

PARK WATCH

® A LEGAL DEVELOPMENTS NEWSLETTER

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THIS NEWSLETTER CONVEYS GENERAL INFORMATION, NOT LEGAL ADVICE: CONSULT AN ATTORNEY BEFORE RELYING HEREON

SAFE Act: A Reprieve for Park Owners Providing Financing to Needy Buyers

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By: Terry R. Dowdall, Esq.

● **Snap Shot:** *These depressed times mean that older and used mobilehome cannot get financed and hence are not readily marketable unless the park owner makes the loan; sometimes, title devolves to the park owner after foreclosure, eviction or default, such that the park owner cannot sell the mobilehome unless financing is also provided. The S.A.F.E. Act purports to prohibit park owners from helping needy buyers. Sheila Dey of WMA has successfully, single-handedly, sought an exemption for Park owners until S.A.F.E. Act regulations are finalized: THAT could take another two or three years. So the status quo remains in effect for park owners, for now, in California.*

● **The Nature of the Market:** Many owners in California carry a considerable numbers of park-financed homes. This is because, generally, there are no commercially available loans for used mobilehomes. Thus, park owners are often the *only* option in order to facilitate the purchase of the mobilehomes. Park owners' motivations are different than the conventional lender: the park owner has a keener interest in the buyer's success because the mobilehome stays in the park and the buyer has a continuing relationship as a tenant. If anything, the park owner is *more* careful about extending credit than any conventional mobilehome lender; we need a good buyer and *often more importantly, a good tenant.*

● **Anecdotal evidence?** In speaking with a park owner who made twenty-six loans for park-financed homes in the park recently, ALL the buyers fully performed to end of the contract. A sound buyer is only valuable if also a good tenant.

The big difference *today* is that park owners are still

willing and able to make loans to assist the parties to a mobilehome sale when no one else is. Conventional lenders are nowhere to be seen in respect to used and older product. For "older persons" (55+) parks, perhaps this issue is less significant, because the incoming residents often pay in cash, transitioning and down-sizing from larger residences. But for the "all-age" parks and communities with an abundance of smaller and pre-HUD homes, the poor and needy are without *any* financing alternatives without the assistance of the park owner.

The S.A.F.E. Act licensing requirement includes mobilehomes, but sweeps with an overbroad reach. Park owners are deeply ensconced with the interest in success for the buyers of mobilehomes. Default creates huge expense for park owners faced with eviction, abandonment or foreclosure, lost rents and re-sale efforts. Loans are firstly designed to perform; but maximizing economic gain is subordinate to the interest in locating a tenant to occupy the space and pay the rents. The park owner's interests are plainly different from the scope of the remedy in the S.A.F.E. Act and the targets thereof in need of regulation.

Absent an exemption through legislation or regulation, the S.A.F.E. Act on its face purports to apply to park owners making the occasional loan on the home it recovered through eviction, foreclosure or abandonment. For now, new developments give some cause for guarded optimism. In the *Counsel Corner* section of the WMA Reporter, **Sheila Dey** reports that an temporary exemption from the S.A.F.E. Act requirements has been obtained.

HUD has granted the industry, in California specifically, a reprieve from enforcement of the S.A.F.E. Act. On June 21, the California Business, Transportation and Housing Agency confirmed HUD's agreement to provide California park owners a temporary exemption for park owners who

“occasionally carry back paper on units in their parks that they sell to occupants.” As Sheila reports, “as a result of this temporary exemption from S.A.F.E. Act implementation, park owners who make occasional chattel loans may do so without having a Mortgage Loan Originator license and the Consumer Finance Lender license through the Department of Corporations. This is indeed good news since the S.A.F.E. Act provisions in SB 36 affecting licensees of the Department of Corporations take effect on July 31, 2010. However, I must stress that this relief from SAFE Act implementation is only temporary.”

In the meantime, S.A.F.E. Act jurisdiction is being transferred to a newly formed federal agency, the **Consumer Financial Protection Bureau**. While it is believed that HUD personnel may go to that agency, still, the delays in issuance of regulations (together with the time for public comment and seeking inroads into a fair application of the law) may be substantial, from eighteen months to perhaps two or three years.

● **Commercial Alternatives Contemplated:** In anticipation of the S.A.F.E. Act, various entrepreneurs are exploring avenues by which to assist the park owner in financing of mobilehomes which cannot be conventionally financed. This may pose very special problems to be overcome.

For example, a licensee, for a fee, might make the loan, and then sell it (after close of escrow) back to the park owner as an assignee. However, according to MHI, the assignee of such loans *must also be licensed*. If the point of dealing with a licensee is to acquire the loan and service it as though the park owner had made it in the first instance, that plan cannot work—the park owner would need to be licensed anyway. Hence, given the uncertainties in the current status of the S.A.F.E. Act and (i) how it is interpreted, (ii) what exemptions will be permitted, and (iii) when it will apply, my opinion is that it is premature to enter into any contractual arrangement of this kind, and when such (if ever) is considered, to have the arrangement *carefully reviewed* by counsel knowledgeable of the S.A.F.E. Act, the California Finance Lenders Law and other applicable state regulations.

We do know that there is a plainly provided exemption for (1) carry-back financing of homeowner-occupied dwellings, and (2) for attorney assisted transactions (so long as there is a pre-existing relation with the attorney and counsel is not hired only for the purpose of the loan itself).

To add to the news, just a day ago, **Barney Frank** issued a letter which is believed to reinforce this position, as respects retailers. That letter is attached. It states:

Given the fact that HUD has yet to publish

a final rule addressing implementation of the S.A.F.E. Act, HUD should provide prompt and clear guidance for states where there is some debate or uncertainty as to the need for the registration and licensing of certain individuals.

Unique Status of Manufactured Housing Retailers

We believe that it is important to acknowledge that the manufactured housing industry is uniquely affected by the requirements of the Act. Accordingly, we have concerns that the industry not be adversely affected in ways that are inconsistent with the purposes of the S.A.F.E. Act.

But this does not address community owners. How all this eventually comes into focus remains to be seen. Sheila concludes and cautions:

“So for now we have a reprieve from the provisions of the S.A.F.E. Act. However, if you are making more than the occasional chattel loan on homes you own, you should probably secure a Mortgage Loan Originator license and a Consumer Finance Lender license through the Department of Corporations or locate a consumer finance lender with a Mortgage Loan Originator who will permit you to fund the loans through their licenses.”

Hydrants off the Table

● **Update:** Kim Strange, Deputy Director of HCD, that HCD is not going to pursue regulations to require fire sprinklers in new manufactured housing. Kim stated that the reason for their decision was the cost and burden of mandating fire sprinklers at this time was not in the best interests of the industry or consumers.

Emergency Preparedness.

● **Please be advised!** We cannot accept Emergency Preparedness Plan orders after July 30, 2010, due to existing volume and the need for timely production by September 1.

● **Check your local enforcement agency.**

At least one local enforcement agency is demanding submission in August!

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Please feel free to contact Terry R. Dowdall, Esq. for further information and questions.