FULL AND PROPER IMPLEMENTATION OF THE MANUFACTURED HOUSING IMPROVEMENT ACT OF 2000 -- FACT SHEET # 5

HUD HAS NOT IMPLEMENTED ENHANCED FEDERAL PREEMPTION

Federal preemption, with regard to federally-regulated manufactured housing, is essential to ensure interstate commerce, avoid discriminatory state or local standards or regulations, and to protect the balance between affordability and the full protection of homeowners that is required by federal law.

Based on complaints by HUD that the preemption language of the original 1974 law was too weak and restrictive, in the 2000 law, Congress substantially strengthened and enhanced the scope of federal preemption under the law. The 2000 law expanded preemption three ways. First, Congress told HUD to apply preemption "broadly and liberally." Second, it extended preemption to state and local "requirements" that are not necessarily standards. Third, it expanded the basis for preemption to include interference with the comprehensive federal "superintendence" of the industry. As a result, the test for federal preemption is no longer the extremely narrow, "same aspect of performance" standard that HUD routinely used as an excuse not to enforce preemption under the 1974 law.

Today, HUD claims that, in accordance with the 2000 law, it takes a "broad and liberal" view of preemption, stating that "for preemption to work … the Act requires that HUD's construction and safety standards address the same elements of performance as the International Residential Code (IRC) and other state and local codes." The 2000 law, however, does not -- and never has -- referred to the IRC, or conditioned preemption on addressing the "same elements of performance" of the IRC. Neither did the original 1974 law. The reason is simple -- the IRC is highly prescriptive and, therefore expensive. The HUD Code, by contrast, is performance-based, providing cost-savings that are passed to homebuyers. Any comparison or parallel between the HUD Code and IRC is nowhere in the law. Furthermore, the law does not -- and never has -- referred to the same "element" of performance. Under the original 1974 law, the test of federal preemption <u>was</u> whether a federal standard covered the same "aspect" of manufactured home performance as a state or local standard. But even this was drastically changed by the 2000 law, as explained above.

Thus, eleven years after the 2000 law, HUD has not withdrawn or changed outdated and highly restrictive internal 'guidance" and policy statements regarding preemption that pre-date the 2000 law that have led to confusion and unnecessary disputes. If HUD would implement the enhanced preemption of the 2000 law, it would result in major cost savings for homebuyers.

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