



SPONSOR: Sen. Bushweller & Sen. Ennis & Rep. Carson
Rep. Kowalko

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 47

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO THE MANUFACTURED HOME OWNERS AND COMMUNITY OWNERS ACT.

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

Section 1. Amend § 7026, Title 25 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 7026. Right of first offer; notice required before sale of manufactured home community.

(e)(1)a. A home owner association must respond in writing to the notice of a right of first offer and send the response by overnight service with signature receipt to the community owner or the community owner's agent or attorney within 30 calendar days from the date of the mailing of the notice sent by the community owner to the association or to the Authority. The response must clearly indicate that:

1. The members of the association intend to accept the purchase price and any special conditions material to the transaction for the sale, transfer, or conveyance of the community, as described in the notice of right of first offer; or,

2. The members of the association do not accept the price and any special conditions material to the transaction for the sale, transfer, or conveyance of the community, as described in the notice of right of first offer, but that they intend to offer to purchase the community at an alternative price; or,

3. The members of the association have no interest in purchasing the community and that they do not intend to proceed any further in the transaction, or, if the members of the association do not respond, they shall be deemed to have notified the community owner that they have no interest in purchasing the community.

b. If the home owners association does not respond in material compliance with this section, such failure to respond shall be deemed to serve as notice to the community owner that the home owners association does not wish to purchase the community.

(2) An alternative offer of price for the sale, transfer, or conveyance of the community from the home owner association remains valid for 6 months, unless withdrawn by the home owner association in writing and sent to the community owner by overnight service with signature receipt. If the community is still for sale at the expiration of the

initial 6-month alternative offer period, the home owners association shall have the right to refresh their alternative offer within 7 days of its expiration upon written notice to the community owner. The refreshed offer will be valid for 6 months. The home owners association shall have the right to refresh their offer every 6 months until the property is sold or 18 months has elapsed from the time notice was provided pursuant to subsection (a) of this section, whichever comes first. The alternative offer and any refreshed alternative offer may be amended at any time upon written notice to the community owner. In the event a community owner decides they no longer want to sell a community after having provided the home owners association with the notice of first offer, any outstanding alternative offer shall be void. The community owner shall promptly notify the home owners association of their decision to remove the community from the market.

a. A notice to withdraw an alternative offer must be approved by the members of the home owners association. The approval percentage must be stated in the notice to the community owner.

b. The community owner may not sell the community to a third party at or less than the price offered in the alternative offer from the home owner association unless:

1. The offer is withdrawn as described in paragraph (e)(2)a. of this section; or

2. The home owner association is given 30 calendar days to match the lower price and all of the material terms and conditions of the lower offer.

i. The notice of the right to match the lower third-party offer shall be sent to the home owner association by overnight service with signature receipt. The notice must state the price and any special conditions material to the transaction for the sale, transfer, or conveyance of the community.

ii. Upon written demand from the home owner association, the community owner must provide the home owner association with tangible evidence of the lower offer received within 3 business days of receipt of the written request from the home owner association by overnight service with signature receipt.

iii. If the home owner association matches the offer within 30 calendar days of receipt of the notice, the community owner is obligated to move to the next step of the negotiation with the home owner association pursuant to subsection (g) of this section.

c. The community owner may accept an offer from a third party higher than the alternative price, if any, offered by the home owner association ~~without further obligation to the home owner association unless there are significant and/or material changes in terms and conditions. However, association, but only after the home owner association must be~~ is given 7 business days to match the higher offer. ~~offer under the following circumstances:~~

52 1. If the higher offer is less than \$40 million and the home owner association's alternate price is within
53 6% of the offer; or

54 2. If the higher offer is \$40 million or greater and the home owner association's alternate price is within
55 4.5% of the offer.

56 d. The notice of the right to match the higher offer pursuant to paragraph ~~(e)(2)e.1. or (e)(2)e.2.~~ (e)(2)c.
57 of this section above must be sent to the home owner association by overnight service with signature receipt. The
58 notice must state the price and any special conditions material to the transaction for the sale, transfer, or
59 conveyance of the community. Upon written demand from the home owner association, the community owner
60 must provide the home owner association with tangible evidence of the higher offer received within 3 business
61 days of receipt of the written request from the home owner association by overnight service with signature receipt.

62 e. If the home owner association matches the offer within 7 business days of receipt pursuant to
63 paragraph ~~(e)(2)e.1. or (e)(2)e.2.~~ (e)(2)c. of this section above, section, the community owner is obligated to move
64 to the next step of the negotiation with the home owner association pursuant to subsection (g) of this ~~section~~
65 ~~below.~~ section. The community owner shall not accept or entertain a higher offer from a third party after the home
66 owners association matches the offer.

67 ~~f. If the community owner accepts an offer from a third party that is greater than the alternative price~~
68 ~~offered by the home owners association, such that the provisions of either paragraph (e)(2)e.1. or (e)(2)e.2. of this~~
69 ~~section are not triggered, the community owner shall certify this fact in writing to both the home owner association~~
70 ~~and the Consumer Protection Unit within 7 business days of acceptance of the third party offer. Such written~~
71 ~~certification shall also indicate whether the accepted third party offer contained any significant and/or material~~
72 ~~changes in terms or conditions.~~

73 g. If the community owner has not sold, transferred, or conveyed the community 2 years after notice was
74 provided under subsection (a) of this section, the community owner must begin the notice and right of first offer
75 process from the beginning under subsection (a) of this section before the community owner can sell, transfer, or
76 convey the community, unless negotiations are in process for the home owner association to purchase the
77 community and that home owner association waives this requirement in writing.

78 (3) If the home owner association responds that it has no interest in purchasing the community, or fails to respond
79 within the 30-day response period pursuant to paragraph (e)(1) of this section, or fails to respond within 7 business days
80 pursuant to paragraph (e)(2)c. of this section, the community owner shall file an affidavit of compliance, pursuant to
81 subsection (m) of this section, at the Office of the Recorder of Deeds in the appropriate county.

82 (4) Failure of the home owner association to accept the price and any special conditions material to the transaction
83 for the sale, transfer, or conveyance of the community as stated in the notice of right of first offer, or failure to state an
84 alternative price pursuant to paragraph (e)(1)b. of this section within the 30-day response period, or failure to respond
85 within 7 business days pursuant to paragraph (e)(2)c. of this section eliminates the right of the home owner association to
86 purchase the community during the remainder of the 12-month period that commenced on the date of the community
87 owner's notice of intention to sell, transfer, or convey all or part of the community.

SYNOPSIS

This Act requires that if a home owner association has made an offer under this section and 2 years have passed since the community owner first provided notice of the decision to sell, transfer, or convey the manufactured home community, the notice and right of first offer process in this section must start again before an ownership interest in the community can be sold, transferred, or conveyed. This Act also allows the home owner association to make a counter offer any time a third party makes an offer higher than the alternative price offered by the home owner association.

Author: Senator Bushweller