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Dear Manufactured Housing Community Landlord:

We are writing to inform you of a concern that has come to our attention in recent months and to put all manufactured home community owners on notice of your obligations under the law.

The Delaware Department of Justice Manufactured Housing Ombudsperson has referred to the Consumer Protection Unit ("CPU") multiple consumer complaints from residents regarding recent rental increases in manufactured housing communities. To balance the needs of both manufactured home residents and community owners, Delaware law provides several approved methods for determining annual lot rent increases in manufactured home communities. Absent certain prohibitions, community owners may base an increase in lot rent on one of the following:

1. the Consumer Price Index for All Urban Consumers (CPI-U), which is a measure of inflation in the Philadelphia-Camden-Wilmington region;
2. market rent, which is rent that would result from market forces absent an unequal bargaining position between the community owner and the homeowners, phased in over time; or
3. a separate written agreement regarding rent increases between a community owner and homeowner.

The complaints assert that manufactured housing community owners are increasing rents using **both** a CPI-U increase **and** a phased-in market rent value increase in the same year. This is a misreading of the statute that runs counter to the purpose of the law.

Rent Increase Justification

Delaware's landmark Manufactured Homes and Manufactured Home Communities Act ("MHMHCA") includes a subchapter dedicated to Rent Increase Justification, outlining specific parameters and formulas for how, when, and by how much a manufactured home community owner may increase a manufactured home resident's lot rent, providing critical protection against unreasonable and burdensome rental increases.

As provided by 25 *Del. C.* § 7051(a), "a community owner may not increase a tenant's lot rent more than once in any 12-month period."[1] Section 7052A(b)(1) provides a list of three options that a compliant community owner may use as their basis for rent increases per 12-month period

[1] 25 *Del. C.* § 7051(a).

for each resident.[2] A community owner "may increase rent under 1 of the following…" methods, to include:

- Based on the CPI-U;
- Based on the market rent;
- Based on a separate written agreement between a community owner and homeowner, mutually agreeing to a rent increase effective for longer than 1 calendar year.[3]

The choice to phase in market rent necessarily precludes the use of a CPI-U rent increase in a given year.

When it created Section 7052A in 2022, the legislature included explicit direction for community owners to bring the amount of rent to market rate, gradually, in equal increments over a course of seven or ten years.[4] A community owner who chooses to base an annual rent increase on market rent, instead of CPI-U, is permitted to impose a series of rent hikes for the specified seven- or ten-year period, which must be communicated to the manufactured home resident in the first year such annual increase is put into effect.

Under the only logical reading of the statute, a rent increase based on market rent cannot be implemented simultaneously with a rent increase based on CPI-U. This is supported by language throughout the statute that contemplates a structure whereby the community owner must choose a single approach:

- "a community owner may not increase tenant's lot rent more than once in any 12-month period,"[5]
- "a community owner may increase rent under 1 of the following [methods],"[6] and,
- a market rent increase "must be phased in equally" over seven or ten years.[7]

Reading these provisions together, it is clear that aggregating both market rent and CPI-U rent increases in the same 12-month period would be a violation of Chapter 70.

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[2] 25 *Del. C.* § 7052A(b)(1).

[3] The CPI-U is calculated by the United States Bureau of Labor Statistics, published every month, and measures the "average change in prices over time in a fixed market basket of goods and services." *See* bls.gov/regions/mid-atlantic/news-release/consumerpriceindex_northeast.htm. Under 25 *Del. C.* § 7052A(c)(1), annual rent may be raised by the average annual increase of the CPI-U for the most recently available preceding 24-month period, as provided by the Delaware Manufactured Home Relocation Authority.

Market rent is calculated based on competition in the market, including an analysis of current local housing demand and supply, geography, and price of nearby properties.

[4] Under 25 *Del. C.* § 7052A(d)(3), a community owner using a market rent-based increase must phase in the total increase equally over a course of seven or ten years.

[5] 25 *Del. C.* § 7051(a).

[6] 25 *Del. C.* § 7052A(b)(1).

[7] 25 *Del. C.* § 7052A(d)(3).

The law must be read consistent with the legislative purpose to prevent residents from unreasonable and burdensome rent increases.

A community owner's attempt to increase a resident's lot rent based on more than one method in the same 12-month period would be unreasonable and burdensome on residents, and thus counter to the law's purpose.

The General Assembly was keenly aware of competing interests in the manufactured housing market when it approved Chapter 70, Subchapter VI, Rent Increase Justification, and as it has made subsequent amendments to the law. Indeed, the stated purpose of the law is to "accommodate" such "conflicting interests"—on the one hand, "protecting manufactured homeowners, residents, and tenants from unreasonable and burdensome space rental increases," while, at the same time, "providing for the need of manufactured home community owners to receive a just, reasonable, and fair return on their property."[8] However, manufactured home community owners double-dipping on rent increases is neither just, reasonable, nor fair. Thus, a reading of the statute that would permit a community owner to impose a rent increase based on CPI-U, while already increasing the resident's rent based on market rent in the same year, would be contrary to the stated goals of the legislature.

Conclusion

In summary, raising lot rent based on both market rent and CPI-U in a single year is a violation of the MHMHCA and potentially a violation of the Consumer Fraud Act, 6 *Del. C.* § 2511 *et seq*.

Any community owner that has implemented more than one rent increase in the same year should take appropriate corrective action to bring themselves into compliance with the law.[9] Failure to do so may result in a CPU enforcement action.

Thank you for your attention to this letter. If you have questions, please reach out to Deputy Attorney General Giovanna Crozier-Fitzgerald at giovanna.crozierfitzgerald@delaware.gov.

Respectfully,

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Victoria Finkle
Director of Consumer Protection
Delaware Department of Justice

[8] 25 *Del. C.* § 7050.

[9] *See* 25 *Del. C.* § 7055.