilitated by it and the ADR program would be jeopardized in the absence of Council.

CHALLENGES

Council is facing several challenges, all of which are related to issues of membership and attendance.

The first challenge Council is currently facing is the lack of attendance at meetings. Council has not had twelve members committed to attending meetings since at least 2011.

The attendance issue is due, in part, to Council's inability to fill member vacancies. Council is unable to obtain membership from all three counties or to find membership representing the manufactured housing industry. Ongoing vacancies have limited Council in such a way that now there is little interest in becoming a Council member *because* there is a "lack of any meaningful business being conducted and no items of interest on the agendas."⁹

As a direct result of the lack of attendance and ongoing vacancies, Council's second challenge is reaching a quorum. Council reached a quorum only once in 2011 and 2012, and did not reach a quorum at any meetings held in 2013. Council reached a quorum at the November and December 2014.

The definition for "quorum" is in Section III(3) of Council's bylaws, and states, "Council shall not take any formal action without the affirmative vote of a majority of the quorum of members present at any meeting; such minimum quorum required to be no less than one greater than 50% of appointed voting members."

Council's third challenge is that it has been unable to take any formal action due to its inability to reach quorum.

OPPORTUNITIES FOR IMPROVEMENT

Council needs new members appointed who are committed to attending meetings, particularly members representing New Castle County and the manufactured housing industry.

Council proposes that the size of Council be reduced from twelve members to nine members, with four members representing the manufactured housing industry, four members representing persons who live in manufactured housing, and one member of the general public. By reducing the size of the membership, Council hopes to be able to maintain a full membership, reach a quorum at the majority of meetings, and, by reaching a quorum, be able to take formal actions needed to accomplish its goals.

⁹ See minutes of the November 19, 2014 Council meeting.

Council would like to be able to compensate members for travel expenses to and from meetings. Its governing statute provides for reimbursement of reasonable and necessary expenses for Council members incident to their duties, but does not provide for a funding source for this reimbursement.¹⁰ Meetings are currently held in Dover to accommodate both Sussex and New Castle members. The Council hopes to increase attendance and membership by providing compensation for travel expenses.

ADDITIONAL COMMENT FROM THE JOINT SUNSET ANALYST

Meeting minutes from 2011 to 2014 document Council's ongoing challenge in reaching a quorum and filling vacant member seats. According to meeting minutes, Council discussed three ideas to increase attendance and interest in membership:

1. Reimbursement for travel expenses related to attending Council meetings.
2. Reduce the size of Council.
3. Combining Council with another board.

If the Joint Sunset Committee determines that combining Council with another board is the best option, it may wish to consider the Delaware Manufactured Home Relocation Authority ("the Authority"). The Authority is closely related to Council, as its objectives include:

[A]ssisting manufactured home owners assisting manufactured home owners who are tenants in a manufactured home community where the community owner intends to change the use of all or part of the land on which the community is located or where the community owner intends to convert the manufactured home community to a manufactured home condominium community or to a manufactured home cooperative community pursuant to Chapter 71 of this title, and by assisting manufactured home community owners with the removal and/or disposal of nonrelocatable or abandoned manufactured homes.¹¹

The following summary of meeting minutes underscores Council's ongoing challenges in reaching a quorum and finding people willing to serve as members:

2011: Four meetings were held in 2011 (February, April, October, and December).

In December, the members present agreed to continue an RSVP policy in every meeting notice, "so that those planning on attending need not travel to a meeting when a quorum could not be achieved; the policy also provided that the Governor's office of chronic absences."

¹⁰ See Appendix C, 29 Del. C. § 2519(4).

¹¹ See 25 Del. Code § 7012(b)(2), on page 45 in Appendix D. See also § 7011 on page 44 of Appendix D, for Authority's governing statute.

2012: Council held four meetings in 2012: in March, April, May, and October.

In March, Council discussed combining with another board. There was also discussion that Council's powers had diminished. In October, Jen Allen, Associate Executive with the First State Manufacture Housing Association, advised Council that she was actively seeking to fill the four vacant member seats, but there had not been much interest.

2013: There are no meeting minutes for 2013.

2014: Four meetings were held in 2014, in August, October, November, and December.

In August, Council decided to vote on and approve its bylaws at the next meeting at which there was a quorum.

In October, Council discussed reimbursement for travel expenses as a possible incentive for membership, noting that "right now that is not something that can be done, but it may be something to bring up during Sunset Review." Mr. Strong advised that complaints should be submitted to the Department instead of through ADR until further notice, since quorum issues have prevented referrals to ADR. Mr. Strong also requested that Council meet monthly until further notice.¹² Ms. Allen again advised that she was unable to find anyone interested in filling the member vacancies. Although Council had difficulty finding members since at least 2011, by October 2014, Ms. Allen cited the "lack of any meaningful business being conducted" as the current reason for the lack of interest.

In November, with seven voting members in attendance, a quorum was reached and Council voted on and approved a motion to reduce the number of members from twelve to nine, with four members representing homeowners, four members representing landowners, and one member representing the industry. Mr. Strong advised Council that reducing the number of members requires legislation.

Council agreed to allow attendance via telephone, although Mr. Strong cautioned against allowing telephone participation from becoming the norm.

Council has had meetings on December 17, 2014 and January 21, 2015. Minutes have not been posted as of the printing of this Draft Report.

¹² At the November meeting, Mr. Strong advised Council that any ADRs received by the Attorney General's office would be forwarded to the Council chairperson.

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APPENDIX A

**Proposed Legislation to Amend Chapter 25, Title 29
of the Delaware Code related to Consumer Protection Advisory Councils**

EXHIBIT __

SPONSOR:

[DELAWARE STATE SENATE]/[HOUSE OF REPRESENTATIVES]

__ GENERAL ASSEMBLY

SENATE/HOUSE BILL NO. ____

**AN ACT TO AMEND CHAPTER 25, TITLE 29 OF THE DELAWARE CODE RELATING TO
CONSUMER PROTECTION ADVISORY COUNCILS****BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:**

Section 1. Amend § 2519 paragraph (1 and 2), Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline.

§ 2519

(1) The Council on Manufactured Housing shall advise the Division on matters relating to ~~mobile~~ manufactured home owners and tenants, manufactured housing and ~~mobile home parks~~ manufactured home communities. The Council may consider matters referred to it by the Division, and may, on its own motion, consider any issue or matter within its field of expertise. The Council shall report directly and exclusively to the Division. All funding for the Council shall be determined by the Division.

(2) The Council on Manufactured Housing shall be composed of ~~14~~ 11 members, ~~12~~ 9 of whom shall be appointed by the Governor: ~~Six~~ Four members representing the manufactured housing industry; and ~~6~~ four members representing persons who live in ~~mobile home parks~~ manufactured home communities, both those who own the ~~mobile~~ manufactured homes in which they reside and those who do not own the ~~mobile~~ manufactured homes in which they reside (at least 1 from each county). One additional member shall be appointed from the public at large. In the event a member ceases to be an owner or employee of a ~~mobile home park~~ manufactured home community, or a resident of a ~~mobile home park~~ manufactured home community, such person's membership shall cease upon the occurrence of such event. In addition to the ~~12~~ 9 voting members appointed by the Governor, a representative of the Division appointed by the

- 18 Director, and a representative of the Department of Justice, appointed by the Attorney General, shall serve
19 as nonvoting ex officio members.

SYNOPSIS

This bill reduces the number of members of the Council on Manufactured Housing. By reducing the number of council members, Council should be able to maintain a full membership and reduce the ongoing problem of vacancies, and reach a quorum at the majority of meetings. Having a full membership will allow the Council to take formal actions needed to accomplish its goals of facilitating the ADR process for manufactured housing disputes and providing an open channel of communication between homeowners and landowners in the manufactured home communities and the Consumer Protection Unit of the Office of the Attorney General. This bill also replaces the term mobile home with manufactured home and replaces the term park with community.

APPENDIX B

Draft Bylaws (have not been approved by Council)

Delaware Governor's Council on Manufactured Housing

The Council on Manufacture Housing shall advise the Director, Consumer Protection Division of the Department of Justice on matters relating to manufactured home owners and tenants, manufactured housing and manufactured home communities. The Council may consider matters referred to it by the Division, and may, on its own motion, consider any issue or matter within its field of expertise. The Council shall repost directly and exclusively to the Division. All funding for the Council shall be determined by the Division.

I. Membership:

1. The Council on Manufactured Housing shall be composed of ~~14~~ 11 members, ~~12~~ 9 of whom shall be appointed by the Governor: ~~six~~ four members representing the manufactured housing industry; and ~~6~~ four members representing persons who live in manufactured homes, both those who own the manufactured homes in which they reside and those who do not own the manufactured homes in which they reside (at least 1 from each county). In the event a member ceases to be an owner or employee of a manufactured home community, or a resident of a manufactured home community, such person's membership shall cease upon occurrence of such event. In addition a representative of the division appointed by the director, and a representative of the Department of Justice, appointed by the Attorney General, shall serve as nonvoting ex officio members.
2. Each member shall serve for a term for 2 years, and may successively serve for 1 additional term; provided, however, that where a member was initially appointed to fill a vacancy, such member shall successively serve for only 1 additional term **following completion of the filled vacancy term**. Any person appointed to fill a vacancy on the council shall hold office for the remainder of the un-expired term of the former member.
3. Members of the Council shall serve without compensation except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.
4. A Chairperson and a Co-Chairperson of the Council shall be chosen by members of the Council from among its members, shall serve in that capacity for a term of 1 year, and shall be eligible for reelection. However, the Chairperson and Co-Chairperson may not both represent the manufacture housing industry or both represent persons who live in manufactured homes; but, rather, while serving a term together, one from members representing the manufacture housing industry and the other from members representing persons who live in manufactured homes.
5. Moreover, each and every time a new Chairperson (not reelected Chairperson) is

chosen he/she must be a member whose representation of either the manufacture housing industry or persons who live in manufactured homes is different than the representation of the most immediate previous Chairperson.

6. Although members are appointed by the Governor, the Council has a duty to ensure that attendance is such that the business of the Council can be accomplished. In light of that duty the following guidelines are established:
 - i. Any member who misses three consecutive meetings may be reported to the Governor's office with the recommendation that the member be replaced on the council.
 - ii. Any member who misses six meetings within the calendar year shall be reported to the Governor's office with the recommendation that the member be replaced on the council.
 - iii. Attendance will be taken at a scheduled meeting regardless of whether there is a quorum or not.

II. Meetings:

1. Regular Meetings. The Council shall meet monthly in Dover, Delaware at a place decided by and agreed by the members of the Council.
2. Special Meetings. Either the Chairperson individually, Co-Chairperson individually or collectively nine other members of the Council may call special meetings provided, however, that all proper notice requirements are met.

III. Conduct of Meetings:

1. All meetings shall be presided over by the elected Chairperson; or Co-Chairperson in the absence of or at the request of the Chairperson.

The Chairperson is responsible to:

- i. moderate/facilitate the meeting;
 - ii. insure minutes of the meeting are recorded and filed properly;
 - iii. set up meeting dates and times;
 - iv. insure the meeting is posted in accordance with open meeting law;
 - v. set agenda topics;
 - vi. insure that full and proper membership is maintained;
 - vii. represent the Council before the appointing authority, the public and the media as required;
 - viii. report to the appointing authority the name of any member who fails to attend meetings in accordance with the attendance policy.
2. Each meeting of the Council shall be publicly posted consistent with 29 *Del. C. section § 10004*. Each Council member shall receive a written agenda for each meeting and a copy of the minutes of the previous meeting prior to the day that the Council meets.
3. The Council shall not take any formal action without the affirmative vote of majority of the quorum of members present at any meeting; such minimum

quorum required to be no less than one greater than 50% of appointed voting members.

4. No member of the Council may authorize any person to act for him or her by proxy.
5. All Council meetings shall include public comment periods during which persons who are not Council members may address the Council. With exception of the public comment period, only members of the Council may speak during Council meetings, unless a member of the Council requests from the Chairperson and is granted permission to yield the floor to a person who is not a Council member. The Chairperson may suspend this by law when circumstances dictate.

IV. Bylaw Changes:

1. Any changes to these Bylaws, following initial adoption, shall be made only by formal action of Council members as follows:
 - i. Any and all changes must be on the agenda and discussed at no less than three scheduled and held meetings prior to being voted upon;
 - ii. Any and all changes must be approved by a "super-majority" of Council members, defined as 75% of appointed voting members.

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APPENDIX C

Council on Manufactured Housing Governing Statute Title 29, Chapter 25 of the Delaware Code

Subchapter II. Consumer Protection

§ 2519 Consumer protection advisory councils.

Council on Manufactured Housing. —

(1) The Council on Manufactured Housing shall advise the Division on matters relating to mobile home owners and tenants, manufactured housing and mobile home parks. The Council may consider matters referred to it by the Division, and may, on its own motion, consider any issue or matter within its field of expertise. The Council shall report directly and exclusively to the Division. All funding for the Council shall be determined by the Division.

(2) The Council on Manufactured Housing shall be composed of 14 members, 12 of whom shall be appointed by the Governor: Six members representing the manufactured housing industry; and 6 members representing persons who live in mobile home parks, both those who own the mobile homes in which they reside and those who do not own the mobile homes in which they reside (at least 1 from each county). In the event a member ceases to be an owner or employee of a mobile home park, or a resident of a mobile home park, such person's membership shall cease upon the occurrence of such event. In addition to the 12 voting members appointed by the Governor, a representative of the Division appointed by the Director, and a representative of the Department of Justice, appointed by the Attorney General, shall serve as nonvoting ex officio members.

(3) Each member shall serve for a term for 2 years, and may successively serve for 1 additional term; provided, however, that where a member was initially appointed to fill a vacancy, such member shall successively serve for only 1 additional full term. Any person appointed to fill a vacancy on the Council shall hold office for the remainder of the unexpired term of the former member.

(4) Members of the Council shall serve without compensation except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council. A Chairperson of the Council shall be chosen by members of the Council from among its members, shall serve in that capacity for a term of 1 year, and shall be eligible for reelection.

29 Del. C. 1953, § 8614; 57 Del. Laws, c. 583, § 1; 64 Del. Laws, c. 2, § 4; 65 Del. Laws, c. 445, §§ 1-4; 68 Del. Laws, c. 149, § 9; 69 Del. Laws, c. 291, § 98(c); 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 138, § 25; 77 Del. Laws, c. 106, § 5.

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APPENDIX D

Title 25, Chapter 70 of the Delaware Code (including the Delaware Manufactured Housing Alternate Dispute Resolution Act)

Subchapter I. Manufactured Home Owners and Community Owners Act

§ 7001 Purposes and policies; enforceability.

(a) This subchapter must be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) To clarify and establish the law governing the rental of lots for manufactured homes as well as the rights and obligations of manufactured home community owners (landlords), manufactured home owners (tenants) and residents of manufactured home communities; and

(2) To encourage manufactured home community owners and manufactured home owners and residents to maintain and improve the quality of life in manufactured home communities.

(b) This subchapter applies to all rental agreements for manufactured home lots and regulates and determines the legal rights, remedies and obligations of all parties to a rental agreement, wherever executed, for a lot for a manufactured home in a manufactured home community within this State. A provision of a rental agreement which conflicts with a provision of this subchapter and is not expressly authorized herein is unenforceable. The unenforceability of a provision does not affect the enforceability of other provisions of a rental agreement which can be given effect without the unenforceable provision.

25 Del. C. 1953, § 7001; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 66 Del. Laws, c. 268, § 1; 74 Del. Laws, c. 35, § 2.

§ 7001A The Delaware Manufactured Housing Alternative Dispute Resolution Act.

(a) The purpose of the Delaware Manufactured Housing Alternative Dispute Resolution (ADR) Act is to provide a means to resolve disputes without litigation by using alternative dispute resolution techniques. The act requires the use of alternative dispute resolution by the parties if the Governor's Advisory Council on Manufactured Housing, by the affirmative vote of a majority of its members, determines that an existing dispute or perceived grievance between a manufactured home community owner and a tenant or a group of tenants should be referred to ADR. A broad interpretation of the provisions of this section should achieve these purposes.

(b) As used in this section, unless the context otherwise requires:

(1) "ADR" means the alternative dispute resolution method provided for by this section, unless the parties to a dispute adopt by written agreement some other method of ADR, in which event "ADR" refers to the method they adopt. The "ADR" method provided for by this section is mandatory, but nonbinding mediation.

(2) "ADR specialist" means an individual who has the qualifications described in subsection (g) of this section to conduct an ADR proceeding.

(3) "Advisory Council" means the Governor's Advisory Council on Manufactured Housing.

(4) A "dispute subject to ADR" means a dispute that is not the basis for a pending action for summary possession in accordance with § 5702 of this title.

(5) "Mediation" is an option by which an ADR specialist facilitates the parties in reaching a mutually acceptable resolution of a dispute. It includes all contacts between the ADR specialist and any party or parties until a resolution is agreed to, the parties discharge the ADR specialist, or the ADR specialist finds that the parties cannot agree.

(6) "Person" means any individual, corporation, association, partnership, statutory trust, business trust, limited liability company, or any other legal, commercial, or governmental entity, whether or not organized for profit.

(c) A person who files a certificate of agreement provided for in subsection (d) of this section agrees to submit all disputes subject to ADR to an ADR specialist. Upon the filing of a certificate of agreement, the filer is bound by the provisions of this section.

(d) (1) A certificate of agreement to submit a dispute to ADR must set forth:

- a. The name of the person filing the certificate;
- b. The address of the person filing the certificate, including the street, number, city, state, and zip code, which will be used to give any required notice in a dispute;
- c. The name of the person or persons or entity subject to the dispute; and
- d. The nature and substance of the dispute in sufficient detail to permit understanding of the circumstances and issues involved in the dispute.

(2) A provision in a certificate of agreement that purports to limit a dispute that is subject to ADR, other than an action for summary possession, is void.

(e) (1) A certificate of agreement accepting ADR must be filed with the Chair of the Advisory Council, or the Chair's designee.

(2) The Chair shall keep records as are required to determine who has filed a certificate of agreement accepting ADR or when such a certificate has been revoked, together with the date of any such filing or revocation.

(3) The Chair shall keep appropriate records regarding all disputes which have been referred to ADR by the action of the members of the Advisory Council.

(4) A certificate of agreement accepting ADR or revoking ADR must be accompanied by a payment of \$30 to the Governor's Advisory Council. The payment amount may be changed by a two-thirds affirmative vote of the members of the Advisory Council. The payment will be refunded if the Advisory Council does not submit the dispute to ADR.

- (f) (1) If the Advisory Council determines that an existing dispute or perceived grievance between a manufactured home community owner and a tenant or a group of tenants should be referred to ADR, ADR is mandatory, but nonbinding. A manufactured home community owner or a tenant or a group of tenants who are the respondents in a dispute for which a certificate of agreement has been filed with the Advisory Council, shall submit to the ADR.
- (2) An affirmative vote by a majority of the members of the Advisory Council is sufficient to submit a dispute between a manufactured housing community owner and a tenant or a group of tenants to ADR.
- (g) ADR proceedings must be conducted by a person who meets the following criteria:
- (1) The person has successfully completed at least 25 hours of training in resolving civil disputes in a course or program approved by the Delaware State Bar Association, or
- (2) The person is registered as an active member of the Delaware Bar, together with a minimum of 5 years of experience as a practicing attorney; and
- (3) The person agrees to conduct ADR proceedings without compensation.
- (h) *The ADR mediation conference.* — A mediation conference must be scheduled in consultation with the parties within 30 days of the date of the determination by the Advisory Council that the dispute shall be referred to ADR, and must be held by the selected ADR specialist within ninety days after scheduling. All parties must participate in the mediation conference. The ADR specialist may immediately terminate the ADR conference and recommend that the Advisory Council refer the dispute to the Attorney General's office for further investigation, for failure to participate in the mediation conference. All persons necessary for the resolution of the case must be present at the mediation conference.
- (1) Before a mediation conference begins, the ADR specialist shall provide the parties with a written statement setting forth the procedure to be followed. The parties are each required to serve upon the ADR specialist a Confidential Mediation Conference Statement 10 days prior to the scheduled mediation conference.
- (2) Prior to the commencement of the mediation conference, the parties and the ADR specialist shall sign a written agreement which must include explanation of the following:
- a. The rights and obligations of parties to the mediation conference; and
 - b. The confidentiality of the mediation conference.
- (3) All memoranda, documents, work products, and other materials contained in the case files of an ADR specialist or a court related to the mediation are confidential. Any communication made in, or in connection with, the mediation which relates to the dispute being mediated, whether made to the ADR specialist or a party or to any person, if made at a mediation conference, is confidential. The certificate of agreement is confidential unless the parties otherwise agree in

writing. Confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding except:

- a. If all parties to the mediation agree in writing to waive confidentiality;
- b. In an action between an ADR specialist and a party to the mediation for damages arising out of the mediation; or
- c. Statements, documents, memoranda, materials, and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in, and were not used in, the mediation conference.

(4) The ADR specialist shall assist the parties to reach a mutually acceptable resolution of their dispute through discussion and negotiation. The ADR specialist may terminate the mediation conference if the parties are unable to reach agreement. Such a termination is without prejudice to either party in any other proceeding. The ADR specialist may not impose any adjudication, sanction, or penalty upon the parties based solely on their failure to reach an agreement; however, the ADR specialist may impose sanctions upon a party who fails to appear for a mediation conference or fails to negotiate in good faith. A party is not bound by anything said or done at the mediation conference, except by a settlement agreement, if a settlement is reached.

(5) If the parties involved in a mediation conference reach a settlement, the agreement must be reduced to writing by the ADR specialist, unless the parties otherwise agree as part of their settlement that they will prepare the writing. The written agreement must be signed by the parties and the ADR specialist. The ADR specialist shall encourage unrepresented parties to the mediation to consult with counsel prior to executing a mediation agreement. The ADR specialist shall provide all parties with a list of agencies that may be able to assist an unrepresented party, such as the Consumer Protection Unit of the Attorney General's Office; Delaware Volunteer Legal Services, Inc. (DVLS); Community Legal Aid Society, Inc. (CLASI); and Legal Services Corporation of Delaware, Inc. (LSCD). A settlement agreement must set forth the settlement of the disputed issues and the future responsibilities of each party to the agreement. The agreement is binding on all parties to the agreement.

(6) If the parties involved in a mediation conference do not reach a settlement, the ADR specialist shall file with the Advisory Council a notice and serve a copy to each of the parties, advising that mediation was not successful.

- (i) (1) With the exception of subsection (l) (statute of limitations) of this section, the ADR procedures provided for in this section cease to have any force or effect upon the commencement of litigation concerning the dispute that is the subject of the ADR proceedings. The parties to such litigation are exclusively subject to the rules of the tribunal in which the litigation has been commenced and nothing in this section shall be construed to infringe upon or otherwise affect the jurisdiction of the courts over such disputes.

(2) The Council may make a recommendation to the Office of the Attorney General for further action if the ADR process is unsuccessful. The Office of the Attorney General shall report back

to the Advisory Council within 60 days as to the action taken or to be taken with respect to the dispute.

(j) The results of the ADR proceedings must be reported to the Advisory Council. Memoranda and documents submitted to an ADR specialist, statements made during the ADR, and notes or other materials made by the ADR specialist or any party in connection with the ADR are not subject to discovery, may not be introduced into evidence in any proceeding, and may not be construed to be a waiver of any otherwise applicable privilege; however, nothing in this section limits the discovery or use as evidence of documents and other materials that would have otherwise been discoverable or admissible as evidence but for the use of those documents or materials in the ADR proceeding.

(k) An ADR specialist has the same immunity that the ADR specialist would have if that ADR specialist were a judge acting in a court with jurisdiction over the subject matter and over the parties involved in the dispute that led to ADR.

(l) The initiation of ADR under this section suspends the running of the statute of limitations applicable to the dispute that is the subject of the ADR until 14 days after the ADR specialist files notice that mediation was not successful, pursuant to paragraph (h)(6) of this section.

75 Del. Laws, c. 382, § 1; 70 Del. Laws, c. 186, § 1.

§ 7002 Jurisdiction.

(a) Any person, whether or not a citizen or resident of this State, who owns, holds an ownership or beneficial interest in, uses, manages or possesses real estate situated in this State submits to the jurisdiction of the courts of this State as to any action or proceeding for the enforcement of an obligation or right arising under this subchapter.

(b) A summary proceeding to recover the possession of a rented lot, pursuant to Chapter 57 of this title, may be maintained in the Justice of the Peace Court in the county where the property is located.

(c) In the absence of a provision in this subchapter governing the relationship between a manufactured home owner (tenant) and a manufactured home community owner (landlord), the Residential Landlord-Tenant Code set forth in Part III of this title governs the relationship. The Residential Landlord-Tenant Code also governs the rental of manufactured homes. In the event of conflict between the provisions of this subchapter and those of the Residential Landlord-Tenant Code, this subchapter governs issues pertaining to the rental of lots in manufactured home communities.

25 Del. C. 1953, § 7002; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 64 Del. Laws, c. 95, § 1; 65 Del. Laws, c. 446, § 1; 66 Del. Laws, c. 268, § 1; 74 Del. Laws, c. 35, § 2.

§ 7003 Definitions.

Unless otherwise expressly stated, if a word or term is not defined under this section, it has its ordinarily accepted meaning or means what the context implies. In this subchapter, the following definitions apply.

(1) "Agreement" means a written rental agreement.

- (2) "Authority" means the Delaware Manufactured Home Relocation Authority.
- (3) "Common area" means shared land or facilities within a manufactured home community over which the landlord retains control.
- (4) "Community owner" or "landlord" means the owner of 2 or more manufactured home lots offered for rent. It includes a lessor, sublessor, park owner or receiver of 2 or more manufactured home lots offered for rent, as well as any person, other than a lender not in possession, who directly or indirectly receives rents for 2 or more manufactured home lots offered for rent and who has no obligation to deliver such rents to another person.
- (5) "Guest" or "visitor" means a person who is not a tenant or resident of a manufactured home community and who is on the premises of the manufactured home community with the express or implied permission of a tenant or resident of the community.
- (6) "Hold over" means to retain possession of a rented lot in a manufactured home community after the termination, nonrenewal, or expiration of a rental agreement governing the rented lot.
- (7) "Holdover" means an act of retaining or a tenant who retains possession of a rented lot in a manufactured home community after the termination, nonrenewal, or expiration of a rental agreement governing the rented lot.
- (8) "Home owner" or "tenant" means an owner of a manufactured home who has a tenancy of a lot in a manufactured home community; a lessee.
- (9) "Landlord" or "community owner" means the owner of 2 or more manufactured home lots offered for rent. It includes a lessor, sublessor, park owner or receiver of 2 or more manufactured home lots offered for rent, as well as any person, other than a lender not in possession, who directly or indirectly receives rents for 2 or more manufactured home lots offered for rent and who has no obligation to deliver such rents to another person.
- (10) "Lease" or "rental agreement" means a written contract between a landlord and a tenant establishing the terms and conditions whereby a manufactured home is placed upon or is allowed to remain upon a rented or leased lot in a manufactured home community.
- (11) "Manufactured home" means a factory-built, single-family dwelling:
- a. Transportable in 1 or more sections, which is either 8 body feet or more in width and 40 body feet or more in length, or, when erected on site, has more than 400 square feet in living area; and
 - b. With or without a permanent foundation and designed to be used as a year-round dwelling when connected to the required utilities; and
 - c. If manufactured since June 15, 1976, built in accordance with manufactured home construction requirements promulgated by the federal Department of Housing and Urban

Development (HUD) or by other applicable codes. "Manufactured home" is synonymous with "mobile home", "trailer", and similar terms used elsewhere in this title.

(12) "Manufactured home community" means a parcel of land where 2 or more lots are rented or offered for rent for the placement of manufactured homes. Manufactured home community is synonymous with "mobile home park", "trailer park", and "trailer court".

(13) "Notice" means a written announcement, warning or other communication delivered to or served upon a person, as designated in statute.

(14) "Premises" means the rented lots in a manufactured home community, the structures upon them, and the facilities and appurtenances thereon, as well as the grounds, common areas and facilities held out for the use of the tenants and/or residents generally or whose use is contracted for between landlord and tenant.

(15) "Quiet enjoyment" includes the peaceful possession of the premises in a manufactured home community without unwarranted disturbance.

(16) "Recreational vehicle" means a travel trailer, camping trailer, park trailer, camper, camper motor home or similar accommodation which is primarily designed as temporary living quarters for recreational camping or for seasonal or travel use and which either has its own motor power or is mounted on or drawn by another vehicle.

(17) "Rent" means money paid by a tenant to a landlord for the possession, use and enjoyment of a rented lot and other parts of the premises in a manufactured home community pursuant to a rental agreement. For purposes of summary possession, rent includes late fees for rent, other fees and charges, including utility charges, and the tenant's share of the Delaware Manufactured Home Relocation Trust Fund assessment.

(18) "Rental agreement" or "lease" means a written contract between a landlord and a tenant establishing the terms and conditions whereby a manufactured home is placed upon or is allowed to remain upon a rented or leased lot in a manufactured home community.

(19) "Resident" means a person who resides in a manufactured home located in a manufactured home community. A resident may or may not be a tenant.

(20) "Seasonal property" means a parcel of land operated as a vacation resort on which 2 or more lots are rented or offered for rent for the placement of manufactured homes or other dwellings used less than 8 months of the year. A seasonal property is characterized by a lack of availability of year-round utilities and by the fact that its tenants have primary residences elsewhere.

(21) "Tenant" or "home owner" means an owner of a manufactured home who has a tenancy of a lot in a manufactured home community; a lessee.

(22) "Tree" for the purpose of this chapter means a woody, perennial plant at least 25 feet in height or with a main stem a minimum of 6 inches in diameter.

(23) "Trust Fund" means the Delaware Manufactured Home Relocation Trust Fund.

(24) "Utility charge" means a charge by a landlord or others to a tenant for a commodity such as water, sewer, electricity, fuel, propane, cable television or trash.

(25) "Utility service" means a service provided by a landlord or others to a tenant for a commodity such as water, sewer, electricity, fuel, propane, cable television or trash.

25 Del. C. 1953, § 7003; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 66 Del. Laws, c. 268, § 1; 74 Del. Laws, c. 35, § 2; 74 Del. Laws, c. 147, § 1; 77 Del. Laws, c. 258, § 1.

§ 7004 Exemptions.

(a) The rental of ground upon which a recreational vehicle is placed, including any facilities or utilities thereon, is exempt from the requirements of this subchapter, and nothing in this subchapter may be construed as determining, regulating or governing the legal rights of parties to any lease or rental agreement for the ground on which a recreational vehicle is situated.

(b) The rental of ground within the category of seasonal property is exempt from the requirements of this subchapter, and nothing in this subchapter may be construed as determining, regulating, or governing the legal rights of parties to any lease or rental agreement for the rental of ground within the category of seasonal property.

25 Del. C. 1953, § 7005; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 66 Del. Laws, c. 268, § 1; 74 Del. Laws, c. 35, § 2; 74 Del. Laws, c. 147, § 2.

§ 7005 Requisites for rental of a manufactured home lot.

A landlord shall not rent a lot in a manufactured home community without first delivering to the prospective tenant a copy of the proposed rental agreement, a copy of the rules, standards and fee schedule of the manufactured home community, a copy of this subchapter, and a summary of this subchapter written by the Office of the Attorney General and made available to all landlords prior to January 1, 2012, all of which shall be delivered to the prospective tenant at the time the prospective tenant obtains from the landlord an application for tenancy in the community. The prospective tenant shall acknowledge such delivery by signing a receipt.

74 Del. Laws, c. 35, § 2; 78 Del. Laws, c. 20, § 1; 79 Del. Laws, c. 412, § 1.

§ 7006 Provisions of a rental agreement.

(a) All new and renewing rental agreements, including those rental agreements whose original term has expired, for a lot in a manufactured home community must contain:

(1) Specific identification and location of the rented lot within the manufactured home community;

(2) A stipulation of the total amount of annual rent for the lot;

(3) a. A stipulation of the term of the rental agreement and the terms of payment of rent, which shall be in monthly increments, unless the parties agree otherwise as noted below. In addition, rental payments shall be paid by the tenant to the owner/landlord in equal dollar amounts, or as close thereto as possible, and shall be extended equally, pro rata on a monthly basis, over a calendar year. Any provision in a rental agreement or otherwise which requires rental payments or rental increases to be paid in one lump sum shall be null and void. Nothing herein shall preclude a tenant from requesting, and the owner/landlord from agreeing thereto, that rental payment be made in a 1-time lump sum payment by the tenant.

b. The provisions of this section shall be prospective in nature.

c. The monthly rental amount, as aggregated, must not exceed the annual rental amount and such monthly rental amount shall be determined by dividing the total annual rental amount, as set forth in the rental agreement, into 12 equal payments, to be made on a monthly rental schedule.

(4) The amount of rent due for each term of payment and the date on which each payment of rent is due;

(5) The amount of any late-payment fee for rent and the conditions under which the fee may be imposed;

(6) A listing of each other fee or charge in a manner that identifies the service to be provided for the fee or charge in accordance with the provisions of § 7008 of this title;

(7) The name and address of the landlord or the person authorized to receive notices and accept service on the landlord's behalf;

(8) The name and location of the federally insured financial institution where the landlord's security-deposits account is located;

(9) A services rider which contains a description of each utility, facility and service provided by the landlord and available to the tenant, clearly indicating the financial responsibility of the tenant and the landlord for installation and maintenance, and for the related fees or charges that may be imposed upon the tenant by the landlord;

(10) A rental agreement summary which must contain a brief description of the manufactured home, the rented lot, rental amount, term, landlord's mailing address, tenant's mailing address, fees, security deposit, information regarding rent adjustment, community status and method of notice; in addition, the summary must include the amount of rent charged for the lot for the 3 most recent past years. If the amounts are unknown after a diligent search or if the lot was not rented, a statement to that effect must be included. The rent history provided pursuant to this paragraph may not be used as a predictor of future rent increases, nor may it be used against the community owner/landlord in any way;

(11) The grounds for termination, as described in this subchapter;

(12) A specific reference to this subchapter as the law governing the relationship between the landlord and the tenant regarding the lot rental;

(13) Provisions requiring the landlord to:

- a. Maintain and regrade the lot area where necessary and in good faith, as permitted by law, to prevent the accumulation of standing water thereon and to prevent the detrimental effects of moving water if such efforts shall not cause the creation of any new accumulations of standing water or detrimental effects of moving water on another lot area. "Standing water" shall be understood to mean motionless water, not flowing in a stream, tide or current, that has not dissipated within 48 hours after cessation of precipitation. Areas defined by local, state, or federal regulations as wetlands, flood plains, tidal areas, water recharge areas, or recorded drainage systems are exempt from this provision.
- b. Maintain the manufactured home community in such a manner as will protect the health and safety of residents, visitors and guests;
- c. Identify each lot area in the community in such a way that each tenant can readily identify that tenant's own area of responsibility;
- d. Maintain the community, including common areas and rental lots not under rent, keeping it free of species of weeds or plant growth which are noxious or detrimental to the health of the residents;
- e. Make a good faith effort to exterminate insects, rodents, vermin or other pests which are dangerous to the health of the residents when an infestation exists in the common areas of the community;
- f. Maintain all water, electrical, plumbing, gas, sewer, septic and other utilities and services provided by the landlord in good working order, repairing these utilities and services within the earlier of 48 hours after written notification of a utility or service problem, or as soon thereafter as is practicable if a repair within 48 hours is not practicable;
- g. When applicable, specify whether septic systems are to be maintained by the landlord or by the tenant;
- h. Respect the privacy of residents and agree not to enter into, under or on the manufactured home without the permission of the tenant or an adult resident unless emergency circumstances exist and entry is required to prevent injury to person or damage to property. However, the landlord may, with 72 hours' notice, inspect any utility connections owned by the landlord or for which the landlord is responsible;
- i. Maintain all roads within the community in good condition;
- j. Comply with all federal, State and local building codes;
- k. Allow the tenant freedom of choice in the purchase of goods and services other than utilities and related services subject to the limitations in paragraph (b)(13) of this section;

1. Maintain, care for and remove, if necessary, trees on any lot, including common areas, if the tree is at least 25 feet in height or has a main stem/trunk larger than 6 inches in diameter. Such maintenance, care and removal means those steps required to maintain a live and healthy tree condition per standard horticultural practices in accordance with the standards as set forth by the American Association of Nurserymen.
 1. Nothing contained in this subsection shall require the landlord to remove leaves, needles, pine cones, sap, pods, seed containers, or any such material normally produced by the tree as part of its life cycle.
 2. The landlord must respect the privacy of the tenant and not enter the rented lot to maintain, care for, and/or remove trees without the permission of the tenant or an adult resident unless emergency circumstances exist and entry is required to prevent injury to person or damage to property.
- (14) Provisions requiring the tenant to:
- a. Keep the exterior of the manufactured home and the rented lot in a clean and sanitary condition;
 - b. Refrain from storing outside on the lot occupied by the tenant's manufactured home building materials, furniture or similar items usually not stored outside a home by a property owner in a residential area;
 - c. Dispose of all rubbish, garbage and other waste materials in a clean and sanitary manner;
 - d. Abide by all reasonable written rules concerning use, occupation and maintenance of the premises, and amendments thereto, as provided for in § 7019 of this title;
 - e. Abide by all reasonable written manufactured home standards, and amendments thereto, as provided for in § 7020 of this title.
- (b) A rental agreement for a lot in a manufactured home community may not contain:
- (1) A provision whereby the tenant authorizes a person to confess judgment on a claim arising out of the rental agreement;
 - (2) A provision whereby the tenant agrees to waive or to forego any right or remedy provided by law;
 - (3) A provision whereby the tenant waives the right to a jury trial;
 - (4) A provision which permits the landlord to take possession of the rented lot or the tenant's personal property without the benefit of formal legal process;
 - (5) A provision which permits the landlord to collect a fee for late payment of rent without allowing the tenant to remit the rent in full a minimum of 5 days beyond the date the rent is due;

- (6) A provision which permits the landlord to impose for late payment of rent, based on a monthly payment, a fee in excess of the greater of \$25 or 5% of the rental payment specified in the rental agreement;
- (7) A provision which permits the landlord to charge an amount in excess of 1 month's rent for a security deposit, unless mutually agreed to, or to retain the security deposit upon termination of the rental agreement even though the tenant has paid the rent and any fees or charges in full as of the date of termination and has caused no damage to the landlord's property;
- (8) A provision which permits the landlord to collect a deposit in excess of 1 normal billing period for any governmental mandated charge which is the responsibility of the tenant and would ultimately become the responsibility of the landlord if not paid by the tenant, or to retain the deposit upon termination of the lease if the tenant has paid the mandated charge;
- (9) A provision which prohibits the tenant from terminating the rental agreement upon a minimum of 30 days notice when a change in the location of the tenant's current employment causes the tenant to commute 30 miles farther from the manufactured home community than the tenant's current commuting distance from the community, or a provision which prohibits a tenant who is a member of the armed forces of the United States from terminating a rental agreement with less than 30 days notice to the landlord if the tenant receives reassignment orders which do not allow at least 30 days notice;
- (10) A provision for a waiver of any cause of action against, or indemnification for the benefit of, the landlord by the tenant for any injury or harm caused to the tenant or to residents, guests or visitors or to the property of the tenant, residents, guests or visitors resulting from any negligence of the landlord or of a person acting for the landlord in the performance of the landlord's obligations under the rental agreement;
- (11) A provision which denies to the tenant the right to treat a continuing, substantial violation by the landlord of any agreement or duty protecting the health, welfare or safety of the tenant or residents as a constructive or actual eviction which would otherwise permit the tenant to terminate the rental agreement and to immediately cease payments thereunder; provided, that the landlord fails to correct the condition giving rise to the violation or fails to cease the violation within a reasonable time after written notice is given to the landlord by the tenant;
- (12) A provision which prohibits displaying a for-sale sign that advertises the sale of a manufactured home in a manufactured home community; however, the landlord may establish reasonable limitations as to the number of signs and the size and placement of signs;
- (13) A provision which unreasonably limits freedom of choice in the tenant's purchase of goods and services, provided however, that:
- a. The landlord is not required to allow service vehicles to have access to the manufactured home community in such numbers or with such frequency that a danger is created or that damage beyond ordinary wear and tear is likely to occur to the infrastructure of the community;

- b. The landlord may restrict trash collection to a single provider; and
 - c. The landlord may select shared utilities;
- (14) A provision which permits the recovery of attorneys' fees by either party in a suit, action or proceeding arising from the tenancy;
- (15) A provision which violates any federal, state or local law;
- (16) A provision which requires the tenant to:
 - a. Sell or transfer a manufactured home to the landlord; or
 - b. Buy a manufactured home from the landlord; or
 - c. Sell a manufactured home through the services of the landlord;
- (17) A provision which requires the tenant to provide the landlord with a key to the tenant's manufactured home or any appurtenances thereto;
- (18) A provision which regulates the use of satellite dishes or television antennas that conflicts with federal law or FCC regulations;
- (19) A provision which requires the tenant to accept automatic deduction of rent payments from the tenant's checking or other account;
- (20) A provision which grants the landlord an option or right of first refusal to purchase the tenant's manufactured home; and
- (21) A provision which limits to a liquidated sum the recovery to which the tenant otherwise would be entitled in an action to recover damages for a breach by the landlord in the performance of the landlord's obligations under the rental agreement.
- (c) If a court of competent jurisdiction finds that a tenant's rental agreement contains a provision in violation of subsection (b) of this section:
 - (1) The landlord shall remove the provision and provide all affected tenants by regular first-class mail with proof of mailing or by certified mail, return receipt requested, at the address of the tenants' rented lots, with either an amended rental agreement or corrective addendum to the rental agreement within 30 days of the exhaustion of all appeals, if any are taken; and
 - (2) The landlord is liable to the tenant for actual damages suffered by the tenant as a result of the violation, plus court costs, if any.
- (d) If a court of competent jurisdiction finds that a landlord has wilfully included in the rental agreement a provision in violation of subsection (b) of this section, the tenant is entitled to recover 3 months' rent in addition to an award under subsection (c) of this section.

- (e) A rental agreement must be executed before a tenant occupies a lot.
- (f) A landlord may not offer a lot for rent in a manufactured home community unless the lot conforms to the applicable state, county or municipal statutes, ordinances or regulations under which the manufactured home community was created, or under which the manufactured home community currently and lawfully exists.
- (g) A violation of subsection (f) of this section is punishable by a fine of not more than \$1,000.
- (h) If a court of competent jurisdiction finds that a tenant's rental agreement fails to contain a provision required by subsection (a) of this section:
 - (1) The landlord shall include the provision and provide all affected tenants by regular first class mail with proof of mailing or by certified mail, return receipt requested, at the address of the tenants' rented lots, with either an amended rental agreement or corrective addendum to the rental agreement within 30 days of the exhaustion of all appeals, if any are taken; and
 - (2) The landlord is liable to the tenant for actual damages suffered by the tenant as a result of the violation, plus court costs, if any.
- (i) If a court of competent jurisdiction finds that a landlord has wilfully failed to include in the rental agreement a provision required by subsection (a) of this section, the tenant is entitled to recover 3 months' rent in addition to an award under subsection (h) of this section.
- (j) Both the landlord and tenant shall comply with the provisions of the rental agreement. The remedies available to a landlord or a tenant set forth in this chapter are in addition to those remedies available to a landlord or a tenant in a court of competent jurisdiction for the failure by the landlord or the tenant to comply with any provision of a rental agreement.

25 Del. C. 1953, §§ 7004, 7006; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 66 Del. Laws, c. 268, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 35, § 2; 75 Del. Laws, c. 375, § 1; 75 Del. Laws, c. 382, §§ 3-5; 77 Del. Laws, c. 53, § 1; 77 Del. Laws, c. 258, §§ 2, 3; 77 Del. Laws, c. 259, § 1.

§ 7007 Term of rental agreement; renewal of rental agreement [For application of this section, see 79 Del. Laws, c. 304, § 7]

- (a) The term of a rental agreement for a lot in a manufactured home community must be:
 - (1) One year; or
 - (2) A shorter or longer term that is mutually agreed upon by the parties and is designated in writing within the rental agreement.
- (b) Upon the expiration of the term of a rental agreement, the rental agreement must be automatically renewed by the landlord for the same term and with the same provisions as the original agreement, with the exception that modified provisions relating to the amount and payment of rent

are permitted, and, with the mutual agreement of all parties to the rental agreement, other modifications not prohibited by law, unless:

- (1) The tenant notifies the landlord in writing, a minimum of 60 days prior to the expiration of the rental agreement, that the tenant does not intend to renew it, or a shorter or longer period of time as is mutually agreed upon by the parties; or
- (2) The landlord notifies the tenant in writing, a minimum of 90 days prior to the expiration of the rental agreement, that the agreement will not be renewed for due cause, as described in § 7010(a) of this title.

25 Del. C. 1953, § 7009; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 74 Del. Laws, c. 35, § 2; 79 Del. Laws, c. 63, § 4.

§ 7008 Fees; services; utility rates.

(a) A "fee" or "charge" is a monetary obligation, other than lot rent, designated in a fee schedule pursuant to subsection (b) of this section and assessed by a landlord to a tenant for a service furnished to the tenant, or for an expense incurred as a direct result of the tenant's use of the premises or of the tenant's acts or omissions. A fee or charge may be considered as rent for purposes of termination of a rental agreement, summary possession proceedings or for other purposes if specified in this title.

(b) A landlord must clearly disclose all fees in a fee schedule attached to each rental agreement.

(c) A landlord may assess a fee if the fee relates to a service furnished to a tenant or to an expense incurred as a direct result of the tenant's use of the premises. However, a fee that is assessed due to the tenant's failure to perform a duty arising under the rental agreement may be assessed only after the landlord notifies the tenant of the failure and allows the tenant 5 days after notification to remedy or correct the failure to perform. A tenant's failure to pay the fee within .5 days of notification is a basis for termination of the rental agreement pursuant to § 7010A of this title.

(d) A prospective tenant in a manufactured home community may be required to pay an application fee to be used by the landlord to determine the prospective tenant's credit worthiness. A landlord may not charge an application fee that exceeds the greater of 10% of the monthly lot rent or \$50. A landlord shall, upon receipt of any money paid as an application fee, furnish a receipt to the prospective tenant for the full amount paid by the prospective tenant, and shall maintain for a period of at least 2 years complete records of all application fees charged and the amount received for each fee. If a landlord unlawfully demands or charges more than the allowable application fee, the prospective tenant is entitled to damages equal to double the amount demanded or charged as an application fee by the landlord.

(e) If a landlord pays a tenant's utility charge to a third party due to the tenant's failure to do so, the charge is considered a pass-through utility charge. In addition to any late charge paid by the landlord to the third party, the landlord may assess a third-party-payment fee not to exceed the greater of 5% of the total payment by the landlord to the third party or \$25.

(f) A landlord may assess a late-payment fee for the late payment of rent if:

- (1) The rent is not paid within 5 days after the due date specified in the rental agreement; and
- (2) The rental agreement provides for a late-payment fee.

(g) A landlord may assess an optional-user fee for the use of designated facilities or services. Failure of a tenant to pay an optional-user fee for requested use of a facility or service may not be the basis for termination of the rental agreement. However, continued use of the requested facility or service without paying the optional-user fee may result in termination of the rental agreement pursuant to § 7010A of this title. Optional-user fees include, but are not limited to, fees for the use of a swimming pool, marine facilities and tennis courts.

(h) The amount of an optional-user fee must be reasonably related to the cost of providing the facility or service upon which the fee is based.

(i) A fee may not be increased more than once during any 12-month period. A utility rate may be adjusted as provided in subsection (j) of this section. A landlord shall notify a tenant in writing of any fee increase or additional fee at least 60 days prior to the effective date of the increase or addition. A fee increase or an additional fee is unenforceable unless proper written notice has been given to the tenant.

(j) A landlord may charge a tenant for utilities provided by the landlord to the tenant if specified in the rental agreement. The rate charged by a landlord for a utility may not exceed the utility's retail consumer rate, and the rate charged by the landlord may be adjusted without notice on a monthly basis.

(k) A landlord may not assess an entrance or exit fee. An entrance fee is any fee assessed by a landlord to a tenant prior to the tenant's occupancy of a rented lot, except for an application fee or a security deposit, or for those fees or charges for utilities, for direct services actually rendered, or for the use of facilities, all of which must be identified and described in the rental agreement or in a separate notice pursuant to § 7006 of this title. An exit fee is a fee assessed by a landlord to a tenant immediately prior to or after the tenant's final departure from the rented lot, except for those fees or charges for direct services actually rendered by the landlord which would not otherwise be provided without charge in the normal course of business.

(l) If a utility, facility or service previously provided pursuant to the rental agreement is discontinued, the landlord shall adjust the tenant's rent, charge or fee payment by deducting the landlord's direct operating costs of providing the discontinued utility, facility or service. An adjustment is determined as follows:

- (1) No less than 60 days prior to the discontinuance of the utility, facility or service, the landlord shall notify all affected tenants of the discontinuance, and include in the notification an explanation of the discontinuance and the reduction in the direct operating cost, if any, associated with the discontinuance.
- (2) Within 10 days after the landlord's notice pursuant to paragraph (l)(1) of this section, the tenants may form a committee not to exceed 5 members. The committee and the landlord shall meet together at a mutually convenient time and place to discuss the discontinuance of the utility, facility or service.

(3) At the meeting, the landlord shall disclose and explain all material factors for the proposed discontinuation of the utility, facility or service, together with supporting documentation. The reduction in the direct operating cost of the utility, facility or service, as determined by an independent public accountant or certified public accountant paid for by the landlord, is binding upon both the landlord and the tenants.

(m) Notwithstanding any other provision in this chapter, where there exists a community center available for use by community tenants, the owner/landlord shall not refuse to make such community center available to a tenant's association or to a group of tenants, whose purpose of such use is to address matters affecting or relating to such tenants' rights, obligations and/or privileges in, about, and/or relating to the manufactured home community. The use of the community center for such meetings shall be at no additional charge to the tenants as imposed for ordinary use by tenants and the landlord shall honor the request for use of the community center by the tenants' association or group of tenants within 14 days after a request to the landlord has been made. The tenants shall abide by all existing rules and/or regulations established for the community center.

65 Del. Laws, c. 446, § 1; 74 Del. Laws, c. 35, § 2; 77 Del. Laws, c. 390, § 1.

§ 7009 Termination of rental agreement by tenant during first month of occupancy; during first 18 months of occupancy.

(a) If a landlord fails to substantially comply with the provisions of a rental agreement, or if there is a material noncompliance with this subchapter or any statute, ordinance or regulation governing the landlord's maintenance or operation of the manufactured home community, a tenant may, upon written notice to the landlord, terminate the rental agreement and vacate the rented lot by removing that tenant's manufactured home and all personal possessions at any time during the first month of occupancy. The tenant has no further obligation to pay rent after the date of vacating the lot. A tenant retains the right to terminate a rental agreement beyond the first month of occupancy if the tenant remains in possession of the lot in reliance on the written promise by the landlord to correct the condition or conditions which would justify termination of the agreement by the tenant during the first month of occupancy.

(b) If a condition exists which deprives a tenant of a substantial part of the benefit and enjoyment of the bargain pursuant to the rental agreement, the tenant may notify the landlord in writing of the condition, and, if the landlord does not remedy the condition within 15 days from the date of mailing, the tenant may terminate the rental agreement and vacate the rented lot by removing the tenant's own manufactured home and all personal possessions. The tenant has no further obligation to pay rent after the date of vacating the lot. Notice pursuant to this subsection need not be given if the condition renders the premises uninhabitable or poses an imminent threat to the health, safety or welfare of the tenant or a resident of the tenant's manufactured home.

(c) A tenant may not terminate a rental agreement pursuant to this section for a condition caused by lack of due care by the tenant, a resident of the tenant's manufactured home, or any other person on the premises with the tenant's or resident's consent.

(d) If a condition referred to in subsection (a) or (b) of this section was caused by the landlord, the tenant may recover any damages sustained as a result of the condition, including, but not limited to,

reasonable expenditures necessary to obtain adequate substitute housing while the manufactured home is uninhabitable or while an imminent threat to health, safety or welfare exists, or while the tenant is deprived of a substantial part of the benefit and enjoyment of the bargain pursuant to the rental agreement prior to the termination of the rental agreement by the tenant, and for a reasonable length of time following the termination of the rental agreement.

(e) If a landlord or the landlord's authorized representative intentionally misrepresents a material fact regarding a manufactured home community, the scope or extent of services provided by the landlord, or a provision of a rental agreement in a brochure, newspaper, radio or television advertisement, or other document or advertisement, for the purpose of inducing a tenant to enter into a rental agreement, and the tenant reasonably relies upon the misrepresentation to the tenant's detriment when entering into the rental agreement, the tenant has the right to terminate the rental agreement within 18 months of execution of the rental agreement.

25 Del. C. 1953, § 7010; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 35, § 2.

§ 7010 Termination or nonrenewal of rental agreement by landlord; due cause; change in land use.

(a) A landlord may terminate a rental agreement for a lot in a manufactured home community before it expires or may refuse to renew an agreement only for due cause. "Due cause" means:

- (1) An intended change in the use of the land of a manufactured home community as specified in subsection (b) of this section; or
- (2) The grounds for termination pursuant to § 7010A of this title.

(b) If a change is intended in good faith in the use of land on which a manufactured home community or a portion of a manufactured home community is located and the landlord intends to terminate or not renew a rental agreement, the landlord shall:

- (1) Provide all tenants affected with at least a 1-year termination or nonrenewal notice, which informs the tenants of the intended change of use and of their need to secure another location for their manufactured homes. The landlord may not increase the lot rental amount of an affected tenant after giving notice of a change in use;
- (2) Give all notice required by this section in writing. All notice must be posted on the affected tenant's manufactured home and sent to the affected tenant by certified mail, return receipt requested, addressed to the tenant at an address specified in the rental agreement or at the tenant's last known address if an address is not specified in the rental agreement;
- (3) Provide, along with the 1-year notice required by paragraph (b)(1) of this section, a relocation plan (Plan) to each affected tenant of the manufactured home community. The Plan must be written in a straightforward and easily comprehensible manner and include the following:

- a. The location, telephone number and contact person of other manufactured home communities, known to the landlord after reasonable effort, within a 25-mile radius of the manufactured home community where the change of land use is intended;
 - b. The location, telephone number and contact person of housing for tenants with disabilities and for older tenants, known to the landlord after reasonable effort, within a 25-mile radius of the manufactured home community where the change of land use is intended;
 - c. A listing, known to the landlord after reasonable effort, of government and community agencies available to assist tenants with disabilities and older tenants;
 - d. A basic description of relocation and abandonment procedures and requirements;
 - e. A preliminary indication of whether a tenant's manufactured home can or cannot be relocated;
 - f. A copy of this section of the Code;
- (4) Submit the Plan to the Delaware Manufactured Home Relocation Authority at the same time that the Plan is submitted to the affected tenants;
- (5) Update the Plan and distribute the updated Plan every 3 months. If the landlord fails to provide a quarterly update to each affected tenant and to the Authority, the date of termination of the tenant's rental agreement will be extended by 1 month for each omitted quarterly update;
- (6) During the relocation process observe and comply with all federal, state and local laws relating to older tenants and tenants with disabilities.
- (c) If a manufactured home community owner does not in good faith intend to change the land use of the community, yet provides a homeowner or tenant with a termination or nonrenewal notice pursuant to subsection (b) of this section, the community owner has committed the act of misrepresentation with intent to deceive the homeowner or tenant.
- (1) A violation of this subsection is subject to the following civil penalties:
- a. A cease and desist order;
 - b. Payment of a monetary penalty of not more than \$250 for each violation;
 - c. Restitution;
 - d. Such other relief as is reasonable and appropriate; and
 - e. Double the monetary penalty if the homeowner or tenant is over 65 years old.
- (2) Prima facie evidence that a community owner did not intend in good faith to change land use includes, but is not limited to, evidence that the community owner reused the land for lot rentals

for manufactured homes within 7 years of providing a tenant with a termination or nonrenewal notice, and did not make a material and bonafide effort to change the subdivision plan or zoning designation, or both.

(3) A court may award attorneys' fees and costs to a homeowner if it determines that the community owner violated this section.

(d) If a landlord has given the required notice to a tenant and has fulfilled all other requirements of this subchapter, the failure of the Authority to perform its duties or authorize payments does not prevent the landlord from completing the change in use of land.

25 Del. C. 1953, § 7011; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 66 Del. Laws, c. 268, § 1; 74 Del. Laws, c. 35, § 2; 75 Del. Laws, c. 375, §§ 2, 3.

§ 7010A Termination or nonrenewal of rental agreement by landlord; due cause: noncompliance.

(a) A landlord may terminate a rental agreement with a tenant immediately upon written notice if the tenant does not comply with the terms of the rental agreement or the requirements of this subchapter and the noncompliance is the result of:

(1) Clear and convincing evidence that conduct of the tenant or of a resident of the tenant's manufactured home caused, is causing, or threatens to cause, immediate and irreparable harm to any person or property in the manufactured home community;

(2) Conviction of a crime or adjudication of delinquency committed by a tenant or by a resident of the tenant's manufactured home, the nature of which at the time of the crime or act of delinquency caused immediate and irreparable harm to any person or property in the manufactured home community;

(3) Clear and convincing evidence of a material misrepresentation on the tenant's application to rent a lot in the manufactured home community which, if the truth were known, would have resulted in the denial of the application;

(4) The failure of the tenant to provide proper notification to the landlord prior to selling or transferring to a buyer or transferee title of a manufactured home which the buyer or transferee intends to retain in the manufactured home community, pursuant to § 7022(c) of this title; or

(5) The failure of a tenant to bring his or her manufactured home into compliance with written standards pursuant to § 7020(b) or § 7022(e) of this title.

(b) A landlord may terminate a rental agreement with a tenant by providing prior written notice as follows:

(1) If the tenant's noncompliance with the terms of the rental agreement or the requirements of this subchapter involves conduct of the tenant, of a resident of the tenant's manufactured home, or of a guest or visitor of the tenant or resident which results in the disruption of the rights of others entitled to the quiet enjoyment of the premises, the landlord shall notify the tenant in

writing to immediately cause the conduct to cease and not allow its repetition. The notice must specify the conduct which formed the basis for the notice and notify the tenant that if substantially the same conduct recurs within 6 months, whether or not the 6-month period falls within 1 lease period or overlaps 2 lease periods, the landlord may immediately terminate the rental agreement and bring an action for summary possession; or

(2) If the noncompliance is based upon a condition on or of the premises of the manufactured home community, the landlord shall notify the tenant in writing, specifying the condition constituting the noncompliance and allowing the tenant 12 days from the date of mailing or personal service to remedy the noncompliance. If the tenant remains in noncompliance at the expiration of the 12-day period, whether or not the 12-day period falls within 1 lease period or overlaps 2 lease periods, the landlord may immediately terminate the rental agreement and bring an action for summary possession; or

(3) If rent, which includes late fees for rent, other fees and charges, including utility charges, and the Trust Funds assessment, is not received by the landlord by the 5th day after the due date or during the grace period stated in the rental agreement, whichever is longer, the landlord shall notify the tenant in writing, demanding payment and stating that unless the required payment is made within 7 days from the date of mailing or personal service, the rental agreement will be terminated. If the tenant remains in default after the 7-day period, whether or not the 7-day period falls within 1 lease period or overlaps 2 lease periods, the landlord may terminate the rental agreement and bring an action to recover the rent due and for summary possession.

(c) Whether or not repeated instances of noncompliance fall within 1 lease period or overlap 2 or more lease periods, if there are repeated instances of noncompliance by the tenant with a provision of the rental agreement, with any rule or regulation material to the rental agreement, or with a provision of this subchapter, even when corrected by the tenant, a landlord may immediately terminate the rental agreement and bring an action for summary possession and any moneys due, or may refuse to renew the agreement pursuant to § 7007 of this title. "Repeated instances of noncompliance" include:

(1) Failure of the tenant on 4 separate occasions within 12 consecutive payment periods, to make a rent payment by the fifth day after the due date or during the grace period stated in the rental agreement, whichever is longer, resulting in notice being sent to the tenant pursuant to paragraph (b)(3) of this section;

(2) Failure of the tenant on 2 separate occasions within 12 consecutive payment periods to reimburse a landlord within 7 days of notice from the landlord to the tenant that the landlord paid the tenant's utility charge;

(3) Tender by the tenant on 2 separate occasions within 12 consecutive payment periods of a bank draft or check which is dishonored by a financial institution for any reason, except for a mistake by the financial institution;

(4) Four separate incidents of noncompliance as described in paragraph (b)(1) or (2) of this section within a 12-month period; or

(5) Any combination of four separate incidents of noncompliance as described in any subdivision of this subsection within a 12-month period.

(d) A landlord may not terminate a rental agreement or refuse to renew a rental agreement pursuant to paragraph (c)(1) of this section unless the landlord notifies the tenant after the third separate occasion within 12 consecutive payment periods that a subsequent incident of noncompliance described in paragraph (c)(1) of this section may result in either the immediate termination of the rental agreement or the nonrenewal of the rental agreement at its expiration.

(e) In an action for summary possession based on nonpayment of rent, the tenant is entitled to raise by defense or counterclaim any claim against the landlord that is related to the rental of the lot.

(f) A notice sent to a tenant advising the tenant that the rental agreement is terminated or will be terminated or will not be renewed must specify the reasons for such action in sufficient detail so that the dates, places and circumstances concerning the termination are clear. Mere reference to or recital of the language of this section is not sufficient.

(g) A landlord's right to terminate a rental agreement prior to the expiration of the agreement or right to refuse to renew at the expiration of the agreement does not arise until the landlord has complied with the applicable notice provision upon which the landlord is relying for the termination or non-renewal of the agreement.

74 Del. Laws, c. 35, § 2.

§ 7011 Delaware Manufactured Home Relocation Authority [For application of this section, see 79 Del. Laws, c. 304, § 7]

(a) The Authority shall be administered by a board of directors (Board) made up of the following 5 voting members: 1 member who is appointed by the Governor from a list of at least 2 nominees submitted by the largest not-for-profit association representing manufactured home owners in the State; 1 member who is appointed by the Governor from a list of at least 2 nominees submitted by the largest not-for-profit association representing the manufactured home industry in this State; 1 member who is appointed by the Governor from the public-at-large; 1 member who is appointed by the Speaker of the House of Representatives; and, 1 member who is appointed by the President Pro Tempore of the Senate. One nonvoting member shall be appointed by the Attorney General, as a representative of the Consumer Protection Unit of the Justice Department, but none of the last 3 members listed above shall be a landlord, community owner, home owner, or tenant. All Board members shall be residents of the State, and such members shall serve at the pleasure of the authority that appointed such member. The terms of the members shall be staggered so that no more than 2 members' terms end at the same time. The first 2 appointees shall serve for a term of 1 year, the next 2 appointees shall serve for a term of 2 years, and the remaining 1 appointee shall serve for a term of 3 years. Thereafter, all appointees shall serve for a term of 2 years; provided, however, that a member may be appointed for a term of less than 2 years to ensure that the Board members' terms expire on a staggered basis. The term for any member of the Board may subsequently be renewed for an additional term or additional terms. The Governor shall designate 1 member of the Board as the chairperson of the Board.

(b) (1) The board of directors of the Authority may employ or retain such persons as are reasonable and necessary to perform the administrative and financial transactions and responsibilities of the Authority and to perform other necessary and proper functions not prohibited by law. The Authority

is responsible for all direct and indirect costs for its operations, including, but not limited to, receipts and disbursements, personnel, rental of facilities and reimbursement to other State agencies for services provided and, therefore, must be fiscally revenue-neutral.

(2) Members of the board of directors of the Authority may be reimbursed from moneys of the Authority for actual and necessary expenses incurred by them as members, but may not otherwise be compensated for their services.

(3) There is no civil liability on the part of, and no civil cause of action of any nature against, the Authority, an agent or employee of the Authority, the board of directors of the Authority, or a member of the board of directors of the Authority for any act or omission in the performance of powers and duties under this subchapter unless the act or omission complained of was done in bad faith or with gross or wanton negligence.

(4) Meetings of the board of directors of the Authority are subject to the provisions of the Freedom of Information Act, Chapter 100 of Title 29. All meetings must be conducted at a central location in the State, unless agreed to for a given meeting by at least 3 of the 5 board members.

(c) The Authority's board of directors shall:

(1) Adopt a plan of operation and articles, bylaws and operating rules;

(2) Establish procedures under which applicants for payments from the Authority may be approved;

(3) Authorize payments and adjust, eliminate or reinstate the Trust Fund assessment established in § 7012 of this title only if at least 3 of the 5 members of the board of directors approve the payments or assessments;

(4) Facilitate the initial meeting between the home owners and landowner and select an arbitrator pursuant to § 7043 of this title.

(d) The Authority and its board of directors may:

(1) Sue or be sued;

(2) Borrow from private finance sources and issue notes or vouchers in order to meet the objectives of the Authority and those of the Trust Fund established in § 7012 of this title.

74 Del. Laws, c. 35, § 2; 74 Del. Laws, c. 147, §§ 3, 4; 78 Del. Laws, c. 132, §§ 1-3; 79 Del. Laws, c. 63, § 5.

§ 7012 Delaware Manufactured Home Relocation Trust Fund [Terminates effective July 1, 2019]

(a) The Delaware Manufactured Home Relocation Trust Fund (Trust Fund) is established in the Division of Revenue of the Department of Finance for exclusive use by the Delaware Manufactured Home Relocation Authority to fund the Authority's administration and operations. All interest earned from the investment or deposit of moneys in the Trust Fund must be deposited into the Trust Fund.

(b) Moneys in the Trust Fund may be expended only:

(1) To pay the administrative costs of the Authority;

(2) To carry out the objectives of the Authority by assisting manufactured home owners who are tenants in a manufactured home community where the community owner intends to change the use of all or part of the land on which the community is located or where the community owner intends to convert the manufactured home community to a manufactured home condominium community or to a manufactured home cooperative community pursuant to Chapter 71 of this title, and by assisting manufactured home community owners with the removal and/or disposal of nonrelocatable or abandoned manufactured homes; and

(3) After notifying the manufactured home owners who are tenants in a community owner's manufactured home community that the community owner intends to change the land use or to convert the community pursuant to paragraph (b)(2) of this section, if the community owner does not change the land use or convert the community within 3 years of notification, or if the Authority finds there is prima facie evidence under § 7010(c)(2) of this title that the owner did not intend in good faith to change land use, the community owner shall within 30 days of the date the Authority provides written notice to the community owner, reimburse the Authority for whatever moneys the Authority has expended from the Trust Fund with respect to that manufactured home community, along with double the legal interest rate. The date of the mailing of notice by the Authority is deemed the date that a community owner is notified about reimbursing the Authority. However, if the community owner, with due diligence, has not been able to complete the change-in-use process within 3 years, the Authority may grant a reasonable extension to the community owner to complete the process.

(c) The Trust Fund terminates on July 1, 2019, unless terminated sooner or extended by the General Assembly.

(d) The cap on the Trust Fund is \$15 million. The cap may be adjusted, eliminated or reinstated by the board of directors of the Authority at any time, subject to the voting requirements of § 7011(c)(3) of this title.

(e) If the Trust Fund ceases to exist, the funds held at the time of dissolution must be liquidated as follows:

(1) Fifty percent of the total funds, on a per capita basis, to tenants of rented lots in manufactured home communities in Delaware who have occupied the lots for at least the 12 months immediately prior to the time of the dissolution; and

(2) Fifty percent of the total funds to landlords owning rented lots at the time of dissolution, prorated on the number of lots actually rented by the landlords for at least the 12 months immediately prior to the time of dissolution.

- (f) (1) The board of directors of the Authority shall set a \$3.00 monthly assessment for deposit in the Trust Fund for each rented lot in a manufactured home community. The board may adjust, eliminate or reinstate the assessment, and shall notify landlords and tenants of each adjustment, elimination or reinstatement pursuant to board regulations.

(2) One-half of the monthly assessment set pursuant to paragraph (f)(1) of this section is the obligation of the tenant of the rented lot, and 1/2 of the assessment is the obligation of the landlord. The landlord shall collect the tenant's portion of the assessment on a monthly basis as additional rent. The landlord shall remit to the Trust Fund both its portion and the tenant's portion of the assessment on a quarterly basis. The landlord is responsible for safeguarding all assessments it collects. Failure by a tenant to pay to the landlord the tenant's portion of the assessment as additional rent is grounds for termination of the rental agreement pursuant to § 7010A of this title. An assessment is not due or collectable for a vacant lot.

(3) If a lot is rented for any portion of a month, the full monthly assessment must be paid to the Trust Fund.

(4) If a rental agreement contains a capping provision which limits the amount by which rent may be increased, the Trust Fund assessment is deemed not to be rent for purposes of rent increases.

- (5) a. If within 30 days of the quarterly due date a landlord fails to remit to the Trust Fund both its portion and the tenant's portion of the assessment, the Authority may, but shall not be required to, notify the landlord in writing, demanding payment and stating that, unless the required payment is made within 7 days from the date of mailing, legal action may be initiated in a court of competent jurisdiction to collect any assessment, interest, at the rate of 1% per month until paid in full, or other sums due and owing. Any written notice must comply with § 7024 of this title. If the Authority is awarded a judgment in its favor, the Authority may request and the court shall award reasonable attorney's fees, costs, and expenses. Failure by the Authority to provide such notice described herein shall not be prejudicial to the Authority's right to pursue such cause of action.

b. A landlord may assert as an affirmative defense to legal action initiated pursuant to paragraph (f)(5)a. of this section above that a tenant has failed to pay its portion of the assessment; there shall be a rebuttable presumption that the tenant has paid its required assessment amount, in full.

(g) The Authority may not for any reason, including age, income level or geography, exempt any landlord or tenant from paying the Trust Fund assessment.

(h) The Trust Fund must be audited annually. If the State Auditor's Office performs the audit, the Authority shall pay to the State from the Trust Fund the cost of the audit. The completed audit must be made available to the public by placing it on a website, by offering it as a hard copy for a fee which reflects reasonable reproduction cost, or in some other manner determined by the Authority.

(i) In addition to providing for an annual audit pursuant to subsection (h) of this section, the Authority shall make available to the public, at least on a quarterly basis, the amount of the payment made to each tenant and landlord, along with a description of the property related to the payment and the reason for the payment.

74 Del. Laws, c. 35, § 2; 74 Del. Laws, c. 147, §§ 5, 6, 7; 75 Del. Laws, c. 375, § 4; 78 Del. Laws, c. 238, §§ 1, 2; 79 Del. Laws, c. 151, § 1; 79 Del. Laws, c. 205, § 1.

§ 7013 Relocation expenses; payments for nonrelocatable homes.

(a) If a tenant is required to relocate due to a change in use or conversion of the land in a manufactured home community as set forth in § 7010(b) of this title and complies with the requirements of this section, the tenant is entitled to payment from the Trust Fund of the lesser of:

(1) The actual, reasonable expenses of moving the manufactured home and existing appurtenances to a new location within a 25-mile radius of the vacated manufactured home community including, but not limited to, the cost of taking down, moving and setting up the home in a new location; or

(2) The maximum relocation payment, which must be established by the Authority's board of directors. The determination by the board of the amount of a relocation payment is final and may not be appealed.

(b) A tenant is not entitled to compensation for relocation under subsection (a) of this section if:

(1) The landlord moves the tenant's manufactured home by mutual consent to another lot in the manufactured home community or to another manufactured home community at the landlord's expense;

(2) The tenant is vacating the manufactured home community and so informed the landlord before notice of the change in use was given;

(3) The tenant abandons the manufactured home as set forth in subsection (f) of this section; or

(4) The tenant has failed to pay the tenant's share of the Trust Fund assessment during the course of the tenancy.

(c) Compensation for nonrelocatable homes.

(1) A tenant is entitled to compensation from the Trust Fund for the tenant's manufactured home if the home, which is on a lot subject to a change in use of land, cannot be relocated. The board of directors of the Authority shall establish criteria for determining whether a home can or cannot be relocated. The criteria must include:

a. Availability of a replacement home site; and

b. Feasibility of physical relocation.

(2) If the board determines that a manufactured home cannot be relocated pursuant to paragraph (c)(1) of this section, the board shall provide compensation to the tenant. The amount of compensation, as determined by a board-approved, certified manufactured home appraiser, is the fair market value of the home as sited and any existing appurtenances, but excludes the value of the underlying land. However, the amount of compensation may not exceed an amount set by the board and which may be adjusted from time to time by the Board, to be paid in exchange for the title of the nonrelocatable manufactured home. Prior to receiving payment for a nonrelocatable home, the tenant must deliver to the board the current title to the home duly endorsed by the owner or owners of record, valid releases of all liens shown on the title, and a tax release. The board shall then relinquish the title to the landlord to facilitate the removal and/or disposal of the home from the manufactured home community. For the purpose of compensation to the landlord pursuant to § 7014 of this title, a home that cannot be relocated is deemed abandoned. The determination of the board as to the amount of compensation is final and may not be appealed.

(d) Except as provided for abandonment in subsection (f) of this section, in order to obtain payment from the Trust Fund for the relocation of a manufactured home, a tenant must submit to the Authority, with a copy to the landlord, an application for payment which includes:

(1) A copy of the notice of termination or nonrenewal of the rental agreement due to change in use of land, as required by § 7010(b)(1) of this title; and

(2) A contract with a licensed moving or towing contractor for the moving expenses for the manufactured home.

(e) The Authority shall approve or reject payment to a moving or towing contractor within 30 days after receipt of the information required by this section, and forward a copy of the approval or rejection to the tenant, with a voucher for payment if payment is approved.

(f) In lieu of the procedure in subsection (a) of this section, a tenant may abandon the manufactured home in the manufactured home community. A tenant shall receive a payment from the Trust Fund for the abandoned manufactured home. Before collecting a payment, a tenant shall deliver to the Authority a current State of Delaware title to the manufactured home duly endorsed by the owner of record, a valid release of all liens shown on the title, and a tax release. The amount of the payment shall be set by the Authority. The Authority's determination of the amount of the payment is final and may not be appealed.

74 Del. Laws, c. 35, § 2; 74 Del. Laws, c. 147, § 8; 79 Del. Laws, c. 151, § 2.

§ 7014 Payment of funds to landlord for removal and/or disposal of abandoned homes.

(a) A landlord is entitled to receive from the Trust Fund payment in an amount determined by the Board to be sufficient to remove and/or dispose of a non-relocatable or abandoned manufactured home pursuant to § 7013(c) and (f) of this title.

(b) Payment for removal and/or disposal of a manufactured home pursuant to subsection (a) of this section must be authorized by the Authority and made in the form of a voucher issued to the Division

of Revenue of the Department of Finance, directing the Division to issue a check in a designated amount to the landlord.

(c) If the Trust Fund does not have sufficient moneys to make a payment to a landlord pursuant to this section, the Authority shall issue a written promissory note to the landlord for funds due and owing. Promissory notes may be redeemed in order of issuance of the notes as additional moneys come into the Trust Fund.

(d) If a landlord realizes a profit from the removal and/or disposal of a manufactured home, the landlord shall reimburse the Trust Fund for any profit gained by the landlord pertaining to that home.

(e) A landlord may not receive payment from the Trust Fund if the landlord has failed to pay the landlord's share of the total Trust Fund assessment during the course of tenancies or has failed to remit the tenants' share as required by § 7012(f)(2) of this title.

(f) It is a class A misdemeanor for a landlord or a landlord's agent to file any notice, statement or other document required under this section which is false or contains a material misstatement of fact.

74 Del. Laws, c. 35, § 2; 74 Del. Laws, c. 147, §§ 5, 9.;

§ 7015 Payment of funds to homeowners.

(a) When a payment to a tenant is authorized by the Authority, payment must be made in the form of a voucher issued to the Division of Revenue of the Department of Finance, directing the Division to issue a check in a designated amount to the named tenant.

(b) If the Trust Fund does not have sufficient moneys to make a payment to a tenant pursuant to this section, the Authority shall issue a written promissory note to the tenant for funds due and owing. A promissory note may be redeemed in order of issuance of the notes as additional moneys come into the Trust Fund.

(c) It is a class A misdemeanor for a tenant or a tenant's agent to file any notice, statement or other document required under this section which is false or contains a material misstatement of fact.

74 Del. Laws, c. 35, § 2; 74 Del. Laws, c. 147, §§ 5, 9.

Analyst's Note: The remaining provisions of Title 25, Chapter 70, Subchapter I are not included in this Draft Report, as they are not directly related to the Council on Manufactured Housing or the administration of the Delaware Manufactured Housing Relocation Authority.

APPENDIX E

**Title 25, Chapter 70 of the Delaware Code
(as it implicates the Council on Manufactured Housing)**

Subchapter III. Affordable Manufactured Housing**§ 7040 Purpose [For application of this section, see 79 Del. Laws, c. 304, § 7]**

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.

79 Del. Laws, c. 63, § 1.

§ 7041 Definitions [For application of this section, see 79 Del. Laws, c. 304, § 7]

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 of this title, it has its ordinarily accepted meaning or means what the context implies.

79 Del. Laws, c. 63, § 1.

§ 7042 Rent justification [For application of this section, see 79 Del. Laws, c. 304, § 7]

(a) A community owner may raise a home owner's rent for any and all 12-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 36-month period provided the community owner can demonstrate the increase is justified for the following conditions:

(1) The community owner, during the preceding 12-month period, has not been found in violation of any provision of this chapter 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 1 or more factors listed under subsection (c) of this section.

(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 to recent new home owners entering the subject manufactured home community and/or by comparable manufactured home communities. To be comparable, a manufactured home community must be within the competitive area and must offer similar facilities, services, amenities and management.

(8) The amount of rental assistance provided by the community owner to the home owners under § 7021A of this title.

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. A community owner also shall not utilize as justification for any future rental increase the cost of capital improvements or rehabilitation work, once that cost has been fully recovered by rental increases that were incorporated

into a prior rental increase in excess of CPI-U, where the prior rental increase was properly implemented under this subchapter.

79 Del. Laws, c. 63, § 1; 79 Del. Laws, c. 304, §§ 1, 6.

§ 7043 Rent increase dispute resolution [For application of this section, see 79 Del. Laws, c. 304, § 7]

(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 home owners are not identified by name, the community owner shall make the names and addresses available to any affected home owner, home owners' association and the Authority, 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. The community owner proposing the rent increase shall recommend to the Authority a date, time and place of the meeting and the Authority shall affirm that recommendation with the community owner, if it finds the date, time and place to be reasonable. At the meeting the community owner shall, in good faith, disclose in writing all of the material factors resulting in the decision to increase the rent. When market rent is a factor used by the community owner, the community owner shall provide a range of rental rates from low to high, and when relevant the mean and median; this disclosure shall include:

(1) Whether comparable rents were determined at arm's length, each case in which the community owner or related party has an ownership interest in the comparable lot/community; and

(2) The time relevance of the data.

For purposes of this subsection, "related party" means any of a person's parents, spouse, children (natural or adopted) and siblings of the whole and half-blood. 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) After the informal meeting, any affected home owner who has not already accepted the proposed increase, or the home owners' association on the behalf of 1 or more affected home owners who have not already accepted the proposed increase may, within 30 days from the conclusion of the final meeting, petition the Authority to appoint a qualified arbitrator to conduct nonbinding 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, 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 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 collected from the home owners and community owner. All other costs shall be the responsibility of the respective parties. The arbitration must be held within 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 title.

(h) The arbitrator will render a written decision within 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.

79 Del. Laws, c. 63, § 1; 79 Del. Laws, c. 304, §§ 2-4.

§ 7044 Appeal [For application of this section, see 79 Del. Laws, c. 304, § 7]

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 and the Court shall address written and/or oral arguments of the parties as to whether the record created in the arbitration is sufficient justification under the Code for the community owner's proposed rental increase in excess of CPI-U.

79 Del. Laws, c. 63, § 1; 79 Del. Laws, c. 304, § 5.

§ 7045 Penalties [For application of this section, see 79 Del. Laws, c. 304, § 7]

A community owner who raises a home owner's rent more than the annual average increase of the CPI-U for the preceding 36-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 home owners with interest. The Department of Justice shall have authority over this section.

79 Del. Laws, c. 63, § 1.

§ 7046 Exemption [For application of this section, see 79 Del. Laws, c. 304, § 7]

(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.

79 Del. Laws, c. 63, § 1.