



March 21, 2017

Mr. Jim Gray, Director
Duty to Serve Program
Federal Housing Financing Agency
400 7th St. SW
Washington, DC 20024

Via email: dutytoserveStakeholders@fhfa.gov

Dear Mr. Gray,

The purpose of this submission is to provide the Federal Housing Finance Agency (FHFA) and the Government Sponsored Enterprises (GSEs) a detailed roadmap for structuring a manufactured housing chattel lending program in Florida. The statutory and regulatory requirements for manufactured housing communities in Florida provide the necessary homeowner and lender protections to support a successful GSE-sponsored manufactured housing chattel lending program. While the information contained in this submission is comprehensive, it is not exhaustive. The Florida Manufactured Housing Association and its members are committed to working with the FHFA and the GSEs to answer any follow-up questions and to provide additional information.

I. Florida Industry Overview and Underserved Markets

The need for a secondary market for chattel manufactured home loans in Florida has been well document. Over 2 million people reside in approximately 850,000 mobile and manufactured homes. This is close to 12 percent of all occupied single-family homes in Florida. A more important number is that 55 percent of manufactured homeowners in Florida have an annual income of less than \$30,000. These are the very low-, low-, and moderate-income families that “Duty to Serve” was intended to serve.

Two distinct underserved market populations in Florida will benefit from a chattel loan program. The first group is homeowners residing in age 55+ manufactured home communities. Many of these people have excellent credit (FICO scores of 750 or above), but they are required to pay much higher rates than similarly qualified homeowners with a conventional mortgage. A second group is low-income families seeking to purchase a home for \$20,000 or less. Currently, there is no financing available for these very-low income families. The lack of a chattel lending program for manufactured housing affects younger and older families, but Florida’s older population is most acutely impacted. Florida’s population of resident age 65 and over age is the fastest growing population sector and is estimated to reach over 5.5 million people, close to 25 percent of the State’s total population, by 2030.

II. Florida Statutory Requirements and Lender Agreement Provisions Supporting a GSE-sponsored Secondary Market Program

Chapter 723, Florida Statutes, Sections 715.10 to 715.111, Florida Statutes, Sections 83.42 and 83.49, Florida Statutes and Rules 61B-29 – 61B 35 and 61M-1, Florida Administrative Code regulate the operation of mobile home and manufactured housing communities in Florida. Florida has some of the most comprehensive industry landlord-tenant laws and regulations in the country. Florida's existing statutory and regulatory framework supports a successful GSE-sponsored chattel lending program. Under Florida law a lender and a community owner can enter into a contract to enhance lender protections. This agreement should be negotiated at the time that loans are extended for financing a purchase of a home in the mobile home park. Lender Agreements are specifically addressed in Chapter 723.086, Florida Statutes.

Below is a listing of homeowner and lender requirements and the applicable statutory provisions that support a GSE-sponsored chattel lending program.

1. The lease term must be for a minimum of one year and renewable absent good cause. Good cause include: non-payment of rent, conviction of a felony and a significant violation of community rules.

Section 723.031(4), Florida Statutes, requires that all rental agreements in mobile home parks are for a minimum term of one year. The lease term is essentially for the lifetime of the owner of the home. The owner can be evicted for very limited reasons. Eviction is statutorily limited to claims based upon non-payment of rent, acting in a manner that endangers the life, health or safety of the community residents or employees, and for two violations of the same rule or regulation of the community in a twelve month period. See, section 723.061(1)(a) – (c), Florida Statutes.

The purchaser of the home has the right to assume the existing rental agreement of the seller of the home. See, section 723.059(3), Florida Statutes.

2. A community owner must provide a minimum 30-day notice prior to a rent increase.

The community owner, in Florida, must provide a 90 day notice of a lot rent increase. See, section 723.037(1), Florida Statutes. In addition, that same statute requires a 90 day notice prior to any change in the rules and regulations and any reduction in services or facilities. In addition, section 723.031(5) requires that all rental agreements must be for a minimum term of one year coupled with the requirement for one rental increase in an annual period, means that the 90 day notice for most home owners in the state of Florida occur at the same time.

3. There must be at least a five-day grace period for rent payments, and the tenant must have a right to cure a default on rent payments.

Florida requires a 5 day demand for payment of rent after the grace period set forth in the rental agreement ends. Most home owners are given a 5 day grace period to make payments prior to the payment due date. See, section 723.061(3), Florida Statutes.

4. If the tenant is evicted for non-payment of rent, the homeowner has the right to:
 - a. Lease their home under the following conditions:
 - i. The home meets minimum community standards.
 - ii. A prospective homebuyer submits an application for tenancy and is approved by the community owner prior to occupying the home.
 - iii. The home is leased within 90 days of the eviction.
 - iv. The home owner pays past due rent prior to leasing the home.

There is no such requirement under Florida law. If a home owner fails to pay rent in a timely manner, it is considered a breach of the rental agreement and the mobile home park owner is entitled to an eviction. The eviction can be terminated by the tenant paying all fees and costs associated with the eviction, as well as the past due rent.

- b. Sell their home in place without relocating it from the rental site under the following conditions:
 - i. The home meets minimum community standards.
 - ii. A prospective homebuyer submits an application for tenancy and is approved by the community owner prior to occupying the home.
 - iii. The home is actively listed for sale and sold within 90 days of the eviction.
 - iv. The homeowner agrees to pay past due rent when the home is sold.
 - v. The lender provides the community owner a priority lien for the payment of past due rent when the home is sold.

A tenant being evicted for non-payment or for bad acts, has the right to sell their home to a qualified buyer, who must be approved by the community management, typically for credit and criminal background. Eviction actions take approximately 60-90 days to process from filing to service of the writ of possession.

5. If the tenant's home is repossessed by the lienholder, the lienholder has the right to:
 - a. Sell the home in place without relocating it from the rental site under the following conditions:
 - i. The home meets minimum community standards.
 - ii. A prospective homebuyer submits an application for tenancy and is approved by the community owner prior to occupying the home.
 - iii. The home is actively listed for sale. If the home is listed with the community owner, the community owner agrees to sell the home for a reduced sales commission and provide the prospective tenant any published rent incentives available at the time.
 - iv. The community owner will maintain the rental site at his or her own expense.

- v. The community owner will perform necessary home maintenance or repairs for the lienholder and will invoice the lienholder for the cost only.
- vi. The lienholder will not be required to pay the community owner rent for up to six month, unless the net proceeds from the sale of the home exceed the loan payoff amount. If the home does not sell within six months, future rent payments will be at the discretion of the community owner.

Under Florida law a lender and a community owner can enter into a contract to do all of the things in the above criteria upon possession of the manufactured home by the lender. This should be negotiated at the time that loans are extended for financing a purchase in the mobile home park. See, section 723.086, Florida Statutes.

6. The community owner must allow a "for sale" sign not greater than 24" x 18" to be placed in the window of the seller's home.

Under Florida law, the community owner cannot make or enforce any rule, regulation, or rental agreement that denies or abridges the right of any mobile home owner to sell his or her mobile home with a community. See, section 723.058(1), Florida Statutes. The community owner cannot prohibit the home owner from posting a "For Sale" sign in the window. The community owner can regulate placement on the premises, and can limit size, character and placement of "For Sale signs subject to properly promulgated reasonable rules and regulations. See, section 723.058 (1), Florida Statutes.

7. The community owner cannot prohibit the formation of a homeowners' association and the rights of residents to peaceably assemble in an open public meeting for any lawful purpose at reasonable times and in a reasonable manner in the common areas of the community.

Under Florida law, the community owner cannot prohibit the formation of a homeowners' association and the rights of residents to peaceably assemble in an open public meeting for any lawful purpose at reasonable times and in a reasonable manner in the common areas of the community. See, sections 723.054, 723.055, and 723.056, Florida Statutes.

8. The community owner must notify the tenants at least 120 days in advance of the sale of the manufactured home community if the sale will result in a change in use of the land comprising the mobile home park. The tenants, through their homeowners' association, may match any bona fide offer for the sale and the community owner must consider the tenant's offer and negotiate with them in good faith.

Under Florida law, the community owner must notify the tenants in advance of an offer to sell the manufactured home community for any reason. See, section 723.071(1), Florida Statutes. The tenants have 45 days from the date of the notice to enter into a contract to purchase the

community under the same terms and conditions as offered, or to negotiate different terms and conditions. See, section 723.071(1), Florida Statutes.

If the sale will result in a change in use of the land comprising the mobile home park, the tenants must be offered an opportunity to purchase the community. The tenants, through their homeowners' association, may match any offer for purchase under the same terms and conditions. See, section 723.061(1)(d), Florida Statutes.

III. **Process for Repossessing and Reselling Manufactured Homes Securing a Chattel Mortgage in Florida**

In Florida, a chattel loan secured by the manufactured home can be recorded as a lien against the title at the time of purchase. This outline deals with the Florida law utilized to secure the protection of that asset in the event of default by the borrower.

Generally, the process for repossessing and reselling manufactured home ("Home") securing a chattel loan ("Loan") requires:

- sending the borrower ("Borrower") a notice of default and right to cure ("Notice of Default");
- gaining possession of the Home either by voluntary surrender or court order;
- if not a voluntary surrender, filing an action in the county where the home is located seeking either foreclosure or replevin;
- if a foreclosure action, sending the borrower a notice of repossession, notice of right to reinstate, notice of right to redeem and notice of private or public sale;
- if a foreclosure action, proceeding through hearing to final judgment;
- if a replevin, securing a writ of replevin to take possession of the property and to final judgment;
- if a mortgage foreclosure, holding a public sale;
- if a replevin, titling the home in the lender's name as a repossessed home. The home can then be sold by the lender.

1. Recovery of Property by Writ of Replevin and Judgment

Recovery of a manufactured home under Florida law is typically through an action for replevin, under sections 78.01 – 78.21, Florida Statutes. The remedy of replevin is not the only method of obtaining possession of property. See, *159 East, Inc. v. Margolis*, 702 So. 2d 286 (Fla. 4th DCA 1997), holding that while improper use of prejudgment replevin proceedings precluded issuance of a replevin writ, a landlord could enforce its statutory lien to avail itself of

its possessory rights to personalty. *See also, KDC Financial Corporation v. American Rock, Inc.*, 578 So. 2d 757 (Fla. 3rd DCA 1991), where it is noted that voluntary surrender and peaceable repossession remain alternative remedies for obtaining possession of property.

A lien holder whose lien is based upon a promissory note secured by the manufactured home must have a possessory right upon default in order to seek a writ of replevin. In the absence of such language within the promissory note, the lien holder may bring an action for breach of contract and foreclosure.

2. Mortgage Foreclosure and Judgment

If the governing documents do not provide a remedy of possession upon default, the replevin statute may not be used. In the absence of such language in the governing documents, the lender must file a mortgage foreclosure action for personalty.

An action for foreclosure of the security interest as a mortgage is governed by Chapter 702, Florida Statutes. The statute requires a notice of foreclosure proceedings, proof of the obligation and default, final judgment and then a deficiency judgment.

3. Notice of Default

A Notice of Default is required by Florida law for foreclosure of a mortgage on personal property and by federal law for loans made under the authority of Section 501(a) of the Depository Institutions Deregulation and Monetary Control Act, 12 U.S.C. § 1735f-7a and 12 C.F.R. Part 190 ("DIDA"). (DIDA preempts state law usury ceilings and, subject to conditions, limits on any fees that would be classified as finance charges under the Truth in Lending Act.)

Florida law requires a Notice of Default under the replevin statute. The notice requirement is not stated in the statute, but is based upon case law. It has been held that plaintiff must make proper demand upon a defendant before bringing a replevin suit. *See Security Underwriting Consultants, Inc. v. Collins, Tuttle Investment Corp.*, 173 So. 2d 752 (Fla. 3rd DCA 1965).

The Notice of Default is typically sent out following the expiration of the late charge grace period. If the Borrower fails to cure, and will not agree to a voluntary surrender of the Home, the lender must obtain possession by court order, which is then executed by the local sheriff. Borrowers also may surrender or abandon their homes.

4. Replevin – Prejudgment Writ and Complaint

There are two different approaches used in the replevin statute. The "Prejudgment Writ of Replevin" in section 78.068, Florida Statutes, allows for the possession of the property by the lender pending final judgment. As discussed at some length by the court in *Prestige Rent-A-Car, Inc. v. Advantage Car Rental and Sales, Inc.*, 656 So. 2d 541 (Fla. 5th DCA 1995), there are two

separate and distinct procedures for obtaining a replevin writ in Florida prior to entry of a final judgment.

The procedure set forth in section 78.068 allows the replevin writ to be issued without notice to the Borrower. There is also a procedure for obtaining a replevin writ through a show cause hearing. The tradeoff for obtaining the writ on an ex parte basis is that the applicant must post a bond. *See, Comcoa, Inc. v. Coe*, 587 So. 2d 474 (Fla. 3rd DCA 1991). However, a party seeking a writ of replevin can forego posting a bond by utilizing the notice procedures under section 78.065 which allow for an order to show cause, and a hearing in accordance with the provisions of section 78.067. The typical replevin action in Florida follows the procedure for a show cause hearing. The Plaintiff must file a complaint, seeking an order to show cause, wherein notice is provided by the court to the defaulting Borrower and the court holds a hearing to determine possession pending final judgment.

There are protections after the writ has been issued authorizing the Sheriff in the county where the property is located to execute on the writ, regardless if the property is in the possession of a third party or is otherwise removed from the property and stored in another location.

5. The Borrower's Rights to Cure, Reinstate and Redeem

In a recovery of the manufactured home pursuant to the mortgage foreclosure statute, the lender must send the borrower a notice of repossession, a notice of right to reinstate and a Notice of Disposition (notice of sale) and right to redeem the repossessed Home. These four notices can be combined into one document, so long it is timely sent. Virtually all chattel lenders afford Borrowers in Florida the right to reinstate, preferring to avoid a repossession sale.

Borrower's Right to Cure a Default	Arises	Must be Exercised	How	Ends
Cure	Before repossession	Before any legal action to repossess the Home or accelerate the balance due on the Loan; but the Notice of Default and the Right to Cure is excused in some circumstances.	By curing the default(s) described in the Notice of Default	Prior to the expiration of the cure date set forth in the Notice of Default.
Reinstate	After repossession	Any time after the Notice of Sale is sent	By curing the default(s) described in the Notice of Sale	Upon completion of the repossession sale
Redeem	After repossession	Any time after the Notice of Sale is sent	By paying entire balance due on the Loan	Upon completion of the repossession sale

Under Florida's replevin statute, the Borrower has the right to cure after initial notice, or redeem at any time prior to final judgment for the amount of the lien and costs. Attorney fees are available if provided for in the financing documents.

6. Timing of a Sale

In a mortgage foreclosure, Florida requires a Notice of Sale be given, including the date the repossession sale may occur.

Under the Florida replevin statute, the lender takes title to the home as a repossessed home. The home can then be marketed and sold by the lender.

7. Documents Required for Liquidation

Under the replevin statute, the Florida title is issued as a "repossessed" title to lienholder's name.

In the mortgage foreclosure action, there is a public sale held at which the lender may bid up to the judgment amount. Upon completion of the sale, the title is converted to the lender's name as a "repossessed" title.

8. Transferring Title

After either a public sale or a private sale the Home a "Statement of Sale" and an affidavit of private sale or affidavit of public sale should be completed, and delivered to the buyer.

9. Home Subject to a Certificate of Title

The method of processing an application for title for a repossessed Home depends on three factors, which vary by state, who has the original certificate of title, the Borrower or the lender Secured Party?

- The Secured Party has possession of the original certificate of title in Florida, if the title was not filed in an electronic format for title.
- In Florida, recent title records are kept in electronic format in a database maintained by the state — the state does not issue paper titles if an electronic format title has been recorded.
- Florida allows the Secured Party to act as retailer for the sale of the repossessed Homes without a retailer license.

10. Deficiency Judgment

Under the mortgage foreclosure statute, the lender is entitled to a deficiency judgment on owner occupied residential property not to exceed the difference between the judgment amount and the fair market value of the property on the date of sale.

IV. **Community Underwriting**

The quality of the community where the home is located is an important consideration. Home values and the ability to resell a home in place are important safeguards for lenders. These safeguards can be better understood and measured by evaluating each community before doing business. While there is a broad range of sizes, location, ages and quality of communities, each community must be evaluated based on how it measures up to local market factors and industry standards.

Below is a list of factors that lenders should consider prior to making loans in a community. While each factor should be considered, some factors carry more weight than others.

- a. Understand the broader housing market in relation to the manufactured housing market.
 - i. Complete a "Housing Cost Comparison" analysis that evaluates the cost to live in an apartment vs a single-family home-vs. a land lease community. Consider similar amenities; square footage; bedroom bath configuration. Is the land/lease option a better housing value?

- ii. Look at market demand for manufactured housing and single family homes along with apartment occupancy in the market.
 - iii. What is the overall health of the market; time on market for home sales; unemployment, etc.?
 - iv. Examine the overall location; access to shopping, schools, etc.
 - b. Understand the characteristic and unique features of the community. This can be done by employing the "Community Attributes System" or by assessing the features of the community. The following criteria are used to rate communities.
 - i. Quality and quantity of amenities
 - ii. Quality of housing stock (age; single vs. multi-section; appurtenances)
 - iii. Size of home site i.e. density
 - iv. Location to conveniences.
 - v. Unique aspects e.g. water front.
 - vi. Public vs. private utilities.
 - vii. Quality of management; rule enforcement.
 - viii. Entryway components
 - ix. Infrastructure (sidewalks, storm sewer, curb and cutter, onsite parking).
 - x. Services included in the rent (lawn mowing, 24-hour security gate or guard, etc.
 - c. Rent comparison to comparable MH communities in the area. Is the community rent within market? Adjust rents for services included in the rents; water, sewer, trash, lawn mowing, cable TV, etc. to determine the "net rent" to allow for a fair comparison between the comps.
 - d. Manufactured home resale history. What are the average resale prices? How long does a home stay on the market? How many homes are listed as a percentage of the total number of sites? (7% is a guide).
 - e. Review the community lease.
 - i. Does the lease incorporate the minimum lender requirements? (see Section ii. , Florida Statutory Requirements and Lender Agreement Provisions Supporting a GSE-sponsored Secondary Market Program
 - a. Is there a fixed escalator included in the lease (e.g. CPI or a minimum, maximum)?
 - f. What is the occupancy history of the community? Has it remained stable or improved?
 - g. Quality of the housing stock. Percentage of single vs. multi-section homes. Appurtenances, carports, screen rooms, garages, storage rooms.
 - h. If there are leases homes, what is the percentage compared to owner occupied homes?
 - i. Review the community rules. Are they being well enforced?
 - j. What's the history of repossessions? Has the owner purchased them? Have they taken back any home titles surrendered by a resident?
 - k. Quality of comparable community amenities; lot size; features lakes water front.

V. Underwriting the Community Owner and Management

Underwriting the community will provide a good understanding of the community's ownership and management, but further examination will ensure that the community owner understands and supports

the expectation of the lender. An agreement between the lender and community owner, which was discussed in Section II, 5, documents of expectations of each party. Additional due diligence by the lender may provide a more complete picture of ownership and management. Some of the things to consider are:

- a. Have there been resident complaints to the state regulatory agency from residents.
- b. Any outstanding local agency violations; health department, zoning, etc.
- c. History of the operator. Have they had any community loans foreclosed? What is their capital expenditure history? Does the owner simply maintain the community or do they upgrade services and amenities? What's their overall experience in the MH business?
- d. Will the community owner coordinate their eviction for non-payment of rent with the lender's/services repossession process?
- e. Is the community owner willing to enter into a lender agreement?
- f. Is there an on-site manager to help control and manage the repossession/foreclosure
- g. Is the community owner willing to inspect the home for needed repairs and coordinate repairs to the home to facilitate a sale?
- h. Is the community owner willing to provide rent and/or sales commission concessions to the lender
- i. Would the community owner be willing to purchase any repossession? Is there an opportunity for the community owner to either assume the loan or for the lender to make a loan with the community owner to purchase the home?

We also believe that Florida has the requisite statutory and regulatory framework in place to ensure a successful GSE-sponsored chattel loan pilot program. The Florida Manufactured Housing Association is committed to working with the GSEs and providing the support necessary to assist in the development of a safe and sound chattel manufactured home loan program.

Sincerely,



James R. Ayotte
Executive Director