

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY

Statutory Authority: 25 Delaware Code, Section 7011 (25 Del.C. §7011)

PROPOSED

PUBLIC NOTICE

202 Rent Increase Dispute Resolution Procedures

AND NOW, this 8th day of January, 2014, the Delaware Manufactured Home Relocation Authority (the "Authority"), issues the following Order and Public Notice:

1. Pursuant to its statutory authority, at the Authority's board meeting held on January 7, 2014, the Authority adopted a resolution proposing for adoption a comprehensive set of regulations and guidelines (the "Proposed Regulations") to be used in the administration of the Rent Justification Dispute Procedures set forth in 25 Del.C. §7043.

2. The Rent Justification Dispute Procedures, by statute, apply to all manufactured home community leases expiring on or after November 30, 2013. Due to time restraints, it was necessary to establish emergency regulations to provide manufactured home community owners and tenants with guidelines and procedures to be used pending the adoption of final regulations and guidelines by the Authority.

3. The emergency regulations, which were published in the Delaware *Register of Regulations* at 17 DE Reg. 267 (09/01/13), are scheduled to expire on March 9, 2014.

4. After considering any and all comments to the emergency regulations, the Authority has decided to submit for public comment final "Proposed Regulations".

NOW THEREFORE, for the reasons set forth above, IT IS ORDERED:

1. That the "Rent Increase Dispute Resolution Procedures" (the "Proposed Regulations") attached hereto as Exhibit A are proposed for adoption pursuant to 25 Del.C. §7011 and §7043. The Proposed Regulations herein shall be published in the Delaware *Register of Regulations* on February 1, 2014 to provide the public with an opportunity to submit written comments for a period of 30 days after the "Proposed Regulations" are published in the Delaware *Register of Regulations*.

2. Copies of the Proposed Regulations are available by contacting Susanne Lantz, Executive Director of the Authority, at 1675 S. State Street, Suite E, Dover, DE 19901, 302-674-7768.

3. The Authority will entertain written comments to the Proposed Regulations. Anyone wishing to submit written comments should submit such comments by March 2, 2014 to Susanne Lantz, Executive Director of the Authority, at 1675 S. State Street, Suite E, Dover, DE 19901.

4. The Authority shall transmit a copy of this Order and the Proposed Regulations to the Delaware Registrar of Regulations for publication in the next issue of the Delaware *Register of Regulations*.

5. That the Authority reserves the right to hereafter alter, amend, or waive the Regulations adopted herein to the extent that the same may be allowed by law.

6. That the Authority reserves the jurisdiction and power to enter such further orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE AUTHORITY:

Mitch Crane, Chairperson

Dated: January 8, 2014

202 Rent Increase Dispute Resolution Procedures

(Authorization: Section 7011)

1.0 Introduction: Role of Authority Regarding Rent Increase Disputes

The Authority's role in the administration of rent increase disputes is limited to implementing and overseeing the process by which rent increase disputes are resolved and to the extent applicable, funding direct arbitration costs in excess of the arbitration fees paid by the participants in arbitration proceedings under 25 Del.C. §7043. In fulfilling that role, the Authority shall at all times remain neutral and shall not provide legal advice to any party relating to any rent increase dispute.

2.0 Definitions

For the purposes of these regulations, the following words and phrases have the meaning ascribed to them in this Section unless the context of the regulation clearly indicates otherwise, or unless the meaning set forth below is inconsistent with the Act or the manifest intention of the Act.

“Act” means the Delaware Manufactured Home Owners and Community Owners Act set forth in 25 **Del.C.** Chapter 70.

“Affected home owner” means a leaseholder of a manufactured home community whose rent increase is subject to the provisions of 25 **Del.C.** §7043.

“Authority” means the Delaware Manufactured Home Relocation Authority.

“Community owner” means the owner of a manufactured home community, as defined in the Act.

“CPI-U” means the average annual increase of the Consumer Price Index For All Urban Customers in the Philadelphia-Wilmington-Atlantic City area for the most recently available preceding thirty-six (36) month period at the time the notice of a rent increase is mailed to the leaseholders.

“Designated representative” means an individual authorized to act on behalf of any party, provided said authorization is in writing and signed by the party on whose behalf the individual is authorized to act.

“Direct arbitration costs” means the following out of pocket costs paid in connection with an arbitration hearing held pursuant to the provisions of 25 **Del.C.** §7043(c): (a) fees payable to the arbitrator; (b) the reasonable cost of any meeting rooms or facilities used for the arbitration hearing; (c) the cost of the court reporter for attendance at the arbitration hearing; (d) the reasonable out of pocket expenses paid by the arbitrator in connection with the scheduling and holding of the arbitration hearing; and (e) any other costs approved in advance by the Authority and determined by the Authority to constitute a “direct arbitration cost”. Direct arbitration costs shall not include the cost of preparing a verbatim transcript of the hearing unless the arbitrator determines that a verbatim transcript is necessary in order for the arbitrator to render a decision.

“HOA” means a home owners association registered with the Authority pursuant to 25 **Del.C.** §7026(b).

“Leaseholder” means a person who is a party to a lease subject to the provisions of 25 **Del.C.** §7040 through 7055.

“Notice to the Authority” or words to that effect shall mean the delivery of notice to the following address: Delaware Manufactured Home Relocation Authority, 1675 S. State Street, Suite E, Dover, DE 19901.

“Party” shall include a community owner, an HOA, and any leaseholder affected by a proposed rent increase.

3.0 Notification of Rent Increase Dispute Resolution Provisions

Each year, the Authority provides community owners with notice of the right of first offer provisions set forth in 25 **Del.C.** §7026. Simultaneously with the sending of that notice, the Authority shall also provide each manufactured home community owner with a copy of the Rent Increase Dispute Resolution provisions set forth in 25 **Del.C.** §7040 through 7055 and a copy of any applicable regulations adopted by the Authority.

4.0 Rent Increase Notice Procedures

4.1 A community owner is required to give written notice to each affected home owner, to the Home Owners Association, if one exists, and to the Authority, at least 90 days prior to any increase in lot rent. When more than one tenant is affected by the rent increase, in lieu of providing the HOA or the Authority with copies of each letter sent to each affected tenant, the community owner shall provide the HOA and the Authority with a summary letter (“Summary Letter”) certifying that written notice has been sent to each affected home owner together with a copy of the form of notice provided, which form must contain the information required hereunder. The Summary Letter shall identify all affected home owners by lot number, name, group or phase. If the affected home owners are not identified by name, the community owner shall make the names and addresses available to any affected home owner or HOA upon request. In any such notice, in addition to the information required to be provided under 25 **Del.C.** §7043(a), the community owner shall (with respect to each affected home owner) state whether or not the proposed rent increase exceeds the CPI-U and provide the following information:

4.1.1 The current monthly lot rent;

4.1.2 The proposed monthly lot rent;

4.1.3 The CPI-U;

4.1.4 The effective date of the rent increase;

4.1.5 The community owner’s contact information, which shall include the name and mailing address of a representative of the community owner authorized to respond to questions relating to the proposed rent increase and schedule any necessary meetings and/or arbitration proceedings required under the Act; and

4.1.6 If the proposed rent increase exceeds the CPI-U, a date, time and place on which the community owner is available to meet with the affected home owners, Home Owners Association, or their representatives, which dates must be within thirty (30) days of the date the notice is mailed out.

5.0 Scheduling of Meetings When Proposed Rent Increase Exceeds CPI-U

When a proposed rent increase exceeds the CPI-U, the Authority shall schedule a meeting between the parties at the time, date, and place set forth in the community owner's initial notice, unless the Authority determines, based on input from the parties, that said time, date, or place should be changed, in which case the Authority, in its sole discretion, shall schedule the meeting at a time and place to be held no later than thirty (30) days after the mailing of the notice of the rent increase. Unless otherwise agreed to by all of the parties, the meeting shall take place in the county in which the manufactured home community is located. Notice of the time, date and place of the meeting shall be provided to the community owner and the HOA. If no HOA exists, notice of the time, date, and place of the meeting shall be provided to the affected leaseholders, or their designated representative, by the community owner.

6.0 Meeting Procedures

- 6.1 At any meeting held pursuant to 25 Del.C. §7043(b), the community's HOA, if any, shall be the designated representative of those leaseholders who are members of the HOA. Any leaseholders that are not members of the HOA may designate the HOA to represent his or her interest at the meeting and any subsequent arbitration proceeding. Any such designation shall be in writing, shall be signed by the applicable leaseholder, and, if applicable, shall be provided to any arbitrator appointed pursuant to Section 7.0 below. In all other cases, where the number of affected leaseholders exceed five (5), the leaseholders shall designate in writing at least one representative to act on behalf of the affected leaseholders. Any tenant affected by the proposed increase in rent shall have the right to attend the meeting. In all cases the community owner shall designate a representative to act on behalf of the community owner. At each meeting, a "sign-in" sheet shall be available and any person attending the meeting shall be required to sign the sign-in sheet confirming said person's attendance at the meeting. The community owner shall maintain a copy of the sign-in sheet for each meeting and provide the Authority with a copy of the sign-in sheet upon request.
- 6.2 At the meeting, the community owner shall, upon request of any affected home owner or his or her representative, disclose all of the material factors resulting in the decision to increase the rent, including the financial and other pertinent documents and information supporting the reasons for the rent increase.
- 6.3 If the parties are unable to resolve any dispute during the initial meeting, the parties may agree to extend or continue the meeting to a mutually agreeable time and place.
- 6.4 If the parties are able to resolve all disputes relating to the proposed rent increase, the community owner shall so inform the Authority in writing. Any resolution of the rent dispute shall be documented by a writing signed by all of the parties and/or their duly authorized representatives.
- 6.5 If all of the affected parties are unable to resolve the dispute at the final meeting, or are unable to agree on extending or continuing the meeting, any party who has not agreed to a resolution of the issues may, within thirty (30) days from the conclusion of the last meeting, file a petition, together with the \$250.00 arbitration fee, requesting the Authority to appoint a qualified arbitrator to conduct non-binding arbitration proceedings pursuant to 25 Del.C. §7043(c). In order to be considered timely, both the petition and the arbitration fee must be filed and paid to the Authority within the aforesaid thirty (30) day period.
- 6.6 If none of the parties pay the \$250.00 arbitration fee and petition the Authority to appoint a qualified arbitrator within the aforesaid thirty (30) day period, the community owner shall be authorized to implement the proposed rent increase as set forth in the initial notice, or if applicable, the rent otherwise agreed to by the community owner and affected leaseholders.
- 6.7 Any party is entitled to be represented by legal counsel at any meeting provided that said legal counsel is authorized to practice law in the state of Delaware.

7.0 Arbitration Procedures

- 7.1 Upon receipt of a petition to appoint a qualified arbitrator pursuant to 25 Del.C. §7043(c) and the initial \$250.00 arbitration fee from the party filing the petition, the Authority shall prepare a caption setting forth the names of the parties and shall select an arbitrator to serve as the arbitrator and to conduct the non-binding arbitration proceeding. Each arbitration petition shall be assigned a docket number by the Authority. Thereafter, any paper filed with the Authority or appointed arbitrator shall include on the first page the caption and docket number assigned to the case. The initial petition shall include the name, mail and email addresses, telephone and fax numbers of the person filing the petition and the name, address, telephone and fax numbers of the person representing the person filing the petition. The initial \$250.00 arbitration fee shall be paid by the party filing the petition at the time the petition is filed. An original and one copy of the petition shall be provided to the Authority. If the petition is filed by the community owner, a copy of the petition shall be mailed to each affected home owner, and if applicable, to the Home Owners Association (or their respective designated representative) on the same day that the petition is filed. If the petition is filed by an affected home owner, or if applicable, the

Home Owners Association, a copy of the petition shall be mailed to the community owner (or the community owner's designated representative) on the same day the petition is filed. In the arbitration petition, the party filing the petition should provide a concise statement of the issues to be determined by the arbitrator and certify that a copy of the petition has been delivered to the opposing party or parties or their respective representative(s). The party filing the petition shall also include the names of all home owners affected by the proposed rent increase. Any document required to be mailed shall be mailed by United States mail, first class, with postage prepaid.

- 7.2 The Authority shall endeavor to create a list of members of the Delaware Bar who are both qualified and willing to act as arbitrators.
- 7.3 Any arbitrator appointed by the Authority shall be a member of the Delaware Bar who has provided the Authority with satisfactory evidence of his or her training in alternative dispute resolution.
- 7.4 If all of the parties have agreed in writing to the appointment of a specific Delaware attorney to act as arbitrator, the Authority shall appoint the agreed upon attorney as arbitrator.
- 7.5 Upon receipt of written notice from the Authority of his or her appointment, the appointed arbitrator shall determine whether or not there is any conflict of interest or other matter that would otherwise affect his or her ability to render an impartial decision, in which case the appointed arbitrator shall decline the appointment and the Authority shall appoint another arbitrator. Notwithstanding the foregoing, if all of the parties agree in writing to waive any conflict of interest and the arbitrator is willing to accept the appointment, the appointed arbitrator may accept the appointment. Upon appointment of an arbitrator, the parties shall provide the arbitrator with a list of witnesses who are expected to testify as quickly as possible so that the arbitrator may run a conflict of interest check on all names supplied by the parties.
- 7.6 Where a community owner has proposed rent increases in excess of the CPI-U that would affect leaseholders at different time periods, with the consent of all the parties, the Arbitrator is authorized to consolidate the cases for purposes of the arbitration hearing. Under such circumstances, only one payment of \$250.00 each shall be required from the community owner and leaseholders.
- 7.7 Simultaneously with the filing of a petition to arbitrate, the party filing the petition shall pay to the Authority the \$250.00 arbitration fee set forth in 25 Del.C. §7043(c). The other party or parties shall pay their \$250.00 arbitration fee within fifteen (15) calendar days after the filing of the petition. Where multiple leaseholders are affected by a proposed rent increase, only one payment of \$250.00 shall be required on behalf of all such leaseholders whose rent increase has the same effective date. All such fees collected by the Authority shall be deposited into the Authority's general operating account and shall not be considered a part of the Trust Fund administered by the Authority pursuant to 25 Del.C. §7012. If any party or parties fail to timely pay the required \$250.00 arbitration fee, the arbitrator is authorized to enter judgment against the party or parties failing to pay the arbitration fee.
- 7.8 Unless agreed to in writing by all of the parties, all arbitration hearings must be held within sixty (60) days from the date of the filing of the petition to arbitrate. Where multiple petitions relating to the same matter have been filed, the date of the filing of the first petition shall govern.
- 7.9 As quickly as practicable after an arbitrator is selected, the arbitrator shall contact the parties (or their representatives and by teleconferences, whenever possible) to schedule the hearing at a mutually convenient time and place. Hearings may be held in the evenings or on weekends. Once an arbitrator has been appointed, no *ex parte* communications with the arbitrator are permitted. Prior to the hearing, the arbitrator shall notify the Authority in writing of the time, date, and place of the hearing.
- 7.10 The arbitrator is authorized to schedule an informal preliminary conference with the parties (in person or by telephone) as the arbitrator deems appropriate in order to narrow the issues and minimize the expense of the arbitration process. The arbitrator is authorized to require the parties to exchange or provide to the other parties documents relevant to the rent increase at issue, including documents related to the standards set forth in 25 Del.C. §7042.
- 7.11 At any arbitration hearing:
- 7.11.1 The Delaware Uniform Rules of Evidence shall be used as a guide by the arbitrator for admissibility of evidence submitted at the arbitration hearing;
- 7.11.2 All testimony will be under oath or affirmation administered by the arbitrator, unless waived by all parties;
- 7.11.3 Testimony shall be transcribed and shall be considered a written record;
- 7.11.4 Each witness shall be subject to reasonable cross examination by the opposing party; and
- 7.11.5 The Arbitrator is authorized to limit the number of witnesses to avoid duplication, and where multiple leaseholders are affected by the proposed rate increase, require the affected leaseholders to designate a representative to act on and testify on behalf of all affected leaseholders.

- 7.12 The parties are encouraged to stipulate to undisputed facts and to the admissibility of evidence in order to narrow the issues and minimize the expense of the arbitration process.
- 7.13 Subject to the terms and conditions of any confidentiality designation pursuant to subsection 7.17 below, any exhibit that a party intends to rely upon at the hearing must be provided to the arbitrator and opposing parties at least five (5) business days prior to the hearing, except for good cause shown.
- 7.14 At the hearing, the community owner shall open and close the presentation of evidence. The burden of proof shall be on the community owner.
- 7.15 If a party fails to appear at a scheduled hearing, the arbitrator may enter an order ruling against the party who failed to appear.
- 7.16 All parties to hearings, their counsel, and witnesses shall conduct themselves in a proper manner. Disruptive demonstrations of any kind at hearings shall not be permitted. Any disregard by parties, attorneys or other persons of the rulings of the arbitrator on matters of order or procedure may be noted on the record. The arbitrator may, in his or her discretion, recess or continue any hearing when the conduct of witnesses or other persons unduly disrupts or interferes with the proper conduct of the hearing.
- 7.17 Any party may request that the arbitrator accord confidential treatment to some or all of the information contained in a document. If the claim of confidentiality is challenged by any party, then the party claiming confidential treatment must demonstrate to the arbitrator that the designated information is confidential as recognized by state law. Notwithstanding any claim of confidentiality, any party to the proceeding shall be allowed to inspect a copy of the confidential document upon the signing of a confidentiality agreement in a form approved by the arbitrator.
- 7.18 While a court reporter shall be present at all arbitration hearings, unless specifically requested by the arbitrator, a paper or electronic transcript of the hearing shall not be required. In the absence of a specific request by the arbitrator, any party may, at said parties sole cost and expense, order a paper or electronic transcript of the hearing.
- 7.19 Arbitration hearings conducted pursuant to 25 Del.C. §7043 are deemed private proceedings. Unless otherwise authorized by the arbitrator for good cause shown, attendance at any hearing shall be limited to the following:
- 7.19.1 the arbitrator;
 - 7.19.2 the court reporter;
 - 7.19.3 the parties and their respective legal counsel;
 - 7.19.4 witnesses who are not parties, while testifying; and
 - 7.19.5 at the option of the Authority, representative(s) of the Authority.
- 7.20 Settlements are to be encouraged. If the case settles before a hearing or before the arbitrator issues a decision, the arbitrator, after being informed of any settlement, shall arrange a teleconference with all parties (or their authorized representatives) to confirm the settlement, unless the parties have done so in a writing signed by all of the parties (or their authorized representatives). Upon confirmation of any settlement, the arbitrator shall notify the Authority that a settlement has been agreed to by the parties.
- 7.21 The decision of the arbitrator shall be based solely on the evidence presented at the hearing and based on the standards set forth in 25 Del.C. §7042. The arbitrator shall render his or her decision within fifteen (15) days of the conclusion of the arbitration hearing. Decisions by the arbitrator shall be in writing, shall clearly set forth the date of the issuance of the decision, and shall inform the parties of the right to appeal the decision to the Superior Court by filing, within thirty (30) days of the date of the issuance of the arbitrator's decision, a notice of appeal with the office of the Prothonotary of the county within which the affected manufactured home community is located. A copy of the decision shall be provided to the Authority.

8.0 Appeals

- 8.1 As provided for in 25 Del.C. §7044, in any arbitration proceeding, the community owner, home owners association, or any affected home owner may appeal the decision of the arbitrator within thirty (30) days of the issuance of the arbitrator's decision. Any such appeal shall be to the Superior Court in the county of the affected community. If a community is located in more than one county, the appeal may be filed in the Superior Court of either county.
- 8.2 Appeals to the Superior Court by law shall be on the record without a trial de novo.
- 8.3 Promptly after the filing of any appeal, the party appealing from the arbitrator's decision shall, at the appealing party's expense, order a copy of the transcript of the arbitration hearing.
- 8.4 Appeals to the Superior Court shall be prosecuted in accordance with Rule 72 of the Delaware Superior Court Rules of Civil Procedure.

8.5 The party filing the appeal shall provide a copy of the notice of appeal to the Authority, for informational purposes.

9.0 Computing Time

In computing any time period under these rules, the first day of the designated period of time shall commence on the next day after the event requiring the computation of the time period. The last day of the time period shall be included.

17 DE Reg. 804 (02/01/14) (Prop.)