

The Community

What's New

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Spring 2010

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After recently attending a recent Michigan Manufactured Housing Association (MMHA) board meeting, I thought it time to bring everyone up to date with recent events and meetings.

The state has passed a law regarding "rental home" safety inspections. This law will allow local units of government the right to inspect all "rental homes" once every three years. A common question for many of us: Is a "lease to own" or "contract sale" considered a rental home? With over 80 units of local government in Michigan facing bankruptcies, it's a pretty safe bet they will seek any fees they can get their hands on.

The SAFE Act—are you a mortgage broker or loan originator? Most likely if you sell a manufactured home on contract or help arrange for the financing, you will be subject to this law. Michigan has listed the start date of July 31, 2010, as of writing this article. Read on to learn how the SAFE Act affects you (see "Congress has passed the SAFE Act" below).

This is an election year in Michigan. Over half the state house and senate will be replaced at this year's election. Now will be the time to be involved with our state association Political Action Committee (PAC). With sales tax on services, rent control looming (close to passing in Colorado) and resident-owned communities.

Now is an important time to be involved in MMHA. Attend one of the spring mixer meetings to learn more—April 21st in Novi and April 22nd in Grand Rapids. Visit michhome.org or call 800.422.6478 for more information.

Mark Barrett

Congress has passed the SAFE Act

The SAFE Act deals with new regulations for finance companies and mortgage brokers. Here's what it means to community owners:

1. Communities and retailers that finance their own home sales, or those that are compensated financially by finance companies for sending them loans, will need to have a Mortgage Loan Originator (MLO) license. Getting this license will require attending a 20 hour class, passing a test, passing a criminal background check, and obtaining a bond from \$25,000 to a max of \$125,000 depending on amount of financing.

Barrett & Associates has a couple of bond carriers ready to help you with this requirement, give us a call.

2. It's unclear at this time in Michigan, whether communities or retailers who simply help an applicant complete a home loan application and forward it on to a finance company, without being compensated for doing so, will have to carry a MLO license. State law on this issue conflicts with Federal law and the details are being worked out at this time. You should check with the state association and/or legal counsel for more advice.

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Guest Authorities

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Fannie Mae and Flood Insurance

By Creighton Weber, *Wells Fargo Multifamily Capital*

Most community owners are aware that attractive financing is currently available for qualifying manufactured home communities through Fannie Mae ("FNMA"). One frequent issue that we see time and again with Fannie Mae is flood zones.

Do you know if your manufactured home community is located within a flood zone, either entirely or partially, as defined by the Federal Emergency Management Agency (FEMA)? If it is, additional investigation is needed before proceeding with a FNMA loan.

Floods are the most common natural disaster in the US. Flood zones are geographic areas that FEMA has defined according to varying levels of flood risk. Any property located in an "A" or "V" zone (often referred to as the 100-year flood zone) are "generally not acceptable" according to FNMA's underwriting guidelines, "unless only a small number of sites are in the flood zone." The property entrance also cannot be in the flood zone as this could potentially hamper ingress to and egress from the property.

Assume that only a portion of the sites within a manufactured home community are located within a high risk flood zone. In this case, Fannie Mae will provide financing, but they will make an underwriting adjustment for the sites located within the flood zone and they will typically not underwrite any income from those sites. However, the source of the flood zone and the elevation of the homes may result in being able to include all of the sites (and related income) in the underwriting.

By far, the cause for the biggest concern is when the source of flooding is a moving body of water—where there is the most potential during a heavy storm for a docile creek to be transformed into a surging headwater capable of wiping out homes located within the flood zone. In this scenario, any sites in the flood zone have to be removed from the underwriting. If a moving body of water is not the source of flooding, however, the threat

of damage to the homes is not as high, and it may be possible to underwrite rental income from the sites located within the flood zone.

When a property is in a low elevation area or adjacent to a water retention area such as a pond, heavy rains may cause the water level to rise and create flooding, but the water then recedes over time. This is a scenario where the elevation of the homes should be considered, and it may necessitate hiring a surveyor to verify exactly how many sites are located within the flood zone and the elevation levels of those homes. If the surveyor's findings show that the elevation levels of the floors of the homes are above the base flood level, then FNMA may underwrite the rental income from those sites.

Property owners often wonder why simply obtaining the required flood insurance does not alleviate FNMA's concern about a manufactured home community being in a flood zone. Flood insurance can only be purchased for permanent structures and improvements. Manufactured home communities have limited physical improvements, and the only improvements to insure (in addition to the infrastructure) are structures such as a clubhouse or laundry facility. As part of the FNMA appraisal, the appraiser provides an "insurable replacement cost value" along with the income and sales approach to value. The insurable replacement cost value pertains only to the physical improvements at the property, determines the appropriate property insurance coverage that is required. There is usually a significant gap between the appraised value (based for the most part on the income approach to value) and the replacement cost value of the physical improvements.

So, even if a manufactured home community owner obtains flood insurance on the permanent structures, it is likely going to fall far short of covering the loan amount. That is why Fannie looks at this issue in so much detail—as always, the devil is in the details.

Failure to pay specific tax may be costly

By: William J. Perrone, *Dykema*

Owners of manufactured home communities are required to collect and remit a specific tax of \$3 per month on each occupied manufactured home located in their communities. This tax is paid in lieu of any real or personal property tax that would be otherwise owed. It is required to be remitted to local government unit's treasurer by the fifth day of each month for the taxes due for the preceding month.

While the specific tax is levied against the owner or occupant of the occupied home, the legal responsibility to pay it is on the community owner, who can then seek reimbursement from the home owner or occupant. This is usually done by adding the \$3 tax to the monthly site rental amount.

Failure to timely pay the specific tax is now subject to penalty. Two years ago, a little known law (PA 5 of 2008) was enacted and provides for the following:

- Late payment penalty of 3% of the unpaid balance, if not paid by the fifth day of a month.
- Interest accrues on the unpaid balance at the rate of 1% per month until paid.
- The community owner is liable for a civil fine of up to \$10 per occupied

home for each month the specific tax is not remitted.

Every year community owners ask whether a home is "occupied" if the homeowner is in Florida for the winter or is otherwise not in current occupancy. The safe advice is a home is "occupied" if the owner intends to return on a regular basis (i.e., has not "abandoned" the home).

Because dollar amounts are relatively low (and are usually paid or payable by the site tenant in any event), and there are now significant penalties, interest and fines due for failure to timely pay the specific tax, the best course of action is to timely pay the specific tax for all homes in the community on a regular basis unless truly abandoned.

One alternative argument made by local government tax collectors is if the specific tax is not being paid on a home, it is no longer exempt from real or personal property taxes. Therefore, the higher ad valorem tax can be assessed and levied against the community owner. At least one municipal attorney has provided this advice. Obviously, that is not a result any community owner would like to face.

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3. The rules on these MLO licenses vary by state. If operating in other states, you should check with their applicable laws by contacting the state manufactured housing association and/or the state regulatory agency in charge of managing this issue in their respective state.

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Staff



Mark Barrett, President

Mark has been married for over 20 years and has been working with his wife and best friend Devra since 1994. He is currently an instructor for the State of Michigan Continuing Education Department in the field of prefabricated building installation and service. Mark graduated from Central Michigan University with a Bachelors of Science in Finance and Marketing. He has certificates from Michigan State University, Drake University and Oberlin College, designation of Certified Insurance Counselor and a Surplus Lines License. When not hard at work, Mark can be found on the golf course or traveling with his family.


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Claim Reports

Claim Reports

Examples of claims filed last quarter

Liability:

Several slips and falls on ice. Two of the more interesting filings: one claimed whip lash from falling on ice, and the other complained about a spot and then went out and slipped on that spot.

Workman's Compensation:

A part-time employee fell off a dumpster.

An employee was working on a street light but did not secure the ladder. It slid down the pole and the employee went to the hospital for review. The hospital insisted a cat scan be performed, which

resulted in a bill but no injury. The employee was off for one day and cost the owner \$6,500.

Employee Practices Liability Insurance:

An employee (sales person) filed suit against owner for discrimination after being fired. (Of course failure to show up for work had nothing to do with it.)

Boiler:

A ruptured boiler in club house caused \$9,300 in damage. (Good thing we expand our property from beyond normal to cover such things.)