

SPONSOR: Rep. Kowalko & Rep. K. Williams & Sen. Ennis
Reps. Baumbach, Carson; Sen. Walsh

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 46
AS AMENDED BY
HOUSE AMENDMENT NO. 2
AND
HOUSE AMENDMENT NO. 4
AND
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO A DELAWARE MANUFACTURED HOME OWNER ATTORNEY FUND.

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

Section 1. Amend § 7012, Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7012. Delaware Manufactured Home Relocation Trust Fund.

(a) The Delaware Manufactured Home Relocation Trust Fund ~~(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:~~ for only the following purposes:

(1) To pay the administrative costs of the ~~Authority;~~ 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~~ or disposal, or both, of nonrelocatable or abandoned manufactured ~~homes; and~~ homes.

(3) To carry out the Authority's responsibilities under this chapter.

(4) To fund the Delaware Manufactured Home Owner Attorney Fund under § 7028 of this title.

~~(3)~~ (c) 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~~ under paragraph (b)(2) of this section, if the community owner does not change the land use or convert the community within 3

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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~~ 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)~~ (d) The Trust Fund terminates on July 1, 2024, unless terminated sooner or extended by the General Assembly.

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

~~(e)~~ (f) 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~~ dissolution.

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

b. Beginning on [the effective date of this Act], the landlord portion of the monthly assessment is reduced by $0.50 for each rented lot.

c. Beginning on [the effective date of this Act], 50 cents of the tenant portion of the monthly assessment for each rented lot is redirected to the Delaware Manufactured Home Owner Attorney Fund under § 7028 of this title.

(2) O~~ne-half of the monthly assessment set pursuant to paragraph (f)(1) of this section is the obligation of the tenant of rented lot, and 1/2 of the assessment is the obligation of the landlord.~~

a. The monthly assessment set under paragraph (g)(1) of this section must be paid as follows:

1. One half of the portion of the monthly assessment under paragraph (g)(1)a. and the $0.50 under paragraph (g)(1)c. is the obligation of the tenant of the rented lot.

2. One half of the portion of the monthly assessment under paragraph (g)(1)a., after the $0.50 reduction under paragraph (g)(1)b., is the obligation of the landlord.

b. 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~~ under § 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,~~ may 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~~ the notice ~~described herein shall not be~~ under this paragraph (g)(5)a. of this section is not 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.~~ under paragraph (g)(5)a. of this section ~~above~~ that a tenant has failed to pay its portion of the ~~assessment; there shall be~~ assessment. There is a rebuttable presumption that the tenant has paid its required assessment ~~amount,~~ amount in full.

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

~~(h)~~ (i) The Trust Fund must be audited annually. If the State Auditor's Office performs the audit, the Authority shall pay the cost of the audit to the State from the Trust ~~Fund the cost of the audit~~. Fund. 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)~~ (j) In addition to providing for an annual audit ~~pursuant to subsection (h)~~ under subsection (i) 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.

(k) If the Delaware Manufactured Home Owner Attorney Fund ceases to exist, the funds held at the time of dissolution must be liquidated 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 before the time of the dissolution.

Section 2. Amend Subchapter I, Chapter 70, Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7028. Delaware Manufactured Home Owner Attorney Fund.

(a) The Delaware Manufactured Home Owner Attorney Fund is established through funding provided under § 7012 of this title to provide legal representation and advocacy for manufactured home owners in disputes with community owners.

(b) The Department of Justice must enter into a contract, under the requirements of Subchapter VI, Chapter 69 of Title 29, for a person to assist and represent manufactured home owners in disputes with community owners with matters that include all of the following:

(1) Providing educational materials and presentations for manufactured home owners on their rights as manufactured home owners.

(2) Forming a home owners association.

(3) Defending an eviction.

(4) Enforcing a breach of a lease agreement by a community owner.

(5) Remedying the failure of a community owner to maintain communities in a manner consistent with local, state, and federal health and safety rules, regulations, and laws.

(6) Challenging a potentially unenforceable term in a lease agreement.

(7) Challenging a potentially unenforceable community rule.

(8) Challenging a rent increase under Subchapter III of this chapter, if all of the following apply:

a. The proposed rent increase is 3% or higher plus the CPI-U as defined in § 7042 of this title.

b. The challenge is requested by either of the following:

1. The homeowners association that represents 25% or more of the homeowners.

2. A simple majority or more of the homeowners who received notice of the proposed rent increase under § 7043 of this title, calculated based on 1 vote for each home that received notice.

(c) Not less than quarterly, the Authority shall issue a voucher to the Division of Revenue directing the Division of Revenue to issue a check to the Department of Justice in the amount of the assessments collected under § 7012(g)(1)c. of this title.

(d) The Department of Justice shall file an annual report with the General Assembly October 1 of each year that shall provide all of the following information as of the end of the prior fiscal year:

(1) The amount in the Attorney Fund.

(2) The amount that was spent in the previous year.

(3) The number of cases the contracted attorney worked on in the previous year.

(4) The number of manufactured home owners who were represented by the contracted attorney in the previous year.

Section 3. Amend § 7042, Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7042. Delaware Manufactured Home Relocation Trust Fund.

(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 for only the following purposes:

(4) To fund the Delaware Manufactured Home Owner Attorney Fund under § 7046 of this title.

(f) 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.

(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.

(g)(1)a. The Board shall set a ~~$3.00~~ monthly assessment for deposit in the Trust Fund for each rented lot in a manufactured home community and the initial amount of the assessment is $3.00. The Board may adjust, eliminate, or reinstate the assessment, and shall notify landlords and tenants of each adjustment, elimination, or reinstatement under Board regulations.

b. Beginning on [the effective date of this Act], the landlord portion of the monthly assessment is reduced by $0.50 for each rented lot.

c. Beginning on [the effective date of this Act], 50 cents of the tenant portion of the monthly assessment for each rented lot is redirected to the Delaware Manufactured Home Owner Attorney Fund under § 7046 of this title.

(2) ~~One-half of the monthly assessment set under paragraph (g)(1) of this section is the obligation of the tenant of rented lot, and 1/2 of the assessment is the obligation of the landlord.~~

a. The monthly assessment set under paragraph (g)(1) of this section must be paid as follows:

1. One half of the portion of the monthly assessment under paragraph (g)(1)a. and the $0.50 under paragraph (g)(1)c. is the obligation of the tenant of the rented lot.

2. One half of the portion of the monthly assessment under paragraph (g)(1)a., after the $0.50 reduction under paragraph (g)(1)b., is the obligation of the landlord.

b. The landlord shall collect the tenant's portion of the ~~assessment~~ assessments under this section 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~~ assessments 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 under § 7016 of this title. An assessment is not due or collectable for a vacant lot.

(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 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 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 § 7015 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~~ the notice ~~described herein shall not be~~ under this paragraph (g)(5)a. of this section is not 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 under paragraph (g)(5)a. of this section ~~above~~ that a tenant has failed to pay its portion of the ~~assessment; there shall be~~ assessment. There is a rebuttable presumption that the tenant has paid its required assessment ~~amount,~~ amount in full.

(k) If the Delaware Manufactured Home Owner Attorney Fund ceases to exist, the funds held at the time of dissolution must be liquidated 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 before the time of the dissolution.

Section 4. Amend Subchapter V, Chapter 70, Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7046. Delaware Manufactured Home Owner Attorney Fund.

(a) The Delaware Manufactured Home Owner Attorney Fund is established through funding provided under § 7042 of this title to provide legal representation and advocacy for manufactured home owners in disputes with community owners.

(b) The Department of Justice must enter into a contract, under the requirements of Subchapter VI, Chapter 69 of Title 29, for a person to assist and represent manufactured home owners in disputes with community owners with matters that include all of the following:

(1) Providing educational materials and presentations for manufactured home owners on their rights as manufactured home owners.

(2) Forming a home owners association.

(3) Defending an eviction.

(4) Enforcing a breach of a lease agreement by a community owner.

(5) Remedying the failure of a community owner to maintain communities in a manner consistent with local, state, and federal health and safety rules, regulations, and laws.

(6) Challenging a potentially unenforceable term in a lease agreement.

(7) Challenging a potentially unenforceable community rule.

(8) Challenging a rent increase under Subchapter III of this chapter, if all of the following apply:

a. The proposed rent increase is 3% or higher plus the CPI-U as defined in § 7052 of this title..

b. The challenge is requested by either of the following:

1. The homeowners association that represents 25% or more of the homeowners.

2. A simple majority or more of the homeowners who received notice of the proposed rent increase under § 7043 of this title, calculated based on 1 vote for each home that received notice. (c) Not less than quarterly, the Authority shall issue a voucher to the Division of Revenue directing the Division of Revenue to issue a check to the Department of Justice in the amount of the assessments collected under § 7042(g)(1)c. of this title.

(d) The Department of Justice shall file an annual report with the General Assembly October 1 of each year that shall provide all of the following information as of the end of the prior fiscal year:

(1) The amount in the Attorney Fund.

(2) The amount that was spent in the previous year.

(3) The number of cases the contracted attorney worked on in the previous year.

(4) The number of manufactured home owners who were represented by the contracted attorney in the previous year.

Section 5. If House Bill No. 45 has not passed both chambers by July 1, 2019, Section 1 and Section 2 of this Act take effect August 1, 2019, and Section 3 and Section 4 do not take effect.

Section 6. If House Bill No. 45 has passed both chambers by July 1, 2019, and is enacted into law, Section 3 and Section 4 of this Act take effect 1 day after House Bill No. 45 takes effect and Section 1 and Section 2 do not take effect.

Section 7. If House Bill No. 45 has passed both chambers by July 1, 2019, but is not enacted into law, Section 1 and Section 2 of this Act take effect November 1, 2019, and Section 3 and Section 4 do not take effect.