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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 132

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO RENT INCREASES 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 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:

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20 j. ~~[Repealed.]~~ If the rented lot is subject to a capital improvement assessment fee under § 7020 of this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. 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 contemporaneously with the
53 same notice and procedural requirements as required for a rent increase under Subchapter VI of Chapter 70 of this
54 title.

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

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

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

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

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

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

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

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

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

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

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

75 2. Five percent of the rent.

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

79 a. A description of the capital improvement.

80 b. The cost of the capital improvement.

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

83 d. The date on which the capital improvement fee terminates.

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

86 § 7050. Purpose.

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

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

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

106 § 7051. Rent ~~increase; notice.~~ increases.

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

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

111 (2) A community owner may only seek an increase in rent in an amount that is more than the CPI-U under §§
112 7052 through 7054 of this title.

113 (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
114 end of the 90 day period that starts from date of the notice under § 7053 of this title.

115 (c) If there is no petition for arbitration under § 7053 of this title, a rent increase that is above the CPI-U takes
116 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
117 this title.

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

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

123 § 7051A. Applicability.

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

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

128 § 7052. Rent increase justification.

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

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

139 (2) The proposed rent increase is directly related to operating, maintaining, or improving the manufactured
140 home community, and justified by 1 or more factors listed under subsection (c) of this ~~section.~~ section, after all
141 expenses are considered collectively with consideration of all increases and decreases in expenses.

142 (3) A rent increase that is more than 10% above CPI-U is presumed unconscionable.

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

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

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

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

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

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

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

153 (7) ~~Market rent. — For purposes of this section, market rent²¹ means that rent which would result from market~~
154 ~~forces absent an unequal bargaining position between the community owner and the homeowners. In determining~~
155 ~~market rent relevant considerations include rents charged to recent new homeowners entering the subject manufactured~~
156 ~~home community and/or by comparable manufactured home communities. To be comparable, a manufactured home~~
157 ~~community must be within the competitive area and must offer similar facilities, services, amenities, and management.~~
158 [Repealed.]

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

161 (d) A community owner ~~shall~~ must not incorporate the cost of a civil penalty, criminal fine, or litigation-related
162 costs for rent-related proceedings into rent charged under any circumstance. ~~A community owner also shall not utilize as~~
163 ~~justification for any future rental increase the cost of capital improvements or rehabilitation work, once that cost has been~~

164 fully recovered by rental increases that were incorporated into a prior rental increase in excess of CPI-U, where the prior
165 rental increase was properly implemented under this subchapter.

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

168 § 7053. Rent increase dispute resolution.

169 (a)(1) A community owner shall give written notice to each affected homeowner and to the ~~homeowners~~²
170 homeowner association, if one exists, and to the Delaware Manufactured Home Relocation Authority (“Authority”), at least
171 90 days prior to any increase in rent. The notice shall ~~identify all affected homeowners by lot number, name, group, or~~
172 ~~phase. If the affected homeowners are not identified by name, the community owner shall make the names and addresses~~
173 ~~available to any affected homeowner, homeowners’ association, and the Authority, upon request.~~ provide information as
174 follows:

175 a. The notice shall identify the affected homeowner by lot number and name and shall state the amount of
176 the homeowner’s current rent and the amount of the proposed rent increase.

177 b. The total rent increase proposed for the community. If not all of the homeowners are affected by the
178 rent increase, the notice must also state the amount that the total proposed rent increase would be if the proposed
179 rent increase affected all homeowners equally. The amount of a rent increase for a homeowner may not be affected
180 in any way by a community owner’s decision to exclude some homeowners from a rent increase for any reason,
181 including long-term leases.

182 (2) The Authority must maintain a ~~form~~ final meeting notice form that includes all of the following:

183 a. The deadline to request arbitration under subsection (f) of this section.

184 b. A statement that an informal meeting under subsection (e) of this section does not affect, in any way,
185 the date by which arbitration must be requested under subsection (f) of this section.

186 (3) The written notice under this subsection (a) must contain all of the following:

187 a. The approved date, time, and place for the final meeting required under subsection (b) of this section.

188 b. The form language maintained by the Authority under paragraph (a)(2) of this section.

189 c. The right to demand information under paragraphs (a)(4) through (a)(5) of this section.

190 (4)a. The community owner shall provide copies of the notices required under paragraph (a)(1) of this section
191 to the homeowner association and the Authority. If there are more than 20 homeowners in the community subject to the
192 proposed rent increase, the community owner shall provide the information required under paragraphs (a)(1)a. through

193 (a)(1)b. of this section in the form of spreadsheet, with homeowners grouped either by street or alphabetically by last
194 name.

195 b. The Authority shall provide the information under paragraph (a)(4)a. of this section to a homeowner
196 subject to the proposed rent increase, upon the request of the affected homeowner.

197 (5)a. A homeowner association or a homeowner subject to the rent increase may demand that the community
198 owner provide income and operating expense statements for the community for the 3 prior calendar or fiscal years.

199 b. Upon a showing of good cause, a demand for information under paragraph (a)(5)a. of this section may
200 be for a longer period of time.

201 c. The income and operating expense statements under paragraphs (a)(5)a. through (a)(5)b. of this section
202 must be sworn and submitted on a form maintained by the Authority.

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

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

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

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

212 (f)(1) After the final meeting, any affected homeowner who has not already accepted the proposed increase, or the
213 ~~homeowners'~~ homeowner association on the behalf of 1 or more affected homeowners who have not already accepted the
214 proposed increase may, within 30 days from the conclusion of the final meeting, petition the Authority to appoint a
215 qualified arbitrator to conduct nonbinding arbitration proceedings. If the thirtieth day is a Saturday, Sunday, legal holiday,
216 or other day on which the office of the Authority is closed, the 30-day period ~~shall run~~ runs until the end of the next day on
217 which the office of the Authority is open. ~~Only if~~

218 (2) If a petition is timely filed, the Authority shall select an arbitrator who is a member of the Delaware Bar
219 with appropriate training in alternative dispute resolution. The Authority may select an arbitrator from the list of
220 arbitrators maintained by the Superior Court of the State, or by soliciting applicants for a list maintained by the
221 Authority, or through another method which the Authority, in its discretion, has determined will be sufficient to result
222 in the selection of an appropriate arbitrator.

223 (3) ~~The tenants~~ homeowner association or the group of affected homeowners and the landlord community
224 owner must each pay \$250 to the Delaware Manufactured Home Relocation Trust Fund to be applied to the arbitrator's
225 fee. The Authority shall pay all direct arbitration costs in excess of the \$500 collected from the homeowners and
226 community owner. All other costs shall be the responsibility of the respective parties.

227 (4) The arbitrator shall conduct pre-arbitration matters expeditiously.

228 (5) If the arbitrator determines that the petition can be decided by applying the law to undisputed facts, the
229 arbitrator may issue a decision without holding an evidentiary hearing.

230 (6) The arbitration must be held within 60 days from the date of the ~~petition.~~ petition, unless delayed by
231 mutual agreement of the parties or for demonstrated good cause.

232 (h) ~~Unless waived by all parties, testimony will~~ All testimony must be under oath or ~~affirmation, administered by~~
233 ~~the arbitrator.~~ affirmation.

234 (i) ~~Testimony shall be transcribed and shall be considered a written record.~~ All arbitration proceedings must be
235 recorded and transcribed.

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

239 (k) ~~The arbitrator will~~ must render a written decision within 15 days of the conclusion of the arbitration hearing.

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

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

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

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

252 Section 9. Amend § 7054, Title 25 of the Delaware Code by making deletions as shown by strike through and
253 insertions as shown by underline as follows:

254 § 7054. Appeal.

255 (a) The community owner, the ~~homeowners'~~ homeowner association, or any affected homeowner may appeal the
256 decision of the arbitrator within 30 days of the date of issuance of the arbitrator's decision. The appeal shall be to the
257 Superior Court in the county of the affected community.

258 (b) The appeal shall be on the ~~record and the Court shall address written and/or oral arguments of the parties as~~
259 record, which includes all proceedings conducted during the arbitration process, including pre-arbitration matters.

260 (c) ~~to whether the record created in the arbitration is sufficient justification for the arbitrator's decisions and~~
261 ~~whether those decisions are free from legal error.~~ The court shall address whether the arbitrator's factual findings are
262 supported by substantial evidence. Appellate review of conclusions of law are de novo.

SYNOPSIS

Senate Bill No. 132 (SB 132) and Senate Bill No. 110 (SB 110) both revise the requirements for rent increases in manufactured home communities and the dispute resolution process when a rent increase is proposed. Many of the revisions to Chapter 70 of Title 25, which governs manufactured homes on rented lots in manufactured home communities, are identical in both SB 132 and SB 110. The main difference between SB 132 and SB 110 is that SB 110 clarifies when a manufactured home community owner can recover the cost of a capital improvement from the homeowners in the community by making 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.

SB 132 does all of the following:

1. Adds definitions and clarifies how often a rent increase may occur or be requested.
2. Revises the requirements for when rent may be increased above the Consumer Price Index for All Urban Consumers.
3. Adds disclosure requirements to the rent increase dispute resolution process.
4. Clarifies the legal standard and scope of a court's review of an arbitrator's decision.
5. Clarifies when rent increases take effect.
6. Makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual

Senate Substitute No. 1 for SB 132 differs from SB 132 because it includes the revisions to Chapter 70 of Title 25 that are in SB 110, which are as follows:

1. Repeals the definition of "market rent" because that term is not a factor considered for justifying a rent increase under current law.
2. Clarifies that the amount the community owner collects from a capital improvement assessment fee ends when the cost of the capital improvement is recovered, instead of a permanent rent increase, consistent with a recent ruling by the Supreme Court of Delaware.
3. Adds a corresponding technical change that continues to allow a homeowner or homeowner association to dispute a capital improvement assessment fee under the existing rent increase dispute resolution process.

Senate Substitute No. 1 for SB 132 differs from SB 132 and SB 110 as follows:

1. Restores changes in utility charges as a factor that may justify a rent increase above the CPI-U.
2. Reorganizes the notice requirements under § 7053(a) for clarity.
3. Allows a homeowner to receive income and operating expense statements from the community owner for a period of time longer than 3 years upon a showing of good cause.
4. Requires an arbitrator to use the standards in Chapter 70 of Title 25 in making a decision.

Author: Senator Ennis