SPONSOR: Rep. Baumbach & Sen. Ennis
Rep. Kowalko

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO. 106

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO MANUFACTURED HOMES AND MANUFACTURED HOME COMMUNITIES.

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

Section 1. Amend § 7026(e)(2), Title 25 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

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

(e)(2) An alternative offer of price for the sale, transfer, or conveyance of the community from the home owner association will remains valid ~~for 12 months,~~ unless withdrawn by the home owner association in writing and sent to the community owner by overnight service with signature receipt. The alternative offer may be amended at any time upon written notice from the home owner association to the community owner by overnight service with signature receipt.

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offer from the home owner association ~~during the 12-month period of the alternative offer,~~ unless: ~~the offer is withdrawn as described in paragraph (e)(2)a. of this section.~~

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 The offer is withdrawn as described in paragraph (e)(2)a. of this section, or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

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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~~, regardless of the 12-month period of the alternative offer,~~ unless there are significant and/or material changes in terms and conditions. However, the home owner association must be given 7 business days to match the higher offer under the following circumstances:

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

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

d. The notice of the right to match the higher offer pursuant to paragraph (e)(2)c.1. or (e)(2)c.2. of this section 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 3 business days of receipt of the written request from the home owner association by overnight service with signature receipt.

e. If the home owner association matches the offer within 7 business days of receipt pursuant to paragraph (e)(2)c.1. or (e)(2)c.2. of this section above, 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 below. The community owner shall not accept or entertain a higher offer from a third party after the home owners association matches the offer.

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

SYNOPSIS

This bill amends section 7026 of title 25 regarding a manufactured housing home owners association's ("HOA") right of first offer to purchase their manufactured home community. The bill provides that a HOA's alternative purchase offer will not expire after 12 months and will remain valid unless it is withdrawn by the HOA. The bill further permits a HOA to amend its alternative offer at any time and allows a HOA to match a third party's lower price offer and all of the material terms and conditions of the lower offer. Finally, the bill provides that if the community owner accepts an offer from a third party that is greater than the alternative price offered by the HOA, the community owner is required to certify that fact in writing to both the HOA and the Consumer Protection Unit.