

Manufactured Home Owner's Rights in Pennsylvania

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Agenda

- About RHLS
- Introduction to Manufactured Homes
- Legal Framework – Manufactured Homes in PA
- Other Resources

RHLS

Regional Housing Legal Services is a non-profit law firm with unique expertise in affordable, sustainable housing and its related components — community and economic development, utility matters and preservation of home ownership. RHLS provides innovative project and policy solutions that help create sustainable communities offering decent, safe and affordable housing for lower-income Pennsylvanians.

RHLS Focus Areas

- Development & preservation of affordable housing
- PA Housing Law Project
- PA Utility Law Project (PULP)
- Public Policy Initiatives
- Resident Protection Project
 - inform MH residents of their rights
 - Protect and enforce MH resident rights
 - Help residents try to purchase their communities
 - Work w/PLAN rgnl. programs toward these ends

Manufactured Home Defined



Manufactured Homes Are Not Mobile

“Manufactured Home” is the official term for a home built according to 1976 HUD code. But many people still use the term “mobile home”, even though they are not mobile:

- In Pennsylvania, nearly 55% have never been moved
- More than 20% have not been moved in over 10 years
- Mobility is not a factor for people who choose manuf. housing
- A manuf. home is a long-term housing choice for most residents

Titling of Manufactured Homes as Personal Property - *75 Pa.C. S. § 1140*

- Manufactured homes are titled as vehicles—they are considered personal property, not real property
- If a home is permanently situated on land owned by the homeowner, the title can be cancelled
 - 60% of homes are sited on private land
- Status as personal property has an adverse effect on financing and interest rates, as well as resale value
- Some MH sellers are also lenders
- Some MH lenders “specialize in subprime lending”

Taxation of Manufactured Homes as Real Property

- Despite being personal property and titled as vehicles, homes are taxed as real estate
- Community owner pays R/E tax on the land, and the resident pays a R/E tax on the home.
- Combined with disadvantages of titling as a vehicle, many MH owners feel they get worst of both worlds in this regard

Vulnerability of Homeowners in Manufactured Home Communities

- MH homeowners face “unique vulnerabilities” due to
 - having their homes on land owned by others
 - the status of their homes as personal property
 - social stigmas—income, education, home values
 - siting issues – flood plain
 - Unregulated rent increases - amount
 - Unfair rules - inability to challenge w/o risking eviction
 - Underinvestment in infrastructure (water, roads, utilities)
 - Community sale or closure—forced relocation, loss of equity, expense of moving home, loss of home

Special Protections Needed

- Community owners generally have “far greater bargaining power” than homeowners
 - *Staley v. Bouril*, 718 A.2d 283 (Pa. 1998)
- Homeowners need “special protections” against
 - arbitrary evictions
 - unfair rules and regulations
 - retaliation
 - *Malvern Courts v. Stephens*, 419 A.2d 21 (Pa. Super. 1980)

Legal Framework

- Landlord-Tenant Act - *68 P.S. § 250.101 et seq.*
 - Establishes proper eviction notice and procedure
 - Protects right to organize—“tenant organization”
 - Protects right to have social and business visitors
 - Sets community owner duties for common areas, facilities
- Manufactured Home Community Rights Act
 - Limits legal grounds for eviction—good cause
 - Establishes other resident rights
 - Limits community rules – fair, reasonable, not arbitrary
 - Requires disclosure of some information to some residents
 - *68 P.S. § 398.1 et seq.*

Evictions - Grounds

A MH community owner may evict a resident or not renew the lease only for one of the following reasons:

- Non-payment of rent
- A second or subsequent violation of community rules within a 6-month period
- Change in use of the community or part of it
- Termination of the community or part of it

68 P.S. § 398.3

The End of the Lease Term is Not a Ground for Eviction

- The owner of a MH community “shall not be entitled to recovery of a space upon the termination of a lease regardless of the term of the lease if the resident”:
 - is complying with the rules of the community
 - is paying the rent due, and
 - desires to continue living in the community

68 P.S. § 250.501 (c.1), (c.2)

Eviction Procedure - General

- Eviction is only through the courts
- Notices are required, then court dates
- How the notices are delivered matters
- **WHAT YOU SHOULD DO:**
 - Save all letters, notices, etc...
 - Save envelopes or record how you received notice
 - Call legal aid or an attorney

Pre-eviction procedure – General

68 P.S. § 398.3(b)

- Prior to the commencement of any eviction, or the termination of or failure to renew a lease, the community owner must give the homeowner a written notice
- Notice must describe “particular breach or violation”
- Notice must be served by certified/registered mail
- Notice is a warning or opportunity to cure
- Notice says that if rent isn’t paid or if further violation of rules, then an eviction may be commenced
- MHCRA specifically prohibits self-help eviction

Eviction Procedure in Case of Non-payment of Rent

- MHCRA-pre-suit notice- eviction may occur if rent not paid
 - within 20 days from service, April 1 – Aug. 31
 - within 30 days of service, Sept. 1 – March 31
 - or, if there is an additional instance of nonpayment w/in six months of giving the notice
- LT-Act – If no rent cure within the times set out above, NTQ says that tenant “shall remove”
 - within 15 days from service, April 1 – Aug. 31
 - within 30 days of service, Sept. 1 – March 31
 - service—personal, posting, leaving at principal building
- Right to pay and stay - MDJ Rule 518 - in a case of recovery of possession solely because of failure to pay rent - pay rent actually in arrears and the costs of the proceedings.

Eviction Procedure in Case of Violations of Community Rules

- Notice of rule violation under the MHCRA
- Service - certified or registered mail
- Content - notice shall describe the particular violation
- No eviction may be commenced or lease terminated or refusal to renew lease, unless
 - notice of violation has been properly given, and
 - homeowner has again violated the community rules within six (6) months of the first notice
- *Malvern Courts* - “absent literal compliance with mandatory provisions of this act [the MHCRA], no eviction proceedings may be commenced.”

68 P.S. § 398.3, 68 P.S. § 250.501(c)

Eviction Procedure for Violation of Community Rules (cont.)

- L-T Act eviction proceeding must be started w/in 60 days of last violation - *Davis v. Ellis* (C.P. Bedford 2007)
- ? Must first notice include a warning about the effect of a second rule violation that occurs within 6 months?
- ? Must the second violation be of same rule as first?
- ? Must owner give written MHCRA notice of 2nd violation?
- Owner must give LT - NTQ before starting eviction
 - 30-day notice for leases of less than one year or indeterminate time
 - 3-month notice for leases of one year or longer
- ? Is refusal to sign a new lease a ground for eviction where resident pays rent and obeys rules

Improper Service of Notice of Rule Violation is a Defense to Eviction

Malvern Courts, Inc. v. Stephens, 419 A.2d 21 (Pa. Super. 1980)

- Court stressed the notice provisions in relation to the importance of preventing arbitrary evictions
- Held: Statutory method of giving notice is exclusive, even if there is proof that resident got actual notice
- Reasons for strict requirement concerning service
 - determine if reason for eviction is valid
 - time to cure default or avoid further rule violation
 - fix the 6-month period for 2nd rule violation
- “Absent literal compliance with mandatory provisions of this act, no eviction proceedings may be commenced.”
- Improper service of LT - NTQ under 68 P.S. § 250.501 may be defense to eviction – *Pakyz v. Weiser (C.P. Adams)*

Both Notice of Rule Violation or Unpaid Rent and Notice to Quit Are Required.

- Notice of unpaid rent gives opportunity to cure
- Notice of rule violation is warning not to violate a 2nd time
- Both of these MHCRA notices are conditional
- A conditional notice cannot terminate a leasehold interest—*Brown v. Brown*, 64 A. 2d 506 (Pa. 1949)
- Notice periods in L-T Act and MHCRA conflict. They must be construed to give effect to both, *1 Pa. C.S. §1933*
- Notice under L-T Act is an unconditional notice of intent to sue because of continuing or further violation
- No waivers – MHCRA §398.12 – No party’s rights may be waived by any provisions of a written or oral agreement
- But see, *Adams v. Palmyra Homes* – L-T Act doesn’t apply(?)

Other Defenses to Eviction

Unequal treatment

- “All rules or rental charges shall be uniformly applied” to all residents “of the same or similar category” – 68 P.S. § 398.4(b)
- A resident “shall not be evicted. . .when there is proof that the rules the lessee is accused of violating are not enforced with respect to” others - 68 P.S. § 398.3(c)
- Charging same rent for lot ½ size of most others held not to violate the MHCRA. *Midway Terrace, Inc. v. Foley*, 635 A.2d 191 (Pa. Super. 1993).

Other Defenses to Eviction

Unfair or Unreasonable Rules

- Community owner can establish rules
 - at any time
 - they must be fair and reasonable
 - related to health, safety, upkeep of community
- Provided that, the rules are
 - not arbitrary or capricious
 - included in the written lease
 - delivered to existing lessees
 - given to new lessees before acceptance of deposit/rent
 - posted in the community in conspicuous and readily accessible place
- ? Effect of improper/no posting/not in lease?
- ? How can a resident challenge rules without risking eviction?

Other Defenses to Eviction

Unfair or Unreasonable Rules

- *Semack v. Fiumara* – 47 D & C 3d 440 (C.P. Beaver 1987) – Rule that all vehicles must be registered and in running condition held to be reasonable
- *Nuss Home Park v. Breiner*, 2003 WL 25460454 (C.P. Lehigh) – It was reasonable to limit occupancy to single families and require that names of all occupants be provided
- *Adams v. Palmyra Homes, Inc.* (C.P. Lebanon 2011)– Requiring switch from oil to propane heat was “arbitrary,” absent factual basis for safety concerns

Retaliatory Eviction Prohibited

68 P.S. § 398.16

- Action by community owner to
 - recover possession or change a lease
 - within 6 months of lessee's assertion of rights under the Manuf. Home Community Rights Act
 - shall raise a rebuttable presumption that the owner's action is retaliatory and unlawful

Implied Warranty of Habitability

Staley v. Bouril, 718 A.2d 283 (Pa. 1998)

- There is a limited implied warranty of habitability (IWH) for MH residents leasing spaces in a MH community
- The IWH exist to the extent that the community owner provides utilities or other housing services
- IWH and resident oblig. to pay rent are mutually dependent
- Material breach by one relieves other's obligations
- Resident must give notice of defect to owner/operator
- Owner has reasonable time to cure
- “Far greater bargaining power” of owner recognized
- Remedies—repair & deduct, withhold rent, rent abatement, terminate lease—*Pugh v. Holmes*
- Intentional infliction of emotional distress may apply in IWH case—*Fair v. Negley*, 390 A.2d 240 (Pa. 1978)

Limit on Frequency of Rent Increases

68 P.S. §398.4.1(b)

- Only once every 12 months
- But no limit on amount of rent increase
- There have been some “rent justification” bills, but very strong resistance from the industry

New, renewed or extended lease which increases rent or other payables

68 P.S. § 398.13(e)

- Community owner must give 60 days' notice of intent to offer such a lease with increased rent
- Resident then has 30 days to either accept new lease or notify owner of intent to vacate w/in 30 days
- Resident who “chooses not to enter into” new lease “shall have 60 days from date of notification of intent to vacate. . .to enter into contract to sell or to relocate the manufactured home.”

MHCRA – Disclosures

68 P.S. § 398.6, § 398.13(b)

- Written disclosure required, prior to signing lease, of
 - all rent and other charges payable to owner, and
 - notice of utility charges for which resident is responsible
- Failure to disclose makes charges “void and unenforceable” until disclosure made
- Fee increases are unenforceable until 30 days after notice of increase is posted
- A rental agreement for a first-time lessor is voidable if required disclosures are not given prior to execution of the agreement or prior to initial occupancy, during 1st year of occupancy, until 5 calendar days after disclosure given

MHCRA – More Disclosures

68 P.S. §398.6(e)(8)

- More extensive disclosures are required for leases which are for more than a 60-day period, including:
 - manner in which lot rent will be increased
 - factors that may affect amount of lot rent
 - rent history for the past 3 years
 - history of utility payments for the previous 12 months
- But default lease term is 30 days, so few if any MH residents get these more detailed disclosures
- “Calculation of rent history shall be posted” in public, conspicuous, readily accessible place, in same place as all other rules and regulations
- *Question*: does “calculation of rent history” = “rent history”?

MHCRA – Other Important Rights

- Right to sell one's home in place, subject to reasonable approval of new resident by owner
- Does giving community owner a right of first refusal violate this provision?
- No exit/entrance fees, appliance installation or removal fees, unless there are actual costs
- Written lease required – 30-day is default, unless otherwise agreed

Right to social and business visitors, purchase goods and services

- Manufactured home community is a “multiple dwelling premise” (MDP) – *68 PS § 250.501-A(3)*
- MDP tenants have the right under *68 P.S. § 250.504-A* to
 - have social guests and visitors—for reasonable period
 - invite bus. visitors, tradesmen, suppliers of goods/services
 - buy goods/services from source of resident’s choosing
- Community owner may not charge fee or additional rent for any of these things – *68 P.S. § 398.10, 68 P.S. § 250.504-A*
- “These rights may not be waived”-*68 P.S. § 250.504-A*
- Community owner cannot require purchase of exterior equipment from a designated supplier,
68 P.S. § 398.5,- Adams v. Palmyra Homes, supra.

Tenant Organizations

- A lease cannot be terminated or not renewed because of participation by tenant or member of the tenant's family in a "tenant organization." *68 P.S. §250.205*
- A "tenant organization" is a group of tenants organized for any purpose directly related to their rights or duties. *68 P.S. § 250.102*
- A tenant who individually seeks to induce or deter action by his or her landlord is not protected by the statute. *Mid-Island Properties, Inc. v. Manis, 570 A.2d 1070 (Pa. Super. 1990)*

No Waiver of Rights or Duties

68 P.S. §398.12

- Rights and duties of manuf. home community owners, operators, and residents may not be waived by any provisions of a written or oral agreement.
- “Any such agreement attempting to limit those rights shall be void and unenforceable.”
- In spite of this, many MH leases contains waivers of rights, e.g., notice to quit, right to sell home in place
- Question: What are a tenant’s options when a lease contains unlawful provisions?
- L-T Act, *68 P.S. §250.250.501(e)*, permits shorter or entire waiver of L-T Act Notice to Quit – How can the MHCRA and L-T Act provisions be reconciled?

Abandoned Homes

- Major concern of community owners
- A homeowner is deemed to have abandoned home (and property in it) only if:
 - Judicial Process, or
 - Written statement of abandonment
 - the lessee or resident has physically or permanently vacated home, does not intend to return to it and has given up all further rights or ownership interest.”

Judicial Process for Determination of Abandonment

- “All of the following” are required:
 - the entry of a judgment for possession in favor of the community owner or operator pursuant to applicable law;
 - the execution of an order for possession, or equivalent process, on said judgment; and
 - a determination by a magisterial district court or other court of competent jurisdiction that the home and property have been abandoned

68 P.S. § 398.10.1

Judicial Process for Abandonment (2)

- Determination shall be based on ponderance of evidence of lessee's absence from home for at least 30 days and nonpaymt. of rent for at least 30 days from date due, together with one or more of the following:
 - Termination of electric or water utility to home
 - Cancellation of insurance for the home.
 - Removal of most/all personal property
 - Any other indicia of abandonment.
- MDJs have jurisdiction to determine abandonment
- Determin. of abandonment works as judgment for possession

68 P.S. § 398.10.1

What can be done with an Abandoned Home?

- Owner can enter and secure/clean it
- Can move it – land is cleared of all liens but home itself still is subject to any tax lien
- Can dispose of home – after giving notice
- Upon proper disposal
 - Prioritized list of where money goes
 - Community owner and purchaser of home not liable for any taxes or liens

68 P.S. § 398.10.2

Immunity from liability

- A manufactured home community owner who complies with the procedures set forth in this act
- ...shall be immune from liability...
- ...with regard to or as a consequence of the sale, disposal or destruction of an abandoned manufactured home and any contents in such manufactured home or otherwise in the community or associated with the home except as otherwise specifically set forth in this act.

Sale or Lease of Community

- Community owner shall provide written notice to the residents and to the Pennsylvania Housing Finance Agency, sent and posted within 30 days after an agreement of sale is signed
- Within 30 days of transfer of title, the new owner shall notify the residents of the name and contact information for either new owner or new operator.
- Notice shall be mailed to each resident and posted.

68 P.S. § 398.11.1

Community Closure - Notice

- Closure is all or part of community
- Notice to residents and PHFA within 60 days of deciding to close the community
 - include the estimated date residents will be expected to vacate the community, no less than **180** days from the date of the notice, and the estimated date the community will close
- Notify any potential new residents
- PHFA will send notices to any organization that asks

68 P.S. § 398.11.2(a), § 398.11.3

Community Closure - Payment

- Homeowner's right to relocation expenses
 - \$4,048 for single-unit home (2014 value)
 - \$6,072 for multi-unit home (2014 value)
- No liability for not moving home
 - Community owner must pay \$2,500 or appraised value of the home, whichever is more, if the homeowner abandons the home

68 P.S. § 398.11.2(c)(d)(g)

Community Closure – Payment, Continue

- Nothing in the text of the law ties payment to leaving voluntarily
- Can homeowner stay after the community is declared “closed,” receive proper eviction procedure, and still get money for relocating or abandoning the home? We think yes.

Resident Right to Negotiate Purchase of the Community

- If a tenant organization, nonprofit, CDC, housing authority, or redevelopment authority represents 25% of spaces in the community:
 - It/they can make an offer to purchase the community
 - The community owner “shall consider” the offer, and “shall negotiate in good faith with the entity submitting the offer.”

68 P.S. § 398.11.2(b)

Enforcement of the MHCRA

- Pa. Attorney General and District Attorneys have the power to bring actions to restrain acts prohibited by the MHCRA, where that would be in the public interest—discretionary
- AG “shall have the power and *it shall be his duty* to enforce the provisions of this act...” - mandatory?
- Private right of action for damages
 - for community owner, operator, or lessee
 - aggrieved by a violation of their MHCRA rights

Enforcement of the MHCRA through Consumer Protection Law

- “A violation of this act ... shall also constitute an ‘unfair or deceptive act or practice’ within the meaning of section 2(4) of ... the ‘Unfair Trade Practices and Consumer Protection Law,’ [73 P.S. § 201-1 et seq.] and shall be a violation of and shall be subject to the enforcement provisions and private rights of action contained in that act.”

- Exemplary damages, attorney fees

68 P.S. § 398.16.1

CPL and Attorneys' Fees

73 P.S. § 201 - 9.2

- The court may, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars...
- The court may award to the plaintiff, in addition to other relief provided in this section, costs and reasonable attorney fees.

Rights under the Pennsylvania Constitution

- Right of free communication of thoughts, opinions— Every citizen may freely speak, write, and print on any subject – *Art. I, sec. 7*
- Right of citizens to peaceably assemble for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance – *Article I, sec. 20*
- Inherent rights of mankind – *Article I, sec. 1*
- Question—Do these rights apply as against private parties as well as the government? Are MH communities equivalent to a company town, as in *Marsh v. Alabama*, 326 U.S. 501 (1946)?

Other Laws May Also Apply

- DEP and environmental regulations may apply to water treatment and sewage/septic systems
- Some townships have codes that apply specifically to manufactured home communities
- Other townships have general codes that apply to MH communities, e.g., private roads code

Resources

- RHLS - <http://rhls.org/mh>
 - PA case list
 - Manufactured Home Community Rights Act – full text
 - Resident’s rights brochure
- National Consumer Law Center
 - <http://www.nclc.org/issues/manufactured-housing.html>
- CFED - I’M HOME
 - http://cfed.org/programs/manufactured_housing_initiative/im_home/
- Center For Community Change
 - www.mhaction.org
- National Manufactured Home Owners Association
 - <http://www.mhoaa.us/>

Questions? Comments?

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