

**PROPOSED CHANGES TO THE LAST WORKING DRAFT OF
OPPORTUNITY TO PURCHASE LEGISLATION
2010 UTAH GENERAL LEGISLATIVE SESSION
January 11, 2010**

Amends **13-2-1**
Amends **57-16-16**
Enacts **57-16-19**

13-2-1. Consumer protection division established -- Functions.

- (1) There is established within the Department of Commerce the Division of Consumer Protection.
- (2) The division shall administer and enforce the following:
 - (a) Chapter 5, Unfair Practices Act;
 - (b) Chapter 10a, Music Licensing Practices Act;
 - (c) Chapter 11, Utah Consumer Sales Practices Act;
 - (d) Chapter 15, Business Opportunity Disclosure Act;
 - (e) Chapter 20, New Motor Vehicles Warranties Act;
 - (f) Chapter 21, Credit Services Organizations Act;
 - (g) Chapter 22, Charitable Solicitations Act;
 - (h) Chapter 23, Health Spa Services Protection Act;
 - (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
 - (j) Chapter 26, Telephone Fraud Prevention Act;
 - (k) Chapter 28, Prize Notices Regulation Act;
 - (l) Chapter 32a, Pawnshop Transaction Information Act;
 - (m) Chapter 34, Utah Postsecondary Proprietary School Act;
 - (n) Chapter 41, Price Controls During Emergencies Act; and
 - (o) Chapter 42, Uniform Debt-Management Services Act.
 - (p) Section 57-16-9

57-16-16. Mobile home park residents' associations.

- (1) "Resident association" means any organization of residents of a manufactured home community or mobile home park, organized to address their common interests.
- (2) Residents in mobile home parks shall have the right to form associations comprised of residents of the mobile home park in which they reside, and to participate in regional, state, or national resident associations and advocacy groups.
- (3) The membership of the resident association may elect officers of the association at a meeting where a majority of the members are present.
- 4) All residents of the park, even if not members of the association, may attend association meetings, except that:
 - (a) membership in a resident association that is formed for the purpose of purchasing the manufactured home community or mobile home park may be limited to owners of manufactured homes located in the community.
- (5) Except in emergency situations, there shall be seven days' notice of an association meeting to all residents of the park. All residents of the park, even if not members of the association, may attend association meetings. The park operator and non-resident employees shall not:
 - (a) be members of the association;
 - (b) attend meetings unless invited by the association;

- (c) unlawfully interfere with the operation of the association; or
 - (d) interfere with a resident's right to contact a state or local health department, a municipality, or other group to complain about the health and safety conditions of the mobile home park.
 - (e) No community owner shall harass or threaten any resident association, or engage in any unfair or deceptive conduct to inhibit or interfere with the creation or operation of such association by the residents.
- (6) A resident association may not impose fees, dues, or assessments, upon its members unless a majority of the members agree to the assessment of fees, dues, or assessments.
- (7) The park operator shall permit meetings by any resident association located within the park relating to manufactured home living or social or education purposes, including forums for or speeches by public officials or candidates for public office.
- (8) Resident associations may schedule with the park operator the use of the common facilities of the park, if any, free of charge. However, the resident association shall be responsible for any damage to the common facilities caused by a member of the resident association while a common facility is in use by the resident association.

57-16-19 Notice of sale of underlying property-Administrative enforcement -

- (1)As used in this section :
 - a. "Resident Association" means a resident association organized under Section 57-16-16
 - b. "Division" means the Division of Consumer Protection
- (2)Except as provided in Subsection (8), a mobile home park owner shall give notice in accordance with Subsection (3) of:
 - a. A bona fide offer to purchase or transfer all or a portion of the mobile home park that the mobile home park owner intends to accept;
 - b. An advertisement or other public notice posted by the mobile home park owner or the mobile home park's owner agent that the mobile home park, or a portion of the mobile home park, is for sale
- (3)The notice under Subsection (2) shall:
 - a. Be sent by first class mail to :
 - i. Each resident of a mobile home park at the resident's mobile home park address;
and
 - ii. A state-wide manufactured homeowners' association that is incorporated with the Division of Corporations and Commercial Code; and
 - b. State that the mobile home park owner:
 - i. Has received an offer that the mobile home park owner intends to accept, including information such as price and acceptable terms that will enable a resident association to make an offer that the community owner will
 - ii. Intends to sell the mobile home park or a portion of the mobile home park
 - c. State that the mobile home park owner will wait 60 days from the date of the notice before entering into a final unconditional agreement to sell or transfer the mobile home park or a portion of the mobile home park, during which time a resident association may make an offer to purchase the mobile home park or the relevant portion thereof.
 - d. BE SENT ONE TIME ONLY PER BONA FIDE OFFER TO PURCHASE OR SALE AS DESCRIBED IN SUBSECTION (2) (a); IF THE INITIAL OR PREVIOUS BONA FIDE OFFER CONDITIONS CHANGE, THEN THE MOBILE HOME PARK OWNER SHALL SEND NOTICE AS DESCRIBED IN SUBSECTION (2) AND (3) ; OR

- e. BE SENT WHEN THE MOBILE HOME PARK IS ADVERTISED FOR SALE WITH DIFFERENT CONDITIONS THAN THE INITIAL OR PREVIOUS ADVERTISEMENT OR PUBLIC NOTICE AS DESCRIBED IN SUBSECTION (2)(b)
- (4) A resident association INCORPORATED WITH THE STATE OF UTAH shall have 60-days after the post marked date of the notice described in Subsection (2) to make an offer to the mobile home park owner.
- (5) A GROUP OF RESIDENTS WHO INTENDS TO MAKE AN OFFER TO PURCHASE THE MOBILE HOME PARK , SHALL
- a. SEND A LETTER OF INTENT TO PURCHASE THE MOBILE HOME PARK TO THE MOBILE HOME PARK OWNER WITHIN THE FIRST 30-DAYS OF THE 60-DAY NOTICE PERIOD DESCRIBED IN SUBSECTION (4) ;
- i. THE LETTER OF INTENT MAY INCLUDE INFORMATION THAT SHOWS THE RESIDENTS ARE PREPARING A VIABLE OFFER, INCLUDING INFORMATION SHOWING THEIR ABILITY TO COMPLETE THE TRANSACTION
- ii. SHALL BE SEND BY REGISTERED OR CERTIFIED MAIL
- (6) IF THE RESIDENTS FAIL TO SEND A LETTER OF INTENT WITHIN THE FIRST 30 DAYS OF THE 60-DAY NOTICE PERIOD DESCRIBED IN SUBSECTION (4), THE MOBILE HOME PARK OWNER MAY ACCEPT AN OFFER FROM ANY OTHER BUYER WITHOUT WAITING UNTIL THE END OF THE 60-DAY NOTICE PERIOD.
- (7) A resident association offer TO PURCHASE under Subsection (4) shall include:
- a. A proposed price;
- b. Terms of sale; and
- c. A proposed time frame to obtain financing and close the transaction.
- (8) If a mobile home park owner receives an offer from a resident association in accordance with Subsections (4), (5), and (6) , the mobile home park owner shall:
- a. Consider the resident association’s offer; and
- b. Negotiate in good faith
- (9) This section does not confer a right of first refusal.
- (10) A mobile home park owner is not required to give notice to a resident before the mobile home park owner makes a final, unconditional, acceptance of an offer for the sale or transfer of a mobile home park or a portion of the mobile home park if the sale or transfer is :
- a. To the mobile home park owner’s immediate family member;
- b. To a trust that has the mobile home park owner’s immediate family member as a beneficiary;
- c. By a partnership to one or more of the partners;
- d. A conveyance of an interest in the mobile home park incidental to the financing of the mobile home park;
- e. Between joint owners;
- f. Between owners in common; or
- g. Pursuant to eminent domain;
- (11) A mobile home park owner may record with the county recorder of the county in which the mobile home park is located an affidavit stating that:
- a. The mobile home park owner has complied with the requirements of SUBSECTIONS (2) THROUGH (9); or
- b. The sale or transfer of the mobile home park is exempt from the notice requirements under Subsection (11)
- (12) ∴
- a. The Division shall enforce this section, including:

Comment [c1]: registered mail is very expensive and complicated.

- i. Investigating alleged violations of this section; and
 - ii. Issuing cease and desist orders and imposing administrative penalties for violations of this section
 - b. A person who violates this section is subject to:
 - i. A cease and desist order; and
 - ii. An administrative penalty of not more than \$2,500 for each separate violation of this section
 - c. The division shall deposit all administrative penalties collected under this section in the Consumer Protection Education and Training Fund created in Section 13-2-8
- (13) ~~_____~~
- a. A civil action may be brought to enforce this section by:
 - i. A resident; or
 - ii. Resident association
 - b. ~~_____~~
 - i. Residents not contesting the claims of each other may join as plaintiff.
 - ii. A court may consolidate multiple resident actions making all persons with claims filed parties to the action
 - c. In each action under Subsection (14) (a)
 - i. A person bringing the action may recover the greater of:
 - 1. Actual damages; or
 - 2. \$1,000 for each violation of this section; and
 - ii. The prevailing party shall be awarded costs and reasonable attorney fees.

(13) A resident association may bring a civil action to enforce this section. If it prevails, it shall be entitled to costs and a reasonable attorney's fee in addition to the legal or equitable relief awarded by the court.