

SUMMER 2011



Summer is winding down and we are heading into fall - always a busy time of the year. Congress comes back from recess, kids head back to school, and for many of us involved in state and national industry associations, we prepare for a myriad of conferences and business meetings. Members of the NCC will convene at the upcoming MHI Annual Meeting in Phoenix, Arizona. I look forward to these opportunities to brainstorm and network with fellow NCC members. I truly believe that we are at our best when we are working together, discussing the most pressing issues facing our industry, and developing solutions to move us forward. I also believe that participating in industry events gives us the opportunity to learn from each other.

What a summer if you consider yourself a political junkie! The drama of the Congressional debt ceiling debate captured everyone's attention and really exemplified the craziness inherent in the current world of "inside the beltway" politics. Our MHI/NCC lobbying staff works tirelessly advocating for our industry. Their efforts are so important...but it is not enough. It is essential that we, as members of the NCC, step up to do our part. There are tremendous legislative and regulatory challenges confronting us every day that could have a tremendous impact on our industry, both today and in the future. Are you actively involved as a member of the NCC? Have you made your voice heard by participating in industry gatherings, such as the upcoming MHI Annual meeting in Phoenix? If you've registered and are planning to join us, thank you for committing to work with us to develop

solutions and a path forward. If you have not registered, please reconsider. Your voice, your ideas and your enthusiasm are needed now more than ever. We face an uncertain economic future and if our industry is to survive and succeed, it will take commitment and action from ALL of us!

On July 21st, the Consumer Financial Protection Bureau (CFPB) officially opened its doors for business, with former Ohio Attorney General Richard Cordray as the appointed nominee for the position of Director of the CFPB. Read about this as well as other hot issues in the Washington Update.

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Community Connections is a quarterly e-newsletter of the National Communities Council (NCC) sent to all direct dues-paying members of NCC and certified state representatives. The fast pace of this newsletter allows information to be shared as soon as it is news. It provides a forum for keeping community owners, managers, and developers up-to-date on the issues impacting them. Community Connections addresses issues uppermost in the minds of its readers with concise articles and features.

From the Chairman

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MHI has announced its theme for next year's Congress and Expo, "Rethinking Housing and Your Business in the New Economy". As community owners, how are we responding to shifts in the market? With the changes in the economy, how do we position ourselves to better serve potential homeowners with changing needs and tastes? In this issue, you will read about an expanding segment of the manufactured housing industry that serves an important market niche – age restricted communities for seniors. Given that the Baby Boomer generation is quickly approaching retirement age, are we, as an industry, poised to meet the unique needs of this large demographic group?

I hope that you enjoy the summer issue of "Community Connections". I trust that you will find it informative and inspiring, as you read what others in our industry are doing to change perceptions and policy. Whether its MHI/NCC staff meeting with Members of Congress and regulators in D.C., state association executives, such as Sherry Norris, fighting misperceptions and bad press in an effort to promote and protect our industry, we are all part of the solution. Collectively, whether you are a lender, a park owner, or a property manager, imagine what we could accomplish if we are all actively participating.

As always, I welcome your comments and suggestions as we continually strive to keep you, as an NCC member, engaged, educated and informed. I look forward to seeing you in Phoenix in October!

Steve Schaub
Yes! Communities
2011 NCC Chairman

Upcoming Events

MHI 2011 Annual Meeting
October 2-4, 2011
Pointe Hilton Tapatio Resort
Phoenix, AZ

2012 National Congress & Expo
April 10-12, 2011
Caesars Palace
Las Vegas, NV



Washington UPDATE

Flood Insurance

On July 12, the House approved legislation (H.R. 1309) reauthorizing the National Flood Insurance Program (NFIP) through 2016. The program is important for home owners and community owners in flood zone areas who must have flood insurance in place in order to secure financing. The NFIP is scheduled to expire on September 30, 2011. H.R. 1309 calls for the long-term reauthorization of the NFIP, but also sets forth reforms to the program. MHI/NCC is part of a large coalition advocating for the long-term reauthorization of the NFIP.

The program's authorization expired in 2008 and has been continuing to operate for the past three years through short-term extensions. The bill now awaits a vote in the Senate.

Dodd-Frank Update

MHI has an effort underway to seek bi-partisan legislative relief in six specific areas of the Dodd-Frank bill. The issues that have been identified by MHI's Dodd-Frank Task Force are incorporated into legislative language that is now in the bill drafting phase with House legislative counsel. Congress is now in August recess and MHI expects to have language finalized in legislative format with our supporters shortly after they return in September. For a more detailed report, please see the accompanying article "Dodd-Frank Act and Manufactured Housing".

MHI Continues Efforts on Weather Radio Legislation

The House Financial Services Committee has approved legislation (H.R. 1751), sponsored by Committee Chairman Spencer Bachus (R-AL), that would require all new manufactured homes be equipped with NOAA weather radios. MHI has maintained its official position that if Congress is to mandate the installation of weather radios, they should be required of all forms of housing, not just manufactured homes. Severe weather events, such as tornados and hurricanes, do not discriminate by housing type and neither should federal policy.

The measure is expected to come up for floor consideration in September under "suspension of the rules", a tool to provide swift floor consideration of bills. MHI has conducted significant outreach to Rep. Bachus and his senior staff to press for substantive revisions in the bill and to underscore the potential burdensome impact this mandate could have on an industry that is already struggling. MHI has also underscored that weather radio legislation competes with an existing warning notification system (WARN Act) scheduled to become active in April 2012, which will provide owners of handheld wireless devices with emergency notifications.

While companion legislation has not yet been introduced in the Senate, MHI has already contacted leaders of the Senate Banking Committee to register industry concerns. MHI expects to work closely with committee leaders to ensure the manufactured housing industry is not unfairly targeted or negatively impacted by any Congressional effort requiring the mandatory installation of emergency notification devices.

EPA Addresses MHI's Concerns Regarding Testing Requirements for Lead Paint Removal

On August 5, 2011 the EPA announced changes to its Lead Renovation and Repair, and Painting Program (RRP) requiring contractors to conduct lead dust testing to determine whether a work area has been properly cleaned and is ready for reoccupancy. This is a victory for MHI and other coalition partners, who lobbied EPA and Congress to eliminate the use of this controversial "clearance testing" requirement. Had the EPA kept in place the proposed "clearance testing" requirement, compliance would have been problematic for owners of older MH communities seeking to do renovations within their communities. EPA, in its August 5 final rule, determined that dust cleaning and removal protocols required by the current rule are sufficient to reduce lead dust hazards. In addition to the "clearance" testing requirement, the final rule makes a number of minor changes and clarifications to the training program and accreditation process in the RRP program.

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Consumer Financial Protection Bureau (CFPB)

Former Ohio Attorney General Richard Cordray has been nominated to be the first-ever Director of the Bureau of Consumer Financial Protection (CFPB). Until a Director is confirmed, the agency does not have some of the authority authorized by the Dodd-Frank Act, such as the ability to regulate non-bank financial institutions.

Effective as of August 1st, Elizabeth Warren, who had been in charge of setting up and establishing the CFPB, will return to her post at Harvard University. Raj Date, CFPB's current Associate Director for Research, Markets and Regulations, will run the day-to-day operations of the CFPB until a Director is in place.

FEATURE STORY

Manufactured Housing Communities and the 55+ Market

By: Lisa Brechtel, Vice-President/Executive Director of MHI-NCC

People are now living long after retirement. According to the 2007 period life table for the Social Security area population, those on the cusp of retirement, ages 55-64, are expected to live on average 21.34 more years. Living in a manufactured home community represents an ideal lifestyle choice for many in this demographic. The following represents some real advantages that manufactured homes offer the 55+ market:

- Manufactured homes can be customized to fit the needs and wants of every homebuyer. This includes interior floor plans, exterior designs and custom kitchens, baths and living areas.
- Manufactured housing, especially those located in land-lease communities, are less expensive to purchase and maintain.
- Manufactured homes offer convenient one-story living and can be built for accessibility.
- Manufactured home communities provide a unique setting where smaller yards require less maintenance, while individual home sites maximize privacy.
- Manufactured home communities provide a secure, friendly, relaxed environment with a strong sense of 'community'.

How can manufactured housing communities benefit 55+?

Manufactured housing communities allow residents to own their own home while leasing the land, thus eliminating the expense of property taxes and allowing homeowners to enjoy amenities and well-maintained common areas. According to a report prepared for the Commission of Affordable Housing and Health Facility Needs for Seniors in the 21st Century, advantages of land-lease properties are that "the resident can own the home with a lower down-payment than virtually any other housing alternative because the cost of land is not included in the transaction. The resident can also benefit from appreciation, provided the home is well maintained in a well-located and maintained park."

In addition, and no less important, is the sense of community engendered by the manufactured home lifestyle. By providing many opportunities for social interaction through organized activities, such as clubs, fitness classes and social events, communities encourage resident relationships. Safety and security are top concerns for many residents. Many 55+ communities are gated and provide on-site security as well as neighborhood watch programs. By providing a sense of security, spaces to personalize, interesting destinations and places to walk, and the options of having pets, manufactured home communities have the potential of encouraging active living for 55+ individuals.

What can community owners offer to attract the 55+ market?

Age restricted manufactured housing communities, typically called 55+, offer many advantages with many different types of land-lease communities to choose from. They can be large communities with numerous amenities or smaller and more affordable family-owned communities. There are communities located all over the country and in every price range. Common amenities include swimming pools, clubhouses, health clubs, and tennis courts.

We know that most people begin their housing search online. To capture the attention of those looking online at housing options, 55+ manufactured home communities need to have attractive websites that provide lots of information, including pictures of the community (not just individual homes), information about lease fees, and testimonials from homeowners. In addition, an attractive and informative website should highlight those services and amenities that are important and attractive to seniors. Jensen Communities (www.jensencommunities.com), offers a great example of a website that is user-friendly. In addition to outlining important information related to the advantages of living in a manufactured home, the website provides prospective

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Manufactured Housing Communities and the 55+ Market

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residents with a comprehensive list of special amenities found in their communities. Jim Ayotte, Executive Director of the Florida Manufactured Housing Association, states, “to make an emotional connection with prospective homebuyers, every community’s website should have a detailed description of their value proposition, with quality pictures of homes and individuals. Homeowner testimonials are a great idea.” With over 900 55+ manufactured home communities, Florida represents a top destination choice for many. In Mr. Ayotte’s view, the range of options available in Florida’s 55+ communities is limitless. Those in the 55+ market are undoubtedly attracted to Florida’s warm climate, sandy beaches, suburban or rural settings (depending on preferences), excellent health care and affordable cost of living. Many of Florida’s 55+ manufactured housing communities have swimming pools, community centers, health clubs, tennis courts and executive or professional golf courses. Seniors are looking not just to buy a home but to buy into a lifestyle. Ayotte also explained that he expects the 55+ community industry to expand over the next ten years as the baby-boomer generation reaches retirement age. Experts have indicated that baby-boomers are very active and many are expected to continue working after they retire. Community owners that focus on the 55+ market need to be poised to meet the unique needs of this large demographic.

Manufactured home communities continue to be a popular option for a growing segment of the aging U.S. baby boomer generation. In the last decade, the median age of the nation has increased from 35.3 to 37.2 – an all-time high as determined by the U.S. Census Bureau. In 2010, 17.3 percent of Florida’s population was age 65 or higher. This trend is expected to continue as more seniors flock to Florida and other warm weather retirement destinations. For seniors, 55+ manufactured home communities provide an affordable housing choice with great lifestyle advantages. Clearly, this niche market is a great opportunity for seniors and community owners alike.

FEATURE STORY

U.S. Supreme Court Denies Review of the *Guggenheim* Case

By Robert S. Coldren & Mark D. Alpert
Hart, King & Coldren

In *Guggenheim v. City of Goleta*, a split 11 (“en banc”) panel of the Ninth Circuit decided that the City of Goleta’s adoption of a rent control ordinance did not cause a “taking” under the Fifth Amendment of the U.S. Constitution that must be compensated. The key fact in deciding the case, according to the eight judge majority opinion, was that the property owner had purchased the property already subject to rent control. In essence, the court concluded that the park owner “got what he paid for” - a property subject to a confiscatory rent control regulation.

The decision is wrong because *Palazzolo* (a prior U.S. Supreme Court decision) affirms that property owners who purchase property subject to confiscatory regulations can bring a Fifth Amendment taking claim.

The *Guggenheim* decision effectively approves of the confiscation of the property owner’s private property for a public purpose, without compensating the property owner. This is the sort of harm the Fifth Amendment was designed to prevent. A petition for review was submitted to the U.S. Supreme Court. The Industry felt the effort merited the putting together of a top-notch team to pursue the petition. Dan Guggenheim received a great deal of financial support, most notably a very generous contribution from the WMA Committee to Save Property Rights. Many other park owners made generous contributions. With their help, Dan was able to hire Theodore Olson (former U.S. Solicitor General) and his team at Gibson Dunn to lead the effort with HK&C’s assistance.

The odds of getting a review by the Supreme Court are always difficult and, unfortunately, review was not granted. The Ninth Circuit’s decision in *Guggenheim* will be the “law of the land” for the foreseeable future, at least in the Ninth Circuit, which covers most of Western United States, Hawaii and Alaska.

Fortunately, the technical legal holding of the Ninth Circuit’s decision in *Guggenheim* is narrow. It held that a property owner, under these circumstances and with this record, who purchases a property subject to rent control, may not bring a “facial challenge” to the ordinance. The decision is narrow because “facial challenges” are lawsuits aimed at the ordinance as drafted, as opposed to a lawsuit based on how the ordinance has been administratively applied to a particular property owner. That means the property owner could theoretically file a new lawsuit claiming its property was “taken” after seeking an administrative application to increase rents. It also means, for the time being, that park owners in Dan’s position should go through the Administrative Rent Hearing process before filing suit.

Despite the narrow holding, however, the decision may not be interpreted so narrowly by local governments and even courts, both of which will have plenty of ammunition to support them from broad language used in the decision. Local government may be emboldened to adopt new rent controls and other land use regulations that will substantially impair the value of property over time. California state courts have never been particularly protective of property rights, and those courts which wish to deny such claims may claim the ammunition they need.

On the other hand, the decision does help open the door to federal litigation of takings claims. The federal courts (particularly the U.S. Supreme Court), have typically been the source of the important decisions affirming property rights. This is extremely important as we look for other opportunities to raise takings challenges that will reach the Supreme Court. Indeed *Guggenheim* has already provided park owners many benefits which include:

- It establishes that a facial *Penn Central* taking claim can be brought. (Rent control advocates have asserted there is no such thing!)

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Guggenheim Case

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- It prevented many cities from amending their ordinances for the many years it was pending.
- It “opens the door” to the Federal Courts where taking claims have a better chance. No decision upholding a *Penn Central* takings claim, in this context, has ever emerged from the State Court system, and practitioners agree this is perhaps *Guggenheim’s* greatest achievement.
- It precipitated the repeal or easing of rent control in a number of cities.
- It is a building block for the ultimate success that park owners will achieve in the U.S. Supreme Court.

Even though a review was not granted, the decision may sow the seeds for the eventual successful challenge of rent control and other property regulations which confiscate private property for public use - without compensating the owner.

Storm Shelters in Manufactured Housing Communities

By: Sherry Norris, Executive Director of the Alabama Manufactured Housing Association

On April 27th, 62 tornadoes struck Alabama killing 247 people. According to the National Oceanic and Atmospheric Administration, between January and May of 2011, there were a total of 122 tornadoes that struck Alabama, giving our state the dubious honor of ranking as the nation's leader in tornado deaths. Since 1980, 412 people in Alabama have been killed as a result of tornadoes. Following Alabama is Missouri (243), Tennessee (176), Texas (147), and Arkansas (144).

The Alabama Emergency Management Association (EMA) has reported a total of 23,553 homes damaged or destroyed on April 27th. In addition to homes, there were schools, drug stores, restaurants, one textile manufacturing factory, grocery stores, city buildings, and apartment buildings that were damaged or destroyed. In light of this, we continue to state that *"everything was destroyed in the path of these tornadoes; the tornadoes did not discriminate and every citizen should be allowed to be safe during a tornado, not just the people who live in a manufactured home. To do otherwise would give a false sense of security to people at work, in a site-built home, an apartment, at a business, a grocery store, or a school."*

The new Governor of Alabama, Robert Bentley, has been quoted in the media as stating that storm shelters should be required in all manufactured home communities. Despite this media report, we have been assured that the Governor does **not** plan to introduce legislation in 2012 requiring storm shelters in manufactured home communities in Alabama. Alabama House Speaker Mike Hubbard has also indicated that the state could help park owners apply for grants to build storm shelters, but will not mandate it through legislation. Our persistence and efforts have paid off...for now. But, we must continue to educate and advocate, at the local and federal level.

As the Executive Director of the Alabama Manufactured Housing Association (AMHA), I have worked diligently over the past few months to fight misperceptions and untruths

surrounding the subject of mandatory storm shelters in manufactured housing communities. I have addressed media reports through interviews and letters to editors, and worked closely with the governor's office and our state legislators. I believe that it is important that all of us at the local/state level work hard to do our part to effect change, be engaged, vigilant and prepared to educate those unfamiliar with manufactured housing. Being prepared and proactive, rather than reactive, brings results.

In 2001, U.S. Representative Spencer Bachus (R-AL) succeeded in getting legislation passed to include manufactured home communities in the Community Development Block Grant (CDBG) program. Prior to this bill, CDBG funds could only be used to build shelters and safe rooms for site-built homes, apartment buildings and schools. The CDBG program is one of the largest sources of federal assistance to local governments. Yet, according to the AL EMA (charged with overseeing this program in each county), no manufactured home community has applied for grant funds for a shelter under this program. The program is available for every homeowner - including manufactured homeowners - to submit an application for an individual shelter, or for park owners to apply for grant funds for a community shelter.

FEMA has indicated that there will be an additional \$100 million in CDBD funds this year for Alabama, specifically for shelters. Cities and local governments may apply for grant funds to build shelters, and to date some towns have submitted applications. Assistance and resources ARE available. It is important that we as an industry join together to fight prejudices and untruths. It is also important that we work alongside our state and local officials, and other concerned groups, to seek solutions that will ensure everyone's safety during a tornado.

FEATURE STORY

SAFE Act Final Rule Published

By: Thayer Long, President and CEO of MHI

If you are an MHI member, you know by now that last month the U.S. Department of Housing and Urban Development (HUD) published the final rule on the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE). The final rule does provide clearer guidance on what HUD believes is activity which would not constitute licensing under the federal law. According to HUD and the federal law, only a person who both takes an application and offers or negotiates loan terms for compensation or gain needs to obtain a state mortgage loan originator license.

MHI strongly urges all industry members to work closely with your state association before doing anything regarding your business, and also strongly encourages the use of outside legal counsel. This article will summarize what the final rule says, and is not intended to serve as legal advice or a business plan. A more detailed version of this summary with examples was provided to MHI members last month.

1. The first area that HUD covers is defining what it means to “take an application.” Examples of activity that will not trigger licensing as per the final rule include: a) physically handling a completed application form or transmitting the completed application form to a lender on behalf of the borrower; b) assisting an applicant who is filling out an application by explaining the contents of the application and where in the application the borrower should provide his/her information. (For example, if a customer was unclear as to what a term like “gross income” meant in an application, the salesperson could explain the customary terminology in order for the customer to complete the application properly); c) describing, in general terms, the loan application process to the applicant as long as there is no discussion of particular loan products; d) conducting administrative or clerical tasks, which are defined to include the receipt, collection, and distribution of information common for processing and underwriting a loan (and necessary

communications with consumers); and f) pulling a credit report solely for the home sale purpose.

2. The second area that HUD covers is defining what it means to “offer or negotiate” the terms of a loan. Examples of what will not trigger licensing per the final rule include: a) telling the borrower the lender has sent him/her a written offer, as long as no details about the offer are shared; b) sharing of general information about a financing source and discussing hypothetical financing options; c) giving the homebuyer a list of available financing sources without recommending any of the sources; d) discussing a buyer’s ability to afford a home; e) presenting or discussing generic facts or generic rate sheets; f) providing general explanations or descriptions in response to consumer queries, such as explaining loan terminology (e.g., debt-to-income ratio) or lending policies (e.g., the loan-to-value ratio policy of the lender); g) arranging the loan closing or other aspects of the loan process, provided that any communication that includes a discussion about loan terms only verifies terms already agreed to by the borrower or prospective borrower; and h) providing borrower with information unrelated to the loan terms, such as best days of the month to schedule a closing;

3. The third area of importance is how HUD defines “compensation or gain.” According to the final rule, compensation or gain does not include the following: a) receiving a sales commission if received solely in connection with a salesperson’s sales activity; and b) physically handling an application or other documents or engaging in generic discussions *do not necessarily* constitute offering or negotiating and, accordingly, *may not* subject the individual to coverage even if they would otherwise be acting for

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SAFE Act Final Rule Published

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compensation or gain. In other words manufactured home sales personnel can earn compensation without triggering licensing as long as sales commissions are received solely for home sales activities and not offering or negotiating activities.

4. HUD interestingly adds a new perspective on what it means to be engaging in the business of being a loan originator. HUD states that a person must be “engaging in the business” of a loan originator in order to be subject to the SAFE Act. A person is engaging in the business of a loan originator if he conducts the activities of a loan originator: (a) in a commercial context and (b) habitually or repeatedly. Basically, an individual must “act” or hold oneself out as a loan originator with an intention/purpose of obtaining anything or value for themselves or someone else for whom they are acting (i.e., to make a profit) and the individual must act as a loan originator habitually or with repetition.
5. Finally, in the area of “seller financing,” HUD asserts that if the seller financing is not habitual or repetitious, then the seller is not engaging in the business of a loan originator. HUD asserts, “the infrequency with which a particular seller provides financing to a buyer to facilitate the sale of the seller’s own residence is so limited that Congress could not have intended to require such sellers to obtain loan originator licenses.”

Per HUD’s rule, the following examples illustrate when an individual generally does not engage in the business of a loan originator: a) An individual who acts as a loan originator in providing financing for the sale of that individual’s own residence, provided that the individual does not act as a loan originator or provide financing for such sales so frequently and under such circumstances that it constitutes a habitual and commercial activity; b) An individual who acts as a loan originator in providing financing for the sale of a property owned by that individual, provided that such individual does not engage in such activity with habitualness; c) An individual who does not act as a loan originator habitually or repeatedly, provided that the source of prospective

financing does not provide mortgage financing or perform other loan origination activities habitually or repeatedly.

While most industry questions were answered in the final rule, it is imperative that you consult with your state association and legal counsel before taking any action.

FEATURE STORY

MHI Task Force Prepares Report on Disaster Housing

By: Lois Starkey, MHI Vice President for Regulatory Affairs

As the summer issue of Community Connections is readied for distribution, we anxiously await the imminent arrival of Hurricane Irene. States along the eastern seaboard have already begun their emergency preparations and evacuations. We all watch and wait and sincerely hope the storm veers off its course leaving little damage in its wake. Should that not occur, states will need to assess damage and begin the process of providing temporary shelter for those impacted by the storm. At the federal level, FEMA's response will once again be scrutinized as they set about providing the necessary assistance and resources. Though there has been tremendous improvement since Katrina, FEMA's current disaster housing and post recovery efforts must be revised.

MHI's Disaster Housing Task Force convened over the summer and has agreed to a set of recommendations that will be incorporated into a comprehensive report to be delivered to the Federal Emergency Management Association (FEMA). This particular Task force was formed in April 2010 with the goal of providing direction and leadership to improve FEMA programs and policies that impact the manufactured housing industry and its consumers. Incorporated into this report will be several specific recommendations designed to give community owners a greater role to play in providing housing for disaster survivors. While the Disaster Housing Task Force's report will cover a wide variety of issues related to FEMA's policies - procurement, delivery, installation, maintenance and service, for example - I would like to share with you some of the ideas that should be of particular interest to community owners. Anyone interested in viewing the full set of recommendations, please feel free to contact me at lstarkey@mfghome.org.

The Task Force is recommending that FEMA consider utilizing temporary housing designs that are compatible with those currently utilized in the commercial market for land lease communities. Such homes could be placed on vacant sites within communities for temporary use by disaster

survivors, and when FEMA's obligation ends, the community owners would be given the option of purchasing the homes.

For disaster relief preparation efforts, the Task Force also recommends that FEMA identify all available housing that could be utilized in the event of a disaster, including land lease communities with vacant spaces and all retail locations with new housing stock. Ideally, a national database, such as MHI's Community Attributes System (CAS), would be the repository of this information. MHI, and the NCC in particular, have been asked to put together a working group for the purpose of looking at ways to improve and expand the CAS. Clearly for the CAS to be a useful tool and resource, the integrity of the data is essential. For that to be possible, we need to evaluate ways to better promote the CAS and encourage more extensive input from community owners. If you have any interest in being a part of this process, please contact Lisa Brechtel at lbrechtel@mfghomes.org.

And while MHI's Disaster Relief Task Force report puts great emphasis on FEMA's role in disaster relief, the report will also stress the importance of industry's support for state-level pre-planning efforts for future disasters. To this end, the Task Force recommends that industry work closely with State Emergency Management and Housing Agencies, as well as State Disaster Housing Task Forces. The Alabama Manufactured Housing Association, led by its Executive Director Sherry Norris, provides a great example in their successful efforts following the deadly tornadoes earlier this summer (see "Storm Shelter" article in this issue of Community Connections). Similarly, over the summer, a group of community owners in Georgia approached the Georgia Department of Community Affairs and were successful in advocating for community owners' involvement in that states' pre-planning efforts. In the case of Georgia, efforts are focused on utilizing the state-wide rental housing

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Disaster Housing

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database, Georgia Housing Search (GeorgiaHousingSearch.org) as a way for community owners to advertise available spaces and homes for rents.

MHI's Disaster Housing Task Force has worked hard to develop recommendations that will offer FEMA valuable and constructive input and guidance. We sincerely hope that this effort will result in some much needed change.

Manufacturers, retailers and community owners can and should play a greater role in the production, distribution, and installation of temporary disaster housing.

FEATURE STORY

Dodd-Frank Act and Manufactured Housing

July 2011 – Manufactured Housing Institute

The Wall Street Reform and Consumer Protection Act of 2010 (or “Dodd-Frank”) is approximately 2,200 pages long and affects all financial service products, including manufactured home loans. Because of the legislation's enormous size, complexity and its broad scope of impact, discussing it in piecemeal terms is difficult. Even within the banking industry, community banks have a different focus compared with the large national banks. For non-depository institutions, the same problem also exists.

Yet, there is a commonality of interest across a number of sectors. Dodd-Frank contains a number of unintended consequences that impact a variety of industries and consumers. For instance, with respect to the manufactured housing industry, Dodd-Frank was structured and written around a regulatory framework for real estate mortgages. However, the bill essentially reclassifies all manufactured home loans as mortgage products. Manufactured home loans not secured by real estate are not the same as mortgages. To regulate all home loans the same way is an unsuitable model, which creates significant challenges to the industry and the consumers it serves.

Manufactured home loans have unique characteristics. Manufactured home loans, in most cases, are much smaller than typical residential real estate secured mortgages and have shorter durations, which make transactional costs harder to recover. Manufactured home loans have higher servicing costs than residential mortgages, requiring specialized knowledge and more personal contact and less reliance on technology. Many manufactured home loans (with the exception of FHA Title I loans) are made with no government guarantees or potential losses to taxpayers.

How is the Industry Impacted?

First, the law creates a new standard for a “high-cost mortgage” loan which is based on interest rate spreads that fluctuate over time. If the Annual Percentage Rate (APR)

exceeds the average prime offer (the loan purchase rate established by Freddie Mac) by more than 6.5 percent, or in personal property transactions under \$50,000 by 8.5 percent, then the loan is considered “high cost.”

For example, if the law became effective today a “high-cost mortgage” loan is any residential loan over \$50,000 with an APR of 11 percent or more, or, a loan under \$50,000 (if the dwelling is considered personal property) with an APR of 13 percent or more. The law does not prevent “high-cost mortgage” loans from being made, but it does make it more difficult to make these loans, and it imposes a significant level of potential legal liabilities making them virtually impossible to securitize.

This is a problem because since our cost of capital is higher, manufactured home loan interest rates are typically higher. Since Fannie Mae and Freddie Mac do not purchase loans or create a secondary market where manufactured housing lenders can access capital at a discounted rate, lenders need to rely on other sources to make loans. These sources charge a higher interest.

Also, there are other fixed costs associated with making any kind of loan, such as fees for preparing the legal documents necessary to originate a loan. These basic costs increase with each state and federal law and regulation that is enacted. In addition, there are costs associated with each prospective borrower, including borrowers that are rejected and those who for whatever reason end up not taking the loan. These costs also include a portion of the advertising and marketing that go into borrower acquisition, the costs of maintaining methods of communication, and the costs of determining loan eligibility.

This conflict is particularly compounded with existing manufactured homes sales, where loan balances tend to be smaller. The loan may be smaller, but fixed costs are the same

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Dodd-Frank Act

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regardless of the loan size. These fixed costs must be recouped in some way in order to make the loan. Therefore, the only way to recoup these costs is by charging a higher rate.

If a lender decides to make a "high-cost mortgage" loan under Dodd-Frank, they must be prepared for a variety of new regulations, including:

- ✓ requirements for borrowers to undergo loan counseling by a HUD-Certified Counselor, the cost of which is expected to be \$400-\$600;
- ✓ prohibitions that prevent financing points, fees and closing costs;
- ✓ rules limiting late fees; and
- ✓ rules requiring multiple disclosures to sell or assign "high cost" loans.

Second, Dodd-Frank does provide a path for relief through the definition of a "Qualified Mortgage (QM)," which is intended to provide a legal safe harbor from some of the Act's more burdensome provisions. However, the criteria that must be met to be considered a qualified mortgage includes:

- ✓ no balloon loans;
- ✓ points and fees are restricted to 3 percent of the loan amount;
- ✓ ability to repay must also consider taxes, insurance, and assessments; and
- ✓ standardization of debt to income guidelines that have not yet been determined.

Again, because of the nuances in manufactured home lending, the definition of QM is unworkable for many loans made in our industry. First, while balloon payments are not commonly made by manufactured home industry lenders, they are common with captive finance companies and local banks. Second, the cap of points and fees at 3 percent coupled with our smaller loan balances will force lenders to charge a higher interest rate (thus tipping the scales and classifying them as "high-cost mortgages.")

Communicating this in detail is complicated because the law's impact will vary from lender to lender depending on their business model and the types of loans that they make.

What is true of all of the existing non-captive lenders involved in manufactured home lending is there is a limit, which varies from organization to organization, of how small a loan they believe they can make and still recover a reasonable amount of their costs. Lenders will have to make a decision on what their lowest loan amount will be due to new limits on their ability to recover those costs. To better understand this, a lender has only three ways to recover costs which are:

- ✓ to buy the loan at a discount, which is only possible if there is a motivated seller involved in the transaction who is able and willing to accept a discounted payout;
- ✓ to charge the borrower additional closing costs; and
- ✓ to raise the interest rate and recover the costs as the borrower pays back the loan.

Even the strategy of using points to keep the interest rate below the triggers of a "high-cost mortgage" is impeded leaving no way to recover costs.

To further clarify, if the cost of origination and legal compliance equals X, that number does not change based on the loan size or duration. The shorter the term and the lower the dollar amount, the harder it is to recover those fixed costs. Here is an example:

A lender is considering making a \$10,000 loan with a term of four years. Using a risk-based pricing model, the correct interest rate is determined to be 11 percent. If the fixed costs of origination are figured to be \$2,000, the lender must charge the borrower either in points or closing costs that \$2,000 to keep the rate at 11 percent. If a law or regulation caps the lender's closing costs or points, then the lender must look to raising the interest rate to recapture whatever costs could not be recaptured through points or closing costs. If the entire cost were recovered via interest, the interest rate would need to be increased to 17 percent to recover the costs.

Captive finance companies currently have zero, or very low, minimum loan cutoffs. Typically, they utilize higher interest rates to recoup costs, but often the justification for lending in the first place is that their related entities are profiting from the transaction in other ways, not the home loan itself.

What is the Result if Dodd-Frank is Not Amended?

Financing will still be available for those buyers with good credit and who can make a sizable down payment. Industry lenders that have or require higher credit quality customers may not be as impacted by the "high-cost mortgage" loan provisions. Those needing to serve customers with more challenged credit quality, and therefore needing to risk price their loans accordingly, will be impacted.

Also, those who fund low balance loans will find it more difficult to do business and existing homeowners will find it very difficult to sell their homes to buyers that need financing.

The dollar amounts for not making a loan will vary by lender because of all the variables detailed above, but each lender will find and set a minimum loan requirement based on their internal numbers.

It has been estimated that 50 percent of all the loans made on manufactured homes in manufactured home communities are under \$25,000. Another source has estimated that nearly 75 percent of all manufactured home personal property loans are under \$75,000.00. If the fixed transactional costs mandated by current and proposed law are higher than the lender's ability to recover costs, the loan will not be made by lenders independent of other profit center relationships.

Bottom line is that without changes, there will be a significant number of consumers who will not be served.

Potential Solutions

MHI has an effort underway to seek bi-partisan legislative relief in six specific areas that needs and deserves the support of everyone in the manufactured housing industry. The issues identified by the MHI Dodd-Frank Task Force are as follows:

1. Elimination of the expanded scope of Homeowners Equity Protection Act (HOEPA);
2. Clarification of the Qualified Mortgage Standards;
3. Clarification and Consistent Standards of a Mortgage Originator;
4. Exemption of Manufactured Homes from the new Appraisal Standards;
5. Exclusion of Manufactured Home Loans from the

- Residential Mortgage Loan Definition; and
6. Clarification and strengthening of exemptions for manufactured home retailers from CFPB Oversight.

A six-page white paper created by MHI can be obtained from MHI or any state association. Industry members should obtain copies and distribute them to their Representatives and Senators along with personal letters and emails urging them to support this effort. Those reading this article should distribute it as widely as possible throughout the industry along with their personal efforts to persuade other industry members, including employees and community residents, as well as suppliers, to also contact their Representatives and Senators.



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Join the NCC

The National Communities Council is the only national organization devoted to advancing the interests of manufactured home community owners, managers, developers, lenders, brokers and service/suppliers.

The NCC has three categories of membership: Owner/Manager, Developer and Affiliate.

The *Owner/Manager* category of the NCC provides a forum for unified action on important community issues. MHI provides a cohesive voice for community managers and owners on issues such as fair housing; occupancy standards; tax and property rights; and environmental issues. Additionally, NCC members benefit from specially tailored accreditation courses designed by the Manufactured Housing Educational Institute (MHEI) to raise professionalism in the field.

The *Developer* category of the NCC is for those companies that develop land for manufactured housing subdivisions and communities. MHI provides number of benefits to developers, including educational and networking opportunities; technical assistance on planning and zoning; publications on manufactured housing development; and access to MHI staff experts. Additionally, membership in MHI affords developers the opportunity to network directly with industry leaders, including manufactured housing producers, lenders and suppliers.

The *Affiliate* category of the NCC is for those individuals or companies whose primary business supports the development, finance or operation of manufactured home communities, but do not own or manage land-lease communities. Individuals or companies joining MHI through the NCC Affiliate category would be voting member of the NCC.

[Click here to request membership information](#)

Questions about NCC membership can be directed to Lisa Brechtel at (703) 558-0666 or Cheryl Langley at (703) 558-0668.