



November 13, 2018

via email: jedd.bellman@maryland.gov

Jedd Bellman
Assistant Commissioner for Non-Depository Supervision
Office of the Commissioner of Financial Regulation
Maryland Department of Labor, Licensing & Regulation
500 N Calvert Street, Suite 402
Baltimore, MD 21202-3651

Re: Financial Consumer Protection Commission Draft Manufactured Housing Legislation

Dear Assistant Commissioner Bellman,

Thank you for the opportunity to participate in the Manufactured Housing Working Group (Working Group) and to provide comments to the Maryland Financial Consumer Protection Commission (Commission) in connection with its draft legislation adding consumer protections to the manufactured housing sales process.

The Manufactured Housing Institute (MHI) is the only national trade organization that represents every segment of the factory-built housing industry. Our members include builders, suppliers, retailers, sellers, community owners and operators, lenders and others who support the industry, including 50 affiliated state organizations. The Manufactured Housing Institute of Maryland (MHI-Maryland) is the state trade association representing the industry and a member of MHI. We have been asked by MHI-Maryland to speak on its behalf regarding the Commission's draft legislation.

Both MHI and MHI-Maryland (collectively hereafter, MHI) believe manufactured housing is essential to addressing America's affordable housing challenges. We also believe regulatory supervision plays a critical role in consumer protection. However, burdensome legal requirements often impede or limit consumer access to financing, which hurts both customers interested in purchasing manufactured homes, as well as those currently living in manufactured homes.

Attached is a redline containing MHI's recommended edits to the Commission's draft legislation. The following are MHI's comments explaining why MHI believes these revisions, and other changes, are necessary.



Inconsistent Use of “Mobile Home” and “Manufactured Home”

The Commission’s draft legislation uses the terms “mobile home” and “manufactured home” interchangeably throughout, without clearly defining either term. Since Maryland’s statutes contain several definitions of “mobile home” and “manufactured home,” MHI suggests that all references to “mobile home” be changed to “manufactured home” and defining that term to have the meaning provided in Md. Code, Public Safety § 12-301(g).

In the manufactured housing industry, “mobile home” is generally understood to mean a factory-built home that was manufactured prior to the 1976 adoption of the manufactured housing constructed standards administered by the Department of Housing and Urban Development (HUD). “Manufactured home” is generally understood to mean a factory-built home that is constructed according to the construction standards administered by HUD (HUD Code Home). Except for a very small number of older homes, most homes that are being sold by retailers are HUD Code Homes. In addition, the industry widely regards the term “mobile home”, when used to describe a manufactured home, as pejorative. The vast majority of HUD-Code homes, once installed, are not moved. They simply are not mobile.

It is MHI’s understanding that the Commission’s legislation is meant to include both HUD Code Homes and non-HUD Code Homes. As a result, MHI recommends using only the term “manufactured home” and defining a “manufactured home” as defined in Md. Code, Public Safety § 12-301(g):

- (1) “Manufactured home” means a structure that:
 - (i) is transportable in one or more sections;
 - (ii) is 8 body feet or more in width and 30 body feet or more in length;
 - (iii) is built on a permanent chassis; and
 - (iv) is designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities.
- (2) “Manufactured home” includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

This definition is broad enough to include both HUD Code Homes and non-HUD Code Homes and is identical to the definition of “mobile home” in Maryland’s Mobile Home Parks Act Title:

- (1) “Mobile home” means a structure:
 - (i) Transportable in one or more sections;
 - (ii) 8 or more body feet in width and 30 or more body feet in length;
 - (iii) Built on a permanent chassis; and



- (iv) Designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities.
- (2) “Mobile home” includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

Md. Code, Real Prop § 8A-101(c).

As a result, MHI recommends that all references to “mobile home” be replaced with “manufactured home” and that the following definition be added to Md. Code, Fin. Inst. § 11-501 and new Md. Code, Real Prop. § 7-601:

“Manufactured home” has the meaning stated in § 12-301(g) of the Public Safety Article.

Definition of Retailer

The definition of “retailer” contained in proposed Real Property § 7-601(c) excludes a manufactured housing retailer who is “brokering, lending, or originating a loan to a consumer borrower.” With this exclusion, if a retailer’s employee were to engage in mortgage loan originator activity, the retailer would no longer be considered a retailer subject to the requirements imposed by the proposed legislation.

MHI believes that this exclusion would create an unintended gap in oversight and regulation. As a result, MHI recommends deleting the exclusion from the definition of retailer.

The proposed definition of “retailer” also provides, in relevant part, that a retailer is a person who: “provides information regarding financing products to a consumer borrower for the purchase of a manufactured home.”

This definition suggests that the Commission agrees that manufactured housing retailer employees, subject to the conduct and disclosure requirements being imposed by the draft legislation, should have the ability to provide useful information about financing opportunities to consumers without being licensed as mortgage loan originators, such as discussing generally available credit terms with consumers and recommending appropriate lenders to consumers. The Commission’s draft legislation, however, does not provide clear guidance regarding when an individual is acting as a mortgage loan originator.

As a result, MHI recommends that the Commission’s draft legislation include revisions to Md. Code, Fin. Inst. § 11-601 to adopt a “bright-line” compensation-based test for determining when a retailer’s employees are acting as mortgage loan originators. Specifically, MHI recommends adding the following exclusion from the definition of “mortgage loan originator” in Md. Code, Fin. Inst. § 11-601(q):



(iv) is a retailer of manufactured or modular homes or an employee of the retailer if the retailer or employee, as applicable, does not receive compensation or gain for engaging in activities described in paragraph (q)(1) of this section that is in excess of any compensation or gain received in a comparable cash transaction.

If the Commission disagrees with this recommendation, MHI respectfully requests that the Commission define the meaning of “offers or negotiates terms of a mortgage loan” as the term is used to define “mortgage loan originator” in Md. Code, Fin. Inst. § 11-601. MHI specifically requests that manufactured housing retailers and their employees have clear guidance regarding the assistance they can provide customers with respect to available financing and lenders.

Retailer Disclosure Format

As drafted, proposed Real Property § 7-603(A)(2) provides that the written disclosure required of retailers shall “be on a form that the commissioner approves.”

MHI recommends that this provision be amended to provide that the disclosure shall “be provided on a form prescribed by the commissioner by regulation”, thus allowing for the formal process for public comment on this important requirement.

Information to be Included in Retailer Disclosure

As drafted, proposed Real Property § 7-603(B)(1) provides that the required retailer disclosure will include: “a disclosure that describes any financial relationship or affiliations between the mobile home retailer and lender whose information the mobile home retailer provides to the consumer borrower.”

MHI recommends that this provision be amended to conform to the disclosure requirement imposed by federal law, which requires the disclosure of any corporate affiliation the retailer has with any creditor. *See* 15 U.S.C. § 1602(dd)(2)(C)(ii)(II)(aa). MHI is concerned that otherwise the proposed disclosure will require an additional inconsistent disclosure that will confuse consumers and distract consumers from the other important disclosures being provided in connection with the transaction.

MHI is also concerned that “financial relationship or affiliations” is too vague and needs to be defined. Specifically, it is unclear which relationships would need to be disclosed. For example, retailers are not compensated by lenders for the referral of business. In addition, a retailer and a lender may enter into several relationships that could be considered “financial relationships,” the disclosure of which would not benefit consumers. These relationships include: dealer agreements/approvals; community agreements providing the lender with reduced rent when a home is repossessed and remains in the community to be remarketed; agreements where the retailer



is on recourse to the lender or where the retailer guarantees consumers' loans to the lender; and commercial loan agreements between the lender and the retailer, including floorplan financing arrangements.

MHI believes that the Commission's intent is to require the disclosure of corporate affiliations and, potentially, arrangements where the lender will compensate a retailer for the referral of a borrower, but does not intend to require the disclosure of relationships similar to those outlined above that do not impact the consumer. As a result, MHI recommends that the term "financial relationship or affiliations," if still used, be clearly defined and that the definition expressly exclude the arrangements outlined in the preceding paragraph, as well as similar relationships.

Delivery of Required Retailer Disclosure

As drafted, the Commission's proposed Real Property § 7-603(C)(1) requires that the retailer disclosure be provided at the time the retailer "provides information to the consumer borrower." MHI recommends that this provision be modified to require that a retailer provide the disclosure at the time the retailer "provides information to the consumer regarding financing and/or potentially available lenders."

Pre-Repossession Notice in the Case of Vacancy or Surrender

As drafted, various provisions require that a notice be given by a lender at least 30 days prior to the repossession of a manufactured home, but the 30 days is reduced to 10 days in the case of vacancy or surrender. Requiring the notice in the case of voluntary surrender or abandonment provides no benefit to consumers.

When a consumer is in default and abandons his or her manufactured home, if notice is required, the notice would be provided to the consumer's last known address, which will generally be the address of the manufactured home. If the consumer abandoned the home, the consumer will not receive the notice. In addition, when a home is abandoned the lender needs to be able to secure the home and thus preserve its collateral, which prevents further damage to the home to the detriment of both the lender and the consumer.

When a consumer enters into an agreement to voluntarily surrender his or her home to the lender, a consumer relinquishes the collateral and gives possession of the home to the lender. The consumer is already aware of the fact that the lender will take possession of the manufactured home because the lender is receiving possession based on a written agreement that the consumer signed. In this scenario, providing a notice of repossession provides no benefit to consumers. Rather, as in the case of abandonment, it places the home in jeopardy, diminishing its value to the detriment of both the lender and the consumer.



As a result, MHI recommends dispensing with the notice when a consumer abandons or voluntarily surrenders the manufactured home.

Conclusion

MHI thanks you for the opportunity to comment on the Commission's proposed legislation. We encourage the Commission to engage with the Working Group, MHI and other stakeholders as the Commission's recommendations and proposed legislation move forward.

Best regards,

A handwritten signature in black ink, appearing to read 'Richard L. Robinson', is enclosed in a thin black rectangular border.

Richard L. Robinson
General Counsel/Sr. VP

Attachment