

MANUFACTURED HOME ABANDONMENT PROCESS AND SPECIAL TAX RELATED ISSUES

The purpose of this presentation is to explain the abandonment process regarding manufactured homes in Pennsylvania, and some of the tax related issues in connection therewith.

In 2012, Act 156 was enacted. It amended the Manufactured Home Community Rights Act (“MHCRA”) to provide a process for establishing that a manufactured home has been abandoned. Prior to 2012, abandonments were difficult and cumbersome because there was no applicable statutory provisions that were helpful to community owners. Thus owners were “stuck” with homes on their properties that could not be removed without risk of liability. The purpose of Act 156 was to streamline the abandonment process for manufactured home community owners to reduce costs, and to enhance community aesthetics and the quality of life for community residents.

In Act 156, the State Legislature declared that if the abandonment process is completed properly, all liens and encumbrances, including tax liens, can be divested, and the home can be sold “free and clear” to a buyer, or destroyed by the community owner without the risk of being liable for unpaid taxes and liens¹.

Even though real estate taxes associated with abandoned manufactured homes are divested, the abandonment process directly benefits local taxing bodies because it allows for old abandonment homes to be demolished and replaced with newer ones, and newer abandoned manufactured homes to be refurbished and resold. Under both scenarios, a new taxpayer eventually moves into the community and occupies the site. In addition, the abandonment process does not relieve the owner of the home of personal liability for the taxes, and local taxing bodies are entitled to seek recovery from the owner of the home.

I. ABANDONMENT PROCESS

Act 156 sets forth the procedure for having a home declared abandoned so that it can be sold or destroyed. There are two ways to accomplish an abandonment: a voluntary abandonment

¹ 68 P.S. § 398.10.2(a.1), provides, in pertinent part, as follows:

Notwithstanding any provision of law to the contrary, upon proper disposal of the personal property and the manufactured home, neither the purchaser or the manufactured home community owner, nor any person acting for or on behalf of the purchaser or the manufactured home community owner, *shall be liable for any outstanding taxes or liens of the home.*

(emphasis added).

by the owner of the home, and a judicial process. There are three main steps in the judicial process: (1) obtaining a possession judgment (of the rented lot) in an eviction case, (2) executing on the possession judgment and having the court formally turn over possession of the lot to the community owner, and (3) obtaining a declaration of abandonment. In both the voluntary process and the judicial process, the abandonment is completed by providing notice of intent to dispose of the home, to the owner of the home, any lienholders and the taxing bodies.

Possession

The eviction process is usually handled through the Magisterial District Court². Act 156 requires that the community owner follow through the eviction process to completion, even if the home has been vacated. That is, an order for possession must be issued and served, and on the appointed day, the turnover of possession by the Court's constable must take place.

Abandonment

Act 156 provides two ways for a manufactured home to be declared abandoned: (1) voluntary abandonment or (2) judicial process. In the former, the title owner(s) of the home must complete a Notice of Voluntary Abandonment and provide it to the community owner. The Notice must state that the owner has physically and permanently vacated the home, has no intent to return, and has given up all ownership rights in the home. If the Notice is complete and signed by all title owners, there is no need to proceed with judicial process for a determination of abandonment.

For a judicial determination, a Request for Determination of Abandonment is filed with the Magisterial District Court³. If the home has been vacated prior to the filing of the eviction complaint, the Request for Determination of Abandonment can be filed at the same time as the eviction complaint. Presuming the community owner meets its burden of proof, the Judge will issue an order declaring the home to be abandoned. The factors the Judge will consider are:

- the home has been vacant for at least 30 days, and
- rent has not been paid for at least 30 days, and
- utility services have been terminated, or
- insurance on the home has been canceled, or
- most or all of the personal belongings have been removed from the home, or
- the existence of any other facts that establish abandonment.

² The Court of Common Pleas also has jurisdiction to handle this as well.

³ Or a motion can be filed in the Court of Common Pleas, if the case is pending there.

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Once the Judge issues the Determination of Abandonment, the home owner has ten days to object. If no objection is filed, then the Determination becomes final.

Notice of Intent to Dispose

The final step (in the voluntary and judicial process) is the sending of the notice of intent to dispose of the home. This notice is sent to the title owners(s) by certified mail and/or receipted 1st class mail. It also has to be posted on the home. The notice is also sent (via certified mail) to any lienholder who has a current lien on the home, if known, and each of the taxing authorities who collect taxes on the home (municipality, county and school district).

Once the notice has been sent, the home owner or lienholder has sixty days to remove the home from the lot. If the home owner or lienholder does not do so, then the abandonment process has been completed, and the community owner can: (1) sell the home if it has any value, or (2) destroy and dispose of the home if it does not.

If the home is sold, a bill of sale will be required so that the new owner can obtain a clean title (free and clear of taxes and liens) from PennDOT. Once the title is issued, the new owner becomes liable for all taxes that become due thereafter on the home. If there are proceeds from a sale that exceed the amounts owed to the community for unpaid rents, other lease charges, and the other costs the community owner incurs in connection with the abandonment or sale process, then the excess is used to pay down first, any past taxes that are due and second, any liens on the home, with any remaining funds belonging to the title owner⁴.

II. TAX RELATED ISSUES

Divestment of Real Estate Taxes

Upon the expiration of sixty days after mailing the disposal notice, if the manufactured home is still in the community (*i.e.*, the homeowner has not removed it), in accordance with Act 156, the home is deemed “conclusively abandoned.”⁵ At that moment, the community owner has

⁴ If the personal property or manufactured home is sold, the proceeds from the sale shall be distributed in the following order:

- (i) to pay the costs of moving, storing and selling the personal property or manufactured home;
- (ii) to pay all back rent due and all other amounts due to the community owner;
- (iii) to pay all outstanding taxes on the manufactured home; and
- (iv) to pay all outstanding liens on the manufactured home.

Any amount still remaining from the sale after payment of the items in subparagraphs (i), (ii), (iii) and (iv) shall be paid to the resident.

68 P.S. § 398.10.2(a)(4).

⁵ See 68 P.S. § 398.10.2(d)(3)(ii). (“If the resident fails to claim and remove the manufactured home within the time specified in the notice or such later time, the manufactured home shall be conclusively deemed abandoned, and the community owner or other authorized person shall be entitled to proceed to sell or otherwise dispose of the manufactured home.”)

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at least an equitable interest in the home and is entitled to dispose of the home, or sell it, free and clear of all liens and taxes.

Local municipalities typically require proof that taxes have been paid or divested prior to issuing a demolition permit. Moreover, proof of payment of local real estate taxes is also typically required in order to transfer the title to a manufactured home. In light of the fact that the abandonment process allows the community owner to demolish or resell an abandoned home free and clear of all liens and taxes, local communities should not be requiring these. It is recommended that the community owner communicate with local taxing bodies in order to ensure that they have updated their records and the taxes have been divested.

Tax Sales Conducted after Expiration of Sixty Day Period in Disposal Notice

There is necessarily a gap between the completion of the abandonment process, and the actual disposal of the home. For example, the community owner must assess the condition of the home in order to determine if it should be demolished or rehabbed and resold. If the condition is such that rehabbing and reselling the home is cost prohibitive, the community owner must obtain a demolition permit before it can proceed to destroy the home, and then must proceed with the physical demolition.

If the abandoned home can be refurbished and resold, the process does not occur immediately. The community owner must first ensure that the home is habitable. Community owners invest significant time and capital rehabbing abandoned homes. Subsequently, even after a purchaser is located, the community owner must submit documentation to PennDOT to complete the transfer of the title to the new owner. It goes without saying that PennDOT's internal title transfer process often takes considerable time before a new title is issued to the purchaser.

If a local taxing body seeks to conduct a tax sale after it receives a notice of intent to dispose, it should provide notice of the sale to the community owner, particularly if the sixty days in the disposal notice has already lapsed. After the disposal period has lapsed, the prior owner's interest in the home has been conclusively terminated and the community has acquired, at a minimum, an equitable interest in the home. If the community owner is not notified of a tax sale, even though it is the only party with any (even equitable) rights in the abandoned home as a result of its completion of the abandonment process, it has no ability to protect its interests, including by objecting to the sale. In this case, the tax sale could be overturned.

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ABOUT THE PRESENTER

James McNally

James McNally (Jim) is a partner at Cohen Seglias Pallas Greenhall & Furman, PC, where he chairs the firm's Financial Services Group. He devotes a significant portion of his practice to representing financial institutions and other creditors in commercial loan workouts, bankruptcy matters, commercial litigation, and commercial loan transactions. He also represents many property management companies and manufactured home community owners in landlord/tenant actions, manufactured home abandonment, general litigation, acquisition, tax assessment appeals, and general dealings with local authorities and governmental entities.

Jim is a frequent speaker and lecturer on topics such as landlord and tenant law, manufactured housing and consumer protection laws.