

CHAPTER 238
FORMERLY
HOUSE BILL NO. 246
AS AMENDED BY
HOUSE AMENDMENT NO. 1 AS AMENDED BY HOUSE AMENDMENT NO. 1 TO HOUSE
AMENDMENT NO. 1

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO MANUFACTURED HOUSING IN THE STATE OF DELAWARE.

Section 2. Amend section 7026(c), Title 25 of the Delaware Code by moving the introductory sentence of existing section 7026(c) to existing section 7026(b)(1), excluding the Model Bylaws which shall remain in section 7026(c), striking the language “The bylaws of the incorporated home owner association will conform substantially to the material in the following model form.”; further amend the language in the introductory sentence of existing section 7026(c) by striking the current language that follows “Authority” and add in its place the following language: “that home owner association must register with the Authority as prescribed by the Authority.”.

Section 3. Amend existing section 7026(b), Title 25 of the Delaware Code by redesignating existing section 7026(b)(2) as section 7026(b)(2)a.; re-numbering existing section (b)(1) as new section (b)(2)c.; and then inserting the following as section (b)(2)b.:

“b. In order to be eligible for registration with the Authority, the home owner association must comply with the following requirements:

1. The home owner association must be incorporated in the State of Delaware and under the laws of the State of Delaware;

2. The home owner association must have written bylaws.

(i) The by-laws must provide that each home owner of each home site is automatically entitled to vote as a special member of the association concerning matters related to the purchase of all or part of the community after a notice of right of first offer has been extended to the home owner association by the community owner. Special members under this paragraph may not be required to meet other preconditions of general membership including the payment of dues.”.

Section 4. Amend section 7026, Title 25 of the Delaware Code by adding the following as the new introductory sentence for section 7026(c), which shall be followed by the existing Model Bylaws:

“(c) The following model bylaws comply with the requisites of this section and may be used by a home owner association. The model bylaws below are intended as a model and home owner associations are not required to adopt the model bylaws. However, to comply with this section, the bylaws of the home owner association must address the substantive topics included as articles in the model bylaws (such as: name and location, corporate seal, members, etc.):”.

Section 5. Amend section 7026, Title 25 of the Delaware Code by making the following changes to the Model Bylaws currently existing therein: in Article III of the Model Bylaws section, above the existing paragraph add the title “Section 1. General Membership” with the following language: “The owner or owners of each home in the community are entitled to membership in the home owners association. In order to become a member in good standing the home owner must pay the annual dues set by the board of directors. Members in good standing are entitled to cast a vote or votes as provided by the Certificate of Incorporation for the Association and these bylaws. The owner or owners of each home are collectively entitled to one vote in all matters.”; then, in Article III of the Model Bylaws section, add the title “Section 2. Special Membership for Exercising Right of First Offer”, and move the language currently existing under the current heading of “Article III Members” to this section; in the currently existing language in Article III, insert the word “special” between the phrases “is automatically a” and “member of the Association.”, and insert the phrase “concerning the exercise of the right of first offer by the Association” between the phrases “At all meetings of the Association” and “, the owner or owners of each home”; in Article VII of the Model Bylaws section, delete the language currently existing in subsection (e) and substitute the following in place thereof: “Negotiate the purchase of the community on behalf of the homeowners when authorized by a vote of the special membership.”; in Article IX, Section 4. of the Model Bylaws section, insert “or a designee” between “The Secretary” and “shall attend all meetings”; in Article X of the Model Bylaws section, strike “at all times, during reasonable business hours,”.

Section 6. Amend section 7026, Title 25 of the Delaware Code by deleting the language existing in current subsection (d)(1) and substituting the following in place thereof:

“(1) If the Authority has informed the community owner that a registered home owner association exists in the community, the community owner shall send the right of first offer directly to the home owner association. The right of first offer shall be sent by overnight service with signature receipt.

a. The right of first offer also shall be sent indirectly to the home owner association through DMHOA, or its successor, through the Consumer Protection Unit of the Office of the Attorney General of the State and through the Authority. The right of first offer shall be sent to the Authority, the Consumer Protection Unit of the Office of the Attorney General of the State or DMHOA, or its successor, by overnight service with signature receipt.”.

Section 7. Amend section 7026, Title 25 of the Delaware Code by striking the current language of existing section (d)(2) and inserting the following language in place thereof:

“(2) If the Authority has not informed the community owner that a registered home owner association exists in the community, the community owner must send the right of first offer directly to the Authority. The right of first offer must be sent by overnight service with signature receipt. The right of first offer to the Authority shall include a list of the known names and mailing addresses of all home owners in the community.

(3) The Authority shall then, within 5 business days of receipt of the community owner’s right of first offer, send a summary notice to all home owners on the list.

a. The summary notice shall inform the homeowners that the community is for sale and they should contact their home owners association to secure further information. If no home owners association exists then the homeowner will need to organize a home owners association meeting the requirements of § 7026(b) in order to pursue the right of first offer.

b. The right of first offer shall be extended indirectly to the home owners through DMHOA or its successor and the consumer protection unit of the office of the attorney general of the state. The right of first offer shall be sent to DMHOA and the Consumer Protection Unit of the Office of the Attorney General of the State by the community owner by overnight service with signature receipt.”.

Section 8. Amend section 7026, Title 25 of the Delaware Code by inserting the following language as new section (d)(3):

“(3) The Right of First Offer shall include:

a. A statement that the community owner has decided to sell, transfer, or convey all or part of the community. The statement must indicate the real property and fixtures to be included in the sale of the community;

b. The price and any special conditions material to the transaction for the sale, transfer, or conveyance of the community;

c. A form confidentiality statement indicating that all significant and material information, including operating expenses and other relevant operating and capital expenditure costs related to the community, shall remain confidential and cannot be released to any individual not a signer to the confidentiality statement. The statement may include reasonable penalties for breach of confidentiality;

d. A statement that the confidentiality statement must be signed by any individual of the home owners association seeking to utilize the confidential information and sent by overnight service with signature receipt to the community owner;

e. A statement that once the confidentiality statement is received by the community owner, the community owner will send by overnight service with signature receipt the price and any special conditions material to the transaction for the sale, transfer, or conveyance of the community and all significant and material information, including operating expenses and other relevant operating and capital expenditure costs related to the community;

f. A statement that the home owner association has 30 calendar days from the date of mailing of the Right of First Offer to respond to the offer.”.

Section 9. Amend section 7026, Title 25 of the Delaware Code by inserting “to the community owner or the community owner’s agent or attorney” in existing section (e)(1) between the phrases “signature receipt” and “within 30”; inserting “or to the Authority” at the end of the first sentence of existing section (e)(1).

Section 10. Amend section 7026(e), Title 25 of the Delaware Code by inserting the following language as new section 7026(e)(1)d.:

“d. 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.”.

Section 11. Amend section 7026(e), Title 25 of the Delaware Code by inserting “to a third party” in section 7026(e)(2)b. between the words “community” and “at”.

Section 12. Amend section 7026(e), Title 25 of the Delaware Code by inserting “from a third party” in section 7026(e)(2)c. between the words “offer” and “higher”; delete “the original price or” in section 7026(e)(2)c.; inserting “and/or” immediately following the phrase “unless there are significant” in section 7026(e)(2)c..

Section 13. Amend section 7026(e), Title 25 of the Delaware Code by inserting “or” at the end of the language in section (e)(2)c.1.

Section 14. Amend section 7026, Title 25 of the Delaware Code by inserting the following language as new section (e)(2)d.:

“d. The notice of the right to match the higher offer pursuant to subsection (e)(2)c.1. or (e)(2)c.2. above must 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. Upon written demand from the home owner association, the community owner must provide the home owner association with tangible evidence of the higher offer received within three business days of receipt of the written request from the home owner association by overnight service with signature receipt.”.

Section 15. Amend section 7026, Title 25 of the Delaware Code by inserting the following language as new Section (e)(2)e.:

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

Section 16. Amend section 7026(e), Title 25 of the Delaware Code by striking “may” from section 7026(e)(3) and replacing with “shall”.

Section 17. Amend section 7026(g), Title 25 of the Delaware Code by striking the language between the phrases “If a home owner association” and “the home owner association has an additional 30 days” and substituting the following language:

“responds to the Notice of Right of First Offer pursuant to subsection (e)(1) of this section, or if the community owner agrees to sell the community to the home owner association pursuant to subsection (e)(2) of this section,”.

Section 18. Amend section 7026(h), Title 25 of the Delaware Code by adding the following language at the end of section 7026(h)(2): “However, if the parties did not fully exhaust the 30 day periods provided in section 7026(e) and 7026(g), any unused days may be added to the 90 day period in section 7026(h)(1) by either party by providing written notification to all other parties within five (5) business days prior to the end of the 90 day period. The time period for calculation of unused days is from the dates of mailing of the notices required by each section.”.

Section 19. Amend section 7026(i), Title 25 of the Delaware Code by striking “and to the Consumer Protection Unit of the Office of the Attorney General of the State” from section (i)(1); and by inserting the following language at the end of section (i)(1):

“If the Authority has not informed the community owner that a registered home owner association exists in the community, the community owner must send the notice of the intent to convey the community at auction directly to the Authority. The notice shall include a list of the known names and mailing addresses of all home owners in the community. The Authority shall, within five (5) business days of the receipt of the notice from the community owner, send the notice to all home owners on the list.”.

Section 20. Amend section 7026, Title 25 of the Delaware Code by deleting “,and to the Consumer Protection Unit of the Office of the Attorney General of the State” from section (i)(3); and by deleting the word “association” between the words “the” and “must” in section 7026 (i)(7) and substituting “community owner” in place thereof.

Approved April 08, 2010