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March 3, 2014

INFORMATION BULLETIN 2014-01 (MH, MP, OL)

TO: MOBILEHOME PARK OPERATORS
MANUFACTURED HOME DEALERS AND SALESPERSONS
OCCUPATIONAL LICENSING CONTINUING EDUCATION
INTERESTED PARTIES
DIVISION STAFF

SUBJECT: LEGAL ISSUES RELATED TO SALES OF MANUFACTURED HOUSING UNITS BY MOBILEHOME PARK INTERESTS WITHOUT HCD OCCUPATIONAL LICENSING

This Information Bulletin provides guidance for mobilehome park operators, employees and other interested parties regarding legal prohibitions and requirements on buying, selling, and leasing manufactured homes, mobilehomes and multifamily manufactured homes (hereafter, "manufactured housing units") without a Department of Housing and Community Development ("HCD") manufactured home occupational license.

INTRODUCTION

Complaints and enforcement investigations concerning unlawful sales and leasing of manufactured housing units are increasing. Some violators lack knowledge of applicable laws and regulations. Many, however, are individuals and businesses who are, or should be, aware of the applicable laws due to their manufactured home industry business involvement; however, they rely on "interpretations" which they believe allow them to operate in a manner contrary to HCD's interpretations of these laws.

Common recurring problems include multiple purchases and sales without HCD's manufactured home occupational license, sales by persons without legal title, failures to transfer title after sale, sales of salvaged units or units not meeting minimum physical standards, transfers of substandard units without adequate disclosure, and failure to pay or disclose outstanding taxes and fees at the time of sale. In some cases, victims have the right to sue for damages; in other cases, HCD investigators may assess civil citations. In severe cases, public prosecutors may seek civil or criminal penalties for willful violations. This Information Bulletin reminds interested parties of applicable laws and regulations and HCD's legal interpretations of those standards.

STATUTORY AND REGULATORY BACKGROUND

HCD's authority and responsibility to regulate the purchase, sale, and leasing of manufactured housing units is in the Manufactured Housing Act of 1980 ("MHA"),

Division 13, Part 2, Chapter 7 (commencing with Health & Safety Code ["HSC"] section 18045), "Occupational Licenses", and includes the definitions, standards, procedures, and enforcement authority covering manufactured housing standards and registration and titling in the balance of the MHA, HSC sections 18000 through 18124.5. The Occupational Licensing regulations are located in Title 25, California Code of Regulations ("25 CCR"), Chapter 4 (commencing with section 5000).

The general rule is that an occupational license is required for persons involved in the purchasing and selling of manufactured housing units. A "manufactured home dealer" ("dealer") is a person who, among other things, does the following:

For commission, money, or other thing of value, sells, exchanges, leases, buys, offers for sale, or negotiates or attempts to negotiate a sale or exchange of an interest in a manufactured home, mobilehome..., or induces or attempts to induce any person to buy or exchange an interest in a manufactured home, mobilehome, ... and who receives or expects to receive a commission, money, brokerage fees, profit, management fees, or any other things of value from either the seller or purchaser of the manufactured home, mobilehome.... (HSC section 18002.6(a)(1)).

Among the exceptions from the licensing requirement are the following activities most relevant to park owners and operators:

(5) Persons not engaged in the purchase or sale of manufactured homes, mobilehomes, as a business.
(6) Persons disposing of manufactured homes, mobilehomes, ... acquired for their own use or for [their] use in a business of acquiring, leasing, or selling manufactured homes, mobilehomes, ..., if the manufactured homes, mobilehomes, ... have been so acquired and used in good faith and not acquired or used for the purpose of avoiding the provisions of this part._
(7) Persons licensed as real estate brokers...pursuant to Section 10131.6.of the Business and Professions Code, (HSC section 18002.6(b)(5), (6) and (7))._

Because the laws are fairly clear, and because no HCD regulations more clearly define when various transactions may occur without occupational licensing, HCD investigators exercise their judgment when deciding to issue a citation (HSC section 18021.7) or to pursue civil or criminal prosecution (HSC sections 18020.5, 18021.5, or 18021.6) using a case-by-case factual analysis based on their interpretation of the law's' language. However, under California law, interpretations of state administrative agencies are entitled to great weight when construing statutory and regulatory provisions within their authority.

LEASING OF PARK-OWNED MANUFACTURED HOUSING UNITS

HSC section 18002.6(a) expressly requires an occupational license for "leases" of manufactured housing units, but it has been HCD's legal interpretation of this law for many years that the reference to "leases", which initially came from the Department of Motor Vehicle's occupational licensing laws transferred to HCD in 1980, refers to independent leasing businesses such as car leasing agencies, not park operators leasing as part of the park's business. Thus, a park operator, or a park employee working on behalf of the park and not independently, is not required to obtain a manufactured home occupational license prior to leasing if it does the following:

- obtains ownership of a manufactured housing unit in a park by any means (e.g., not limited to warehouse lien sales or abandonment judgments), and
- transfers the home into the park's name within 20 days of acquisition as required by HSC section 18100.5, and
- retains ownership to rent/lease it to a park tenant (e.g., doesn't sell it).

This narrow exception to the licensing requirement does not cover transactions which include a lease-to-own option or option to purchase, or transactions in which the sale includes the park operator retaining ownership as a security interest until the unit is fully paid for. The exception also does not cover a park manager or other park employee purchasing, leasing, or selling manufactured housing units independently of the park operator (because that activity is more like an independent car leasing agency rather than the park operating within the business constraints of the park).

A variation on this issue is whether or not a park employee operating independently from the park operator or an investor unrelated to the park operation who purchases and leases one or more units in a park, or in several parks, must obtain an occupational license. This activity generally requires an occupational license because it appears to be clearly within the "leasing" definition in HSC section 18002.6(a) and not expressly excluded in HSC section 18002.6(b), but mitigating facts may exist.

Park operator lease transactions which are exempt from the MHA are subject to a number of other laws, including but not limited to portions of the Mobilehome Residency Law (Civil Code sections 798, et seq.); the Resale Disclosure Law (Civil Code section 1102.6d); HSC section 18025 which makes it unlawful to rent or lease any manufactured housing unit with defective structural, fire safety, plumbing, heat-producing, or electrical systems; and HSC section 18550 which makes it unlawful for any person or park to permit occupancy of any manufactured housing unit with specified defective conditions or without current registration. A park operator also may be liable for damages if an employee or manager independently purchases and leases units, as well as for damages for other violations of these related laws.

PURCHASING AND SELLING BY PARKS OF MANUFACTURED HOUSING UNITS

HSC section 18002.6(a) is clear that the general rule is that purchasing and selling manufactured housing units for commission, money or other things of value requires occupational licensing. The question is, if a park operator or employee purchases and sells manufactured housing units, is that activity exempted by any exemptions in HSC section 18002.6(b)? A case-by-case factual analysis is necessary to determine if an exemption is appropriate. HCD's experience in this area also provides some guidance.

First, the narrow exemption in HSC section 18002.6(b)(5) exempts "persons not engaged in the purchase or sale of manufactured homes, mobilehomes, as a business"; it has long been HCD's legal opinion that acquisitions (and subsequent sales) by a park operator resulting from either a warehouse lien or an abandonment judgment, e.g., an "involuntary" acquisition, is an indication that the park operator is "not in the business" of acquiring manufactured housing units but merely is fulfilling park operation business requirements. However, this is not an automatic exclusion: if sales are being investigated to determine whether or not an occupational license is required, the park

operator could be asked or audited to provide proof (other than a statement under penalty of perjury to register an acquired home) that the warehouse lien sale actually occurred as required by law and/or that a court actually issued an abandonment judgment. In addition, this exemption likely does not cover a park manager or other park employee acting independently of the park operator since the facts generally cannot support the activity of buying and selling manufactured housing as part of the business of being an employee managing a park.

Is an occupational license required if a park operator sells a manufactured housing unit acquired by the park from a homeowner as a bona fide "distress sale"? The general rule: a license is required and "distress sales" are not part of the exemption cited above. But, a case-by-case factual analysis may be required to determine the extent of the violation: whether this is considered part of a "business" of purchasing and selling manufactured housing units; whether the distress sale was forced by the park operator's bad faith acts or omissions as opposed to being caused by independent circumstances; etc. The factors an investigator or prosecutor also might consider include, but are not limited to, the frequency of such transactions; how the selling homeowner, if located, characterized the transaction; whether the park owner has a manufactured home dealer's license but treated the sale as a non-dealer transaction; whether the park operator handled the sale through a Bureau of Real Estate (BRE) license; how the purchase and subsequent sale were synchronized; and how the buyer perceived the transaction.

Do sales occurring after a literal walk-away or nonjudicial abandonment by the prior homeowner require an occupational license? Does it make any difference that the park's intention was to recoup back rent and release the space? An occupational license is required because this option does not fit within the exemption discussed above. In addition, it is illegal for several reasons to resell that home, including that the park owner has no right to sell a manufactured home without <u>legally</u> obtaining ownership (as opposed to mere possession) by a lien sale, execution sale, or abandonment judgment. Thereafter, it must be registered to the park or park owner (if the park purchased it at the sale) within 20 days after legal transfer of ownership in order for it even to be sold. Selling property owned by another person has a number of legal issues besides the occupational licensing statutes, and the selling park operator may have to deal with the purchaser's inability to acquire legal title through registration and titling.

A common assertion is that no license is required because the park operator or employee acquired the manufactured unit "as a private person" and is selling it "as a private person". Obviously, individual private sales are both common between park homeowners, and permitted without an occupational license pursuant to HSC section 18002.6(b)(5) and (6). However, a prosecutor or investigator evaluating the legality of a seller claiming to be making multiple "private sales" may exercise its discretion and seek all the civil and criminal penalties prescribed by the occupational licensing laws if a case-by-case factual analysis indicates that the seller is "in the business of" manufactured housing purchasing and sales and is not covered by an exclusion. The factors to be considered include, but are not limited to, whether it is being acquired for the buyer's or buyer's family residence, as well as those discussed above.

If a seller has both a manufactured housing occupational license and a BRE license, there currently is no express specific requirement to transact the sale using the

manufactured housing occupational license; sales under a BRE license are excluded from the dealer licensing requirement (HSC section 18006.2(b)(7) as long as the sale is consistent with Business & Professions Code section 10131.6 and real estate sales best practices. However, if the sale were advertised with the MH dealership's name, the sale should be transacted under the dealer requirements.

If a park finances a homeowner's purchase of a home and that home subsequently is acquired by a park operator as a result of foreclosure, is the resale of that home by the park exempt from the licensing requirements? It is not expressly exempt, since the foreclosure exemption in HSC section 18002.6(b)(1) only covers insurance companies, banks, savings and loans, finance companies or public officials. Thus, the investigator or prosecutor exercises its discretion in the same type of case-by-case factual analysis would be undertaken by HCD investigators or a prosecutor to determine whether the seller was required to be licensed. For example, if the park were in the business of commonly providing financing, as opposed to predatory sales and financing to lure buyers into buying (which itself would be subject to licensing), the business exemption rather than the financing exemption might be the basis for no prosecution.

Finally, there is a common misperception that a small number of sales per person or per year (e.g., a "de minimus exception") is exempt. No such exemption exists in statute or regulations. Thus, the investigator or prosecutor would exercise its judgment to evaluate the situation on a case-by-case basis and then to determine if one sale, if conducted as a business consistent with HSC section 18002.6(a), should trigger the licensing requirement and the civil and/or criminal penalties.

These sales transactions, whether or not exempt from licensing, are subject to other laws, including but not limited to HSC section 18025 (unlawful to sell or offer for sale any manufactured housing unit with defective structural, fire safety, plumbing, heat-producing, or electrical system); and HSC section 18550 (unlawful for any person or park to permit occupancy of a manufactured housing unit with specified defective conditions or not properly registered).

PENALTIES

Both the MHA and the MPA authorize a variety of administrative, civil, and criminal penalties for the violations referred to in this Bulletin. Various acts or omissions may result in judicial orders for civil penalties (as well as restitution or punitive damages in certain circumstances) as well as misdemeanor sentences (incarceration and fines up to $2,000) for criminal violations. For example, a judge could order civil penalties of up to $2,000 for each violation or for each day of a continuing violation for violating any of the occupational licensing (e.g., acting as a dealer without a license) or titling and registration rules or regulations. Where a person has, but is misusing, an occupational license, that license may be subject to suspension or revocation as well.

In addition, HCD inspectors may issue citations of up to $100 for each violation and up to $250 for each subsequent violation of the same prohibition for violations involving the following: titling and registration or occupational licensing such as acting as a dealer when a license is required (HSC section 18026); failing to provide smoke alarms by the date of sale (HSC section 18029.6); failing to comply with escrow and documentation

requirements if acting as a dealer (HSC sections 18035, 18025.1); various violations of registration, titling, and taxation (HSC section 18059); causing any person to suffer loss or damage by reason of fraud or fraudulent representations in the sale or purchase of a manufactured home (HSC section 18060.5(c); and numerous other violations listed in HSC section 18021.7. Since civil citations relate to each "violation", and not "each transaction", there could be multiple citations and penalties issued for even one illegal transaction if there were multiple violations.

SUMMARY AND CONCLUSION

Many manufactured housing transactions currently occurring involve violations of State laws and regulations, and should be handled by HCD- or BRE-licensed sales personnel. As a result, California consumers are being deprived of various rights and protections including adequate disclosures, clear purchase/sales agreements, fair escrows, and decent and safe manufactured homes and mobilehomes. In many cases, these problems occur because of lack of information regarding state requirements; in other cases, erroneous interpretations of state requirements are taking place with potential civil and criminal consequences to those involved as well as financial harm to victims purchasing the homes. Park operators selling or leasing park-owned manufactured housing should consult with their attorneys as to the rights and obligations of both the lessors or sellers and the lessees or buyers, and other park employees also should consult as appropriate regarding their rights and obligations.

Information regarding the Occupational Licensing requirements, and the laws and regulations governing both manufactured housing units and mobilehome parks, is located on HCD's website, www.hcd.ca.gov/codes under "Occupational Licensing", "Manufactured Homes", and "Mobilehome Parks". Direct specific questions regarding this Bulletin or whether specific activities require licensing to the Occupational Licensing Program Manager at (916) 323-9803 or by email through the HCD website.

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