

Comments Concerning Duty to Serve Listening Session: July 13, 2022
Improving Enterprise Support For Manufactured Housing Tenant Protections

Philip W. Schulte

August 15, 2022

Thank you for holding these listening sessions which are one of the best ways to keep communication going and spreading ideas. I am Philip Schulte, a retired HUD employee who served as a senior manufactured loan specialist and Chief of Compliance/Acting Director of the Manufactured Housing Construction and Safety Standards Division. I am also the President of a condominium association which self manages the condominium project and so I am familiar with the responsibilities of managing and maintaining a collective housing arrangement. Today, I want to give my perspective on how to enhance the protection of manufactured home community residents (tenants). My comments are solely my own rather than those of HUD or anyone other organization.

Tenant protections in manufactured home communities was one of the four activity areas that the Enterprises can elect to cover in their Duty to Serve Plans (12 CFR 1282.33(b) and (c). These lot tenant protections can be divided into three categories (see Table A). According to Freddie Mac’s 2019 study of state laws, no State provides all of these protections for leasehold community tenants.

Table A: Lot Tenant Consumer Protections

Type of Consumer Protections	Nbr. of States Providing This Protection		
	Yes	No	Uncertain
I. <u>Borrower Lease Practices</u>			
1. One Year Lease Term	13	37	
1. One-year renewable lease term unless there is good cause for non-renewal	24	26	
2. 30-day written notice of rent increases	32	18	
3. 5-day grace period for rent payments and the right to cure defaults on rent payments	13	37	
4. Right to Cure Default on Rental Payments	41	9	
II. <u>Business Practices</u>			
8. Right to receive at least 60 days’ notice of planned sale or closure of the manufactured housing community	5	17	28
III. <u>Sale and Repossession</u>			
4. Right to sell the manufactured home without having to first relocate it out of the community	29	15	6
5. Right to sell the manufactured home in place within a reasonable time period after eviction by the manufactured housing community owner	0	42	8
6. Right to sublease or assign the pad site lease for the unexpired term to the new buyer of the tenant’s manufactured home without any unreasonable restraint	13	32	5
7. Right to post “For Sale” signs	17	33	

III. Recognizing the Progress that the Enterprises have made in their DTs 2022-24 Plans

Because manufactured home community residents do not have these protections by law, it is very important that both Enterprises have committed in their Duty to Serve Plans for 2022-2024 to provide all eight of the tenant protections. The Enterprise's expected loan purchases over the three year period are expected to total over 3 billion dollars and cover nearly 18,000 home spaces. This is very significant progress toward the goal of enhancing consumer protection.

IV. Government Actions Impacting the Real Estate Industry

The question is how can the Enterprises encourage improved consumer protection in leasehold communities. Government has three main ways to change practices in the real estate industry:

- Legal Mandates and standards (laws, regulations, model documents and best practices)
- Economic costs or rewards (fines, taxation, incentives, recognition of superior conduct)
- Disclosure of disfavored aspects of a transaction under the assumption that consumers making informed choices will ultimately re-shape market behavior in the desired direction

Also, a fourth method of achieving positive change is to advance Environmental, Social and Governance (ESG) goals. For example, Fannie Mae has stated that it is "dedicated to improving access to the social benefits of affordable homes and rentals for families across the country. To do so means expanding access to reliable home buying and renting resources to help an increasingly diverse generation of home buyers and renters make informed decisions." (emphasis added:

[https://www.fanniemae.com/about-](https://www.fanniemae.com/about-us/esg/social#:~:text=At%20Fannie%20Mae%2C%20we%20are,and%20renters%20make%20informed%20decisions.)

[us/esg/social#:~:text=At%20Fannie%20Mae%2C%20we%20are,and%20renters%20make%20informed%20decisions.](https://www.fanniemae.com/about-us/esg/social#:~:text=At%20Fannie%20Mae%2C%20we%20are,and%20renters%20make%20informed%20decisions.))

Freddie Mac has instituted its own ESG program including Social bonds to "finance multifamily properties that are: (i) affordable to an underserved population; (ii) owned and operated by targeted sponsors and are affordable to low- to moderate-income families; (see

<https://mf.freddiemac.com/docs/social-bonds-framework.pdf>).

Finally, Equity lifestyle Properties Inc. , the largest community owner has "formed an Environmental, Social and Governance Taskforce ("ESG Taskforce") to support our on-going commitment to environmental, social, governance and other public policy matters"(see <https://equitylifestyle.gcs-web.com/static-files/f8cc9265-6c62-47fc-8392-32d1ec930e4e> human resources). Sun Communities also has an established an ESG program that includes the "important opportunity of providing access to affordable and sustainable housing" (see <https://suncommunities.gcs-web.com/static-files/98fee37c-5994-41b1-a841-50e8e203f1b1>). Leading by example can encourage other businesses to consider adding ESG goals like enhanced consumer protections.

V. Legal Mandates and Voluntary Standards

One positive action that the Enterprises could take would be to promote the development of and use of voluntary lot tenant documents by manufactured home community owners. For example, Freddie Mac has adopted the 2021 Model Declaration of Affordability Covenants with Refinance and Resale Restrictions developed by Grounded Solutions Network for the shared equity loan programs (see Chapter 4502 of the Seller Servicer guide). A similar model lease addendum could be developed.

VI. Economic costs or rewards (fines, taxation, incentives, recognition of superior conduct)

1. Financing enhancements for Expanded Consumer Protections

According to Freddie Mac's current 10-K, the average guarantee fee for multifamily mortgages is 42 basis points, an increase of 5 basis points from 2019. The performance of multifamily loans with lot protections could justify considering some lessening of guarantee fees or other charges to encourage more participation.

2. Certification Programs and Recognition of Superior Consumer Protection

There are governmental programs that enhance the minimum government regulatory standards and encourage further progress toward social and environmental goals. For example, in 1997, the Environmental Protection Agency expanded the Energy Star program it began in 1992 to include manufactured and factory built homes.

Over the past 25 years, the program has grown so that as of 2020, more than 3,000 builders, developers and manufactured housing plants are Energy Star Partners, including all of the nation's twenty largest homebuilders. In 2021, There were 123,907 Energy Star homes and apartments built with 30% of manufactured homes being built to the Energy Star specifications.

Also, the EPA and its partners have been successful in making 90% of American households recognize the Energy Star label. EPA has also built other tools such as the energy star portfolio manager which gives participants a score from 1-100 so that they can benchmark their relative performance. Consumer choice of higher energy standard products further encourages businesses to keep enhancing their products. A similar long term effort with a recognized certification should be considered to encourage enhanced consumer protection in manufactured home communities throughout the US.

3. Dialogue with Manufactured Home Community Providers and Owners

The Manufactured Housing Institute's statistics show that there are more than 43,000 manufactured home communities with an estimated 4.3 million home sites. Other data sources (<https://mhphoa.com/investors/>) show the number of homesites and contact information for the largest firms owning manufactured home communities. This data shows a concentration among the top-10 largest manufactured home community firms with over 55% of the total homesites for the top-100 firms. Attending national and regional meetings can be an effective means of encouraging dialogue

Freddie Mac's 2019 study indicated that much of the resistance to change was based on the fear that enhanced consumer protections can adversely affect the ability to sell communities. A symposium can be targeted toward the areas of greatest concern for owners including subleasing of pad rentals under commercially reasonable conditions, selling a home in place, eviction situations and 60 day notice of sale of the park and its impact on the value of the community or the viability of the business.

VII. Disclosure of the Benefits and Risks of Land Leasing

1. Existing Information for Consumers Can Be Expanded

Freddie Mac's web site has a web page on renting homes which covers tenant responsibilities, reporting maintenance issues to landlords and understanding the tenant's rights in the areas of rent increases, security deposits and discrimination. This web page could be expanded to cover the eight consumer protections found in the Duty to Serve regulations. The Consumer Finance Protection Bureau already has a publication called "Ready to buy a Home?" which covers employment stability, downpayments, credit underwriting and financing. A similar publication could be developed targeted to leased land communities.

Many other Federal agencies are involved in the financing of manufactured homes and some of them have publications and web sites to inform consumers about manufactured housing. For example, HUD has a web page that includes links to outside information such as the contact points for all major federal and state manufactured housing organizations and links to the Housing Counseling Clearinghouse. As Fannie Mae noted in its Duty To Serve plan, "Fannie Mae has an opportunity to influence the market. We will continue to identify and work with responsible community owners, highlight best practices and work to improve security for homeowners". Also, there are a number of commercial publications which can be accessed online which give the pros and cons of land leases (e.g., <https://www.bankrate.com/mortgages/land-lease/>, <https://www.triadfs.com/news/the-benefits-of-leasing-a-manufactured-home-site> etc.)

VIII. The Future Of Consumers In Land Lease Communities

1. Manufactured Home Communities

Manufactured home communities are now in extreme demand and land rental prices are accelerating in all classes of residential real estate and given the difficulty of increasing the supply and rising demand. In addition, there are important issues affected manufactured home community resident such as local law or ordinances concerning rent increases, the difficulty of recovering the cost of the home in the event that the homeowner can no longer afford the lot rent and where to go for help if the lot tenant has concerns about the community. Also, other important areas beyond the eight consumer protections such as regulations concerning adding improvements to the manufactured home, community and individual home maintenance responsibilities and how to report concerns about the community.

2. A Secondary Market For Used Manufactured Homes Financed As Personal Property

The announcement by Freddie Mac that it will begin a feasibility study concerning purchasing personal property (chattel) loans is a major step forward to help land lease community residents. The absence of readily available financing for used homes reduces the liquidity of the resale market and what the consumer can expect to recover by selling their manufactured home. Also, having an orderly secondary market based on strong loan origination and servicing standards, proper lender and third party controls will mean fewer defaults and better lender recoveries when they occur. A safe and sound loan program for personal property loans can be developed and should be the subject for a future listening session.