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DELAWARE STATE SENATE  
151st GENERAL ASSEMBLY

SENATE BILL NO. 110

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO CAPITAL IMPROVEMENTS IN  
MANUFACTURED HOME COMMUNITIES.

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

1 Section 1. Amend § 7003, Title 25 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows and by redesignating accordingly:

3 § 7003. Definitions.

4 Unless otherwise expressly stated, if a word or term is not defined under this section, it has its ordinarily accepted  
5 meaning or means what the context implies. For purposes of this chapter:

6 (5) "Consumer Price Index" or "CPI-U" means the Consumer Price Index for All Urban Consumers in the  
7 Philadelphia-Wilmington-Atlantic City area for the most recently available preceding 36-month period.

8 (12) "Lot rent" means the amount of money a homeowner pays to the community owner for the rental of the  
9 lot upon which the homeowner's manufactured home is located.

10 (13) "Maintenance" or "maintain" means the scheduled or unscheduled repair of a community asset during the  
11 time the deficiency occurs. "Maintenance" or "maintain" includes preventive care for buildings, structures, and  
12 equipment as recommended by the manufacturer or contracted architectural and engineering services that support the  
13 planning, design, and execution of repairs or preventive care.

14 Section 2. Amend § 7008, Title 25 of the Delaware Code by making deletions as shown by strike through and  
15 insertions as shown by underline as follows and by redesignating accordingly:

16 § 7008. Provisions of a rental agreement.

17 (a) All new and renewing rental agreements, including those rental agreements ~~whose~~ for which the original term  
18 has expired, for a lot in a manufactured home community must contain all of the following:

19 (10) A rental agreement summary that must contain all of the following:

20 j. ~~[Repealed.]~~ If the rented lot is subject to a capital improvement assessment fee under § 7020 of this  
21 title, a line item that includes all of the following regarding the capital improvement assessment fee:

22 1. The initial total cost.

23 2. The current balance.

24 3. The monthly assessment amount.

25 4. The date that the capital improvement assessment fee is scheduled to be satisfied.

26 (13) Provisions requiring the landlord to do all of the following:

27 a. Maintain and regrade the lot area areas, bulkheads, streets, and other grounds where necessary and in  
28 good faith, as permitted by law, to prevent the accumulation of standing water thereon and to prevent the  
29 detrimental effects of moving water if such efforts do not cause the creation of any new accumulations of standing  
30 water or detrimental effects of moving water on another lot area. Areas defined by local, state, or federal  
31 regulations as wetlands, flood plains, tidal areas, water recharge areas, or recorded drainage systems are exempt  
32 from this paragraph.

33 Section 3. Amend § 7020, Title 25 of the Delaware Code by making deletions as shown by strike through and  
34 insertions as shown by underline as follows:

35 § 7020. Fees; services; utility rates.

36 (n)(1) A community owner may only request a capital improvement assessment fee to recover the cost of the  
37 following:

38 a. A new asset in the community, to the extent the asset is beneficial to the homeowners, where no similar  
39 asset has previously existed.

40 b. A material addition, new major component, or material increase in the capacity of an existing  
41 community asset, to the extent the asset is beneficial to the homeowners, that does any of the following:

42 1. Physically enlarges, expands, or extends the asset, including the addition of cubic or linear space.

43 2. Is reasonably expected to materially increase the productivity, efficiency, strength, quality, or  
44 output of the asset.

45 c. The cost for repairs necessary because of circumstances other than ordinary wear and tear.

46 (2) A community owner may only request a capital improvement assessment fee under paragraph (n)(1) of  
47 this section, if all of the following apply:

48 a. During the preceding 12-month period, the community owner has not been found in violation of any  
49 law or regulation relating to the health or safety of the residents, visitors, or guests that persisted for more than 15  
50 days, beginning from the day the community owner received notice of such violation.

51 b. The community owner is in compliance with the requirements under § 7053 of this title.

52 c. The request for a capital improvement fee is made in the same manner and with the same notice and  
53 procedural requirements as required for a rent increase under Subchapter VI of Chapter 70 of this title.

54 (3) A capital improvement assessment fee may be challenged under § 7053 through § 7054 of this title and  
55 proceedings to challenge a capital improvement assessment fee may be consolidated with proceedings that challenge a  
56 rent increase under § 7052 or § 7053 of this title.

57 (4) A capital improvement assessment fee must be calculated as follows:

58 a. Only the cost of the addition or increase may be used to establish the initial cost.

59 b. Costs attributed to correction or replacement resulting from normal wear and tear may not be included.

60 Whether costs result from normal wear and tear is determined by comparing the condition of the community asset  
61 immediately upon completion of the work that is the basis for the capital improvement assessment fee to either of  
62 the following:

63 1. The condition of the community asset immediately before the most recent correction to the effects  
64 of normal wear and tear.

65 2. If the effects of normal wear and tear were never corrected, the condition of the community asset  
66 when placed in service by the community owner.

67 c. The cost of the capital improvement must be shared equally by all of the lots in the community.

68 d. If the capital improvement benefits both the community owner and the homeowners, the cost of the  
69 capital improvement must be prorated to reflect the division of benefit between the community owner and the  
70 homeowners.

71 e. A capital improvement assessment fee must be recovered evenly over the number of years necessary in  
72 an amount that equals the lower of either of the following:

73 1. Ten percent of the cost of the capital improvement.

74 2. Five percent of the rent.

75 (5) A community owner shall provide at least 90 days written notice of the capital improvement assessment  
76 fee to homeowners under § 7053 of this title. In addition to the requirements under § 7053 of this title, the written  
77 notice must include all of the following:

78 a. A description of the capital improvement.

79 b. The cost of the capital improvement.

80 c. The monthly amount of the capital improvement assessment fee and an explanation demonstrating  
81 how the fee is calculated.

82 d. The date at which the capital improvement fee terminates.

83 Section 4. Amend § 7050, Title 25 of the Delaware Code by making deletions as shown by strike through and  
84 insertions as shown by underline as follows:

85 § 7050. Purpose.

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

101 (b) This subchapter must be liberally construed and applied to promote its underlying purpose, which is to protect  
102 homeowners from unreasonable and unjustified rent increases.

103 Section 5. Amend § 7051, Title 25 of the Delaware Code by making deletions as shown by strike through and  
104 insertions as shown by underline as follows:

105 § 7051. Rent ~~increase; notice.~~ increases.

106 (a) A landlord community owner may not increase a ~~tenant's~~ lot rent more than once during any 12-month period,  
107 regardless of the term of the tenancy or the term of the rental ~~agreement.~~ agreement, and only as follows:

108 (1) A community owner may increase rent on a community-wide basis for any and all 12-month periods  
109 governed by the rental agreement in an amount that is equal to or less than the average annual increase of the CPI-U.

110 (2) A community owner may only seek an increase in rent in an amount that is more than the CPI-U under §§  
111 7052 through 7054 of this title.

112 (b) A rent increase that is equal to or less than the CPI-U takes effect on the first day of the month following the  
113 end of the 90 day period that starts from date of the notice under § 7053 of this title.

114 (c) If there is no petition for arbitration under § 7053 of this title, a rent increase that is above the CPI-U takes  
115 effect on the first day of the month following the end of the 90 day period that starts from date of the notice under § 7053 of  
116 this title.

117 (d) If there is a petition for arbitration under § 7053 of this title, the amount of the rent increase that is equal to the  
118 CPI-U takes effect under subsection (b) of this section and the portion of the rent increase that is above the CPI-U takes  
119 effect under § 7053(l) of this title.

120 Section 6. Amend Subchapter VI, Chapter 70, Title 25 of the Delaware Code by creating a new § 7051A and by  
121 making deletions as shown by strike through and insertions as shown by underline as follows:

122 § 7051A. Applicability.

123 For purposes of § 7051 and §§ 7053 through 7056 of this title, “rent increase” and “increase” also include a capital  
124 improvement assessment fee under § 7020 of this title.

125 Section 7. Amend § 7052, Title 25 of the Delaware Code by making deletions as shown by strike through and  
126 insertions as shown by underline as follows:

127 § 7052. Rent increase justification.

128 ~~(a) A community owner may raise a homeowner’s rent for any and all 12-month periods governed by the rental~~  
129 ~~agreement in an amount greater than the average annual increase of the Consumer Price Index For All Urban Consumers in~~  
130 ~~the Philadelphia-Wilmington-Atlantic City area (CPI-U”) for the most recently available preceding 36-month period,~~  
131 ~~provided the community owner can demonstrate the increase is justified for all of the following conditions: If a community~~  
132 ~~owner seeks a rent increase that is greater than the CPI-U under § 7051 of this title, that rent increase must be reasonable~~  
133 ~~and can be justified only if all of the following requirements exist:~~

134 (1) The community owner, during the preceding 12-month period, has not been found in violation of any  
135 ~~provision of this chapter that threatens~~ law or regulation relating to the health or safety of the residents, visitors, or  
136 guests that ~~persists~~ persisted for more than 15 days, beginning from the day the community owner received notice of  
137 such violation.

138 (2) The proposed rent increase is directly related to operating, maintaining, or improving the manufactured  
139 home community, and justified by 1 or more factors listed under subsection (c) of this section.

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

141 (1) ~~The completion and cost of any capital improvements or rehabilitation work in the manufactured home~~  
142 ~~community, as distinguished from ordinary repair, replacement, and maintenance. [Repealed.]~~

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

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

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

146 (5) Changes in reasonable operating and maintenance expenses relating to the manufactured home community  
147 including costs for water service; sewer service; septic service; water disposal; trash collection; and employees.

148 (6) ~~The need for repairs caused by circumstances other than ordinary wear and tear in the manufactured home~~  
149 ~~community. [Repealed.]~~

150 (7) ~~Market rent. — For purposes of this section, "market rent" means that rent which would result from~~  
151 ~~market forces absent an unequal bargaining position between the community owner and the home owners. In~~  
152 ~~determining market rent relevant considerations include rents charged to recent new home owners entering the subject~~  
153 ~~manufactured home community and/or by comparable manufactured home communities. To be comparable, a~~  
154 ~~manufactured home community must be within the competitive area and must offer similar facilities, services,~~  
155 ~~amenities, and management. [Repealed.]~~

156 (8) The amount of rental assistance provided by the community owner to the homeowners under § 7022 of  
157 this title.

158 (d) A community owner shall must not incorporate the cost of a civil penalty, criminal fine, or litigation-related  
159 costs for rent-related proceedings into rent charged under any circumstance. ~~A community owner also shall not utilize as~~  
160 ~~justification for any future rental increase the cost of capital improvements or rehabilitation work, once that cost has been~~  
161 ~~fully recovered by rental increases that were incorporated into a prior rental increase in excess of CPI-U, where the prior~~  
162 ~~rental increase was properly implemented under this subchapter.~~

163 Section 8. Amend § 7053, Title 25 of the Delaware Code by making deletions as shown by strike through and  
164 insertions as shown by underline as follows:

165 §7053. Rent increase dispute resolution.

166 (c) At or before the final meeting the community owner shall, in good faith, disclose in writing all of the material  
167 factors resulting in the decision to increase the rent. ~~When market rent is a factor used by the community owner, the~~  
168 ~~community owner shall provide a range of rental rates from low to high, and when relevant the mean and median; this~~  
169 ~~disclosure must include all of the following:~~

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

172 (2) ~~The time relevance of the data.~~

173 (3) ~~The community owner shall disclose financial and other pertinent documents and information supporting~~  
174 ~~the reasons for the rent increase.~~

175 (j) ~~The arbitrator will render a decision employing the standards under § 7052 of this title.~~ title and a community  
176 owner must justify the rent increase through clear and convincing evidence. The arbitrator may consider equitable defenses  
177 in opposition to the rent increase.

178 (4) ~~The homeowners will be subject to the rent increase as notified; however, if the rent increase is not approved~~  
179 ~~through the process provided in this section, the community owners shall rebate the increase.~~ (l) A rent increase that is  
180 subject to arbitration under this section takes effect as follows:

181 (1) If the arbitrator finds that the rent increase is justified, the rent increase takes effect the first day of the  
182 month following the date of the arbitrator's decision and remains in effect if the arbitrator's decision is appealed to  
183 Superior Court.

184 (2) If the arbitrator denies the rent increase but on appeal, the Superior Court reverses the arbitrator's decision  
185 and holds that the rent increase is justified, the rent increase takes effect the first day of the month following the date of  
186 the Superior Court decision.

187 (3) If the arbitrator finds that the rent increase is justified, but on appeal, the Superior Court reverses the  
188 arbitrator's decision and holds that the rent increase is not justified, the community owner shall rebate the amount of  
189 the increase paid by each homeowner.

#### SYNOPSIS

This Act clarifies when a manufactured home community owner can recover the cost of a capital improvement from the homeowners in the community and makes the amount the community owner collects a capital improvement assessment fee that ends when the cost of the capital improvement is recovered, instead of a permanent rent increase. A homeowner or homeowner association may dispute a capital improvement assessment fee under the existing rent increase dispute resolution process. This Act also repeals the definition of "market rent" because that term is not a factor considered for justifying a rent increase under current law.

This Act also clarifies when a capital improvement assessment fee or rent increase takes effect.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Ennis