OHIO MANUFACTURED/MOBILE HOME LAW

A Legal Services Practice Manual

James Buchanan

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Acknowledgments

More than 20 years ago, this book began as a response to the need to know about mobile, now manufactured, home law. When the first edition was published in 1995, it was a beginning, an evolving first draft as I said at that time. Since that first edition, the law governing manufactured and mobile homes has changed drastically, requiring that the manual also be updated not only with case law but also with topics not even considered in 1995. However, changing an entire manual requires a lot of work by a lot of people. In addition, while this book has not been in print since 2005, the Ohio State Bar Foundation, through a grant to the Ohio Poverty Law Center, made it possible to revise and return the book to print for the use of legal aid organizations across the state.

Supervising the revision, and working with dedication in addition to her other work at the Ohio Poverty Law Center, was Linda Cook. As with both prior print and electronic editions, Jan Legg spent hours putting the various drafts into a final edition, questioning unclear passages and the need for revisions to citations in the book.

All of this work, especially with the sample pleadings, would not have been possible without the attorneys throughout Legal Services programs that provide information and copies of cases and briefs that update the law as it is determined by courts. Communication brings about change, and the open phone line between others seeking information and those of us able to assist is invaluable for aiding people searching for answers to legal problems and questions.

This manual is still not the final word and never can be. While the Ohio Poverty Law Center provides copies of the unreported cases in Appendix 2, decisions are made weekly and monthly so that the law will continue to evolve. For now, however, this work represents the best and most timely information we can provide.

Once more, thank you to all of the people that worked to make this new manual possible.

— Jim Buchanan
May 6, 2016

EDITOR’S NOTE:
This manual, Appendix 1 of sample pleadings, and Appendix 2 with the unreported cases, are available electronically at: www.ohiopovertylawcenter.org/publications/.
TABLE OF CONTENTS

Table of Authorities............................................................................................................. ix
   Federal ..................................................................................................................................... ix
   Statutes ................................................................................................................................. ix
   Regulations ......................................................................................................................... ix
   Other ...................................................................................................................................... x
State........................................................................................................................................ xi
   Ohio Revised Code ........................................................................................................... xi
   Ohio Administrative Code ............................................................................................... xvii
   Ohio Attorney General Opinions .................................................................................... xviii
   Other ..................................................................................................................................... xviii
Other Authorities ................................................................................................................ xviii

Index of Cases........................................................................................................................ xix

List of Tables .......................................................................................................................... xxxv

Introduction ............................................................................................................................ xxxvii

Chapter 1—Is It a Mobile Home and Why Does That Matter? .............................................. 1-1
   I. Introduction ....................................................................................................................... 1-1
   II. Definition of “Manufactured Home” and “Mobile Home” ........................................... 1-1
       A. Federal Definition ........................................................................................................ 1-2
           1. Manufactured Home Construction and Safety Standards Act .................................. 1-2
           2. Truth in Lending Act ............................................................................................... 1-4
       B. Ohio’s Definition ........................................................................................................ 1-4
   III. Impact of Definition of “Mobile Home” on Litigation ................................................. 1-7
       A. Building Codes ........................................................................................................... 1-7
       B. Zoning ......................................................................................................................... 1-8
       C. Licensing .................................................................................................................... 1-8
       D. Taxation ...................................................................................................................... 1-9
       E. Removal and Storage ................................................................................................. 1-9
       F. Landlord/Tenant Law ................................................................................................. 1-9
   IV. Summary ....................................................................................................................... 1-10

Chapter 2—Government Regulation of Mobile Homes .......................................................... 2-1
   I. Construction and Safety Standards ............................................................................... 2-1
       A. Federal Preemption of State and Local Standards ...................................................... 2-1
       B. Federal Enforcement of Construction and Safety Standards .................................... 2-8
       C. State Common Law Tort Claims ............................................................................... 2-9
   II. Installation Standards ................................................................................................... 2-12
   III. Licensing ....................................................................................................................... 2-13
   IV. Taxation of Mobile Homes ........................................................................................... 2-20
# Chapter 3—Park and Site Development

## I. Introduction

## II. Manufactured Home Parks

### A. Zoning

1. Existing Use ........................................... 3-2
2. Economic Viability ...................................... 3-4
3. Unreasonable Zoning Denial ........................... 3-6

### B. Park Licensing, Inspection and Minimum Facilities

1. Licensing and Inspection .............................. 3-9
2. Minimum Facilities .................................... 3-10

### C. Flood Plain Regulations ................................ 3-17

### D. Federally Subsidized Mobile Home Parks ............... 3-17

### E. Cooperatives and Condominiums ..................... 3-18

### F. Park Closure ........................................ 3-19

## III. Individual Homes ..................................... 3-22

### A. Zoning ................................................. 3-23

1. Existing Use ........................................... 3-23
2. Economic Viability ...................................... 3-25
3. Nuisance ............................................... 3-31
4. Enforcement of Zoning Ordinances ................... 3-32

## IV. Manufactured Home Dealership Placement ............... 3-33

## V. Manufactured Homes Commission ........................ 3-33

### A. Installation Standards ................................ 3-34

### B. Inspection and Occupancy Requirements ............... 3-35

## VI. Summary ............................................... 3-36

---

Chapter 4—Consumer Issues in Mobile Home Living................................. 4-1

## I. Introduction................................................. 4-1

## II. Mobile Home Sales......................................... 4-1

### A. Consumer Sales Practices Act (CSPA) ................. 4-1

### B. Retail Installment Sales Act (RISA) ................... 4-10

### C. Uniform Commercial Code (UCC) ........................ 4-12
Chapter 5—Manufactured Home Landlord/Tenant Law .................................................. 5-1
I. Application of Manufactured Home Landlord/Tenant Law .................................. 5-1
   A. Park Operator ......................................................................................................... 5-5
   B. Resident ................................................................................................................. 5-10
II. Statutory Responsibilities of the Parties .................................................................... 5-5
   A. Park Operator ......................................................................................................... 5-5
   B. Resident ................................................................................................................. 5-10
III. Rental Agreements .................................................................................................... 5-11
   A. Terms of Agreement .............................................................................................. 5-11
   B. Rules ....................................................................................................................... 5-13
   C. Fees and Charges ................................................................................................. 5-15

D. Contract ....................................................................................................................... 4-13
E. Land Contracts .......................................................................................................... 4-16
F. Other Common Law Theories .................................................................................... 4-18
G. Antitrust Law ............................................................................................................ 4-20
III. Financing .................................................................................................................... 4-22
IV. Repossession/Replevin/Foreclosure ......................................................................... 4-29
   A. Applicability of Laws .............................................................................................. 4-30
   B. Validity of Security Interest .................................................................................... 4-31
   C. Notices .................................................................................................................... 4-36
      1. UCC ....................................................................................................................... 4-36
      2. RISA ..................................................................................................................... 4-37
      3. Comptroller of Currency Regulations ................................................................ 4-39
   D. Redemption of Property .......................................................................................... 4-40
   E. Sale of Repossessed Homes ..................................................................................... 4-40
   F. Sale of Repleived Homes ........................................................................................ 4-41
   G. Deficiencies ............................................................................................................. 4-41
   H. Damages .................................................................................................................. 4-42
   I. Foreclosure ............................................................................................................. 4-44
V. Consumer Remedies for Defective Homes ................................................................. 4-46
   A. Rescission and Revocation of Acceptance ............................................................... 4-46
   B. Warranties .............................................................................................................. 4-49
      1. Magnuson-Moss Warranty Act .............................................................................. 4-49
      2. UCC/Ohio Warranties ......................................................................................... 4-51
   C. Tort Liability .......................................................................................................... 4-51
   D. Products Liability .................................................................................................... 4-53
   E. Contract .................................................................................................................. 4-53
   F. Other Remedies ....................................................................................................... 4-54
VI. Insurance ..................................................................................................................... 4-54
VII. Arbitration .................................................................................................................. 4-57
VIII. Mediation .................................................................................................................. 4-62
IX. Other Consumer Issues ............................................................................................ 4-63
X. Damages ..................................................................................................................... 4-65
XI. Attorney Fees in Consumer Cases .......................................................................... 4-67
XII. Conclusion ............................................................................................................... 4-67
D. Statutory Prohibitions

1. Prohibited Lease Terms
2. Freedom of Choice in Services
3. Prohibition Against Intimidation and Retaliation

E. Sales Interference

1. Procedures in Home Sales
2. Manufactured/Mobile Home Sales Provisions in the Statute
3. Denial of Right to Sell Home
4. Refusal to Enter into Rental Agreement with Purchaser
5. Age and Condition of Homes
6. Fees and Commissions
7. Limits on Sales Interference Claims
8. Abandoned Mobile Homes
   a. Jurisdiction
   b. Service of Complaint
   c. Judgment
   d. Pre-Writ Procedure
   e. Writ of Execution
   f. Low-Value Homes

IV. Remedies of Residents

A. Rent Escrow

1. Procedure
2. Results of Escrow Cases

B. Receivership

C. Injunctive Relief

D. Damages

1. Contract
2. Tort Liability
3. Illegal Actions by Park Operator
4. Common Law Remedies
5. Security Deposits

V. Remedies of Park Operators
Chapter 6—Practice and Procedure

I. Discovery .................................................................................................................. 6-1
   A. Landlord/Tenant Cases ....................................................................................... 6-1
   B. Consumer Cases .................................................................................................. 6-3
   C. Other Cases ......................................................................................................... 6-4

II. Sample Pleadings ..................................................................................................... 6-5

Appendix 1—Sample Pleadings Documents (online—www.ohiopovertylawcenter.org/publications/). A-1

Appendix 2—Unreported Decisions (online—www.ohiopovertylawcenter.org/publications/)

\COLUMBUS01\oplc_files\51 Publications\Mobile Home Manual\2015-2016\revised chapters\5-2016 MH A and ToContents.docx
<table>
<thead>
<tr>
<th>Statutes</th>
<th>Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 USC 101 (13A) ................</td>
<td>7 CFR 21</td>
</tr>
<tr>
<td>11 USC 547(c)(3) ................</td>
<td>7 CFR 1924, Subpart A, Exh J</td>
</tr>
<tr>
<td>11 USC 1322(b)(2) .............</td>
<td>7 CFR 1924, Subpart A, Exh J, Part A(IV)</td>
</tr>
<tr>
<td>12 USC 1464 .....................</td>
<td>7 CFR 1924, Subpart A, Exh J, Part B(I)(C)</td>
</tr>
<tr>
<td>12 USC 1464(c)(1)(J) ..........</td>
<td></td>
</tr>
<tr>
<td>12 USC 1465 .....................</td>
<td></td>
</tr>
<tr>
<td>12 USC 1701 .....................</td>
<td></td>
</tr>
<tr>
<td>12 USC 1701j-3 .................</td>
<td></td>
</tr>
<tr>
<td>12 USC 1703 .....................</td>
<td></td>
</tr>
<tr>
<td>12 USC 1703(b)(2)(b) (Housing &amp; Economic Recovery Act)</td>
<td></td>
</tr>
<tr>
<td>12 USC 1709(b) ................</td>
<td></td>
</tr>
<tr>
<td>12 USC 1713 .....................</td>
<td></td>
</tr>
<tr>
<td>12 USC 1715d ...................</td>
<td></td>
</tr>
<tr>
<td>12 USC 1715(z) ................</td>
<td></td>
</tr>
<tr>
<td>12 USC 1735f-7(DIDMCA) ........</td>
<td></td>
</tr>
<tr>
<td>12 USC 1744 .....................</td>
<td></td>
</tr>
<tr>
<td>12 USC 3802(1) ................</td>
<td></td>
</tr>
<tr>
<td>15 USC 1–37 (Clayton Act) ....</td>
<td></td>
</tr>
<tr>
<td>15 USC 15a .....................</td>
<td></td>
</tr>
<tr>
<td>15 USC 1601, et seq. (TILA)</td>
<td></td>
</tr>
<tr>
<td>15 USC 1602(w) ................</td>
<td></td>
</tr>
<tr>
<td>15 USC 1638(a) ................</td>
<td></td>
</tr>
<tr>
<td>15 USC 2301–2312 (Magnuson-Moss Warranty Act)</td>
<td></td>
</tr>
<tr>
<td>15 USC 2302(a)(2) .............</td>
<td></td>
</tr>
<tr>
<td>15 USC 2310(a)(3)(i) ..........</td>
<td></td>
</tr>
<tr>
<td>15 USC 2310(d)(3)(A) and (B)</td>
<td></td>
</tr>
<tr>
<td>15 USC 2310(d)(3)(C) ..........</td>
<td></td>
</tr>
<tr>
<td>26 USC 7701(a)(19)(C)(v) ......</td>
<td></td>
</tr>
<tr>
<td>38 USC 1828 (DIDMCA) ..........</td>
<td></td>
</tr>
<tr>
<td>38 USC 3712 ....................</td>
<td></td>
</tr>
<tr>
<td>42 USC 1437 ....................</td>
<td></td>
</tr>
<tr>
<td>42 USC 1474 ....................</td>
<td></td>
</tr>
<tr>
<td>42 USC 1475 ....................</td>
<td></td>
</tr>
<tr>
<td>42 USC 3601–3614 (Fair Housing Act Amendments)</td>
<td></td>
</tr>
<tr>
<td>42 USC 4003 ....................</td>
<td></td>
</tr>
<tr>
<td>42 USC 4012a ...................</td>
<td></td>
</tr>
<tr>
<td>42 USC 5035(a)(24)(C) ..........</td>
<td></td>
</tr>
<tr>
<td>42 USC 5035(a)(24)(D) ..........</td>
<td></td>
</tr>
<tr>
<td>42 USC 5035(a)(25) ............</td>
<td></td>
</tr>
<tr>
<td>42 USC 5401 ....................</td>
<td></td>
</tr>
<tr>
<td>42 USC 5401–5426 (MHCSSA) .....</td>
<td></td>
</tr>
<tr>
<td>7 CFR 214, 215 ................</td>
<td></td>
</tr>
<tr>
<td>7 CFR 214, 215 ................</td>
<td></td>
</tr>
<tr>
<td>7 CFR 214, 215 ................</td>
<td></td>
</tr>
</tbody>
</table>
## State

**Ohio Revised Code**

<table>
<thead>
<tr>
<th>Chapter 119</th>
<th>3-16</th>
</tr>
</thead>
<tbody>
<tr>
<td>174.03(B)(4)</td>
<td>5-5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 303</th>
<th>3-3</th>
</tr>
</thead>
<tbody>
<tr>
<td>303.19</td>
<td>3-23</td>
</tr>
<tr>
<td>303.21(A)</td>
<td>3-26</td>
</tr>
<tr>
<td>303.212(A)</td>
<td>2-6</td>
</tr>
<tr>
<td>303.212(B)</td>
<td>3-26</td>
</tr>
<tr>
<td>303.212(B)(1)</td>
<td>3-26</td>
</tr>
<tr>
<td>303.212(B)(2)</td>
<td>3-26</td>
</tr>
</tbody>
</table>

| 307.37 | 2-6 |
| 307.37(a) | 2-6 |

| 309.32(A)(1) | 4-33 |
| 319.54 | 2-21 |
| 322.03 | 2-20 |
| 323.151–156 | 1-6 |

<table>
<thead>
<tr>
<th>Chapter 519</th>
<th>3-3</th>
</tr>
</thead>
<tbody>
<tr>
<td>519.02</td>
<td>3-22</td>
</tr>
<tr>
<td>519.212(A)</td>
<td>2-6, 3-26</td>
</tr>
<tr>
<td>519.212(B)(1)</td>
<td>3-26</td>
</tr>
<tr>
<td>519.212(B)(2)</td>
<td>3-26</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 713</th>
<th>3-3</th>
</tr>
</thead>
<tbody>
<tr>
<td>733.02</td>
<td>3-8</td>
</tr>
<tr>
<td>1151.294</td>
<td>4-28</td>
</tr>
<tr>
<td>1151.294(A)(1)</td>
<td>1-6, 1-7</td>
</tr>
</tbody>
</table>

| Title 13 (Ohio UCC) | 4-3, 4-12, 4-13, 4-30, 4-31, 4-33, 4-36, 4-39, 4-41, 4-42, 4-46, 4-47, 4-49, 4-51, 4-52 |

<table>
<thead>
<tr>
<th>Chapter 1302</th>
<th>4-12</th>
</tr>
</thead>
<tbody>
<tr>
<td>1302.01(A)(8)</td>
<td>4-12</td>
</tr>
<tr>
<td>1302.26</td>
<td>2-19</td>
</tr>
<tr>
<td>1302.26–28</td>
<td>4-12, 4-49</td>
</tr>
<tr>
<td>1302.26(A)</td>
<td>4-49</td>
</tr>
<tr>
<td>1302.27</td>
<td>4-12, 4-49</td>
</tr>
<tr>
<td>1302.27(B)(1) and (3)</td>
<td>4-49</td>
</tr>
<tr>
<td>1302.28</td>
<td>4-12, 4-49</td>
</tr>
</tbody>
</table>

Chapter 1309 | 1-6, 2-25, 4-43, 4-44 |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1309.102(A)(1)</td>
<td>4-33</td>
</tr>
<tr>
<td>1309.102(A)(23)</td>
<td>4-30</td>
</tr>
<tr>
<td>1309.102(A)(53)</td>
<td>1-6, 4-13</td>
</tr>
<tr>
<td>1309.102(A)(54)</td>
<td>1-7, 4-13</td>
</tr>
<tr>
<td>1309.334</td>
<td>4-32</td>
</tr>
<tr>
<td>1309.334(A)</td>
<td>4-33</td>
</tr>
<tr>
<td>1309.334(E)</td>
<td>2-25</td>
</tr>
<tr>
<td>1309.37</td>
<td>4-41</td>
</tr>
<tr>
<td>1309.48(A)</td>
<td>4-44</td>
</tr>
<tr>
<td>1309.48(B)</td>
<td>4-46</td>
</tr>
<tr>
<td>1309.50</td>
<td>4-11</td>
</tr>
<tr>
<td>1309.50(A)</td>
<td>4-44</td>
</tr>
<tr>
<td>1309.515(B)</td>
<td>4-31, 4-35</td>
</tr>
<tr>
<td>1309.601–628</td>
<td>4-40, 4-42</td>
</tr>
<tr>
<td>1309.609(A)(1)</td>
<td>4-30</td>
</tr>
<tr>
<td>1309.609(B)(2)</td>
<td>4-29</td>
</tr>
<tr>
<td>1309.610</td>
<td>4-31, 4-38</td>
</tr>
<tr>
<td>1309.610(B)</td>
<td>4-40</td>
</tr>
<tr>
<td>1309.611</td>
<td>4-38</td>
</tr>
<tr>
<td>1309.611(D)</td>
<td>4-36</td>
</tr>
<tr>
<td>1309.612</td>
<td>4-36, 4-39</td>
</tr>
<tr>
<td>1309.614</td>
<td>4-36, 4-37</td>
</tr>
<tr>
<td>1309.615</td>
<td>4-38</td>
</tr>
<tr>
<td>1309.615(F)</td>
<td>4-42</td>
</tr>
<tr>
<td>1309.617</td>
<td>4-38</td>
</tr>
<tr>
<td>1309.620</td>
<td>4-37</td>
</tr>
<tr>
<td>1309.620(A)</td>
<td>4-37, 4-44</td>
</tr>
<tr>
<td>1309.620(D)</td>
<td>4-37</td>
</tr>
<tr>
<td>1309.620(E)–(F)</td>
<td>4-37</td>
</tr>
<tr>
<td>1309.620(G)</td>
<td>4-37</td>
</tr>
<tr>
<td>1309.623</td>
<td>4-40</td>
</tr>
<tr>
<td>1309.624</td>
<td>4-38</td>
</tr>
<tr>
<td>1309.625</td>
<td>4-11, 4-42, 4-43, 4-44</td>
</tr>
<tr>
<td>1309.625(B)</td>
<td>4-42</td>
</tr>
<tr>
<td>1309.625(E)</td>
<td>4-43</td>
</tr>
<tr>
<td>1309.626</td>
<td>4-42, 4-43</td>
</tr>
<tr>
<td>Ohio Administrative Code</td>
<td>4781-12-051(B)(11)</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>109:4-3-07</td>
<td>4781-12-051(B)(12)</td>
</tr>
<tr>
<td>109:4-3-09</td>
<td></td>
</tr>
<tr>
<td>3701-27-02</td>
<td>4781-12-051(B)(18)</td>
</tr>
<tr>
<td>3701-27-05(C)</td>
<td>4781-12-051</td>
</tr>
<tr>
<td>4101:2-6-20</td>
<td>4781-12-06</td>
</tr>
<tr>
<td>4101:2-6-21</td>
<td>4781-12-07–12-07.3</td>
</tr>
<tr>
<td>4501:1-3-01 to 1-3-12</td>
<td></td>
</tr>
<tr>
<td>4501:1-3-06</td>
<td></td>
</tr>
<tr>
<td>Chapter 4781-6</td>
<td>4781-12-08(L)</td>
</tr>
<tr>
<td>4781-6-01(A)(1)</td>
<td></td>
</tr>
<tr>
<td>4781-6-01(A)(2)</td>
<td>4781-12-083</td>
</tr>
<tr>
<td>4781-6-02.3 et seq.</td>
<td>4781-12-09</td>
</tr>
<tr>
<td>4781-7-01(B)(2)</td>
<td>4781-12-10</td>
</tr>
<tr>
<td>4781-7-01(B)(3)</td>
<td>4781-12-11</td>
</tr>
<tr>
<td>4781-7-01(K)(1)</td>
<td>4781-12-12</td>
</tr>
<tr>
<td>4781-10-01</td>
<td>4781-12-12–12-07.3</td>
</tr>
<tr>
<td>4781-10-01(D)</td>
<td>4781-12-13</td>
</tr>
<tr>
<td>4781-10-01(E)</td>
<td>4781-12-14</td>
</tr>
<tr>
<td>4781-11-01</td>
<td>4781-12-15</td>
</tr>
<tr>
<td>4781-11-10</td>
<td>4781-12-16</td>
</tr>
<tr>
<td>4781-11-16</td>
<td>4781-12-17</td>
</tr>
<tr>
<td>4781-11-17</td>
<td>4781-12-18</td>
</tr>
<tr>
<td>4781-12-01 et seq.</td>
<td>4781-12-19</td>
</tr>
<tr>
<td>4781-12-01 to -04</td>
<td>4781-12-20</td>
</tr>
<tr>
<td>4781-12-02</td>
<td>4781-12-20(A)</td>
</tr>
<tr>
<td>4781-12-03</td>
<td></td>
</tr>
<tr>
<td>4781-12-04</td>
<td></td>
</tr>
<tr>
<td>4781-12-041</td>
<td></td>
</tr>
<tr>
<td>4781-12-05</td>
<td></td>
</tr>
<tr>
<td>4781-12-05-5</td>
<td></td>
</tr>
<tr>
<td>4781-12-051(A)(2)</td>
<td></td>
</tr>
<tr>
<td>4781-12-051(B)(1)–(19)</td>
<td></td>
</tr>
<tr>
<td>4781-12-051(B)(5)</td>
<td></td>
</tr>
<tr>
<td>5781-12-051(B)(6)</td>
<td></td>
</tr>
<tr>
<td>4781-12-051(B)(9)</td>
<td></td>
</tr>
<tr>
<td>4901:1-16-07</td>
<td></td>
</tr>
<tr>
<td>4901:1-16-07</td>
<td></td>
</tr>
<tr>
<td>4901:1-16-08</td>
<td></td>
</tr>
<tr>
<td>4901:1-16-09</td>
<td></td>
</tr>
<tr>
<td>4901:1-18-05</td>
<td></td>
</tr>
<tr>
<td>4901:1-18-06</td>
<td>2-29</td>
</tr>
<tr>
<td>4901:1-18-08</td>
<td>2-31</td>
</tr>
<tr>
<td>4901:1-18-08(E)</td>
<td>2-31</td>
</tr>
<tr>
<td>5501:2-5-05</td>
<td></td>
</tr>
</tbody>
</table>
## Ohio Attorney General Opinions

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>52-1383</td>
<td>2-23</td>
</tr>
<tr>
<td>52-1470</td>
<td>2-24</td>
</tr>
<tr>
<td>55-5577</td>
<td>2-23</td>
</tr>
<tr>
<td>61-2693</td>
<td>2-23</td>
</tr>
<tr>
<td>64-1445</td>
<td>2-24</td>
</tr>
<tr>
<td>66-182</td>
<td>2-6</td>
</tr>
<tr>
<td>69-128</td>
<td>2-24, 3-20</td>
</tr>
<tr>
<td>72-033</td>
<td>2-23</td>
</tr>
<tr>
<td>73-042</td>
<td>5-3</td>
</tr>
<tr>
<td>76-025</td>
<td>2-24</td>
</tr>
<tr>
<td>77-038</td>
<td>5-2</td>
</tr>
<tr>
<td>79-098</td>
<td>2-17</td>
</tr>
<tr>
<td>80-020</td>
<td>2-23</td>
</tr>
</tbody>
</table>

## Other

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>67 Ohio Jur.3d 13</td>
<td>3-3</td>
</tr>
<tr>
<td>City of Canton Ordinance 2911.11</td>
<td>3-26</td>
</tr>
<tr>
<td>Civil Rule 23</td>
<td>4-4</td>
</tr>
<tr>
<td>Civil Rule 65</td>
<td>5-36</td>
</tr>
<tr>
<td>Colorado Uniform Building Code</td>
<td>2-4</td>
</tr>
<tr>
<td>New York State Private Housing Finance</td>
<td>3-21</td>
</tr>
<tr>
<td>Ohio Const. Art. I, Sections 1, 16 and 19</td>
<td>3-6</td>
</tr>
<tr>
<td>SB 142 (1998)</td>
<td>1-6</td>
</tr>
<tr>
<td>Texas Manufactured Housing Standards</td>
<td>2-10</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Case Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABM Farms, Inc. v. Woods</td>
<td>4-61</td>
</tr>
<tr>
<td>Alkenbrack v. Green Tree Servicing LLC</td>
<td>4-59, 4-60</td>
</tr>
<tr>
<td>All Seasons Mobile Home Park v. Tymico</td>
<td>5-61</td>
</tr>
<tr>
<td>Allason v. Gailey</td>
<td>4-57</td>
</tr>
<tr>
<td>Anderle v. Ideal Mobile Home Park, Inc.</td>
<td>2-30, 5-9, 5-30, 5-76, 5-77</td>
</tr>
<tr>
<td>Anderson v. Brown</td>
<td>2-23, 3-10</td>
</tr>
<tr>
<td>Apel v. Wolf</td>
<td>5-14, 5-45, 5-46, 5-77</td>
</tr>
<tr>
<td>Apple Creek Banking Co. v. Smith</td>
<td>2-18, 4-13, 4-30, 6-4</td>
</tr>
<tr>
<td>Arndt v. P &amp; K, Ltd.</td>
<td>5-45</td>
</tr>
<tr>
<td>Arndt v. P &amp; M, Ltd. (2008)</td>
<td>5-6, 5-8, 5-17, 5-42, 5-45</td>
</tr>
<tr>
<td>Association for Regulatory Reform v. Pierce</td>
<td>1-3</td>
</tr>
<tr>
<td>Atkinson v. General Electric Credit Corp</td>
<td>4-27</td>
</tr>
<tr>
<td>Baker v. Blevins</td>
<td>3-24</td>
</tr>
<tr>
<td>Baker v. Dupler</td>
<td>4-13</td>
</tr>
<tr>
<td>Baldauf v. Kent State University</td>
<td>5-46</td>
</tr>
<tr>
<td>Ballinger v. Craig</td>
<td>4-64</td>
</tr>
<tr>
<td>Bank One of Columbus, NA v. Myers</td>
<td>4-10, 4-11</td>
</tr>
<tr>
<td>Bank of New York Mellon v. Ferrari</td>
<td>2-25, 4-33</td>
</tr>
<tr>
<td>Barnett v. Smith</td>
<td>5-52, 5-56</td>
</tr>
<tr>
<td>Barnett Bank of Marion County NA v. Nelson, Florida Insurance Commissioner</td>
<td>4-24</td>
</tr>
<tr>
<td>Base-Smith v. Lautrec, Ltd</td>
<td>5-45</td>
</tr>
<tr>
<td>Beck v. Springfield Township Board of Zoning Appeals</td>
<td>3-3, 3-4, 3-23</td>
</tr>
<tr>
<td>Bell v. Turner (2007)</td>
<td>3-27</td>
</tr>
<tr>
<td>Bell v. Turner (2010)</td>
<td>3-27</td>
</tr>
<tr>
<td>Bell v. Turner (2013)</td>
<td>3-27</td>
</tr>
<tr>
<td>Benner v. Hammond</td>
<td>1-7, 3-29, 3-30</td>
</tr>
<tr>
<td>Bennett v. CMH Homes, Inc.</td>
<td>4-50, 4-51</td>
</tr>
<tr>
<td>Bennett v. Croxford (Oct. 14, 1996)</td>
<td>5-6, 5-36</td>
</tr>
<tr>
<td>Bennett v. Croxford (April 18, 1997)</td>
<td>5-14, 5-42, 5-77</td>
</tr>
<tr>
<td>Bennett v. Knisley</td>
<td>4-52, 4-66</td>
</tr>
<tr>
<td>Bennington v. Austin Square, Inc. (2006)</td>
<td>5-12, 5-29, 5-30, 5-77</td>
</tr>
<tr>
<td>Bennington v. Austin Square, Inc. (2010)</td>
<td>5-12, 5-29, 5-77</td>
</tr>
<tr>
<td>Benson v. Oaks Mobile Home Park</td>
<td>5-6, 5-7, 5-51, 5-75, 5-77</td>
</tr>
<tr>
<td>Bittner v. Tri-County Toyota</td>
<td>4-67, 5-77</td>
</tr>
<tr>
<td>Blair v. Mobile Home Communities, Inc.</td>
<td>5-22</td>
</tr>
<tr>
<td>Blake v. Townsend</td>
<td>5-42</td>
</tr>
</tbody>
</table>
BLD Partners v. City of Dayton.................................................................................................................. 3-29
Blon v. Bank One Akron, NA.................................................................................................................. 4-39
Bloomingburg Mobile Home Park v. Conner ......................................................................................... 5-2
Board of County Commissioners of Ashtabula Cty. v. Curtis ......................................................... 3-10, 3-12, 3-16
Board of Health, Lorain Co. General Health Dist. v. Deacon ................................................................ 3-22
Board of Trustees, Put-in-Bay Twp. v. Island Club, Inc. ...................................................................... 5-2
Board of Trustees, Sullivan Twp. v. Baisden ......................................................................................... 3-23
Boechmann v. George ........................................................................................................................... 5-60
Boone v. American Loyalty Insurance Company .................................................................................. 4-57
Booth v. K & K Homes .......................................................................................................................... 4-47, 4-48
Bowen v. Stan B. & Ray V. Ltd ........................................................................................................... 5-13
Bowman v. Gordon .............................................................................................................................. 4-62
Braff Mobile Home Park Co. v. McFarland ......................................................................................... 5-49
Britton v. Gibbs Associates .................................................................................................................. 4-52, 4-56, 4-66
Brodnick v. Munger ............................................................................................................................. 2-5
Brown v. Liberty Clubs, Inc. ............................................................................................................... 4-2
Brown v. Ohio Mobile Home Sales ....................................................................................................... 4-3
Brown v. Panorama Mobile Homes Center, Inc .................................................................................. 4-3
Brown v. Price Mobile Home Center, Inc ............................................................................................ 4-3
Brown v. Rona Enterprises, Inc ......................................................................................................... 4-3
Brown v. Route 33 Corp. ..................................................................................................................... 4-3
Brown v. Stewart’s Mobile Home Sales, Inc......................................................................................... 4-3
Browning v. Five Star Motors, Inc ......................................................................................................... 4-4
Bryant v. Dale ....................................................................................................................................... 5-65
Buckeye Federal Savings and Loan v. Cunningham ......................................................................... 4-2, 4-3
Buckeye Lake Estates Mobile Home Park v. Abel ............................................................................ 5-61
Buckeye State Mutual Insurance Co. v. Tuttle .................................................................................. 4-55
Bulger v. Bulkowski .............................................................................................................................. 4-14
Bundy v. Sky Meadows Trailer Park .................................................................................................... 5-45
Burgess v. Takacs .................................................................................................................................. 5-45
Burris v. First Financial Corp. ............................................................................................................. 4-27
Burnett v. Purcell .................................................................................................................................. 2-19, 4-13
Burroughs v. Northrup ........................................................................................................................... 5-33
Burton v. Elsea, Inc ............................................................................................................................... 2-18, 2-19, 4-7, 4-13, 4-14, 4-15, 4-49, 4-51
Burton v. Kinane Homes, Inc .............................................................................................................. 4-51, 4-52
Cadillac Estates v. Stanton .................................................................................................................... 3-15
Callahan v. Croxford ............................................................................................................................. 2-17, 5-16, 5-47, 5-63, 5-77
Callahan v. Ickes ................................................................................................................................... 5-65
Camacho v. Holiday Homes ............................................................................................................... 4-59
Canter v. J. M. Mobile & Modular Homes, Inc .................................................................................. 4-54
Cross v. Superior Mobile Homes, Inc. ........................................................................ 4-3, 4-23, 4-66
Croxford v. Litchfield .................................................................................. 5-20, 5-50, 5-77
Cundiff v. Stein ............................................................................................... 5-77
Czerwonko v. Sahara Mobile Home Park & Sales, Inc. .................................. 5-28, 5-29, 6-3
D.A.N. Joint Venture III, L.P. v. Legg ................................................................. 4-2
Dane v. Christman ......................................................................................... 5-59
Daniels v. Decker .......................................................................................... 5-56
Davidson v. Robertson Orchards, Inc. .......................................................... 4-61
Davis v. Duncan ............................................................................................ 3-30
Davis v. Hoover ............................................................................................ 5-8, 5-77
Davis v. McPherson ..................................................................................... 3-3
Davis v. Southern Energy Homes, Inc. ......................................................... 4-58
Day v. Baker ................................................................................................. 5-62
Dearwester’s Gem City Estates v. Nelson ....................................................... 5-16, 5-62, 5-63
Deer Lake Mobile Park v. Wendel ................................................................. 5-25, 5-44, 5-76, 5-77
DeRosa v. Parker .......................................................................................... 3-22
Derr v. Smith ................................................................................................. 4-11, 4-42, 4-43, 4-44, 4-66
DeVoll v. Greathouse Property Mgt. ............................................................. 5-36
Domokur v. Thomas .................................................................................... 3-12
Drenning v. Blue Ribbon Homes .................................................................. 4-9, 4-66
Duncan v. Middlefield .................................................................................. 3-25
Dusi v. Wilhelm ............................................................................................ 3-6, 3-9
Dutiel v. Childers ......................................................................................... 5-54
Dutiel v. Childress ....................................................................................... 5-2
Dutiel v. King ............................................................................................... 5-15
Dutiel v. New Lexington Zoning Board of Appeals ........................................ 3-25
Eagle v. Fred Martin Motor Co. ..................................................................... 4-60
Eamillo v. Liberty Mobile Home Sales, Inc. .................................................. 5-28
Easley v. Thompson ..................................................................................... 5-10
Eastgate Mobile Home Park Residents Association v. Klekamp .................. 3-15, 5-4, 5-9
Eller v. Continental Investment Partnership ............................................... 5-47
Elsea v. Stapleton ......................................................................................... 4-2, 4-6, 4-7, 4-10, 4-12, 4-66
Embrey v. Kreps ........................................................................................... 5-61
Enghard v. Canton Twp. Board of Zoning Appeals ..................................... 3-29
Equitable Fed. Savings & Loan Assoc. v. Hopton ........................................ 4-45
Estadt v. Board of Zoning Appeals of Claiburne Twp. ................................. 2-7
Estate of Lamont Cattano v. High Touch Homes, Inc. ................................. 4-4
Estep v. Tisdale ............................................................................................ 5-15, 5-16, 5-62
Euclid Beach Ltd. v. Brockett ...................................................................... 5-19, 5-25, 5-48, 5-76, 5-77
Evangelinos v. Nixon ................................................................................... 5-16, 5-63

xxii    rev.5/2016
<table>
<thead>
<tr>
<th>Case Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Falbo and Cappelletty v. Raintree Village</td>
<td>5-33</td>
</tr>
<tr>
<td>Farrell v. Deuble</td>
<td>3-30</td>
</tr>
<tr>
<td>Fay Gardens Mobile Home Park v. Newman</td>
<td>5-48, 5-49, 5-76, 5-77, 6-1</td>
</tr>
<tr>
<td>Felix v. Aquameter</td>
<td>2-30</td>
</tr>
<tr>
<td>Felix v. Mobile Homes for Sale</td>
<td>2-17, 4-2, 4-8, 4-66</td>
</tr>
<tr>
<td>Few v. Esselman</td>
<td>2-18</td>
</tr>
<tr>
<td>Fidelity Fin. Serv. Inc. v. Wilson</td>
<td>4-42</td>
</tr>
<tr>
<td>First Realty Property Mgt. Co. v. Smith</td>
<td>5-53</td>
</tr>
<tr>
<td>Fizer v. Luckett</td>
<td>5-10, 6-5</td>
</tr>
<tr>
<td>Fleetwood Enterprises v. U.S. Dept. of Housing and Urban Development</td>
<td>2-3</td>
</tr>
<tr>
<td>Florida Manufactured Housing Association v. Cisneros</td>
<td>2-3</td>
</tr>
<tr>
<td>Ford Motor Credit Co. v. Potts</td>
<td>4-41</td>
</tr>
<tr>
<td>Fostoria Mobile Estates, Inc. v. Neff</td>
<td>5-61</td>
</tr>
<tr>
<td>Francisco v. Manchik</td>
<td>5-53</td>
</tr>
<tr>
<td>Franklin Banks v. Heritage Property Group, LLC</td>
<td>5-41</td>
</tr>
<tr>
<td>Freyermuth v. Navarre Village Homes Austin Square Inc.</td>
<td>5-28, 5-29</td>
</tr>
<tr>
<td>Friend v. Elsea Inc</td>
<td>4-67</td>
</tr>
<tr>
<td>Friendly Village v. Duty</td>
<td>5-13, 5-18, 5-51</td>
</tr>
<tr>
<td>Fuqua Homes, Inc. v. Evanston Building &amp; Loan Co.</td>
<td>4-2</td>
</tr>
<tr>
<td>Fulgenzi v. PLIVA, Inc</td>
<td>2-12</td>
</tr>
<tr>
<td>Garland v. Emerine</td>
<td>3-23</td>
</tr>
<tr>
<td>Garrard v. McComas</td>
<td>5-45</td>
</tr>
<tr>
<td>Gaskill v. Doss</td>
<td>4-66, 4-67</td>
</tr>
<tr>
<td>Georgia Manufactured Housing Association Inc. v. Spalding County, Georgia</td>
<td>2-5</td>
</tr>
<tr>
<td>Gettysburg Homeowners Association v. Ellenburg Capital Corp.</td>
<td>5-35</td>
</tr>
<tr>
<td>Gibbs v. Freeman</td>
<td>5-57</td>
</tr>
<tr>
<td>Gibson v. Suiter</td>
<td>5-6, 5-7, 5-40, 5-77</td>
</tr>
<tr>
<td>Gitler v. Gerity</td>
<td>5-12</td>
</tr>
<tr>
<td>Gitler v. U.S. Atty</td>
<td>3-17</td>
</tr>
<tr>
<td>Glaspell v. Ohio Edison Co.</td>
<td>4-15</td>
</tr>
<tr>
<td>Glouster Community Bank v. Winchell</td>
<td>4-10, 4-31, 4-32</td>
</tr>
<tr>
<td>Goddard v. Manson</td>
<td>2-19, 4-47, 4-66</td>
</tr>
<tr>
<td>Gonder v. Ada Community Improvement Corp.</td>
<td>2-18</td>
</tr>
<tr>
<td>Gonzalez v. Drew Industries, Inc.</td>
<td>2-11</td>
</tr>
<tr>
<td>Grafton Township Trustees v. Wells</td>
<td>4-55</td>
</tr>
<tr>
<td>Grant v. General Electric Credit Corp.</td>
<td>4-26, 4-27</td>
</tr>
<tr>
<td>Green v. Westgate Village Mobile Home Park</td>
<td>5-31</td>
</tr>
<tr>
<td>Green Tree Financial Corp. v. Randolph</td>
<td>4-58, 4-59, 4-60</td>
</tr>
<tr>
<td>Greenbriar Estates v. Eberle</td>
<td>5-65</td>
</tr>
<tr>
<td>Greenlawn Companies LLC v. Felder</td>
<td>4-59, 4-62</td>
</tr>
</tbody>
</table>

*xxiii*  rev.5/2016
<table>
<thead>
<tr>
<th>Case</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Groff v. Heath</td>
<td>3-29</td>
</tr>
<tr>
<td>GS Holdings Ltd. v. Rutherford</td>
<td>5-56</td>
</tr>
<tr>
<td>Haas v. Johnson</td>
<td>5-7, 5-77</td>
</tr>
<tr>
<td>Haas v. Rapp</td>
<td>5-4</td>
</tr>
<tr>
<td>Haga v. Martin Homes (1999)</td>
<td>4-61</td>
</tr>
<tr>
<td>Haga v. Martin Homes (2000)</td>
<td>4-61</td>
</tr>
<tr>
<td>Hall v. Equitable Savings</td>
<td>4-5, 4-46, 4-49, 4-66</td>
</tr>
<tr>
<td>Hall v. Fairmont Homes, Inc.</td>
<td>2-11</td>
</tr>
<tr>
<td>Hall v. Zambrano</td>
<td>5-45</td>
</tr>
<tr>
<td>Hamlet Mobile Home Park v. Rose</td>
<td>5-14</td>
</tr>
<tr>
<td>Hamlet Mobile Home Park v. Sigmund</td>
<td>5-61</td>
</tr>
<tr>
<td>Hammond v. Cappaert Manufactured Housing, Inc.</td>
<td>2-8, 2-10</td>
</tr>
<tr>
<td>Hampton v. Safeco Insurance Co. of America</td>
<td>4-55</td>
</tr>
<tr>
<td>Hardy v. Miller</td>
<td>3-12</td>
</tr>
<tr>
<td>Harriman v. Skyline Corp.</td>
<td>2-10</td>
</tr>
<tr>
<td>Harrison Parks, Inc. v. Bozarth</td>
<td>5-17</td>
</tr>
<tr>
<td>Hatfield v. Oak Hill Banks</td>
<td>4-50</td>
</tr>
<tr>
<td>Hawkins v. Crawford</td>
<td>5-36</td>
</tr>
<tr>
<td>Helena v. Country Mobile Homes Inc.</td>
<td>xxxviii</td>
</tr>
<tr>
<td>Heritage Hills v. Bragg</td>
<td>5-62</td>
</tr>
<tr>
<td>Heritage Hills v. Deacon</td>
<td>4-6</td>
</tr>
<tr>
<td>Hersch v. Anderson Acres, Inc.</td>
<td>5-44</td>
</tr>
<tr>
<td>Hervey v. Normandy Development Co.</td>
<td>4-46, 4-52</td>
</tr>
<tr>
<td>Heuer v. Forest Hill State Bank</td>
<td>2-2</td>
</tr>
<tr>
<td>Highland Estates Mobile Home Park v. Miller</td>
<td>5-57, 5-60, 6-3</td>
</tr>
<tr>
<td>Hilton v. Chillicothe Mobile Homes</td>
<td>4-4, 4-5, 4-66</td>
</tr>
<tr>
<td>Hoeftich v. Hedrick</td>
<td>5-46</td>
</tr>
<tr>
<td>Hoisington v. Western Casualty &amp; Surety Co.</td>
<td>4-56</td>
</tr>
<tr>
<td>Hooker v. Weathers</td>
<td>4-66, 5-32</td>
</tr>
<tr>
<td>Hopkins v. Chaney</td>
<td>4-5, 4-66</td>
</tr>
<tr>
<td>Hopkins v. Haas</td>
<td>4-17, 5-7, 5-42, 5-58, 5-77</td>
</tr>
<tr>
<td>Howard v. Advantage Homes</td>
<td>4-62, 4-66</td>
</tr>
<tr>
<td>Howard v. Helterbride</td>
<td>5-56</td>
</tr>
<tr>
<td>Howard Co. v. Liles</td>
<td>5-17, 6-3</td>
</tr>
<tr>
<td>Huntington National Bank v. Cole</td>
<td>4-10</td>
</tr>
<tr>
<td>Huntington National Bank v. Stockwell</td>
<td>4-38</td>
</tr>
<tr>
<td>Huntsberry v. Countryside Estates</td>
<td>5-15</td>
</tr>
<tr>
<td>In re Ashworth</td>
<td>4-64</td>
</tr>
<tr>
<td>In re Baker</td>
<td>4-63</td>
</tr>
<tr>
<td>In re Bryan</td>
<td>1-9, 4-30, 4-43, 4-44</td>
</tr>
</tbody>
</table>
In re Cluxton .......................................................... 4-33, 4-34
In re Davis (1999) .......................................................... 4-64
In re Davis (2007) .......................................................... 4-33
In re Davis v. Green Tree Servicing, LLC .......................................................... 4-34
In re Delaney .......................................................... 5-34
In re DeNicola .......................................................... 4-47
In re Donley .......................................................... 4-63
In re Evans .......................................................... 2-16, 4-31
In re Evans v. Green Tree Servicing, LLC .......................................................... 4-35
In re FEMA Trailer Formaldehyde Products Liability Litigation .......................................................... 2-10, 2-11
In re Foreclosure of Liens for Delinquent Land Taxes v. Parcels of Land with Delinquent Tax Liens .......................................................... 4-40
In re Marshall .......................................................... 4-64
In re Mitchell .......................................................... 2-18
In re Musser v. Origin Financial LLC .......................................................... 4-35
In re Reinhardt .......................................................... 4-34
In re Saylor .......................................................... 4-63
In re Shupe .......................................................... 4-35
In re Slawter .......................................................... 4-36
In re Strittmaier .......................................................... 3-24
In re Thurmond .......................................................... 4-63
In the Matter of the Complaint of Dumeney and Felix v. Aquameter .......................................................... 2-30, 2-31
In the Matter of the Complaints of Inscho, Carson and Clark (In re Inscho) .......................................................... 2-28, 2-29
Irvin v. Nicholson .......................................................... 5-8
Ishmael v. Dutch Housing, Inc .......................................................... 4-61
J & M Trailer Court v. Dissette .......................................................... 5-56, 5-57, 5-64
Jakacki v. Raineri .......................................................... 5-6, 5-8, 5-40, 5-42
James Place Properties Inc. v. Madison Twp. Board of Zoning Appeals .......................................................... 3-7
Johnson v. Adams .......................................................... 5-19
Johnson v. Drum .......................................................... 5-50, 5-78
Johnson v. Leedom .......................................................... 5-17
Jones v. Sommers Mobile Home Sales, Inc .......................................................... 5-24
Jones v. Superior Mobile Homes .......................................................... 5-6, 5-43
Jowers v. Eastgate Village Ltd .......................................................... 5-45
Juengel v. Christian .......................................................... 5-24, 5-26
Kabco Equipment Specialists v. Budgetel, Inc .......................................................... 4-47
Kanter v. Board of Zoning Appeals .......................................................... 3-4, 3-9
Kantner v. Gibson .......................................................... 5-27
Kantner v. Kanoor .......................................................... 4-15, 4-66, 5-76
McMahan’s Mobile Home Park v. Mabberly ................................................................. 5-66
McWhorter v. Carnein .................................................................................................. 5-75
McWhorter v. Elsea, Inc. ......................................................................................... 4-9, 4-23
Menges v. Superior Mobile Homes ........................................................................ 5-7, 5-23
Mentor Green Mobile Estates v. City of Mentor ....................................................... 3-10
Mentor Trailer Park v. Clark ..................................................................................... 5-30
Meuser v. Smith ......................................................................................................... 3-4, 3-9
MHC5, LLC v. Martin ............................................................................................... 5-60
Michigan Manufactured Housing Assn. v. Robinson Twp. ...................................... 2-4
Mid-America Acceptance Co. v. Lightle ................................................................. 4-9
Middaugh v. Morrow .............................................................................................. 5-45
Middlefield Mobile Home Park & Sales Inc. v. Ziegler .............................................. 5-61
Miles v. Raymond Corp. .......................................................................................... 2-12
Miller Mobile Homes v. Denardy ............................................................................ 5-14
Miller Mobile Homes, Inc. v. Reeves ..................................................................... 5-30, 5-51, 5-78
Millersport Bank Co. v. Blauser ............................................................................. 4-32, 4-33
Minear v. Randolph Township Board of Zoning Appeals ...................................... 3-23
Mitchell v. Thompson ............................................................................................ 3-27
Mix v. Mix .................................................................................................................. 5-58
MLR Properties, Inc. v. Baer .................................................................................. 5-54, 5-57
MLR Properties, Inc. v. Hemmelgarn ..................................................................... 5-64
Mobile Manor Mobile Home Park v. Metts ............................................................. 5-49
Moisman v. Northland Community, LLC .............................................................. 2-30
Monaco v. Schultz ................................................................................................... 5-19, 5-48, 5-78
Montgomery v. Mobile Home Estates .................................................................. 4-12, 4-13, 4-48, 4-50, 4-66
Moonlight Mobile Home Parks v. Eichner ............................................................. 5-60
Moore v. Workman .................................................................................................. 2-18
Morris v. Anthony Estates ...................................................................................... 5-45
Morrison v. Circuit City Stores .............................................................................. 4-60
Moyer v. Citicorp Homeowners, Inc. .................................................................... 4-27
MRD v. Erman .......................................................................................................... 5-19, 5-47, 5-76, 5-78
Mullins v. Huffman ................................................................................................ 2-17, 4-67
Nations Credit v. Pheanis ...................................................................................... 4-5, 4-6, 4-47
Nichols v. Malone .................................................................................................... 5-9, 5-47, 5-78
Noland v. City of Sharonville ................................................................................ 2-22, 3-10
Non-Employees of Chateau Estates Residents Assoc. v. Chateau Estates,
Ltd. (2003) .............................................................................................................. 5-7, 5-9, 5-38, 5-42
Non-Employees of Chateau Estates Residents Assoc. v. Chateau Estates,
Ltd. (2004) .............................................................................................................. 5-42, 5-76, 5-78
Non-Employees of Chateau Estates Residents Assoc. v. Chateau Estates, Ltd.
(2005) .................................................................................................................... 5-42
North Ridge Investment Corp. v. Columbia Gas of Ohio, Inc. ........................... 2-27
Northland Insurance Co. v. Palm Harbor Homes ................................................................. 4-61
Oak Park Mgt. Corp. v. Via ........................................................................................................ 5-67, 5-69
Ohio Civil Rights Commission v. Gitler .............................................................................. 5-49, 5-78
Ohio Civil Rights Commission v. Lysyj ................................................................................ 5-32
Ohio Manufactured Housing Association v. Celebrezze ..................................................... 2-6
Ohio State Student Trailer Park Coop. v. Franklin Co. ......................................................... 3-5, 3-9
Old Bridge Corp. v. Dugan ................................................................................................. 5-22
Orahoske v. Grubbs ........................................................................................................ 2-25
Orchard Isle Mobile Home Park I Condominium Assoc., Inc. v. Sandy Shores .................. 3-19
Paquette v. Universal Utilities Inc. .................................................................................. 2-30
Park Centre Party Centre v. Zell ....................................................................................... 2-29
Park Investments v. Totten ................................................................................................ 5-65
Park Place Home Brokers v. P-K Mobile Home Park ......................................................... 5-32
Parklane Associates v. Licata ............................................................................................... 5-26
Parr v. Pappas .................................................................................................................. 5-34
Parrish v. Board of Township Trustees of Marion Township .............................................. 3-8, 3-9
Payne v. Douglas ............................................................................................................... 5-62, 5-64
People v. Mobile Magic Sales .......................................................................................... 5-24
People ex rel Fahner v. Testa ............................................................................................. 5-24
People ex rel Scott v. Willow Lake Estates ....................................................................... 5-24
People’s Acceptance Corp. v. Van Epps ........................................................................... 4-38
Perry v. Fleetwood Enterprises ......................................................................................... 2-10
Peterson v. Woods .......................................................................................................... 5-57
Petrick v. Monahan .......................................................................................................... 4-16, 4-53, 4-54
Phillips v. Board ............................................................................................................. 5-64
Pierce v. Derickson ........................................................................................................... 5-50, 5-76
Pikewood Manor v. Jones .................................................................................................. 5-6, 5-36, 5-42
Pirigyi v. McKeans ........................................................................................................... 4-66
Pleasant View Mobile Home Court v. Prichard .................................................................. 5-54
Pledger v. Public Utilities Commission .............................................................................. 2-28
Pojman v. Columbia-Brook Park Mgt. .................................................................................. 5-19
Pollitt v. Bramel ................................................................................................................ 5-31, 5-78
Potter v. Dangler Mobile Homes ......................................................................................... 4-2, 4-3, 4-12, 4-13, 4-51, 4-66
Pratt v. North Dixie Manufactured Housing, Ltd. ............................................................... 4-11
Priode v. Degenhart ........................................................................................................... 5-25, 5-26
Properties Ltd. v. Coffee ................................................................................................... 5-15, 5-78
Properties Ltd. v. Paquette ................................................................................................. 5-57
Pummill v. Carnes ............................................................................................................ 5-44
Purcell v. Schaefer ............................................................................................................... 3-27, 3-28
Quiller v. Barclays American/Credit Inc. ........................................................................... 4-27
Quinlan v. Mobile Manor Mobile Home Park .................................................. 5-6, 5-7, 5-40
Ramm v. Shreves ............................................................................................. 5-11, 5-56
Rapa v. Haines .................................................................................................. 2-22
Ratcliff v. Adkins ............................................................................................. 3-30
Reck v. Lucas ..................................................................................................... 5-12
Redman Homes, Inc. v. Ivy ................................................................. 2-10
Reed v. Carroll ................................................................................................. 5-58
Reinhart v. Fout ............................................................................................... 5-59
Renker v. Village of Brooklyn ................................................................. 3-3
Renner v. Darin Acquisition Corp. ............................................................. 4-2
Rex Hill v. Cherry ........................................................................................... 5-39, 5-78
Richard v. Fleetwood Enterprises ............................................................. 2-8, 2-10
Richards v. Eckelberry .................................................................................. 5-55, 5-60
Rickard v. Teynor’s Homes, Inc. ................................................................. 4-58
Rickett v. Ohio Real Estate Appraiser Board .............................................. 2-25, 4-32, 4-33
Ritzman v. Mikel ............................................................................................ 5-28
Robinson v. Haas ........................................................................................... 3-21
Rolfes, et al. v. Harlem Township Board of Trustees .................................... 3-7
Rona Enterprises v. VanScoy ......................................................................... 4-61
Rucker v. Alston .............................................................................................. 2-19
Safest Neighborhood Assoc. v. Athens Bd. Zoning Appeals ......................... 3-25
Santilla v. Sahara Mobile Home Park and Sales ........................................ 5-26
Schaedler v. Shinkle ....................................................................................... 5-51
Schindler v. Columbia-Brook Park Mgt, L.L.C ............................................... 5-19, 5-36, 5-37
Schisler v. H & R Investments ...................................................................... 2-16, 4-17
Schwartz v. Capital Savings & Loan Co. ...................................................... 4-41
Schwartz v. McAtee ....................................................................................... xxxviii, 1-3, 3-21, 3-31, 5-1, 5-53–5-56, 5-60, 5-63
Schwaenbach v. Town of Opal, Wyoming ................................................... 2-4
Schwert v. Abrameczyk .................................................................................. 3-31, 3-32
Scurlock v. City of Lynn Haven ................................................................... 2-3
Sears v. Fechuck ............................................................................................. 5-52
Shane v. Tempel ............................................................................................. 5-27
Shasteen v. Palm Harbor Homes ................................................................. 4-60
Shaw v. Mays Mobile Home Court ............................................................. 5-19, 5-47, 5-76, 5-78
Shepard’s Mobile Home Court, Ltd. v. Bryner ........................................ 5-60, 5-75
Shepard’s Mobile Home Park Ltd. v. Sigmon ........................................... 4-16
Sheridan Mobile Village v. Larsen ............................................................... 5-62, 6-1
Shimko v. Marks ............................................................................................ 5-56
Shopping Centers Assoc. of Northern Ohio v. Public Utilities Commission of Ohio 2-29
Shorter v. Champion Home Builders Co. ..................................................... 2-9, 2-10, 2-11
State ex rel Howland Township Trustees v. Bailes ................................................................. 3-4, 3-9
State ex rel Ohio Bell Telephone Co. v. Court of Common Pleas ........................................... 2-27
State ex rel Petro v Maurer Mobile Home Court, Inc ............................................................. 3-12
State ex rel Ricketts v. Balsly ................................................................................................. 3-8
State ex rel Sunset Estate Properties, LLC v. Village of Lodi .................................................... 3-5, 3-24, 3-25
Stebleton v. Boblenz ............................................................................................................... 3-23
Stein v. Fairview Community Park ........................................................................................... 5-19, 5-47
Sterling v. Stevens ................................................................................................................... 5-46
Stevenson v. Kraynak ............................................................................................................. 5-21
Stillberger v. Springman ......................................................................................................... 5-54, 5-64
Stinchcomb v. Sahara Mobile Home Corp ........................................................................... 4-21
Stites Enterprises v. Dixon ...................................................................................................... 5-55
Stitt v. Dutiel ............................................................................................................................ 2-17, 4-6, 4-10, 4-11, 4-37, 4-38, 4-66
Stoots v. Huber Mobile Home Park ........................................................................................ 2-31, 5-6, 5-37, 5-38
Straley v. Keltner .................................................................................................................. 5-44
Strickland v. Fisher ............................................................................................................... 5-56
Strohecker v. Green Twp. Board of Zoning Appeals ............................................................... 3-25
Summit Mobile Home Park v. Brode ...................................................................................... 5-14
Superior Mobile Homes v. Russell ......................................................................................... 5-11, 5-64, 5-78, 6-3
Superior Mobile Homes v. White ............................................................................................ 5-36
Swigart v. Richards ............................................................................................................... 3-28, 3-29
Swogger v. Merkel .................................................................................................................. 5-6, 5-11, 5-38, 5-40, 5-42
Sylvester v. Howland Township Board of Zoning Appeals ......................................................... 3-23
Tackett v. Boltenhouse ........................................................................................................... 5-6, 5-7, 5-8, 5-78, 6-5
Tea v. Wilhelm ...................................................................................................................... 5-14, 5-60, 6-3
Teets v. Ravenna Twp. Board of Zoning Appeals ................................................................. 3-29
Tenants v. Norval Co ............................................................................................................... 5-6, 5-39
Texas Manufactured Housing Assn., Inc. v. City of La Porte .................................................... 2-5
Texas Manufactured Housing Association, Inc. v. City of Nederland ........................................ 2-4
Thompson v. Irwin ................................................................................................................ 5-45
Thompson v. KMV II, Ltd ...................................................................................................... 5-54, 5-60
Toland v. Wortman ................................................................................................................. 5-4, 5-30, 5-31
Towne Properties v. City of Fairfield ...................................................................................... 2-23
Trailer Mart Inc v. Bowers ...................................................................................................... 2-24
Trailer Mart v. Semanach ....................................................................................................... 5-14, 5-25
Trammell v. McDonald .......................................................................................................... 5-46
Trifonoff v. Reese Mobile Homes .......................................................................................... 4-2, 4-4, 4-9, 4-66
Trimble v. Holiday Homes .................................................................................................... 5-45
Troy v. Casale ........................................................................................................................ 5-50
Turner v. Derickson ............................................................................................................... 5-74
Turner v. Oskowski.......................................................................................................................... 5-74
United Mobile Homes v. Bollinger........................................................................................................ 5-64
United Mobile Homes v. Scruggs........................................................................................................... 5-57
United States v. Anaconda Co. ............................................................................................................... 2-2
United States v. California Mobile Home Park Management Co........................................................ 5-33
United States v. Freer.......................................................................................................................... 5-33
United States v. James Daniel Good Real Property........................................................................... 2-20
United States v. Warwick Mobile Home Estates, Inc........................................................................ 5-31
Van Sickle v. MOM, Inc.......................................................................................................................... 5-28
Vanderbilt Mtg. and Finance, Inc. v. Lloyd........................................................................................... 4-45
Vanhoose v. Advantage Homes Inc........................................................................................................ 4-8, 4-66
Village of Columbiana v. Keister .......................................................................................................... 3-3
Village of Kelley’s Island v. Johnson....................................................................................................... 3-23
Village of Lodi v. Ward .......................................................................................................................... 3-4
Village of Marblehead v. Menier........................................................................................................... 3-32
Village of Moscow v. Skene .................................................................................................................. 2-6, 3-29
Village of New Richmond, Ohio v. Byrne.............................................................................................. 3-31
Village of Williamsburg v. Milton......................................................................................................... 3-23
Voyager Village Ltd. v. Williams........................................................................................................... 5-20, 5-49
Waliga v. Goon ...................................................................................................................................... 5-66
Walker v. Stark County Health Dept. ..................................................................................................... 5-6, 5-9
Wallingford v. Green Tree Servicing, LLC ............................................................................................. 4-34
Ward v. Allen......................................................................................................................................... 5-54
Ware v. Trailer Mart, Inc....................................................................................................................... 4-20, 4-21
Waterhouse v. City of American Canyon ............................................................................................... 5-33
Weaver v. Montgomery ......................................................................................................................... 5-76, 5-78
Webb v. C. & J. Properties ..................................................................................................................... 5-20
Weddle v. Proffitt.................................................................................................................................... 5-78, 5-79
West Ridge Green v. Ortiz...................................................................................................................... 5-13, 5-14
Westfall v. Village of West Unity .......................................................................................................... 2-7
Westgate Village Mobile Home Park v. Fetro....................................................................................... 5-65
Westgate Village Mobile Home Park v. Sander ................................................................................... 5-65
White v. Superior Homes, Inc............................................................................................................... 5-28, 5-29
Wickham v. Woodlyn Acres.................................................................................................................. 5-37
Williams v. Aetna Finance Co................................................................................................................ 4-61
Williams v. Leslie .................................................................................................................................... 2-20, 4-30
Willow Rest Trailer Park, Inc. v. Willow Tenants Association .............................................................. 5-38
Wilson v. Waverlee Homes, Inc............................................................................................................ 4-58
Witt v. J & J Home Centers, Inc .......................................................................................................... 4-14
Wood v. Crestwood Assoc., LLC ......................................................................................................... 5-45
Wood County Health Department v. Woodlake Associates .......................................................... 3-15, 5-9
Woodside Terrace v. Lutz .................................................................................................................. 5-63
Woodside Terrace Mobile Home Owners Association v. Woodside Terrace Co., Ltd. .......... 5-39
Woolridge v. Redman Homes, Inc. .................................................................................................. 2-10
Wurzelbacher v. Johnson ................................................................................................................ 5-65
Wyngate Manor v. Gibbs ................................................................................................................. 5-54
Wyngate Manor v. Hernandes ......................................................................................................... 5-56
Yeager v. Cassidy ........................................................................................................................... 3-29
Young v. Spring Valley Division of Stites Enterprises ................................................................... 4-14
Zane Village Mobile Home Park v. Hedrick .................................................................................... 5-65
Zane Village Mobile Home Park v. Woods ..................................................................................... 5-65
Zimmerman v. Martin ....................................................................................................................... 5-2
Zumberge v. Odebrecht ................................................................................................................... 3-23
<table>
<thead>
<tr>
<th>Table</th>
<th>Description</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table 1</td>
<td>Manufactured Home Design, Construction and Safety Standards</td>
<td>2-3</td>
</tr>
<tr>
<td>Table 2</td>
<td>Steps Necessary to Approve Manufactured Home Park</td>
<td>3-2</td>
</tr>
<tr>
<td>Table 3</td>
<td>Mobile Home Siting: Approval Chances</td>
<td>3-9</td>
</tr>
<tr>
<td>Table 4</td>
<td>Ohio Administrative Code Manufactured Home Park Standards</td>
<td>3-14</td>
</tr>
<tr>
<td>Table 5</td>
<td>Awards in Manufactured Home Consumer Cases</td>
<td>4-66</td>
</tr>
<tr>
<td>Table 6</td>
<td>Manufactured/Mobile Home Sales Provisions in R.C. 3733</td>
<td>5-23</td>
</tr>
<tr>
<td>Table 7</td>
<td>Procedures for Removal, Sale, Destruction or Transfer of Abandoned or Unoccupied Mobile Homes</td>
<td>5-70</td>
</tr>
<tr>
<td>Table 8</td>
<td>Awards in Manufactured Home Landlord/Tenant Cases</td>
<td>5-77–5-78</td>
</tr>
</tbody>
</table>

\COLUMBUS01\ople_files\51 Publications\Mobile Home Manual\2015-2016\revised chapters\5-2016 LIST OF TABLES.docx
INTRODUCTION

Next to subsidized housing, manufactured homes are the largest source of low-income homes in the United States, consisting of one-third of all homes sold annually in the country.\(^1\) In Ohio, there were 243,190 licensed manufactured or mobile homes in 2013.\(^2\) Of these, 70% are located on private property and 30% in more than 1,600 manufactured home communities.\(^3\)

In terms of residents of manufactured housing, the Consumer Financial Protection Bureau reported in 2015 that households in this type of housing are generally younger than 30 or older than 70. Most of the younger group rented the home rather than owned it. In addition, the median income of manufactured home residents was about one-fourth of that of site-built housing.\(^4\)

In Ohio, prior to 1999, the terms “house trailer,”\(^5\) “mobile home,” and “manufactured home” all referred to a type of home that was produced in a factory, pulled by truck to a lot, and placed on the lot for use as a dwelling. Construction of this type of home, by whatever name, continues to comprise the vast majority of all new low-income housing construction in Ohio.

As the Supreme Court of Ohio noted in *Schwartz v. McAtee*, 22 Ohio St.3d 14, 17, 22, 488 N.E.2d 479 (1986), the term “mobile home” is something of a misnomer:

Clearly in many instances “mobile” homes are not mobile at all. In reality, they are immobile homes. Once they are put in place, they require a considerable amount of disassembly before they can be transported to a new location. This has led some jurisdictions to specifically find that “mobile” homes have become immobile.

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\(^3\) Id.

\(^4\) Consumer Financial Protection Bureau, Manufactured Housing Consumer Finance in the United States, Bureau, 2014, Section 2.3.

\(^5\) The term “house trailer” is no longer defined in Ohio law. Although the term “trailer” is still commonly used, Ohio law defines “trailer” to specifically exclude manufactured and mobile homes. R.C. 4505.01(M).
[citing Corning v. Ontario, 204 Misc. 38, 121 N.Y. Supp.2d 288 (1953), and Helena v. Country Mobile Homes, Inc., 387 So.2d 162 (Ala. 1980)]. Until March 1999, the differences between the term “manufactured home” and the term “mobile home” were not inherently significant for the practicing attorney. Since 1999, there are important differences inherent in the definition of the terms. Underlying the terminology differences are the ways in which homes having particular attributes—i.e., mobility, certificates of title, factory construction and size—are treated under various federal and state laws.

In looking at manufactured and mobile home law, this manual is divided into five major sections covering:

- government regulation;
- park and site development;
- sales;
- landlord/tenant laws; and
- practice and procedure tips.

Sample pleadings for use by the Ohio practitioner are appended. No attempt has been made to make this manual useful outside Ohio because the laws regulating mobile homes are widely divergent in other states.

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6 Until the 1970s, in Ohio this type of home was called a “house trailer.” The term was changed to “mobile home”; in the 1990s, they became known as “manufactured homes.” Courts recognized that, while the name had changed, the type of home remained basically the same, and the laws and restrictions applicable under the original terminology were applicable despite the name change. LuMac Development Corp. v. Buck Point Ltd. Partnership, 61 Ohio App.3d 558, 573 N.E.2d 681 (6th Dist. 1988). As of March 30, 1999, the dichotomy of terms became statutory with the definition of “manufactured home” being separated from the definition of “mobile home” as found in R.C. 4501.01(O). These differences will be discussed in Chapter 1, infra.

7 The changes in Ohio law were designed to allow increased sales of manufactured homes, placement in previously restricted areas and a change in the method of taxation. Due to changes in terminology as a result of that law, this manual will use the term “mobile home” for the cases that used that term prior to 1999, and the meaning of it covers both “manufactured” and “mobile” homes. Where possible, the terms are distinguished, but the reader should know that when older cases referred to mobile homes, it included what are now called manufactured homes as well as mobile homes.
This manual reflects the law as it exists at the time of publication. Legislative changes and case law continue to develop. Shifting state oversight of manufactured homes to the Manufactured Homes Commission will also drive further changes.
I. INTRODUCTION

A client has requested your advice regarding a housing problem. The first step is to determine what laws apply. This decision will be based on the type of housing the client has. This determination is important in beginning to analyze your case for possible litigation. Because manufactured and mobile homes are treated differently than standard housing with regard to most laws, it is a crucial difference. Some of the rights that are affected according to housing type include:

- clarification of the home as a motor vehicle or real property for taxation and other purposes;
- placement of the home in an area zoned for single-family residences;
- entitlement to, and use of, foreclosure, repossession or replevin under mortgage loans or sales documents;
- eviction protections in a termination of a tenancy;
- applicability of consumer law protections;
- right to purchase under a land contract; and
- prevention of utility shutoffs, property removal and property seizure.

Thus the first and most important step in analyzing a case is to determine whether your client lives in a manufactured home, a mobile home, or neither.

II. DEFINITIONS OF “MANUFACTURED HOME” AND “MOBILE HOME”

There is no universal definition of either “manufactured home” or “mobile home.” This creates the potential for confusion. Federal and state law each define “manufactured home” and “mobile home,” as well as variations thereof, in some manner, but these definitions are not the same. Even within federal law, certain regulations refer to “manufactured housing” while others refer to “mobile home.” In Ohio, the current statute attempts to create working definitions for each of these terms, but the new definitions are not all-inclusive. Both manufactured homes and mobile homes are treated as residences
under some statutes; in others the two are combined into a single definition; but mobile homes are still treated as motor vehicles under other statutes.

A. **Federal Definition**

1. **Manufactured Home Construction and Safety Standards Act**

   The federal definition of the term “manufactured home” is found in the national Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5401–5426, and the regulations promulgated thereunder by the U.S. Department of Housing and Urban Development (HUD), codified at 24 C.F.R. 3280.1–3280.903. This definition states that a:

   (6) “manufactured home” means a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter [42 U.S.C. 5401 et seq.]...

   42 U.S.C. 5402(6).

   The two key points in this definition are:

   1. it is size-based; and
   2. it covers a home manufactured in a factory rather than built on a lot.

   Square footage, in turn, is determined in the following way:

   Calculations used to determine the number of square feet in a structure will include the total of square feet for each transportable section comprising the completed structure, and will be based on the structure’s exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows. Nothing in this subsection should be interpreted to mean that a “manufactured home” necessarily meets the requirements of HUD’s Minimum Property Standards (HUD Handbook 4900.1) or that it is automatically eligible for financing under 12 U.S.C. 1709(b).

   24 C.F.R. 3280.2.

   The term “mobile home” is still used in at least 52 federal statutes and numerous regulations, although HUD refers to all such housing as “manufactured housing” as do
most other statutes.\(^1\) For example, the Internal Revenue Service still refers to mobile homes as residences,\(^2\) while flood insurance regulations refer to mobile homes.\(^3\) At least one commerce statute defines a dwelling as a residential structure or mobile home,\(^4\) and many banking statutes and regulations use the term.\(^5\) There has been little litigation over the federal definition of “manufactured home,” although in 1986 the manufacturers of these homes challenged the requirement that manufactured homes be built on a permanent chassis. The federal court of appeals in that case held that the chassis requirement was reasonable.\(^6\) The irony of this case was that the federal regulations were designed to ensure that a manufactured home would remain truly “mobile,” while at the same time state courts were examining the immobility of these homes.\(^7\) In the end, the federal court settled the issue by determining that Congress had intended the term to apply to mobile units and that Congress had declared in 1980 that the term “mobile home” was synonymous with the term “manufactured home.”\(^8\) To be mobile, it needed a permanent chassis for transportation purposes.\(^9\) At least for purposes of the current federal manufacturing standards, these homes must remain mobile even if the wheels are removed and the home is never moved from its initial site.

Whether a home fits the definition of a manufactured home for purposes of the Construction and Safety Standards Act will seldom be an issue for the practitioner because manufacturers no longer build the smaller units as permanent residences. A good rule of

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\(^1\) See, for example, 12 U.S.C. 3802(1), referring to the Manufactured Home Construction and Safety Act definitions and 49 C.F.R. 24.501–505.

\(^2\) 26 U.S.C. 7701(a)(19)(C)(v) refers to mobile homes as residences not used on a transient basis.

\(^3\) 42 U.S.C. 4003, 4012a.


\(^5\) See 12 U.S.C. 1464, 1701, 1703, 1713, 1715d, 1715z regarding the financing of both types of home as defined by HUD and the states.


\(^7\) The federal emphasis in cases such as Pierce centers on the fact that mobile homes are manufactured in one location and require mobility to be transported to another location, requiring a permanent chassis for portability. State cases, such as Schwartz v. McAtee, 22 Ohio St.3d 14, 488 N.E.2d 479 (1986), look at the stabilized placement of the homes, their attachment to the land and occupancy within the jurisdiction of the court.


\(^9\) Pierce, 670 F.Supp. at 1043.
thumb, however, is that if the home is greater than 40 feet long or greater than 8 feet wide, it is probably a “manufactured home” for purposes of federal law.

2. **Truth in Lending Act**

The Truth in Lending Act (TILA) also indirectly includes a definition of manufactured or mobile home. TILA speaks in terms of “dwellings,” a term which specifically includes manufactured homes, mobile homes and house trailers, provided that they are used as residences. TILA does not require that such homes be of any particular size in order to be considered a dwelling.

B. **Ohio’s Definition**

Distinguishing the term “manufactured home” from the term “mobile home” is a harder endeavor under Ohio law than under federal law. Because of the differences in terms found in state regulation of licensing, taxation and zoning, and in the amount of litigation concerning the application of such regulations to manufactured and mobile homes, one cannot point to a single definition that is appropriate for all purposes. It is necessary to examine both how manufactured and mobile homes are defined and how each is treated under various areas of Ohio law.

Ohio’s primary definition for “manufactured home” was formerly found in the motor vehicle code at R.C. 4501.01(O). In March 1999, Ohio created a separate definition for “manufactured home” at R.C. 3781.06(C)(4) while restoring the definition of “mobile home,” although drastically changed in substance, to R.C. 4501.01(O). All references to the federal standards based on configuration and size have been removed from Ohio’s definition of “manufactured home,” while only a small number of the size-based standards remain in the definition of “mobile home.”

Ohio’s definition of “manufactured home” is now based on the federal Construction and Safety Standards. R.C. 3781.06(C)(4) defines a manufactured home as:

…a building unit or assembly of closed construction that is fabricated in an off-site facility and constructed in conformance with the federal construction and safety standards established by the Secretary of Housing and Urban Development pursuant to the “Manufactured Housing Construction and Safety Standards Act of 1974,” 88 Stat. 700, 42 U.S.C.A.

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10 12 C.F.R. 226.2(a)(19).
5401, 5403 and that has a permanent label or tag affixed to it, as specified in 42 U.S.C.A. 5415, certifying compliance with all applicable federal construction and safety standards.

While reference is made to the federal law, the definition is dramatically different than that of federal law.

The definition of “mobile home” in Ohio law, found in Section 4501.01(O), as amended, is:

Mobile home means a building unit or assembly of closed construction that is fabricated in an off-site facility, is more than thirty-five body feet in length, or when erected on site, is three hundred twenty or more square feet, is built on a permanent chassis, is transportable in one or more sections, and does not qualify as a manufactured home as defined in Division (C)(4) of Section 3781.06 of the Revised Code or as an industrialized unit as defined in Division (C)(3) of Section 3781.06 of the Revised Code.11


Whether a home is considered as a manufactured home or a mobile home depends on whether the unit meets the federal standards and whether or not the HUD-required label or tag is affixed to it. Because all manufactured and mobile homes built since 1976 are required to meet the federal standards,12 the core issue becomes whether or not the tag is affixed.13 If the tag is affixed, the home falls under the building standards definition; if it is not affixed, the home falls under the motor vehicle definition.

Many Ohio laws governing manufactured and mobile homes incorporate these basic definitions.14 For example, the manufactured home park landlord/tenant law specifically

11 The definition of “industrialized unit” is one referring to self-contained units or component parts of a greater structure. R.C. 3781.06(C)(3) specifically excludes manufactured and mobile homes. The differences between this type of unit and the other two seem fuzzy, but the application of the term in the various parts of the statute indicates that it is not referring to units used as residences.
12 42 U.S.C. 5409(a).
13 The question naturally arises as to what happens to the sections of law applicable when a tag detaches whether naturally, through rehabilitation, construction or accident. Does the “manufactured home” suddenly become a “mobile home” and lose some of the protections afforded it under the building standards, or gain some protections as a “good” under the motor vehicle laws? The answer to these questions must await decisions of courts because none is provided in the law.
14 See for example lease purchase law, R.C. 1351.01(F)(4), which excludes mobile homes meeting the definition of motor vehicle under R.C. 4501.01(O). See also some of the motor vehicle laws such as R.C. 4505.01(A)(3) and R.C. 4781.01(C) referring to the definition of manufactured home in R.C. 3781.06(C)(4) and R.C. 4505.01(A)(4) referring to the definition of mobile home found in R.C. 4501.01(O).
incorporates the definition of “manufactured home,”15 as does one of the homestead exemption laws16 while the Retail Installment Sales Act (RISA) incorporates the definition of “mobile home.”17 In contrast, other statutes, such as the real property homestead exemption law, simply incorporate the terms “manufactured home” and “mobile home” as dwellings without separate definition.18

The definitions of manufactured and mobile home found in R.C. 3781.06 and R.C. 4501.01(O), respectively, are supplemented by other Ohio statutes. For example, the Uniform Commercial Code, Chapter 1309, includes a definition which consolidates the definitions of both “manufactured home” and “mobile home” for commercial purposes. This new definition of “manufactured home”19 mirrors the definition found in the Manufactured Home Construction and Safety Standards Act, resulting in a definition that recombines the definitions of the various types of homes separated by the 1999 Ohio legislation. For purposes of creating a security interest under R.C. Chapter 1309, anything designed and sold to be a dwelling will be defined as a “manufactured home.”

A third variation of this definition is found in R.C. 1151.294(A)(1), which concerns the making of loans for the purchase of mobile homes. The definition of “mobile home” set forth in 1151.294(A)(1) provides that:

(1) “Mobile home” means a movable dwelling for occupancy on land made of one or more units, and having minimum width of ten feet, minimum area of four hundred square feet, and year-round living facilities for one family, including permanent provision for cooking, eating, sleeping, and sanitation.20

The differences between the definition of “mobile home” found in R.C. 1151.294(A)(1) and the federal standards set forth in 42 U.S.C. 5402(6) and 24 C.F.R.

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15 See R.C. 4781.01(G).
16 R.C. 4503.064(D).
17 R.C. 1317.13.
18 R.C. 323.151–.156.
19 R.C. 1309.102(A)(53).
20 This definition was not changed when SB 142—a comprehensive bill affecting multiple aspects of manufactured homes—was passed in 1998, so it remains to be seen whether, for financing purposes, manufactured homes will also be assumed to be within the definition of “mobile home.”
3280.2(a)(16) above, with respect to minimum measurements and area, may create difficulties in financing certain homes.21

Another variation on the basic definition of “mobile home” is found in R.C. 4503.064(E), which defines the term for purposes of determining the homestead exemption for county property taxes. Section 4503.064(E) provides that a “mobile home” includes two or more units which are assembled together to form a single dwelling. By this definition, double-wide mobile homes are included for taxation purposes.

An interesting technicality that arises from Ohio’s definitions of the terms manufactured home and mobile home is that when either are placed on a permanent foundation and attached to utilities on land owned by the home owner, the title can be surrendered and the home declared to be part of the real property.22 If this occurs, most of the laws applicable to mobile homes will not apply to your clients because their dwellings are now real property and no longer fall within the motor vehicle code as items of personal property.

III. IMPACT OF THE DEFINITION OF “MOBILE HOME” ON LITIGATION

Your client’s rights in other areas of Ohio law will be affected by whether they reside in a manufactured home or a mobile home.

A. Building Codes

In Ohio, while manufactured homes are within the definitions in the building standards section of the Revised Code, they are not subject to local residential building codes, because they are protected from conflicting local codes by the preemption of the

21 Given the definition set forth in R.C. 1151.294(A)(1), a mobile home resident could face difficulties in financing a home which meets the federal or R.C. 4501.01(O) definition of mobile home (8 feet wide and 320 square feet in area) because such a mobile home would be 2 feet narrower and 80 square feet smaller in area than the standard set forth in 1151.294(A)(1). As a practical matter, however, the issue is not likely to arise since the manufactured housing industry does not make homes which are less than 40 feet long and 10 feet wide. Also, the new definition of manufactured home transaction in R.C. 1309.102(A)(54) makes the size irrelevant if a security interest is involved.

22 R.C. 4505.11(H). Since 1999, there are specific size and age requirements for homes under this procedure. Previously, a county auditor could change the status of a mobile home to real property under fixtures law, but this was at the discretion of the local official as there was no law allowing such a transformation of the property. See Benner v. Hammond, 109 Ohio App.3d 822, 673 N.E.2d 205 (4th Dist. 1996), app. den., 75 Ohio St.3d 1482, 646 N.E.2d 535 (1996).
Manufactured Housing Construction and Safety Standards Act. Under both federal and state law, Ohio has specifically eliminated manufactured homes from most applications of building codes. See Chapter 2, Section I(A). Because these homes are not subject to local building codes in Ohio, living in a manufactured home can be advantageous for your client in some circumstances.

B. **Zoning**

A client who resides in a manufactured home is protected from exclusion from some single-family residence districts, but those who own mobile homes are at a distinct disadvantage with respect to zoning restrictions. In both cases, restrictive covenants are still enforceable to exclude mobile homes from certain properties. See Chapter 3, Section III.

C. **Licensing**

A mobile home that meets the statutory definition set forth in R.C. 4501.01(O) must be licensed as a motor vehicle. Failure to obtain a license carries a criminal penalty. In addition, the Auditor may impose a penalty of $100 for failure to register the home. Issuance of the license is not affected by financial responsibility laws because they do not apply to mobile homes.

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23 If allowed to enforce local building codes against manufactured homes, localities could, as a practical matter, prohibit these homes because of the different standards set forth in the building codes. Such an action would fly in the face of the stated purpose of the MHCSSA which is to put all manufactured homes under a single set of construction standards.

24 On May 8, 2002, the Ohio Supreme Court struck down the law as it related to zoning in home rule jurisdictions. City of Canton v. State of Ohio, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963. This means that home rule jurisdictions may again zone areas to restrict manufactured homes, but other political entities are still within the rule requiring that single family residence districts be open to this type of housing.

25 R.C. 4503.19(c). If unpaid, the penalty becomes a lien on the home. R.C. 4503.061(G).

26 R.C. 4503.06(H)(2).

27 The definition of “motor vehicle” in R.C. 4509.01(I) does not include mobile homes. Also, these laws apply only to persons “operating” a motor vehicle. R.C. 4509.101.
D. **Taxation**

Unless they have been designated as real property,²⁸ manufactured and mobile homes are classified as personal property for purposes of annual state or local taxation.²⁹ Failure to pay the annual tax on the home, like the failure to obtain an annual motor vehicle license sticker, is no longer a criminal act, but the Auditor may impose a financial penalty and add it to the taxes due on the home.³⁰ See Chapter 2, Section IV(C).

E. **Removal and Storage**

An abandoned mobile home may be removed, stored and sold under Ohio’s motor vehicle laws.³¹ Similarly, because it is a motor vehicle, a mobile home may be repossessed and removed from a lot.³² Also, manufactured and mobile homes in manufactured home parks may now be removed and disposed of pursuant to R.C. Chapter 1923. See Chapter 5, Section V(A)(8).

F. **Landlord/Tenant Law**

R.C. Chapter 5321 does not apply to manufactured or mobile homes on real property owned by a person other than the home owner. Under current law, a manufactured or mobile home situated in a manufactured home park is covered by R.C. Chapter 4781, regardless of whether the resident owns or rents the home.³³ Rental of a manufactured or mobile home outside of a park is governed by R.C. Chapter 5321 because the resident of the manufactured or mobile home is a tenant in a dwelling as defined in R.C. 5321.01. See

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²⁸ If they have been classified as real property, both manufactured and mobile homes will be taxed under the real property laws. R.C. 4503.06(B).
²⁹ R.C. 4503.06.
³⁰ R.C. 4503.06(H)(2).
³¹ In 1985, the Attorney General indicated that it may be a strange interpretation of the storage law, but that mobile homes could be removed if believed abandoned. 1985 Ohio Atty. Gen. Ops. No. 079. R.C. 4513.60 currently provides for the impoundment of motor vehicles on private residential or agricultural property and R.C. 4513.61–.62 provide for the disposition of impounded vehicles. Manufactured and mobile homes could not be considered as abandoned junk motor vehicles under R.C. 4513.63 because that statute includes factors such as “apparently inoperable” and lists damaged motors or transmissions, neither of which manufactured or mobile homes have.
³³ A manufactured home park is defined as a tract of land on which three or more manufactured or mobile homes are located for residential purposes. For more specific information, see Chapter 5, Section I and R.C. 4781.01(A).
Chapter 5, Section I. Rental of lot space on private land for placement of a mobile home is not covered by either law with the exception of eviction cases which now by definition includes single lot rentals as manufactured home parks. See Chapter 5, Section V(A)(5)(a).

The importance of determining whether either R.C. Chapter 5321 or Chapter 4781 applies is that under Chapter 5321, a landlord may simply terminate a month-to-month tenancy with a 30-day notice, for any reason. On the other hand, the Ohio Supreme Court has ruled that under Chapter 3733 (now 4781), a park operator must have specific reasons to evict a resident. Because a manufactured or mobile home resident who is evicted incurs significant costs to move the home, in contrast to simply moving personal belongings to a different home, it is important to know which law applies.

For the reasons discussed above, the first step in analyzing an issue involving a manufactured or mobile home is to determine whether the client’s home is truly a manufactured or mobile home for purposes of the various areas of regulation mentioned. A more in-depth review of each of these areas appears in the following chapters.

IV. SUMMARY

The key factors to consider in determining what laws are applicable to the manufactured or mobile home are:

• construction
• size
• mobility
• permanent foundation
• title
• location

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34 R.C. 1923.01(C)(11).
CHAPTER 2
GOVERNMENT REGULATION OF MANUFACTURED AND MOBILE HOMES

Generally speaking, comprehensive regulation of the manufactured and mobile home industry has limited the number of civil litigation strategies available to mobile homeowners with respect to construction standards, licensing, and taxation. Consumers must generally seek redress through administrative or criminal justice channels, not through civil litigation. Although Ohio courts have authority to review administrative decisions, in some cases a private right of action is totally precluded by government regulation. Moreover, failure to comply with administrative regulations may subject individual mobile homeowners to criminal liability.

This chapter addresses government regulation of manufactured and mobile homes in the areas of construction and safety standards, licensing, taxation, transportation and utilities.

I. CONSTRUCTION AND SAFETY STANDARDS

A. Federal Preemption of State and Local Standards

Although most mobile home cases seen by legal services attorneys concern either consumer law or landlord/tenant law issues, a working knowledge of government regulations pertaining to building standards for manufactured and mobile homes is a useful tool for assessing a case. Such regulations are found in federal law and in the attempts of state and local governments to apply local building standards to manufactured and mobile homes.

Prior to 1974, mobile homes were built according to any local standards that existed. As a result, quality was highly variable and dangerous practices, such as the use of aluminum wiring, existed. In 1974, Congress preempted all state and local regulation of construction and safety standards for manufactured homes by the enactment of the
Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5401–5426 (MHCSSA).¹ Section 5403(d) provides that:

(d) Supremacy of Federal Standards. Whenever a Federal manufactured home construction and safety standard established under this chapter [42 U.S.C. §5401 et seq.] is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.²

Federal law, including the regulations found at 24 C.F.R. 3280–3283, which became effective in June 1976, also creates a governmental enforcement mechanism, precludes private lawsuits to enforce the regulations³ and forces homeowners to seek a remedy through administrative channels. This national preemption was strengthened by the Manufactured Housing Improvement Act of 2000 which stated that “the federal preemption should be broadly and liberally construed” to prevent disparate state and local standards from affecting the uniformity of the standards and to reaffirm the federal oversight of the manufactured home industry.⁴

The major federal regulations governing manufactured home design, construction standards and safety standards are:

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² 42 U.S.C. 5403(d), but see 42 U.S.C. 5422(a), which allows state regulation where no federal standard has been established.
³ Heuer v. Forest Hill State Bank, 728 F.Supp. 1197 (D.Md. 1989), affd. 894 F.2d 402 (4th Cir. 1990). According to the Heuer court, the purpose of the national legislation was to establish uniform national construction standards to be enforced by the states. Consumer protection under the standards was created by mandatory warranties which could be enforced through state courts, and recall notices enforced through the oversight agency (the state agency overseeing manufactured home construction within its borders). With state inspection and enforcement agencies, and state consumer rights enforceable through state courts, Congress felt that there was no need for private actions in federal court against either the government or the manufacturers of these homes.
Challenges to the federal government’s exclusive power to regulate construction and safety design for manufactured homes have been uniformly defeated. For example, when the City of Lynn Haven, Florida, attempted to enact safety requirements stricter than the standards in the MHCSSA, the Eleventh Circuit Court of Appeals held that the city’s ordinance was preempted by the Act.\(^5\) Similarly, attempts by manufacturers to challenge the authority of federal law in the area of construction and safety design have been rejected.\(^6\) Elsewhere, local standards have been found inferior and preempted by the federal law. *Scurlock v. City of Lynn Haven*\(^7\) provides an illustration of an unsuccessful attempt to use building construction codes under the guise of zoning law in order to overcome the effect of federal preemption.

Federal law does not preempt legitimate zoning ordinances unless they attempt to require building standards stricter than the federal act. In *City of Brookside Village v. Comeau*,\(^8\) the Texas Supreme Court held that ordinances which were merely designed to control the location of mobile homes were not preempted as they were based on considerations other than the construction type of the building. In 2013, a community ordinance banning homes older than ten years was upheld against claims that it violated

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\(^5\) *Scurlock v. City of Lynn Haven*, 858 F.2d 1521 (11th Cir. 1988).

\(^6\) *Florida Manufactured Housing Association v. Cisneros*, 53 F.3d 1565 (11th Cir. 1995); *Fleetwood Enterprises v. U.S. Dept. of Housing and Urban Development*, 818 F.2d 1188 (5th Cir. 1987); see also *Liberty Homes, Inc. v. Dept. of Industry, Labor and Human Relations*, 125 Wis.2d 492, 374 N.W.2d 142 (Wis. App. 1985), aff’d., 136 Wis.2d 368, 401 N.W.2d 805 (1987).

\(^7\) 858 F.2d 1521 (11th Cir. 1988).

\(^8\) 633 S.W.2d 790 (Texas 1982), cert. den., 459 U.S. 1087, 74 L.Ed. 93 (1982).
the federal act. In another case, a city ordinance that prohibited mobile homes except in a “duly authorized trailer park” was upheld by a federal court.

State and local ordinances governing the location of mobile homes used as residences will be upheld as long as they do not base the zoning on the construction standards of the home. The local regulation must be based on factors which limit the location of homes within specified areas. Municipalities may zone land to pursue legitimate objectives such as safety (police and fire services), health (sewage system capacity), and the general welfare of the community. As such, manufactured home may be relegated to mobile home parks in many areas of the country.

If a locality attempts to exclude manufactured homes based on construction standards rather than zoning codes, the federal preemption should overcome the local ordinance. For example, when a local government required that manufactured homes meet the Uniform Building Code in Colorado, the federal court ruled that the preemption applied to prevent enforcement of such rules because the federal standard, not state building codes, applied to all manufactured home construction. In another case, a zoning ordinance requiring all homes to comply with local building, zoning, fire and other codes and to meet roof snow load and strength requirements was preempted in Michigan Manufactured Housing Assn. v. Robinson Twp. While the township claimed the requirement was aesthetic, the court pointed out it expressly concerned construction and strength requirements.

Frustrated by numerous attempts of state and local governments to use zoning restrictions to exclude manufactured homes, the United States Department of Housing and Urban Development issued a policy statement in May 1997 to reiterate that the national standards preempt zoning enforcement based on construction and safety codes in conflict

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9 Schwazenbach v. Town of Opal, Wyoming, 706 F.3d 1269 (10th Cir. 2013).
11 In March 1999, single-family residence areas were opened to manufactured homes. However, the new law was overturned in reference to home-rule communities, which can still restrict manufactured and mobile homes to parks. City of Canton v. State of Ohio, 95 Ohio St.3d 149, 2002-Ohio-2005.
with the federal law and accompanying regulations. The following year, “aesthetic compatibility” regulations were deemed to be a proper reason to exclude mobile homes through zoning.

In an unusual case, the basis for the city’s refusal to allow manufactured homes in single-family residence areas was that they were not permanent structures. In *Texas Manufactured Housing Assn., Inc. v. City of La Porte*, the city argued that the homes were transportable so there was not as great an attachment to the neighborhoods or city. The manufacturers argued that most such homes are permanently sited, but their own statistics showed a lesser length of residence for mobile home residences than those in traditional housing.

By statute in Ohio, manufactured and mobile homes are no longer subject to local residential building codes, despite the fact that they are subject to the federal Manufactured Housing Construction and Safety laws. Mobile homes are likewise excluded because they are motor vehicles. However, if classified as real property, both manufactured and mobile homes become “buildings” for real property purposes. This solidifies the 1951 and 1952 Montgomery County Court of Appeals decisions in *Brodnick v. Munger, et al.*, that a mobile home was not a residential building subject to the Montgomery County building code. Consequently, county minimum structural standards were not enforçable with respect to the mobile home, and the county could not deny a permit for electrical service based on failure to meet the structural standards.

Federal preemption, now statutory in Ohio, was first recognized in a 1987 settlement between the state manufactured housing industry and the Attorney General. When the City of Columbus attempted to impose standards greater than the federal act, the

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15 *Georgia Manufactured Housing Association, Inc. v. Spalding County, Georgia*, 148 F.3d 1304 (11th Cir. 1998). See also, *CMH Manufacturing, Inc. v. Catawba County*, 994 F.Supp. 697 (W.D. N.C. 1998) (siding and roof shingle types were required for mobile homes to look more like traditional home construction).
17 The method of reclassifying a manufactured or mobile home as real estate is found in R.C. 4503.06(B).
18 R.C. 5701.02(B).
Ohio Manufactured Housing Association filed a challenge in federal court. The city and state ultimately settled the case by agreeing that the MHCSSA and accompanying regulations controlled. In 1988, Ohio’s building code was revised to drop state regulation of all manufactured homes covered by the MHCSSA, but this proved only temporary because the prohibition was repealed in June 1996. This contributed to the passage of the 1999 statute declaring that the Manufactured Home Construction and Safety Standards were the exclusive construction standards for manufactured housing in Ohio.

Enactment of the MHCSSA meant that the prior authority of the State of Ohio to regulate manufactured home standards as granted by R.C. 307.37 and affirmed in a 1966 Attorney General’s opinion, was effectively overturned. Neither the State of Ohio, nor any localities within Ohio, may regulate manufactured home construction standards under any guise.

The Seventh District Court of Appeals reached the same conclusion in Village of Moscow v. Skene, citing Celebrezze to distinguish between safety regulations and zoning. While the federal law preempted safety and construction characteristics, land use and zoning codes were left intact. The homeowner meeting the zoning requirements was allowed to permanently install a manufactured home as a single-family dwelling. Now, with the advent of the changes in zoning laws, all manufactured homes outside of home-rule communities, will, by definition, meet construction-related requirements for districts zoned for single-family residences.

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22 R.C. 3781.184(A).
23 R.C. 307.37(a) grants boards of county commissioners the right to adopt and enforce regulations pertaining to construction of dwellings within their jurisdictions.
26 Id. at 789–790.
27 R.C. 303.212(A); R.C. 519.212(A) and R.C. 3781.184(C)(1).
The preemption issue was again raised in *Westfall v. Village of West Unity*\textsuperscript{28} after the state reversed itself on the Basic Building Code in 1996. The court found a local ordinance that only regulated the placement of mobile homes was valid unless the ordinance, in reality, sought to regulate safety or construction standards, in which case it would be expressly preempted.\textsuperscript{29} Although placement of manufactured homes may now include single-family residential areas, placement of mobile homes may still be regulated under zoning ordinances.

Meanwhile the Pike County Court also found that the county could enact and enforce regulations that govern placement of homes, utility connections and maintenance of mobile homes so long as they did not conflict with federal law or regulation. In this criminal case, the homeowner was convicted for failure to apply for a permit to place the mobile home on a lot rather than for noncompliance with local health code regulation of mobile homes relating to the building characteristics of the home. His appeal claimed that the county could not regulate mobile homes.\textsuperscript{30} The Court of Appeals viewed the home as a manufactured home rather than a mobile home and pointed out the home was more a dwelling than a motor vehicle.\textsuperscript{31} As a dwelling, it was subject to county regulation.\textsuperscript{32}

While the HUD Construction and Safety Standards are the ones most discussed, there are other federal standards as well. For examples, homes financed by Rural Development are subject to design requirements including size,\textsuperscript{33} thermal construction, 

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\item \textsuperscript{28} 6\textsuperscript{th} Dist. Williams No. WM-96-011, 1997 WL 43271 (January 31, 1997).
\item \textsuperscript{29} Id. The same result was found in *Estadt v. Board of Zoning Appeals of Claiburne Township*, 3\textsuperscript{rd} Dist. Union No. 14-97-1, 1997 WL 317463 (June 6, 1997).
\item \textsuperscript{30} *State v. Hix*, Pike Cty Ct. No. 95 CRB 829 (September 30, 1996), affd. in part, revd. in part, 4\textsuperscript{th} Dist. Pike No. 96CA575, 1997 WL 15226 (January 9, 1997). It would appear that localities may control utility connections, foundations and other requirements related to setting up a manufactured home since none of these contradict construction and safety standards for the home. The installation standards required by the Manufactured Housing Improvement Act of 2000, and put within the jurisdiction of the Ohio Manufactured Home Commission, preempted local set-up requirements. R.C. 4781.14.
\item \textsuperscript{31} *State v. Hix*, 4\textsuperscript{th} Dist. Pike No. 96CA575, 1997 WL 15226 (January 9, 1997).
\item The lower court decision was overturned in part to determine whether the board followed procedural requirements when it enacted the regulation it was attempting to enforce through criminal proceedings.
\item The home must have more than 400 square feet and be wider than 12 feet (single-wide) or 20 feet (double-wide). *Rural Development Multifamily Housing Loan Origination Handbook*, §11.24.
\end{itemize}
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adequate recreational space to accommodate children\textsuperscript{34} and generally that the home not only meet HUD’s standards but also that the home be installed according to Rural Development Instruction 1924-A, Exh. J.

\textbf{B. Federal Enforcement of Construction and Safety Standards}

We next turn to the question of how a homeowner may enforce the construction and safety standards. Unfortunately for the homeowner, the procedures established by the MHCSSA require enforcement by and through certain agencies, not by an individual homeowner. A state administrative agency may take action against a manufacturer that is located within the borders of the state.\textsuperscript{35} A cooperative manufactured home retailer may bring an action against a manufacturer to compel compliance with the MHCSSA or accompanying regulations.\textsuperscript{36} HUD may force manufacturers to notify purchasers of defects and provide correction of those defects.\textsuperscript{37} The U.S. Attorney General or any U.S. Attorney’s office may bring criminal charges against the manufacturers and their corporate officers.\textsuperscript{38} If a defect or failure to comply with the MHCSSA cannot be adequately corrected within 60 days, the Secretary of HUD may require replacement of the home without charge or, in the alternative, a full refund of the purchase price.\textsuperscript{39}

There is no right or mechanism for individuals to enforce the law.\textsuperscript{40} Because of this lack of a private right of action, the construction standards issues must be processed through one of the agencies which are authorized by the MHCSSA (i.e., state administrative agency, U.S. Attorney, HUD, dealers to whom the home is sold). A consumer is limited to filing actions under state law as described below.

\textsuperscript{34} Although no specific definition of adequate space is included, the requirement is included in the Rural Development Multifamily Housing Loan Origination Handbook, §11.24.

\textsuperscript{35} Ohio is one of fourteen states that has not created a state agency to regulate manufacturers of such homes constructed within the state.

\textsuperscript{36} 42 U.S.C. 5412(b).

\textsuperscript{37} 42 U.S.C. 5414.

\textsuperscript{38} 42 U.S.C. 5410.

\textsuperscript{39} 42 U.S.C. 5414(i).

\textsuperscript{40} See e.g., \textit{Richard v. Fleetwood Enterprises}, 4 F.Supp.2d 650 (E.D. Tex. 1998); see also, \textit{Hammond v. Cappaert Manufactured Housing, Inc.}, Civil Action No. 06-0695, 2006 WL 2570537 (W.D. La. 2006).
C. State Common Law Tort Claims

Although private challenges to the federal standards are preempted in the federal law, the courts have increasingly been willing to find a private right of action in state law claims. Based on the savings clause of 42 U.S.C. 5409(c), these courts have allowed suits against manufacturers to proceed for negligence and other state causes of action.

The issue of whether to allow a private suit against a manufacturer to proceed on state common law grounds reached the Tenth Circuit Court of Appeals during 2000. Two aspects of the ruling in *Choate v. Champion Home Builders Co.* are important. First, the court found that the savings clause did not preempt common law tort claims because the savings clause would be meaningless if all such suits were prohibited. Second, the court found that the federal standards were only minimum standards, not maximum. Although they also opined that allowing the suit would be consistent with the Act’s goal to reduce personal injuries and deaths resulting from mobile home accidents, Congress amended the language to put the goals in economic rather than personal safety terms.

Prior to *Choate*, other courts allowed state law claims. In two of three cases decided in 1991, courts opened the doors to state law claims not preempted under the federal standards. One of the two federal decisions on this subject was from Ohio, and subsequently a state court followed the decision to allow state claims.

In *Shorter v. Champion Home Builders Co.*, the United States District Court for the Northern District of Ohio ruled that a state law claim may be brought despite the federal preemption because, under 42 U.S.C. 5409(c), a defendant is not exempt from state law claims merely by compliance with the federal standards. Reading 42 U.S.C. 5409(c) together with the general preemption section in 42 U.S.C. 5403(d), the court determined that while Ohio may not legally create its own safety standards, it could allow state law

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41 The savings clause states that compliance with federal standards “does not exempt any person from any liability under common law.”
42 222 F.3d 788 (10th Cir. 2000).
43 The statute now states that this particular purpose is “to protect residents of manufactured homes with respect to personal injuries and the amount of insurance and property damages in manufactured housing.” 42 U.S.C. 5401(A)(5).
45 42 U.S.C. 5409(c) states that “Compliance with any federal manufactured home construction or safety standard issued under this chapter does not exempt any person from any liability under common law.”
claims for violations of the federal standards. The *Shorter* court then allowed the buyer to proceed on a negligence claim.\(^4^6\)

The same year, a federal court in Texas determined that a claim under the Texas Deceptive Trade Practices Act was proper because it did not involve construction standards, but only claims that the manufacturer’s actions breached express warranties and such acts were fraudulent or unconscionable.\(^4^7\) In *Woolridge v. Redman Homes, Inc.*, the purchasers of a manufactured home with excess concentration of formaldehyde gas brought suit against the manufacturer in state court under the Texas Manufactured Housing Standards Act. The manufacturer removed the case to federal court on the basis of preemption of state law by the federal act. However, the federal court found that the state law in question only duplicated the particular national standard rather than establishing any new standard. The more general state law concerned remedies rather than standards. As such, the particular state standard was part of a general consumer protection law and was not preempted, so the consumer had a right to proceed under the state law. The federal court remanded the case to state court for application of Texas law.

Since *Woolridge*, a number of other courts have dealt with state tort claims as well. The Texas court ruled that the Act did not preempt state claims of strict liability, gross negligence and civil conspiracy in *Richard v. Fleetwood Enterprises*.\(^4^8\) In a 2006 case, the federal court in Louisiana ruled that state claims were not preempted\(^4^9\) while an Alabama federal court ruled that state claims of violations of warranty laws and negligence were not preempted by the federal act.\(^5^0\) In both cases, the courts examined the language of the federal statute that specifically allowed state tort claims. The next year, a California court denied a manufacturer’s attempt to dismiss breach of warranty and consumer protection

\(^4^6\) *Shorter v. Champion Home Builders Co.*, 776 F.Supp. 333, 338 (N.D. Ohio 1991). Because this is a state common law claim, it remains good law despite the changes in the federal law enacted in December 2000. In the amendments, Congress left the savings clause intact. The federal district court in Louisiana found *Shorter* not persuasive because the preemption goal was changed after *Shorter* was decided. *In re FEMA Trailer Formaldehyde Products Liability Litigation*, 620 F.Supp.2d 755 (E.D. La. 2009).


\(^4^8\) 4 F.Supp.2d 650 (E.D. Tex. 1998).


claims under California law.\textsuperscript{51} In 2009, a Louisiana federal court affirmed that there was preemption of state claims over formaldehyde gas emissions.\textsuperscript{52}

The limits to this line of argument may be found in the third case. In \textit{Macmillan v. Redman Homes, Inc.},\textsuperscript{53} a Texas appellate court determined that 42 U.S.C. 5422(a) limits the ability of any state to take action through its legislatures or courts concerning a subject where a federal standard established the basic preemption argument. This section of law was reconciled with 42 U.S.C. 5409(c) when the court stated that common law suits were permissible when no federal standard was created but that a court could not be allowed to create standards stricter than federal law by the use of damage awards.\textsuperscript{54} Because the federal standards governed air quality, Texas courts were prohibited from entertaining a damage action based on a claim alleging formaldehyde levels in excess of the federal standards.\textsuperscript{55}

Only one Ohio court has examined all three sections of the federal statute and agreed with the \textit{Shorter} court. In a pre-\textit{Choate} decision, \textit{Hall v. Fairmont Homes, Inc.},\textsuperscript{56} the Ross County Court of Appeals distinguished \textit{Macmillan} because that court relied on a specific Texas law which conflicted with federal law. The \textit{Hall} court did not have before it a claim of conflicting standards but rather a claim of noncompliance with the federal standard.\textsuperscript{57} This noncompliance breached an express warranty that the home met the federal standards and failed to conform to express representations in violation of Ohio’s Consumer Sales Practices Act.\textsuperscript{58}

\textsuperscript{51} \textit{Gonzalez v. Drew Industries}, 750 F. Supp.2d 1061 (C.D. Cal. 2007). The court said the disputed issue was not the enforcement of the standard, but the remedy to enforce the standard. Further the case was based on two types of legislation exempted by the federal regulations. 24 C.F.R. 3282.11(c).

\textsuperscript{52} \textit{In re FEMA Formaldehyde Products Liability Litigation}, 620 F.Supp.2d 755 (E.D. La. 2009).

\textsuperscript{53} 818 S.W.2d 87 (Tex. App. 1991).

\textsuperscript{54} Id. at 96. Similar to the \textit{Choate} decision, the question here is whether a court can enforce a greater protection that the “minimum” found in federal law.

\textsuperscript{55} Under \textit{Choate v. Champion Home Builders Co.}, 222 F.3d 788 (10\textsuperscript{th} Cir. 2000), one could argue that because the federal standard is considered a minimum, state health codes may be able to provide a better protection.

\textsuperscript{56} 105 Ohio App.3d 424, 664 N.E.2d 546 (4\textsuperscript{th} Dist. 1995).

\textsuperscript{57} Id. at 438.

\textsuperscript{58} R.C. 1345.02(B)(10).
In 2005, Ohio amended its Product Liability Act to exclude common law tort claims from product liability cases. Since then, common law claims have been preempted in cases involving forklifts and medicines, but no case has yet been decided for manufactured homes.

II. INSTALLATION STANDARDS

To meet the Congressional mandate that all states must adopt set up standards for manufactured homes, Ohio created a Manufactured Homes Commission in 2004. The standards adopted by the Commission were required to be equal to or greater that the standards adopted by HUD. Included among the standards are provisions for training and licensing mobile home installers, inspection of homes after set-up, specific installation standards in regards to systems in the home and a dispute resolution system that will resolve disputes about responsibility for defects between manufacturers, dealers and installers of manufactured homes. On June 20, 2008, HUD adopted its final standards found in 24 C.F.R. Part 3286. Subsequently, the Commission adopted Ohio standards, found in Ohio Adm. Code Chapter 4781-6.

Homes financed by the Rural Housing Services require compliance with Rural Development installation and set-up standards.
III. LICENSING

The federal government does not license builders of manufactured homes, dealers, or the homes themselves. There are requirements for documentation to be provided with every home, including an inspection sticker and a consumer’s manual, but these are not licensing requirements.

The responsibility for licensing falls to the states. Ohio requires licensing of the dealers, salespersons, installers, manufactured home parks and individual homes.

Manufacturers who build manufactured and mobile homes in Ohio are bound generally by the same regulations as other businesses. There are no exceptions for manufactured or mobile home dealers under corporation, partnership, taxation or other laws which affect manufacturers. Similarly, brokers (formerly called “dealers”) and salespersons must be licensed under R.C. 4781.16–.17, and the motor vehicle sales laws. However, to the extent that the dealership and franchising arrangements might otherwise be regulated by federal law, the Ohio legislature has created a specific exemption from the motor vehicle laws. As a practical matter, this has little to do with the manufactured home business in Ohio because sales laws requiring brokers and salespersons to be licensed do not impinge on the MHCSSA. No Ohio case had been brought on the subject.

Manufactured home dealers are those who sell at retail manufactured or mobile homes. They may now sell new manufactured or mobile homes both at an established place of business or a motor vehicle show. If the dealer is also a manufactured home park operator, they may also sell homes in a facility at the manufactured home park or on individual lots in the park. Dealers are required to provide written contracts for every

66 R.C. 4781.17.
67 R.C. 4517.09.
68 R.C. 4781.08–4781.11.
69 R.C. 4781.27.
70 Unlike drivers of cars and trucks, mobile home residents are not required to have operators’ licenses. Since these motor vehicles are not operated, they are exempt from most motor vehicle laws such as traffic and personal and financial responsibility laws. See, e.g., R.C. 4509.01.
71 R.C. 4517.49.
72 R.C. 4781.01(O). Those who sell more than five manufactured or mobile homes in a 12-month period must be licensed as dealers. R.C. 4781.16(A)(2).
73 R.C. 4781.16(A)(2)–(3).
74 R.C. 4781.16(B)(4).
retail sale of a manufactured or mobile home,\textsuperscript{75} and to post a surety bond to help guarantee title.\textsuperscript{76}

Persons selling mobile homes for third parties have been known as “manufactured housing brokers,” defined as:

any person acting as a selling agent on behalf of an owner of a manufactured or mobile home that is subject to taxation under Section 4503.06 of the Revised Code.\textsuperscript{77}

Brokers must be licensed\textsuperscript{78} and must have an established place of business” used exclusively for brokering manufactured homes.\textsuperscript{79} The Manufactured Homes Commission has adopted rules for the regulation of manufactured home brokers in place of the rules formerly promulgated by the Bureau of Motor Vehicles.\textsuperscript{80}

\textsuperscript{75} R.C. 4781.24.
\textsuperscript{76} R.C. 4781.25.
\textsuperscript{77} R.C. 4781.01(N), formerly R.C. 4517.01(II). This is not to be confused with the definition of manufactured housing dealer which applies to persons engaging in the display, offering for sale and sale of manufactured homes and mobile homes at retail. R.C. 4781.01(O). Again the law seems to be drawn poorly because the definition of retail sale or sale at retail means the act or attempted act of selling, bartering, exchanging or otherwise disposing of a manufactured or mobile home to an ultimate purchaser to use as a residence. R.C. 4781.01(Q). Doing these acts to dispose of such a home to a purchaser to use as a residence seems to be the same thing most manufactured home brokers do, so under a strict interpretation of the law, most brokers would also have to be licensed as dealers.
\textsuperscript{78} R.C. 4781.16(A)(3), formerly R.C. 4517.02(A)(7).
\textsuperscript{79} R.C. 4781.16(B)(2). See regulations at Ohio Adm. Code 4781-11-17.

Manufactured home dealers, on the other hand, can sell homes at locations other than a specific place of business, which will now include sales at trade shows, as well as in manufactured home parks and sales lots.
\textsuperscript{80} Ohio Adm. Code 4781-11-01. The rules created by the Bureau of Motor Vehicles, Ohio Adm. Code 4501:1-3-01 to 1-3-12 were repealed by the shift of the oversight to the Manufactured Homes Commission from the Bureau of Motor Vehicles. The one consumer protection regulation of Ohio Adm. Code 4501:1-3-06 required manufactured home brokers to maintain a surety bond in the amount of $25,000 for claims to recover losses for down payments, misuse of trust accounts by the broker, unpaid taxes or as a result of fraudulent acts committed by the applicant, licensee, representative or salesperson. This last part may allow for successful claims against bonds to collect for unfair or deceptive acts proven under the Consumer Sales Practices Act, R.C. 1345.02. R.C. 4781.25 requires manufactured home brokers to have a surety bond in an amount to be determined by the Manufactured Homes Commission, but does not include any of the specifics of the prior Ohio Adm. Code 4501:1-3-06. Regulations adopted by the Commission, however, do carry forth the same requirements. Ohio Adm. Code 4781-11-10.
Even though they arrange financing for purchases, both manufactured home dealers and brokers are excluded from state laws regulating mortgage brokers. 81

The definition of manufactured home broker may be a problem for individuals who wish to use a third party to sell their homes. Under R.C. 4781.01(N), a person acting as a selling agent for a manufactured or mobile home owner is a manufactured home broker if the home is subject to taxation under R.C. 4503.06 (manufactured home tax). R.C. 4781.40(M) allows persons other than brokers to sell manufactured and mobile homes when the homes are located in manufactured home parks. Individuals and realtors as well as park operators can act as sellers. Yet each home in a park is subject to taxation under R.C. 4503.06 so that the new definition technically would make any of those listed persons in R.C. 4781.40(M) subject to licensing and regulation by the Manufactured Homes Commission as manufactured home brokers.

The key to reconciling the statutes seems to lie in the introductory statement to R.C. 4781.40(M), which allows sales in manufactured home parks “notwithstanding any other provision of the Revised Code.” This would indicate that individuals, realtors and dealers could sell the homes in manufactured home parks without reference to the licensing requirements of R.C. Chapter 4781. 82

Each manufactured home park in the state must be licensed annually by the Public Health Council or local health departments delegated that authority by the Public Health Council. 83 Pursuant to Health Department laws and regulations, the park license must be renewed annually after an annual inspection in December and payment of a fee based on the number of lots in the manufactured home park. 84

81 R.C. 1322.01(E)(2)(g) excludes those who engage in the retail sale of manufactured or mobile homes from the definition of “loan originator” and R.C. 1322.01(G)(2)(g) excludes them from the definition of “mortgage broker.” Since either manufactured home dealers or brokers engage in the retail sale of manufactured and mobile homes, both are exempt from the laws governing mortgage broker.
82 Requirements formerly found in R.C. Chapter 4517.
83 R.C. 4781.27(A)(1).
84 R.C. 4781.27(A); Ohio Adm. Code 4781-12-02 and 4781-12-04. See also Chapter 3 discussion on licensing, inspection and minimum facilities.
Ohio law further requires that each manufactured home park maintain a register of all homes within the park. Ohio law further requires that each manufactured home park maintain a register of all homes within the park. R.C. 4503.062 requires annual updates of the licensing of each home. If a park fails to maintain such a register, the operator is subject to criminal penalties.

Licensing of individual homes is required under both Ohio’s sales tax laws and motor vehicle laws. As a motor vehicle, manufactured or mobile homes must be titled with a certificate of registration pursuant to R.C. 4503.19–.20 and 4505.06. The title to the home must be transferred to the buyer within 30 days after the issuance of a certificate of occupancy by an applicable agency. No rights in the home can be acquired until the new title is issued, and no court may recognize rights of a person who claims to own the home unless there is a title, an admission of ownership by the parties or, in an action by a secured party to enforce the security interest, an instrument exists showing the validity of

85 R.C. 4503.062. This register is to be available for inspection by the licensing agency or Health Department inspectors. Information in the register includes names, addresses and ages of all inhabitants of the home, make, model, license number and state of license for the home, arrival and departure dates for the home and the transfer of homes in the park. 

86 A fine of not less than $25 nor more than $100.

87 See In re Evans, 370 B.R. 1238 (Bkrptcy, S.D. Ohio 2007).

88 R.C. 4505.06(A)(5)(c) in reference to new manufactured homes. The statute which formerly required the application for certificate of title in the buyer’s name be made in all cases within 30 days of assignment or delivery of the vehicle, now excludes manufactured and mobile homes. R.C. 4505.06(A)(5)(b). Rather, the title does not need to be transferred until 30 days after the “date of delivery” which is defined as the date the certificate of occupancy is delivered to the purchaser. R.C. 4505.06(A)(5)(c). This date can be far beyond the date the home is actually delivered to the buyer. See Chapter 2, Section III(c). See also Schisler v. H & R Investments, 5th Dist. Richland No. CA-2815, 1991 WL 115987 (June 12, 1991). See also discussion in Chapter 4, Section II(E), supra. If the broker does not hold the title at the time of sale, it has 40 days after issuance of a certificate of occupancy to obtain a title for the buyer. R.C. 4505.06(A)(5)(d)(i). A new section has been added to extend that time period until a secured creditor delivers the title to the dealer or the certificate of occupancy is issued, whichever is later. R.C. 4505.06(A)(5)(d)(ii).

The real problem is that the law nowhere defines or provides for a certificate of occupancy. It is a decision of the Manufactured Home Commission or its agents to determine when a person can move into a manufactured home, but the only indication that is given is that the Commission’s seal is placed into the home. Ohio Adm. Code 4781-7-01(B)(2) and (3). Commission members have indicated that this is a local decision made by the Health Department, but there is no provision in the Health Department regulations to allow such a decision. Local health departments deny having such a certificate, pointing to the Commission’s rule that no person may occupy a manufactured or mobile home until the Commission’s seal is given. Ohio Adm. Code 4781-7-01(K)(1).

89 R.C. 4505.04(A). The general rule has been waived when the title was not issued until two days after a loss, but the title transfer was in process, giving the buyer an equitable title to the home. Stahl v. Neff, 3rd Dist. Seneca No. 13-08-09, 2008-Ohio-5195.
the security interest.\textsuperscript{90} Title to the home may also be obtained by appropriate court order when the original title is lost or not delivered at the time of sale.\textsuperscript{91}

Once the home is sold to an individual, the annual registration must be done at the county auditor’s office and the annual registration decal must be issued. Failure to license the home subjects the owner to a small fine.\textsuperscript{92} Although used manufactured and mobile homes may be sold without the title in the hands of the broker at the time of the sale,\textsuperscript{93} if the title is not transferred within 40 days, the consumer has an “unconditional right to rescind the transaction.”\textsuperscript{94} Additionally, failure to transfer title is a violation of the Consumer Sales Practices Act\textsuperscript{95} and makes the contract voidable for lack of consideration.\textsuperscript{96}

Additions to mobile homes have been determined to be motor vehicles, and therefore subject to licensing laws.\textsuperscript{97} Add-on rooms and so-called “half sections” are designed to be part of the manufactured or mobile home, but they must be licensed for sale and transport. Once attached to the home, however, an addition presumably would become part of the original entity and no longer separately licensed.\textsuperscript{98}

Obtaining the license in the form of the certificate of title is vital to the rights of the purchaser.\textsuperscript{99} If the purchaser does not have a title, the purchaser’s rights can be reduced or

\textsuperscript{90} R.C. 4505.04(B).
\textsuperscript{91} See, e.g., Mullins v. Huffman, Franklin C.P. No. 2008 CVG 047984 (October 21, 2009) (sanctions of $35 plus $2,587.50 in attorney fees awarded for failure to transfer a title); Spence v. Hicks, Pickaway C.P. No. 2007 CI 163, (June 18, 2007).
\textsuperscript{92} R.C. 4503.061(G) sets a fine of $10, but R.C. 4503.061 also makes it a minor misdemeanor to violate the registration law.
\textsuperscript{93} R.C. 4505.181(A).
\textsuperscript{94} R.C. 4505.181(B).
\textsuperscript{95} Felix v. Mobile Homes for Sale, Lucas C.P. No. CI-00-2240, 2000 WL 33672907 (Oct. 27, 2000); Stitt v. Dutiel, Perry C.P. No. 22947 (March 15, 1995).
\textsuperscript{96} Callahan v. Crossford, Athens M.C. No. 2006 CVF 00621 (July 31, 2007).
\textsuperscript{97} 1979 Ohio Atty. Gen. Ops. No. 098.
\textsuperscript{98} It is not clear, however, whether the original title would still be applicable or whether a new title would be obtained if an add-on is detached from a home at some future date.
\textsuperscript{99} R.C. 4505.19 prohibits transfer of a manufactured or mobile home without delivery of the title.
totally denied by the mere fact that a manufactured or mobile home was not licensed. 100 In such a case, the purchaser should contact the Investigation Division of the Bureau of Motor Vehicles in Columbus.

R.C. 4505.04 sets forth the method of establishing proof of ownership of a motor vehicle in a civil action for damages. 101 In one case, because proof of ownership (in the form of a certificate of title) was not established, a person was unable to collect any damages. 102 Similarly, a bank’s summary judgment was overturned in Apple Creek Banking Co. v. Smith, 103 because the bank had failed to show it had an enforceable security interest in a mobile home. In Smith, a lien was not recorded on the certificate of title, and a subsequent transfer left the right to the interest in question. In Few v. Esselman, 104 a purchaser of a mobile home, which was subsequently destroyed, could not collect insurance. The court determined that because he did not license the home and obtain a certificate of title, he had no insurable interest. In another case, the title served as proof of ownership and a lien was not invalidated on its face by the fact that the wrong county issued the certificate. 105

Gonder v. Ada Community Improvement Corp 106 involved a home destroyed by fire. The seller had transferred the title before the fire, but it had not been recorded because the title was faulty due to alterations on its face. Granting summary judgment to the sellers, the lower court found that the title had transferred ownership and the buyer had

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100 The strict penalty for failure to produce a title in court has been modified by the Ohio Supreme Court in State v. Rhodes, 2 Ohio St.3d 74, 75–76, 442 N.E.2d 1299 (1982) (criminal matters) and Smith v. Nationwide Mutual Insurance Co., 37 Ohio St.3d 150, 151–152, 524 N.E.2d 507 (1988). In Smith, the Court felt that the proof of title was relevant only to competing claims for a motor vehicle but not when proof of ownership was irrelevant to the case. This has been extended to manufactured homes in Burton v. Elsea, Inc., 4th Dist. Scioto No. 97CA2556, 1997 WL 1285874 (Dec. 27, 1999).


103 9th Dist. Wayne No. 2094, 1985 WL 4647 (December 18, 1985).

104 24 Ohio Misc. 175, 53 Ohio Ops.2d 203 (M.C. 1970).


to bear the loss. Pointing out that the Uniform Commercial Code warrants good title\textsuperscript{107} and that this particular title was defective, the appellate court reversed the summary judgment and remanded the case for determination of the title issue before a decision could be made on liability for the loss.

When a seller fails to transfer a title to the buyer of a manufactured home, the buyer may rescind the transaction according to the decision in \textit{Goddard v. Manson}.\textsuperscript{108} In \textit{Goddard}, the home was located in a manufactured home park but the home was not in the seller’s name. Attempts to transfer the title failed, and the buyer rescinded the purchase agreement. Under the Uniform Commercial Code, a buyer may revoke acceptance of a good if its non-conformity is not cured and substantially impairs the value to the buyer.\textsuperscript{109} In \textit{Goddard}, the buyer was unable to have the full rights of a mobile home owner, including the ability to sell it, so his rights were substantially impaired and revocation of acceptance was allowed.

A more important recent decision involving manufactured home titles is that of \textit{Burton v. Elsea, Inc.}\textsuperscript{110} In \textit{Burton}, one of the issues was whether the buyer could recover damages because he had no title to prove that he owned the damaged home. The court followed the recent Ohio Supreme Court decisions in determining that there was no actual dispute about ownership of the home and to require such proof as a basis for recovering damages would allow the seller to evade liability and fly in the face of the legislative intent of R.C. 4505.04.\textsuperscript{111}

In two decisions in 2000 to 2002, the U.S. District Court, Southern District of Ohio, was faced with a case in which a clerk of courts unilaterally transferred mobile home titles to a creditor under R.C. 4505.10(A). The statute allowed a lienholder to apply to the clerk of courts for a new certificate of title without an action for repossession or a notice to the

\textsuperscript{107} R.C. 1302.25(A). In \textit{Burnett v. Purtell}, 11\textsuperscript{th} Dist. Lake No. 91-L-094, 1991 WL 92304 (June 29, 1992), the court determined that even though the title had been transferred to a buyer of a home, actual delivery had not occurred so the loss from a fire fell upon the seller rather than the buyer.

\textsuperscript{108} 3\textsuperscript{rd} Dist. Crawford No. 3-01-10, 2001-Ohio-2303.

\textsuperscript{109} Codified in Ohio at R.C. 1302.66.

\textsuperscript{110} 4\textsuperscript{th} Dist. Scioto No. 97CA2556, 1999 WL 1285874 (December 27, 1999).

\textsuperscript{111} Id., slip op. at 9. See also \textit{Rucker v. Alston}, 2\textsuperscript{nd} Dist. Montgomery No. 19959, 2004-Ohio-2428.
owner of the home. The title holder of the home discovered the title transfer when she lost her opportunity for a federal housing subsidy because the title to the home was not in her name. The federal court struck down Ohio’s attachment statute for lack of notice or hearing rights, but damages were denied against the clerk of courts. The permanent injunction and clerk’s cross-appeal were dismissed after the legislature changed the law.

IV. TAXATION OF MOBILE HOMES

A. State Taxation

Currently, the two basic taxes on manufactured homes in Ohio are the annual manufactured home tax (which is modified in certain circumstances by the homestead exemption law) and the sales tax. The sales tax is required to be paid the same as with any other new good that is sold and is generally not an issue in the sale by brokers or individuals of used homes. In appropriate cases, the state requires the payment of taxes prior to the change of registration, the same as with other motor vehicles.

112 Leslie v. Lacy, 91 F.Supp.2d 1882 (S.D. Ohio E.D. 2000). The statute, which was declared unconstitutional, was amended the next year to provide predeprivation hearings to title holders.

113 The title was transferred by the clerk of courts on December 17, 1998, without notice to the home owner. The Section 8 subsidy was to begin in January 1999, but required the title of the home be in Ms. Leslie’s name.

114 Leslie v. Lacy, 91 F.Supp.2d 1882 (S.D. Ohio E.D. 2000). The court noted that the right to maintain control over one’s home was “a private interest of historic and continuing importance.” United States v. James Daniel Good Real Property, 510 U.S. 43, 53, 126 L. Ed.2d 490, 114 S. Ct. 492 (1993). Even though the manufactured home is a motor vehicle under Ohio law, the court noted it was also a home and using the attachment lien created all kinds of problems for a homeowner.


116 This changed January 1, 2000, when the Manufactured Home Transfer Tax became effective. R.C. 322.03.

117 Since January 1, 2000, used manufactured and mobile homes are exempt from the sales tax. R.C. 5739.02(B)(39).

118 R.C. 4505.06(B) requires the clerk to obtain proof of payment of sales tax prior to transferring the certificate of title to the buyer’s name. There is no specific statute setting out who is responsible to pay the tax in individual sales, but the purchaser must show proof that it has been paid in order to obtain a new title. When the sale is through a brokerage, the broker will collect the sales tax as part of its business operations. For manufactured or mobile homes sold before January 1, 2000, no proof of tax payment is necessary. R.C. 4505.06.
A question can arise regarding sales tax add-ons that counties are permitted to levy for additional general revenues to support various governmental functions. However, motor vehicles are exempt from the supplemental sales tax, so the seller should not be adding the local sales tax supplement.

Aside from the sales tax, the basic tax on mobile homes is referred to as the manufactured home tax, formerly called the “trailer tax.” This tax is levied annually on all manufactured and mobile homes sited in Ohio as of January 1 each year. It is collected by the county, payable to the treasurer of the county in which the home is located. The minimum tax is $36 unless the home qualifies for a reduction on the basis of the homestead exemption. Although the tax calculation is similar to that of taxation on real estate (tax rate multiplied by the assessable value), until January 1, 2000, manufactured and mobile homes were deemed to decline in value by 5% per year, pursuant to R.C. 4503.06(C)(1). Also, even though the tax is due January 1, it may be paid in two semi-annual installments by January 31 and July 31 of each year. Failure to pay the annual tax, formerly a criminal act, is now punished by the county auditor placing a lien for a fee in an amount depending on the home’s value as estimated under R.C. 319.54.

Since January 1, 2000, manufactured and mobile homes are taxed on the same basis as all other homes. The automatic depreciation table has been eliminated and all homes are taxed by multiplying the assessable (appraised) value by the effective tax rate for

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119 R.C. 5739.021 permits the additional tax for the support of criminal and administrative justice services and the expenses of a levy. This is not to be confused with the supplemental tax for license plates that may be added by county commissioners pursuant to R.C. 4504.02.

120 Under R.C. 5739.021(A), watercraft, outboard motors and motor vehicles are exempted from the sales that are subject to the supplemental local tax.

121 R.C. 4503.06(A).

122 R.C. 4503.06(F) lists certain exemptions, including those homes taxed as inventory under R.C. Chapter 5709, homes in a state facility or park area defined in R.C. 4781.01(D), and those licensed in other states if the home is in Ohio less than 30 days. This tax has been held to be an appropriate fee. Stary v. City of Brooklyn, 162 Ohio St. 120, 129, 121 N.E.2d 11 (1954). Also, if the home obtains “situs” in Ohio after January 1 and is not exempt under R.C. 4503.06(F), the tax will be prorated for the time when the home is sited in Ohio. 1994 Ohio Atty. Gen. Ops. No. 56.

123 R.C. 4503.06(D)(1)(a).

124 R.C. 4503.064–.068.

125 R.C. 4503.06(G).

126 R.C. 4503.061(H)(2). Under the former law, the owner would be fined between $25 and $50.

127 R.C. 4503.06(D)(2)(a). This also applies to used manufactured and mobile homes which are exempt from state sales tax if made on or after January 1, 2000. R.C. 5739.02(B)(39).
residential real property in the district, then deducting any homestead exemption. The assessable value will be 35% of the true value as determined pursuant to R.C. 4503.06(L).\textsuperscript{128}

The homestead exemptions may reduce the assessable value, thus further reducing the tax due annually. For elderly and disabled persons,\textsuperscript{129} the homestead exemption can reduce the tax to the extent of eliminating it entirely.\textsuperscript{130} Each January, when the manufactured home tax is due, the county auditor must issue the certificate of reduction. Applicants may then appeal to the Board of Revision if they have been denied the exemption or if they challenge the amount of the reduction.\textsuperscript{131}

In theory, the process is simple. Each manufactured or mobile home is registered annually and a tax is calculated based on the value of the home. This tax may be reduced or completely eliminated by the application of the homestead exemption. In reality, though, there have been disputes over a number of issues, especially the issue of whether or not state law prevents localities from imposing additional taxes on the homes.

B. Local Taxation

Historically, localities were allowed to place additional taxes on individual homes. In \textit{Rapa v. Haines},\textsuperscript{132} the Ohio courts upheld an annual local trailer tax of \$18 per mobile home in addition to the state tax. The General Assembly subsequently enacted the current tax scheme found in R.C. 4503.06 and preempted local taxation of mobile homes.

Such preemption was applied in \textit{Noland v. City of Sharonville},\textsuperscript{133} in which an Ohio appeals court held that a municipality could not impose an excise tax on mobile homes.\textsuperscript{134}

\begin{itemize}
\item \textsuperscript{128} R.C. 4503.06(D)(2)(b). True value will be established as the value of the home, plus the value of any additions and any fixtures which have been added to the home. R.C. 4503.06(L)(1). Although most homes will probably still decline in value, taxes will only be adjusted through the sexennial appraisals done by county auditors. R.C. 4503.06(L)(3).
\item \textsuperscript{129} In 1992, the homestead exemption was extended to homes held by revocable inter vivos trusts (“living trusts”) by seniors and handicapped persons. See R.C. 4503.065(c)(2).
\item \textsuperscript{130} R.C. 4503.065(c). As of 2015, the exemption was limited to those with incomes below \$30,000 as adjusted under R.C. 4503.065(A)(2)(c).
\item \textsuperscript{131} R.C. 4503.067(H)(1) states that appeals on valuation and taxes may be made by January 31 of the year in the same manner as the assessment of real property under R.C. Chapter 5715.
\item \textsuperscript{132} 64 Ohio Law Abs. 535, 101 N.E.2d 733 (C.P. 1951), affd. 64 Ohio Law Abs. 543, 113 N.E.2d 121 (App. 1951), app. dism. 158 Ohio St. 275, 108 N.E.2d 275 (1952).
\item \textsuperscript{133} 4 Ohio App.2d 7, 211 N.E.2d 90 (1st Dist. 1964).
\end{itemize}
An attempt by another municipality to impose a tax in the form of licensing obtainable only by a payment of a per-home fee was struck down under R.C. 4503.06 in *Anderson v. Brown.* 135

In theory, individuals must pay the annual manufactured home tax, but until the 1999 revisions in the manufactured home park law, county auditors were baffled by linkage of the collection of the tax to the registration of the homes produced by motor vehicle status. Although R.C. 4503.061(C) requires taxes to be current to transfer a manufactured or mobile home title, the Ohio Attorney General stated as early as 1955 that an auditor can demand payment of these taxes prior to registration. 136 This was a hollow statement, because an auditor cannot withhold registration for unpaid prior taxes. 137 The Attorney General has stated that “registration of a manufactured home does occur separate and apart from payment of a tax levied on the home,” 138 and advised that an auditor could not withhold registrations even for nonpayment of current taxes due. 139 On a related point, the new owner of the home cannot be held liable for delinquent taxes owed by former owners of the home. 140

As real property, manufactured and mobile homes may be taxed directly in the form of assessments for certain public purposes such as public works projects or recreational facilities. Even as personal property, they may likewise be taxed without violating R.C. 4503.06 as long as the tax is levied on all residential units alike. An example of such a tax is found in *Towne Properties v. City of Fairfield,* 141 where an assessment that was levied on a manufactured home park rather than on individual homes

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134 See also 1972 Ohio Atty. Gen. Ops. No. 033, stating that a township could not impose a tax on trailer parks through a zoning code mechanism.
135 13 Ohio St.2d 53, 233 N.E.2d 584 (1968).
137 Id.; see also 1952 Ohio Atty. Gen. Ops. No. 1383. However, with the requirement that taxes for the immediately preceding five years be paid prior to obtaining a relocation notice, county auditors now have the ability to require at least five years of taxes before a home may be moved on the public highways. R.C. 4503.061(H)(1).
138 1985 Ohio Atty. Gen. Ops. No. 088 at page 2-361. The opinion states that registration cannot be withheld due to failure to pay taxes, and that the county treasurer, not the auditor, must pursue the non-payment issue. The home must still be licensed even though the owner may be criminally prosecuted for nonpayment of the taxes.
139 Id.
141 50 Ohio St.2d 356, 364 N.E.2d 289 (1972).
was held to be valid for the general purposes of the recreational district. A more recent example is *Colasant v. Olmsted Township*, \(^{142}\) in which the use of the Township’s general fund for waste collection services was determined to be legal even though the mobile home park residents did not directly receive services from this payment.

Taxes may also be levied against manufactured and mobile homes that are held in inventory by dealers, though this does not affect the individual homeowner. Under R.C. 5709.01(B)(1), all personal property, including mobile homes which are used in business in Ohio, may not be taxed as real property but must be taxed as personal property. For homes that are owned and occupied or those which are held for rental and other purposes, there is a specific exemption from personal property taxes under R.C. 4503.06.\(^ {143}\) The same result was reached judicially in earlier litigation of the issue.\(^ {144}\)

The method of taxation for manufactured or mobile homes can be changed if the home is reclassified as real property. This process is done by the county auditor who, in the past, made the determination based on the law of fixtures.\(^ {145}\) If a person desired her home to be reclassified as real estate, she needed to have the auditor review the classification. In doing so, the auditor was to examine:

the facts and circumstances indicative of the temporal as well as the physical character of the foundation when determining whether a house trailer, resting upon a foundation of footers, has ceased to be a house trailer and has become an improvement to the real estate for real estate tax purposes.\(^ {146}\)

The common law fixtures concept was incorporated into Ohio law in 1999. Ohio law provides a statutory procedure for the conversion of manufactured or mobile homes to real property status.\(^ {147}\) The home must be located on land owned by the homeowner prior

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\(^{142}\) 95 Ohio App.2d 605, 643 N.E. 2d 161 (5th Dist. 1994), cert. den. 71 Ohio St.2d 1422, 642 N.E.2d 388 (1994).

\(^{143}\) R.C. 4503.06(E)(1).


\(^{146}\) 1969 Ohio Atty. Gen. Ops. No. 128. In this opinion, it was determined that a temporary foundation was not sufficient to make a mobile home into real property. As to what constitutes a permanent foundation as opposed to temporary, see HUD Handbook 4930.3, *Permanent Foundations Guide for Manufactured Housing*.

\(^{147}\) R.C. 4503.06(B).
to surrender of the title, it must be attached to a permanent foundation and connected to appropriate facilities; and the homeowner must have surrendered the title to the clerk of courts of the county in which the title was issued. Once a home is reclassified, the home is no longer considered a motor vehicle, which eliminates all licensing and manufactured home taxation on the mobile home. If, for some reason, a home classified as real property fails to meet the requirements of this section, or a homeowner chooses to reactivate the title, the law provides a process to reverse the classification. The clerk may reactivate the title if the homeowner applies to do so and the county officers and lienholders provide specific information.

However, this process can change the security interest which a financial institution may hold on the mobile home. If the status of the home is changed from personal property to realty, the perfected security interest in the home is no longer valid. The secured party must then make a fixture filing on the real property in order to maintain a security interest in the home. For that reason, the law now requires notification of the security interest which a financial institution may hold on the mobile home. The adopted bill includes a provision that the real property taxes for all preceding years have been paid; the county auditor must state that the home will be removed from the real property tax list; and the lienholders must consent to the reactivation of the title. The county treasurer must state that the real property taxes for all preceding years have been paid; the county auditor must state that the home will be removed from the real property tax list; and the lienholders must consent to the reactivation of the title.

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148 Permanent foundation is defined as a permanent masonry, concrete or locally approved footing or foundation to which a manufactured or mobile home may be affixed. R.C. 3781.06(C)(5).
150 The home will be taxed as part of the real property after conversion. Snyder v. Hawkins, 5th Dist. Coshocton No. 03-CA-007, 2004-Ohio-99. It also affects the disposition of the home. Once a home becomes part of the real estate, a subsequent transfer of the real estate includes the home, and any such home on land, described in a warranty deed, transfers with the land. Orahoske v. Grubbs, 5th Dist. Guernsey No. 91-CA-27, 2004-Ohio-99.
151 R.C. 4505.11(H)(4). R.C. 5701.02 was amended in 1991 to state that the real property does not include any manufactured homes, mobile homes, travel trailers or park trailers unless all of the requirements of R.C. 4505.11(H) have been met.
152 The county treasurer must state that the real property taxes for all preceding years have been paid; the county auditor must state that the home will be removed from the real property tax list; and the lienholders must consent to the reactivation of the title. R.C. 4505.11(H)(4).
153 Individuals should review their contracts to see if the lender must be notified if the security interest is made invalid. For an example of how liens were released by the conversion of a mobile home to real property, see Snyder v. Hawkins, 5th Dist. Coshocton No. 03-CA-007, 2004-Ohio-99.
154 See 1996 Ohio Atty. Gen. Ops. No. 036. R.C. 1309.334(E); for a discussion of fixture and accession filing, and the amendments to the security interest sections of Chapter 1309, see also Chapter 4(IV)(B), infra.
holder, and either payment of the balance to the lienholder or an execution of a mortgage prior to surrendering the title.\textsuperscript{155}

C. \textbf{Manufactured Home Parks}

Strictly speaking, manufactured home \textit{parks} are not taxed, although fees are assessed annually for the license to operate.\textsuperscript{156} Counties assess real estate taxes on the property. Municipalities have also been allowed to require a licensing fee as long as it is reasonably related to the expense of safety and supervision of the park under the local police powers.\textsuperscript{157}

V. \textbf{TRANSPORTATION}

Both federal and state regulation bear on the issue of the transportation of manufactured and mobile homes. However, such regulation is of more concern to industry than to the individual homeowner at the initial sale; thereafter, as a matter of necessity, the individual is involved in transportation-related issues.

Federal regulation concerns construction of a manufactured home such that the home may be transported with minimal loss.\textsuperscript{158} In the past, the only applicable state law for individual homeowners to follow was the prohibition of riding in the home during its conveyance on the highway.\textsuperscript{159} However, the law now requires that any person who wishes to move a manufactured or mobile home obtain a relocation notice prior to moving the home on any public highway. To obtain the notice, a homeowner must apply with the county auditor and have all taxes paid for the past five years before the notice will be

\textsuperscript{155} R.C. 4505.11(H)(2).
\textsuperscript{156} R.C. 4781.28.
\textsuperscript{157} \textit{Stary v. City of Brooklyn}, 162 Ohio St. 120, 128, 121 N.E.2d 11 (1954). The Supreme Court allowed a municipal charge of a $25 licensing fee as well as the graduated fee payment to the Ohio Department of Health under R.C. 3733.03.
\textsuperscript{158} 24 C.F.R. 3280.901–.903.
\textsuperscript{159} R.C. 4511.701.
issued. Once the notice is approved, it must meet specific requirements and be displayed to the rear of the home. Failure to follow this procedure is a criminal act.

VI. UTILITIES

There are three agencies that regulate manufactured home parks in relation to utilities. These are the Public Health Council, the Ohio Environmental Protection Agency and the Public Utilities Commission of Ohio (PUCO). Because the regulations of the first two agencies are considered elsewhere, this discussion will concern only the regulatory power of the Public Utilities Commission.

A. Regulatory Authority

Among other things, PUCO has authority to regulate all matters concerning gas and electric companies under R.C. 4905.05. This authority has been specifically upheld by Ohio courts in regard to gas companies. Further, the Ohio Supreme Court has refused to allow courts to decide whether a utility must provide services to any specific customer because PUCO has exclusive jurisdiction over such matters. Under its authority to regulate these utilities, the PUCO has issued regulations such as those which give residents rights in relation to termination of utility service.

160 R.C. 4503.061(H)(1). Under the law governing abandoned mobile homes, the auditor must issue the relocation notice without requiring payment of taxes owed if the home is being moved by law enforcement officials or a park operator pursuant to R.C. 1923.14 (i.e., the value of the home is less than $3,000 or if it cannot be sold after two attempts). Id.

161 The notice must be a one-foot-square yellow notice with name, address, registration information and both the county of issuance and the county to which the home is being moved. R.C. 4503.061(H)(3). It must be attached to the rear of the home when it is being transported on a public road. R.C. 4503.061(H)(4).

162 R.C. 4503.61(I) makes it a minor misdemeanor. The fine is $100 and becomes a lien on the home if not paid by the homeowner. R.C. 4503.061(H)(5).

163 See Chapter 3, Section B.2.


165 State ex rel. Ohio Bell Telephone Co. v. Court of Common Pleas, 128 Ohio St. 553, 192 N.E. 787 (1934).

B. Manufactured Home Park Utility Systems as Public Utilities

Manufactured home parks are not restricted to using public utilities to provide basic services to their residents. A park has the choice to allow public utility companies to provide service to the individual residents or to provide the utilities itself. While parks are subject to some restrictions due to the landlord/tenant law, parks are not prohibited from owning a utility system. Similarly, there seems to be little restriction on the monopoly power to both own the system and submeter or master meter the utilities to the residents.

The definition of a public utility is set forth in R.C. 4905.02 and that of a public utility company in 4905.03. The park operator, not the residents, has been determined to be the consumer for purposes of this law.\textsuperscript{167} Whether the park operator may also be considered a public utility will depend on whether it provides service to persons beyond the boundaries of the park. If it does not, park ownership of the utility system will not make it a public utility for purposes of PUCO regulation.\textsuperscript{168} One court has also determined that the EPA’s reasonable interpretation of “service connection” may allow a finding that a manufactured home park operated a public water system.\textsuperscript{169}

C. Submetering/Master Metering

Occasionally, a manufactured home park operator will purchase the gas, electric power, water, propane or heating oil from a public utility, and resell it to the residents. The resale may take place as submetering or through a master meter. With submetering, the residents have individual meters but are billed by the park operator for actual utility use. A master meter system includes a single meter for the park from which the park operator bills according to his or her own beliefs about the individual usage. Additional charges may be added by the park operator whether or not the resident has an individual meter.


While PUCO has not established regulations on either master metering or submetering, its definition of “master meter,” specifically excludes gas systems in manufactured home parks. Although PUCO held hearings in the 1980s, no rules were established and the practice remains unregulated.

In commercial operations, the courts have found both submetering and master metering legal. For manufactured home parks, a similar result was reached in the case of In re Inscho, supra, where submetering was determined to be legal and the manufactured home park was not a public utility for purposes of PUCO regulation. In Inscho, the manufactured home park had a master meter and billed individuals for services, then began submetering when it installed individual meters at the homes. According to the decision of the Public Utilities Commission, the park merely distributed water to residents and was not a public utility subject to their regulation.

PUCO has made one concession to persons in submetered parks by creating additional regulations for utility terminations. Under Ohio Adm. Code 4901:1-18-06, residents are granted certain notice rights when disconnection of master-metered gas or electric service is proposed. In that way, residents may take action under the landlord/tenant law to prevent the disconnection. A park operator is required to make utilities available and the residents are given time by the notice procedure to take legal steps to enforce this right.

At least one court has ruled against a resident of a manufactured home park challenging charges under a submetering agreement. The City of Toledo signed a contract with a manufactured home park to provide water and/or sewer service. The park hired a company to oversee their water accounts and that company charged above allowable

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170 R.C. 4905.90(H); see also Ohio Adm. Code 4901:1-16-07.
171 Shopping Centers Association of Northern Ohio v. Public Utilities Commission of Ohio, 3 Ohio St.2d 1, 208 N.E.2d 923 (1965); Park Centre Party Center v. Zell, 8th Dist. Cuyahoga No. 65221, 1994 WL 189547 (May 12, 1994).
172 R.C. 4905.03(G) defines a water works company as an entity engaged in the business of supplying water. The PUCO decision indicated that the park was only in the landlord/tenant business and merely passed water through its lines for the benefit of its residents.
173 These rights are for regulated utilities. For those unregulated by PUCO, other remedies may be available, i.e., due process rights for government-owned utilities and common law service rights for cooperatives.
174 See R.C. 4781.38(A)(4) and Ohio Adm. Code 4781-12-01, et seq.
175 R.C. 4781.41.
municipal water rates. A resident filed suit disputing the charges, but the Wood County Common Pleas Court dismissed the case.176 Because the agreement between the park and the city was not primarily for the benefit of the one resident, she lacked standing as a third party beneficiary under the contract.177 She also had not filed a complaint with the city under the Toledo administrative policies covering billing disputes for water service, so the court found she had failed to exhaust her administrative remedies and dismissed the suit.

D. Administrative and Billing Companies

A recent trend in manufactured home parks is to create individual metering of utilities and for park management to hire outside companies to oversee the billing. The companies that do the billing often charge park residents an additional fee for reading the meters and sending bills. This process has been reviewed by both the courts178 and the Public Utilities Commission179 and does not appear to violate either state law or regulation. In Anderle v. Ideal Mobile Home Park, Inc., the Eighth District Court of Appeals determined that the duty of a manufactured home park operator to maintain water systems did not prevent him from charging a monthly administrative fee for water meter reading and billing services.180

In 2012, a municipal court in Williams County addressed some new theories about administrative billing companies, with the same result as the other courts.181 The residents

176 Paquette v. Universal Utilities, Inc., Wood C.P. No. 2009-CV-1166 (May 13, 2010). The park argued that individual residents did not have standing to sue under the agreement between the park and the city, and even if they did, they could not sue until they utilized the Toledo utility procedures for billing disputes.

177 The court found that the contract was not primarily for the individual resident’s benefit, which was a requirement for her to be a third party beneficiary of the contract between the park and the city.


180 Anderle, supra, states that “as a matter of law, the duty R.C. 3733.10(A)(4) (now R.C. 4781.38(A)(4) places on park operators to maintain water systems in good and safe working order and condition does not include the responsibility for paying for water meter reading and billing expenses on the park operator.”

claimed that the billing company was violating the state weights and standards laws, but the court pointed out that they had no control over the meters.

The issue addressed by the Public Utilities Commission was not whether the fee was legal, but whether the company reading the meters and billing for services was a waterworks company.\textsuperscript{182} The resident’s claim was that Aquameter, the company providing the services, was a public utility subject to state regulation. The Commission found that Aquameter was not engaged in the business of supplying water through pipes or tubes or in any similar manner, and was not a public utility subject to regulation by the Public Utilities Commission.\textsuperscript{183}

**E. Termination of Utilities**

The PUCO regulations govern termination procedures for gas and electric companies which are regulated by the state.\textsuperscript{184} Ohio Adm. Code 4901:1-18-06 is the general provision governing termination,\textsuperscript{185} while Ohio Adm. Code 4901:1-18-08(E) concerns master-metered premises.\textsuperscript{186} Both relate to R.C. 4933.121 and 4933.122 and its procedural requirements for termination of utility service to residential premises.

The general regulation applies to all utility terminations by regulated utilities and covers dates of termination (November to April moratorium), notice provisions, and procedures for the day of disconnection. The landlord/tenant provisions for master-metered premises go further, allowing service to remain on if the residents take action under the landlord/tenant law. Although the regulation specifically mentions tenants who take action under R.C. 5321.07, the residential landlord/tenant law—the substitution of one escrow law for the other—has been allowed for mobile home parks.\textsuperscript{187} This would seem to


\textsuperscript{183} Id., slip op. at 8.

\textsuperscript{184} PUCO does not regulate governmental utilities or rural cooperatives, for example.

\textsuperscript{185} These regulations include restrictions on when utilities may be terminated in terms of both time of day and months in which termination is prohibited, notices to consumers and customers, authorization for employees to accept payment to prevent termination, and exceptions for medical conditions. Ohio Adm. Code 4901:1-18-06.

\textsuperscript{186} Entitled “landlord-tenant provisions,” this section covers notice to tenants of both rights and alternative methods of maintaining service, as well as procedures for tenant assumption of the account to prevent termination. Ohio Adm. Code 4901:1-18-08.

indicate that the residential landlord/tenant law should apply to manufactured home parks as well.

VII. SUMMARY

As described above, with respect to the construction, licensing, taxation and transportation of manufactured and mobile homes, most of the rights of homeowners are secured through administrative and regulatory channels rather than judicial channels. The pattern is one of preemption: federal law preempts state and local law with respect to construction and safety standards, and Ohio state law preempts local law with respect to registration and taxation. This does not completely foreclose litigation, but offers administrative channels to resolve cases.
I. **INTRODUCTION**

This chapter reviews several issues of particular importance in creating sites for manufactured and mobile homes: zoning, obstacles to the development of manufactured home parks and individual home sites, the closure of manufactured home parks, and new trends in the development of manufactured home communities.

With regard to **zoning**, mobile homes have traditionally been very difficult to place. Individuals and industry alike face hurdles in this respect. Individual home sites are often restricted by deed covenants. In addition, both individual homes and manufactured home parks have been zoned out of neighborhoods, townships and even larger communities. Since 1999, restrictions have been eased for individual manufactured homes outside home rule communities, but remain in place for mobile homes and manufactured home parks.

The **development of a park or an individual home site** involves several steps. Zoning barriers and deed restrictions must be overcome. Design plans must be approved. A park must meet construction and specific facility requirements. An individual home site must have septic and other utility connections approved. Both manufactured home parks and home sites must be built to certain specifications.

Issues may also arise for home owners and tenants upon the **closure of a park**, which may result from a governmental entity’s exercise of eminent domain, for certain violations of the law, sale of the park to an entity to use for other than a manufactured home park, or voluntarily by the owners of the park. For the home owner, closure of a park means relocation to a new site and the considerable costs such relocation entails.

There is a growing tendency to develop **manufactured home communities on a cooperative or condominium basis**. Although Ohio has no law on such forms of organized ownership by manufactured home owners, the 1999 law made such developments easier. Finally, Cleveland entered the site development arena in the 1980s...
with a law to allow placement of individual manufactured homes on urban lots too small for site-built housing. This could be a way for cities to provide increased housing opportunities for low-income persons. Site development has now become state law and a way for cities to provide increased housing opportunities for low-income persons as well as help the mobile home industry.

II. MANUFACTURED HOME PARKS

There are many procedural steps before a new manufactured home park can be opened. While each step is discussed in this chapter, the following table summarizes the necessary steps a developer must take.

<table>
<thead>
<tr>
<th>STEPS NECESSARY TO APPROVE MANUFACTURED HOME PARK</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Zoning Approval</td>
</tr>
<tr>
<td>Development Plan Submission—includes plans for fire protection, EPA approval, drawings</td>
</tr>
<tr>
<td>2. 30-day Review of Plans</td>
</tr>
<tr>
<td>3. Approval by Ohio Manufactured Home Commission</td>
</tr>
<tr>
<td>4. Building Requirements Approved in Locality</td>
</tr>
<tr>
<td>5. Building Manufactured Home Park</td>
</tr>
<tr>
<td>6. License Application</td>
</tr>
<tr>
<td>7. Inspection by Ohio Manufactured Home Commission</td>
</tr>
<tr>
<td>8. Operating License Granted</td>
</tr>
</tbody>
</table>

Table 2

A. Zoning

The initial barrier to the development of any manufactured home park has always been, and continues to be, zoning restrictions. These restrictions have been enacted mainly because of misconceptions about manufactured homes and the real problems that existed with such homes prior to the enactment of the Manufactured Home Construction and Safety Standards Act in 1974. Prior to the enactment of these standards, mobile homes were viewed as unsafe, highly degradable types of housing. The inhabitants of such homes were often low-income persons and the term “trailer trash” came to be used to refer to low-income residents of mobile home parks. With low-value homes and low-income residents,
these homes were often considered a danger to property values in traditional neighborhoods. Also, while many residents of such housing today are senior citizens, the earlier view was of families with many children going to school without paying their fair share of taxes while overcrowding the school systems. Due to these various views of mobile home life, communities took steps to prohibit the placement of such homes by use of zoning restrictions.

Under Ohio law, manufactured home parks are not nuisances per se,1 and as such, they are a permissible development within the context of local zoning laws. On the other hand, the Ohio Supreme Court and various state appellate courts have declared that zoning laws which regulate or prohibit manufactured home parks are constitutional and not prohibited by state or federal law.2 A challenge to the existence of a zoning law will fail if the challenge is based solely on the right of a governmental entity to enact and enforce such a law. Similarly, the fact that Ohio enacted health codes,3 and that it requires minimum standards and licensing for parks, does not preempt zoning ordinances of municipalities or townships.4

There are three notable exceptions to the general rule that a political subdivision5 may ban manufactured home parks entirely: first, if the park existed, or was substantially developed, at the time the zoning ordinance was enacted (an “existing use”); second, if there are no other reasonable uses for the land (“economic viability”); and finally if the zoning denial was unreasonable. These exceptions are discussed below.

1 Kessler v. Smith, 104 Ohio App. 213, 218, 142 N.E.2d 231 (8th Dist. 1957). A manufactured home park may, however, become a nuisance by its operation. 67 Ohio Jur.3d Manufactured Home Parks, Section 13.


3 See R.C. 4781.01, 4781.26-4781.36 and Chapter 3, Section II(B)(2), infra.


5 Counties may create zoning ordinances (R.C. Chapter 303), as may townships (R.C. Chapter 519), and cities and villages (R.C. Chapter 713).
1. Existing Use

The most widely recognized exception to zoning restrictions is the existing use exception. In 1961, the Trumbull County Court of Appeals ruled that an existing park with five lots had a right to add an additional lot despite the prohibition of expansion because the park was a pre-existing nonconforming use. Under the business zoning code, the business was allowed a one-time 25% expansion in facilities because it was an existing business at the time the ordinance was enacted. In the same county the zoning inspector was ordered to grant a zoning certificate for an expansion that was granted to a manufactured home park 22 years after the ordinance was enacted. The zoning inspector argued that there had been changes in the board and the land use patterns, but these could not overturn a prior legal decision of the zoning agency.

The year before, the Hamilton County Court of Appeals similarly granted the right of a park to add ten spaces despite the existence of a prohibition on expansion. The land in that case was the remainder of the park owner’s property, and it adjoined the existing park of 42 lots. Preventing the expansion would have represented an unreasonable hardship.

In Meuser v. Smith, the Franklin County Court of Appeals held that the issuance of a permit to a landowner, when coupled with beginning construction of the mobile home park, established an existing use prior to the enactment of a zoning ordinance prohibiting mobile home parks. By creating an existing use prior to enactment of the ordinance, the park operators had a right to finish the construction of the park.

The attempt to eliminate nonconforming use of individual lots in a manufactured home park failed in Village of Lodi v. Ward. In Ward, the local zoning code included a right to eliminate nonconforming uses after six months if the prior use ceased. When two lots were left open in a manufactured home park for more than six months and the park operators placed new homes on the lots, the Village filed criminal complaints against the park operators. The local court found the operators guilty of violating the ordinance but

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8 Kanter v. Board of Zoning Appeals, 14 Ohio Ops.2d 243, 167 N.E. 2d 678 (C.P. 1960); for an opposite result, see Beck, supra.
the appeals court overturned the convictions because the park had maintained utility connections which indicated they did not intend to abandon their use as manufactured home sites within the park.\textsuperscript{11} The same issue with the same village ended with the same results in the 2013 case of \textit{State ex rel. Sunset Estate Properties, LLC v. Village of Lodi}.\textsuperscript{12}

Two cases illustrate the limitations of the existing use exception. In \textit{Ohio State Student Trailer Park Cooperative, Inc. v. Franklin County},\textsuperscript{13} the mere purchase of land in contemplation of a mobile home park absent any construction did not create an existing use so as to prevent a ban on mobile home parks under a new ordinance. One reason for enforcing the ban was that development of the mobile home park was only in the planning stage. In \textit{State ex rel. Cunagin Construction Corp. v. Creech},\textsuperscript{14} the challenged zoning ordinance had been enacted between the time the initial application for use as a mobile home park was properly denied and the time a second application was filed. The court held that the existing law at the time of application for the park was the key factor in evaluating the effect of the zoning ordinance. In \textit{Creech}, the land was not owned by the company, but only held under option when the first application was filed. The first application was properly denied. Even though the land was purchased prior to the reapplication, the new land use regulations had taken effect and the prohibition of the mobile home park at the time of the second application was upheld.

\textsuperscript{11} The parties had stipulated that the manufactured home park as an entity was the nonconforming use. The ordinance referred to nonconforming mobile homes. It is unknown why the court did not simply overturn the convictions because the issue was whether the park had abandoned its zoning status.

\textsuperscript{12} 9th Dist. Medina No. 12 CA0023-M, 2013-Ohio-4973. The appellate court overturned summary judgment for the village, finding that the ordinance was ambiguous, arbitrary, unreasonable and an unconstitutional violation of substantive due process. The village attempted to declare that individual lots in a manufactured home park had given up their nonconforming use but others continue to be a nonconforming use. The Supreme Court affirmed the appellate court striking down part of the ordinance. \textit{State ex rel. Sunset Estate Properties, LLC v. Village of Lodi}, 142 Ohio St.3d 351, 30 N.E.3d 934 (2015).


2. *Economic Viability*

In 1971, the Mahoning County Court of Appeals struck down a prohibition against mobile home parks as an improper taking of property where use of the land in question for any other purpose would not have been economically feasible. In *Dusi v. Wilhelm*, the court held that the owner of rural property would have been deprived of the value of his land so as to make it valueless if he was not permitted to build the mobile home park he had planned. There were two other mobile home parks in the area, one abutting his land. Also adjacent to the land was a coal tipple and spoils bank. Realtors testified that it was not economically feasible to build single-family residences in the area, while the park development could create 38 mobile home sites. In allowing the development despite local prohibition of new parks, the court specifically held that:

> It is in the public interest to permit the establishment of mobile home parks to alleviate the serious housing shortage with which we are afflicted.\(^{16}\)

In another case, a park in the process of development was allowed to open despite the passage of a zoning ordinance prohibiting mobile home parks in the Village of Orange in Cuyahoga County. In *Kessler v. Smith*, prior to the enactment of the zoning ordinance, the land had been purchased, plans had been prepared, and foundations, wells, pipe lines, utility buildings and a septic system had been installed. The appeals court held that to prohibit the park at that juncture would have had no relation to public welfare, safety or morals and was in contravention of the Fourteenth Amendment of the U.S. Constitution and the Ohio Const. Art. I, Sections 1, 16, and 19.\(^{18}\) The ordinance would have had the effect of destroying the investment and was thus an unreasonable taking of property.\(^{19}\)

In 1995, the Fifth District Court of Appeals ruled that to invalidate a zoning regulation, the party attacking it must show beyond fair debate that the zoning denies them the “economically viable” use of their land without substantially advancing a legitimate


\(^{16}\) Id. at 116, 266 N.E.2d at 283.

\(^{17}\) 104 Ohio App. 213, 214–17, 142 N.E.2d 231 (8th Dist. 1957).

\(^{18}\) Id. at 219.

\(^{19}\) Ironically, as this park aged, the facilities became outdated and fell into disrepair. Later, the developer, George Smith, would face rent escrow and tenant action in the case of *Smith v. Mismas*, Bedford M.C. Nos. 82 CVF 1537 to 1579 (June 11, 1982).
government interest.\footnote{Rolfes, et al. v. Harlem Township Board of Trustees, 5th Dist. Delaware No. 94CA E 13 038, 1995 WL 768579 (November 15, 1995).} In \textit{Rolfes}, the property had been a mobile home park which was closed in 1976, approximately 12 years prior to the enactment of the zoning resolution in 1988. Three years later, the property owner filed for a variance to open a new mobile home park, but the request was denied. The landowners argued that they had a nonconforming use, but the court noted such nonconforming use had ceased 12 years prior to the ordinance and the purchase of the land was specifically noted as the purchase of an abandoned mobile home park. Also the land was not even preliminarily ready for licensing when the filing was made. Finally, the claim that the restriction on mobile home parks did not serve a legitimate government interest was rebutted by testimony concerning increased population and school density as well as drainage problems.

3. \textit{Unreasonable Zoning Denial}

The question of whether denial of a zoning variance is unreasonable is often the thorniest to prove. Because the standards are subjective, each court must determine reasonableness on a case-by-case basis.

One example in which a court found that denial of a zoning variance was not unreasonable is \textit{James Place Properties, Inc. v. Madison Twp. Board of Zoning Appeals}.\footnote{11th Dist. Lake No. 97-L-143, 1998 WL 682347 (September 25, 1998).} The \textit{James Place} court found that denial was not unreasonable when a developer purchased land with full knowledge that it was not zoned for manufactured homes.\footnote{Id.}

The denial of a permit to build a mobile home park may be unreasonable where the development meets all zoning regulations. In \textit{State ex rel. Green Acres Development Co. v. Sabo},\footnote{79 Ohio Law Abs. 129, 149 N.E.2d 38 (8th Dist. 1958).} in spite of the fact that the plans and specifications all conformed to existing law, the construction permit was denied by the local building inspector. The Cuyahoga County Court of Appeals ruled that the developer had a clear right to the construction permit and thus issued a mandamus order for the permit's issuance.\footnote{Id. at 130.} In most instances, however, a court will not issue a writ of mandamus because the proper procedure for attacking the

\textit{Chapter 3} \hfill 3-7 \hfill r5/2016
denial of a permit is to appeal the zoning board decision to the court of common pleas on factual issues.\(^{25}\)

Similarly, the Marion County Court of Appeals upheld a developer’s right to install a manufactured home park in an area already zoned for such developments despite rejection by the township trustees. In *Parrish v. Board of Township Trustees of Marion Township*,\(^{26}\) the zoning commission approval was upheld and the Trustees’ denial overturned because the planned development met all the legal requirements for the designated zoning district.

The question of what agency has the right to make determinations about nonconforming uses and their limits was addressed by the Ohio Attorney General in 2000.\(^{27}\) The issue was whether the Public Health Council and the local health departments had the right to determine whether a manufactured home park was a nonconforming use and whether each lot or the park as a whole is considered in terms of the nonconforming use. According to the Attorney General, only the local zoning authority may make such determinations and the Public Health Authority has no legal right to do so.\(^{28}\) Also, in the absence of a zoning resolution or ordinance to the contrary, the entire park rather than individual lots must be considered as nonconforming.

To summarize the factors that may lead to approval or rejection of a manufactured home park under zoning ordinances, the following table shows a continuum from the applications most likely to be approved to those least likely to be approved.


\(^{26}\) 3rd Dist. Marion No. 9-95-93, 1996 WL 368228 (June 24, 1996).


\(^{28}\) Id. at 18. The Department of Health argued that R.C. 733.02, as amended in 1999 to include density under the matters governed by the Public Health Council, allowed them to regulate lots in a manufactured home park. However, this change did not mean that a zoning authority lost the right to determine whether the park, or its lots, constituted a nonconforming use considering the character of the land use around the park.
MOBILE HOME SITING: APPROVAL CHANCES

**MOST LIKELY**
- zoning ordinance provides for manufactured home parks
- zoning not enacted prior to manufactured home park opening
- existing nonconforming use as a manufactured home park
- prior licensing for manufactured home park
- construction begun on park
- plans submitted and approved for manufactured home park
- no other valuable use for property/hardship
- valuable alternative use
- no plans approved
- no construction or facilities to support manufactured home park
- no prior use as manufactured home park
- no land ownership
- existing use in violation of law

**LEAST LIKELY**
- restrictive zoning in place prior to manufactured home park proposal

Table 3

B. Park Licensing, Inspection and Minimum Facilities

Once permission is obtained for developing a manufactured home park, the developer must first, submit plans to the Ohio Department of Health for approval; second, develop the park according to specifications set out in the Ohio Administrative Code; third, pass inspections by the local or state Health Department; and finally, be issued a license by the local Health Department.

The State of Ohio has preempted the right of localities to license, inspect or charge

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29 *Parrish v. Board of Township Trustees, Marion Township*, 3rd Dist. Marion No. 9-95-93, 1996 WL 368228 (June 24, 1996).
manufactured home parks for any such services. Local regulation, formerly allowed, was displaced in the 1950s upon the enactment, and several subsequent amendments, of the current manufactured home laws on licensing. When a city attempted to license and inspect mobile home parks in 1964, the attempt was struck down. In 1968, the Ohio Supreme Court settled the issue, holding in Anderson v. Brown that local ordinances that require permits for the operation of mobile home parks are unconstitutional.

An attempt by a park operator to use this preemption doctrine to prevent hooking up to a county sanitary sewer system failed in Board of County Commissioners of Ashtabula Cty. v. Curtis. In this case, the park operator argued that the county engineering code was preempted by the rules of the Public Health Council. The court pointed out, however, that the county was not regulating the park sewage facilities but only stating how the facilities may meet the standards.

1. Licensing and Inspection

All manufactured home parks must have a license to operate. This license is issued annually after an inspection is made by a contractor for the Ohio Manufactured Homes

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37 In Stary v. City of Brooklyn, 162 Ohio St. 120, 121 N.E.2d 11 (1954), the Supreme Court found that the health code regulations of Chapter 3733 did not preempt location regulation. When there is no conflict with state regulation, localities may still regulate manufactured home parks. The Franklin County Court of Appeals implied that a county regulation would be valid if it provided a permit. A park may still have to meet both state and local regulations if the two do not conflict. One such park argued state preemption on lot size, and lost its argument when local home density regulations were upheld. Mentor Green Mobile Estates v. City of Mentor, 11th Dist. Lake No. L-15-135, 1991 WL 163450 (August 23, 1991), cert. den., 52 Ohio St.3d 1500, 583 N.E.2d 97 (1992).


40 13 Ohio St.2d 53, 233 N.E.2d 584 (1968).

41 Id. at 59.

42 11th Dist. Ashtabula No. 2003-A-0099, 2005-Ohio-3270. This case actually involved two legal actions which were consolidated and settled. When the park operator failed to meet testing requirements for the system, the agency sought an injunction for testing and repairing the system. There were two issues involved. The park operator stated that the Public Health Council had exclusive power and prohibited any regulation of the sewage system by the county. The second involved a requirement for testing. The court pointed out that the state regulation only required facilities for a manufactured home park and that there were no regulations concerning connection to the county sewer system or prohibiting testing.

43 R.C. 4781.27(A)(1). The license must be posted in a conspicuous place within the manufactured home park according to Ohio Adm. Code 4781-12-03.
Commission and after payment of a fee, the amount of which depends on the size of the park.\textsuperscript{45} For a new park to be licensed, its operation must conform to plans and specifications approved in advance by the county health department.\textsuperscript{46} If a license is denied, the developer may appeal to the Manufactured Home Commission. However, there are no statutory time limits to this process.

The information required by the Manufactured Home Commission includes, but is not limited to, the following:\textsuperscript{47} the plotted area for manufactured and mobile homes\textsuperscript{48}; all utility systems\textsuperscript{49}; local fire department verification of the fire protection system\textsuperscript{50}; data concerning electrical systems,\textsuperscript{51} drainage plans,\textsuperscript{52} lighting,\textsuperscript{53} collection of solid waste,\textsuperscript{54} and flood plains.\textsuperscript{55} The developer must also obtain approval for sewage disposal from either the Ohio Environmental Protection Agency or the local sewer authority.\textsuperscript{56} Along with the plans, the developer must provide proof that the local fire department can provide adequate fire protection to the development.\textsuperscript{57} All applications for manufactured home park development must include written verification from the local zoning authority that the land use has been zoned and approved for the development of a manufactured home park.\textsuperscript{58}

\begin{itemize}
\item \textsuperscript{45} R.C. 4781.27(A)(1) requires licensing annually; R.C. 4781.28 requires annual fee payments; and R.C. 4781.27(B) requires annual inspections by the licensing authority. See also Ohio Adm. Code 4781-12-01 to -04 (licensing), Ohio Adm. Code 4781-12-041 (inspection). The fees charged by the state preempt all local taxation. R.C. 4781.301. For specifics on what constitutes a mobile home park for licensing purposes, see Chapter 5 on landlord/tenant law definitions.
\item \textsuperscript{46} R.C. 4781.31. Copies of such plans should be available at the Manufactured Home Commission office.
\item \textsuperscript{47} Ohio Adm. Code 4781-12-051(B)(1)–(19) list specific plan requirements.
\item \textsuperscript{48} Ohio Adm. Code 4781-12-051(B)(5)–(6).
\item \textsuperscript{49} Ohio Adm. Code 4781-12-051(B)(11).
\item \textsuperscript{50} Ohio Adm. Code 4781-12-051(B)(3).
\item \textsuperscript{51} Ohio Adm. Code 4781-12-051(B)(11).
\item \textsuperscript{52} Ohio Adm. Code 4781-12-051(B)(9).
\item \textsuperscript{53} Ohio Adm. Code 4781-12-051(B)(12).
\item \textsuperscript{54} Ohio Adm. Code 4781-12-051(B)(14).
\item \textsuperscript{55} Ohio Adm. Code 4781-12-051(A)(2).
\item \textsuperscript{56} Ohio Adm. Code 4781-12-051(B)(17) and (C).
\item \textsuperscript{57} R.C. 4781.27(C). The fact that proof of adequate fire protection is required as an initial matter, which indicates its relative importance, is likely indicative of a recognition of fire risks attendant with manufactured and mobile homes.
\item \textsuperscript{58} Ohio Adm. Code 4781-12-051(B)(18).
\end{itemize}
developer fails to submit plans for a park or an expansion, the Commission may refuse to grant an operating license.  

Adherence to the EPA regulations is necessary to operate a manufactured home park. In Ashtabula County, a manufactured home park licensed to operate 49 lots was prohibited from expanding past 18 lots because of an unrepaired septic system which constituted a health hazard. The court in *State ex rel. Curtis v. Ashtabula County Commissioners* found that it was not an unconstitutional taking of property to deny the expansion because the park operator could use the property currently for the 18 lots and was free to expand it to the 49 lots if he complied with the order to abate the sewage violations. In later litigation, Curtis was ordered to connect the sewage system to the public sanitary sewer system. In Wood County, a penalty assessed against a manufactured home park for violation of sewer statutes was affirmed by the appellate court. Failure to have a license, improper disposal of sewage, and improper disposal of solid waste resulted in violation notices against a Gallia County landowner with four mobile homes on the land.

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59 The following case illustrates such a denial. In *Domokur v. Thomas*, 7th Dist. Mahoning No. 80 CA 33, 1981 WL 4768 (August 6, 1981), the prior owner of a mobile home park sold the park with a sewage system designed for 120 lots. However, he had developed only 30 lots in the park, and over a decade the system capability was reduced by changes in the system's capacity to handle only 75 lots rather than 120. The purchaser of the park attempted to expand the park to 112 lots, but was notified that the Ohio Department of Health thought the sewage system was not sufficient. He sued for misrepresentation. The former owner won the case and the appellate court affirmed. The important fact was that the new owner had never applied for the expansion but merely relied on the old plans and specifications in attempting to expand to 112 lots. At trial, he admitted that he needed approval from the state, yet had not sought it. Upholding the jury verdict, the appellate panel ruled that the appellants had never been refused expansion so that there was no misrepresentation or damage.


61 *Board of County Commissioners of Ashtabula County v. Curtis*, 11th Dist. Ashtabula No. 2003-A-0099, 2005-Ohio-3270. In 2001, the Board filed suit alleging the septic system was improper and seeking an order to require the owner to connect the park to the public sewer system. The Court of Common Pleas of Ashtabula County granted summary judgment for the Board (Ashtabula C.P. Case No. 2001 CV 832), and the owner appealed. The appellate court affirmed the lower court’s summary judgment decision.


63 The violation notice was not directly at issue in the case of *Hardy v. Miller*, 4th Dist. Gallia No. 98CA13, 1999 WL 1256347 (December 9, 1999), but it was part of the underlying facts in this case involving the sale of a manufactured home park. In 2011, a defective sewage treatment plant resulted in a civil penalty of $473,141 against a manufactured home park. Although the lower court made findings on the objections filed by the park operators, the appeal was dismissed as premature since the lower court had not ruled on all objections to the Magistrate’s report.
2.  *Minimum Facilities*

To ensure health and safety, certain minimum facilities, enumerated below, are required in all manufactured home parks in Ohio. The regulations governing such facilities have been developed over the past four decades. Due to the variability of grandfathering regulations, manufactured home park regulations apply differently in the time periods prior to 1951, 1951–1961, 1961–1971, and 1971 to date. Some regulations were promulgated and became mandatory in the intervening years, and other individual requirements, such as tiedowns, became effective on the dates each subsequent revision of the regulations took effect.64

The following is a table of sections in the Ohio Administrative Code that discuss specific requirements and the time periods for which different subsections apply.

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64 An example is the tiedown requirements for homes placed in manufactured home parks after June 1, 1979. Ohio Adm. Code 4781-12-082.
### Ohio Administrative Code Manufactured Home Park Standards

<table>
<thead>
<tr>
<th>Ohio Adm. Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>4781-12-06</td>
<td>site, drainage and grading</td>
</tr>
<tr>
<td>4781-12-07-075</td>
<td>flood plain management and placement restrictions</td>
</tr>
<tr>
<td>4781-12-08</td>
<td>lot size, setbacks and boundaries; prior to 1951, 1951–1961, 1961–1971, 1971 to date</td>
</tr>
<tr>
<td>4781-12-08(L)</td>
<td>street and lot marking; June 1, 1979 to date</td>
</tr>
<tr>
<td>4781-12-081</td>
<td>auxiliary building placement</td>
</tr>
<tr>
<td>4781-12-083</td>
<td>notification prior to placement of home in park</td>
</tr>
<tr>
<td>4781-12-09</td>
<td>street size, connections and safety, type and depth of paving, path and walkway size, auto parking spaces; 1951–1960, 1961–1971, 1971 to date</td>
</tr>
<tr>
<td>4781-12-10</td>
<td>lighting minimum requirements</td>
</tr>
<tr>
<td>4781-12-11</td>
<td>water supply systems, safety and pressure; prior to 1979, 1979 to date</td>
</tr>
<tr>
<td>4781-12-12</td>
<td>storm water systems</td>
</tr>
<tr>
<td>4781-12-13</td>
<td>location of water lines relative to sewage lines</td>
</tr>
<tr>
<td>4781-12-14</td>
<td>park service building, lighting and sewer facilities</td>
</tr>
<tr>
<td>4781-12-15</td>
<td>plumbing fixtures in park service building</td>
</tr>
<tr>
<td>4781-12-16</td>
<td>sewage discharge into sanitary sewers</td>
</tr>
<tr>
<td>4781-12-17</td>
<td>manufactured home connections to sanitary sewers</td>
</tr>
<tr>
<td>4781-12-18</td>
<td>solid waste collection, storage and disposal</td>
</tr>
<tr>
<td>4781-12-19</td>
<td>electrical systems installation and upkeep</td>
</tr>
<tr>
<td>4781-12-20</td>
<td>must meet local fire protection standards</td>
</tr>
<tr>
<td>4781-12-21</td>
<td>minimum recreation area and facilities; 1971 to date</td>
</tr>
<tr>
<td>4781-12-22</td>
<td>maintenance, prohibition on nuisances and pets running at large, rats and mice extermination</td>
</tr>
<tr>
<td>4781-12-23</td>
<td>conspicuous posting of park rules</td>
</tr>
<tr>
<td>4781-12-24</td>
<td>operator or agent must be available, emergency contact</td>
</tr>
<tr>
<td>4781-12-25</td>
<td>Records</td>
</tr>
</tbody>
</table>

### Table 4

While Ohio Adm. Code 3701-27-05(C) formerly stated that no authority other than the Public Health Council (Ohio Department of Health) shall make rules concerning the standards relating to manufactured home park development, with the exception of local park rules not in conflict with the administrative code, the situation changed with the [66](#). The General Assembly in 1996 created lot sizes for manufactured home parks built prior to 1971. R.C. 4781.26(B).

[65](#) Rather than leave it to the Public Health Council, the General Assembly in 1996 created lot sizes for manufactured home parks built prior to 1971. R.C. 4781.26(B).

[66](#) The Ohio Attorney General has stated that the rules promulgated pursuant to R.C. 3733.01 to 3733.08 are not exclusive and that rules not in conflict with the health regulations, such as traffic regulations, are valid. 1981 Ohio Attty. Gen. Ops. No. 097. Although R.C. 3733.01 to R.C. 3733.08 and the rules relating to park facilities have been revoked, related rules have not all been revoked yet. In addition, certain valid standards have been promulgated with respect to subsidized mobile home parks. (See discussion of federally subsidized manufactured home parks, infra.)
creation of the Manufactured Homes Commission in 2004. The Commission has promulgated rules concerning foundations and base support systems for manufactured and mobile homes, and adopted the national Model Manufactured Home Installation Standards. 

The Commission is responsible for inspecting and approving all aspects of the installation of all manufactured homes, whether in a manufactured home park or on private land.

While not a standard in derogation of state law, in 2004 the federal government began offering incentives for certain manufactured home parks to install tornado shelters. The Housing and Community Development Act of 1974 was amended to allow a local recipient to include in plans the payment for construction or improvement of tornado-safe shelters for residents of manufactured housing provided those shelters meet specific standards.

The primary issue in litigation over the foregoing standards has been who must bear the cost of upgrading a park to meet such standards. To date, courts have held that the tenants may be saddled with the cost of such upgrades. In both Eastgate Mobile Home Park Residents Association v. Klekamp and Wood County Health Department v. Woodlake Associates, the electrical systems were upgraded, but the parks were allowed

67 R.C. 4781.04(A)(3).
68 Ohio Adm. Code 4781-6-01(A)(1).
69 R.C. 4781.04(A)(2) and (3).
71 The park must contain at least 20 manufactured housing units close enough to the shelter to make it available to residents in the event of a tornado. It must be of a size sufficient to accommodate all occupants of the park within which it is located (42 U.S.C. 5305(a)(24)(C)) and must be within 1,500 feet of a warning siren. 42 U.S.C. 5305(a)(24)(D).
73 Wood Co. C.P. No. 89 CIV 332 (July 11, 1990), app. dism., 6th Dist. Wood No. 90WD79, 1991 WL 25381 (November 15, 1991). In Wood County, the court distinguished an earlier decision requiring the owner to pay for system upgrading. In Cadillac Estates v. Stanton, Wood C.P. No. 82 CIV 22 (August 24, 1982), the court denied summary judgment because of the park’s failure to cite controlling authority, not because the court made an actual decision on the basis of the law. The lower court conditions case and the appellate decision on the landlord/tenant issues in Wood County will be discussed in a later chapter on landlord/tenant law. The Wood County court determined the connections were fixtures and could be removed by the resident when moving from the park.
to pass on the bill to the tenants, notwithstanding the provisions relating to mobile home electrical systems set forth in Ohio Adm. Code 4781-12-20 (now Ohio Adm. Code 4781-12-19). These regulations are phrased in terms of the responsibilities of the park operator, but do not specifically address the last issue.  

Once a park is determined to have met the standards, it will be granted a license. Thereafter, annual inspections are made to determine whether the park continues to meet such standards or whether defects exist that require repair before a license may be issued or renewed.

A park that does not meet the state standards may not be granted a license or may have its license suspended or revoked. In addition, if any of the rules promulgated under R.C. 4781.26 to 4781.35 are violated, the licensor may ask the prosecuting attorney, the city law director, or the Ohio Attorney General to bring an action for an injunction against the park operator. A violation of R.C. 4781.35(A) is also a 4th degree misdemeanor.

As an example, in State v. Gitler, the Lucas County Health Department brought an action against a park operator for disobeying an order regarding condition upgrades in her

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74 See, e.g., Ohio Adm. Code 4781-12-20(A). “Electrical systems in manufactured home parks shall be installed and maintained in accordance with the ‘National Electrical Code—2008 Handbook, Article 550—Mobile Homes and Mobile Home Parks,’ or ‘N.E.C.,’ published by the national fire protection association and the approved plans.” However, a park operator may pass on the costs of improvements in the form of a rent increase. R.C. 4781.36(C).

75 R.C. 4781.29. Revocation of a license affects the residents of a park more than the park operator. The closing of a park leaves residents without homes, while the park operator is merely left without some income. State ex rel. Curtis v. Ashtabula County Health Department, 11th Dist. Ashtabula No. 95-A-0001, 1996 WL 297024 (May 3, 1996). State regulations are not always the final word in the oversight of facilities and conditions in manufactured home parks. In 2001, the Board filed suit alleging that the septic system was improper and seeking an order to require the owner connect to the public sewer system. The Court of Common Pleas of Ashtabula County granted the Board summary judgment and the owner appealed. The appellate court found that state regulations did not preempt county sewer regulations. Board of County Commissioners of Ashtabula County v. Curtis, 11th Dist. Ashtabula No. 2003-A-0099, 2005-Ohio-3270. R.C. 6117.01(D) provides that the state regulations are still “subject to Chapter 119 of the Revised Code.” This allowed Ashtabula County to enforce its rules regarding the septic system. The court determined that the state regulation was only on the manufactured home park but not the connection to the county sewer system.

76 R.C. 4781.35(B).

77 R.C. 4781.99(C)(6). A misdemeanor of the 4th degree is punishable by a fine of not more than $250 (R.C. 2929.28(A)(2)(v)), and the fine for a minor misdemeanor is not more than $150. R.C. 2929.28(A)(2)(v).

manufactured home park. Citing Ohio Adm. Code 3701-27-02, the court found the park operator in violation of state law and affirmed the criminal penalty against her.\textsuperscript{79}

More recently, the Ohio Attorney General obtained a temporary restraining order against several manufactured home parks operated by the same person.\textsuperscript{80} The basis of the order was to prevent the park from continuing violations of waste water discharge from its water treatment facilities.\textsuperscript{81}

C. \textbf{Flood Plain Regulations}

In 1992, the Ohio General Assembly prohibited the placement of manufactured or mobile homes, or the replacement of any home within any portion of a manufactured home park that is located within a hundred-year flood plain, without first obtaining a permit from the director of health or a licensor authorized by the director.\textsuperscript{82} In the event of flood damage to an existing home or park, alterations, repairs or changes to the manufactured home or to the lot must be made in compliance with the flood plain management rules adopted pursuant to R.C. 4781.26(A).\textsuperscript{83}

D. \textbf{Federally Subsidized Mobile Home Parks}

Some manufactured and mobile home developments are required to meet standards higher than those set by Ohio law in order to obtain subsidies from the federal government. There are two potential sources of federal subsidy: the U.S. Department of Housing and Urban Development (HUD) and the Rural Housing Service (RHS). Although HUD has not subsidized a park in Ohio since the 1970s, regulations that would enable HUD to resume subsidies are still contained in 24 C.F.R. 207.33.\textsuperscript{84} The RHS subsidizes

\textsuperscript{79} Id. A later attempt to overturn the judgment was dismissed by the federal court due to lack of jurisdiction to review challenges to state court decisions. \textit{Gitler v. U.S. Attorney}, Civil Action No. 3:07 CV 2899, 2007 WL 3113540 (N.D. Ohio, October 22, 2007).

\textsuperscript{80} \textit{State of Ohio v. Mark Anthony}, Hocking C.P. No. 13 CV 0147 (July 19, 2013).

\textsuperscript{81} In the end, the parks were all closed when the park operator could not comply with the required changes.

\textsuperscript{82} R.C. 4781.32(A)(1). Regulations were also adopted by the Ohio Department of Health in 1992. Ohio Adm. Code 4781-12-07 to -075.

\textsuperscript{83} R.C. 4781.34(A); see regulations at Ohio Adm. Code 4781-12-07 to -075.

\textsuperscript{84} See also HUD Handbook 4545.1 Rev.
manufactured home communities under a more widely developed regulatory program found at 7 C.F.R. 1924, Subpart A, Exhibit J.

RHS guidelines cover many of same subjects as Ohio’s Administrative Code. To prevent a conflict of interest, the RHS guidelines provide that where there is a conflict between state and federal standards, the stricter of the two sets of requirements will prevail. RHS guidelines include standards governing accessory buildings, anchoring systems, site and foundations, grade elevations, utility connections, and streets. Fire safety regulations applicable to rental projects are also set forth. All homes, regardless of project type, must meet the standards set forth in the Construction and Safety Standards Act.

E. Cooperatives and Condominiums

Only a very few cooperative and condominium manufactured or mobile home communities exist in Ohio. In an attempt to develop more such communities, legislation has been introduced several times in the General Assembly, but no proposal has yet been successful. While this community status would allow self-rule, give a sense of neighborhood, and save failing parks for the residents, it would still not eliminate the requirement to be licensed as a manufactured home park. Because the Association would own all the lots, although jointly, there would be a single owner of more than one manufactured or mobile home on a tract of land, thus meeting the definitional requirements

89 7 C.F.R. 1924, Subpart A, Exhibit J, Part B(I)(C). Sites must be above the 100-year flood plain. Id. at Subpart B(I)(C). Because of this, any federal parks will automatically pass the new state flood plain regulations.
93 7 C.F.R. 3550.73(e). Under Ohio law, this would restrict these developments to manufactured homes only because those homes meeting the standards would be “manufactured” rather than “mobile” homes.
of R.C. 4781.01(D). The association then would be the park operator and the residents would be entitled to their rights under R.C. Chapter 4781.94

There has been one eviction case in which a manufactured home park condominium association attempted to terminate a lease with a resident. The trial court ordered the lease terminated, but the Sixth District Court of Appeals overturned the lower court decision.95 Rather than relying on landlord/tenant law, the appellate court addressed the lease under contract law and determined that the language of the lease clearly indicated that it was perpetually renewable and could not be terminated merely by the passage of time.

F. Park Closure

The closure of a manufactured home park may result, directly or indirectly, from any number of causes: a developer’s financial difficulties,96 the pressures of urbanization,97 noncompliance with state law,98 declaration that the property is a nuisance,99 the taking of

94 If all the lots were titled to the individual owners rather than the Association, the development would meet the specific exception to the definition of manufactured home park under R.C. 4781.01(D).
95 Orchard Isle Mobile Home Park I Condominium Assoc., Inc. v. Sandy Shores, 6th Dist. Ottawa No. OT-05-08, 2006-Ohio-326.
97 Witness the disappearance of manufactured home parks in Franklin County and Hamilton County as urban areas surrounding Columbus and Cincinnati, respectively, moved increasingly outward.
98 For example, the Ohio Manufactured Homes Commission has a right to close a manufactured home park for violations of health codes and regulations. If a park fails to abide by the rules for manufactured home parks, the health department may revoke the license under which the park operates. R.C. 4781.29. The better alternative for park residents is for one of the parties named in R.C. 4781.35(B) to use the injunctive power available thereunder, but the local agency has the final say on which method to use to force compliance with the law. An example of this is State of Ohio v. Mark Anthony, Hocking C.P. No. 13 CV 0147 (July 19, 2013), in which a temporary protection order was issued to force a park operator’s compliance with laws regarding waste water discharge from waste water treatment plants in manufactured home parks.
99 Lytle v. Potter, 480 F. Supp.2d 986 (N.D. Ohio, W.D. 2006). The issue in Lytle was whether the Common Pleas Court had properly declared a property to be a nuisance and permanently enjoined the park’s operation. The federal case was brought on compensation for taking of property and due process issues, but the federal court dismissed it because it was not yet ripe for adjudication in that state procedures for compensation were not yet exhausted.
property by eminent domain,\textsuperscript{100} or, most commonly, the decision by a developer simply to get out of the business.

Faced with the closure of a manufactured home park, a tenant-resident must find another place to live, and an owner-resident must either move her home or sell to another person who is willing to move it. Many times the homes are so old that moving them can damage them. In other cases, the value of the home does not warrant the cost of moving it.

If a park is being closed, or an individual homesite is being taken for a federal project or a federally assisted project, relocation funds must be provided.\textsuperscript{101} It is doubtful that many Ohio residents have benefitted from these funds, and there are no specific statistics available, but such funds no doubt make relocation easier. Both Rural Development and HUD adhere to the Uniform Relocation Assistance regulations found at 49 C.F.R. 24.\textsuperscript{102} Although there is a general inclusion of manufactured and mobile homes in the regulations integrated under the definition of “dwelling,”\textsuperscript{103} there are specific sections on manufactured home relocation assistance.\textsuperscript{104} If a person does not qualify for federal relocation funds, he or she must hope that a local government or a purchaser will help pay for the relocation.

Since 1986, Ohio law has given residents the right to notification and the opportunity to move should an owner decide to cease operations and sell the park “for a use other than

\begin{itemize}
  \item \textsuperscript{100} A manufactured home park is not immune from eminent domain. Although there is no case law on the subject, the Ohio Attorney General has determined that a single mobile home and the property on which it is located may be considered real property for purposes of taking by eminent domain. See 1969 Ohio Atty. Gen. Ops. No. 128. Clearly, there would be no specific immunity for a group of homes if there is none for an individual home.
  \item \textsuperscript{101} 49 C.F.R. 24.1.
  \item \textsuperscript{102} 7 C.F.R. 21 (Rural Development); 24 C.F.R. 42 (HUD).
  \item \textsuperscript{103} 49 C.F.R. 24.2(10) includes mobile homes in the definition of dwelling for purposes of the program. Ohio regulations implementing the requirements for relocation payments are found at Ohio Adm. Code 5501:2-5-05. These cover payment for replacement housing, moving and related expenses for both mobile home owners and occupants.
  \item \textsuperscript{104} 49 C.F.R. 24.501–.505 (Subpart F of the regulations) covers manufactured and mobile homes. It entitles persons to both a moving expense and a replacement housing payment. The regulations allow for replacement housing when the home either cannot be moved due to attachment to the real property, or if it would not be feasible to move without substantial loss or damage. 49 C.F.R. 24.503.
\end{itemize}
a manufactured home park.” 105 In such event, owners of manufactured or mobile homes have 180 days following receipt of written notification from the park operator. 106 Tenants must receive 120 days’ prior written notice. 107 While a landlord may attempt to use the forcible entry and detainer law in order to shorten the notice period, the requirements of R.C. 4781.45 requiring good cause to evict rather than simply a termination of tenancy may guarantee the full 120 days. 108 Similarly, if a park operator attempts to close a park after announcing a future sale for a use other than a manufactured home park, a court can issue a restraining order to give the residents the full time the law allows. 109

Some states give the residents the first opportunity to buy the manufactured home park when it is sold. Connecticut requires notice of proposed land use change or sale and the opportunity for the park residents to organize an association to purchase the park. New York has a Manufactured Home Cooperative Fund Program to assist with resident purchases of their parks. 110 New Hampshire has experienced success in resident buyouts of numerous parks using a Community Loan Fund cooperating with nonprofit and government agencies to provide necessary funding.

105 R.C. 4781.40(A)(3). Note that the statute does not expressly contemplate the situation where the park is not sold “for a use other than as a manufactured home park,” but is simply closed. This omission runs counter to the apparent intent of the statute, which is to guarantee residents the maximum amount of time for relocation.

106 R.C. 4781.40(A)(3).

107 Id. Written notice to owners and tenants may be given by certified mail, return receipt requested, or by delivering the notice in person, in which event “the recipient shall complete a return showing receipt of the notification.” R.C. 4781.40(A)(3).

108 Id. The argument has been made that amendment of the eviction statute (R.C. 1923.02) following the Supreme Court’s decision in Schwartz v. McAtee, 23 Ohio St.3d 14, 488 N.E.2d 479 (1986) allows for termination of month to month tenancies as in Chapter 5321, but, since no specific addition was made to Chapter 3733, there is no indication that this result was intended. Also, because there are specific time provisions made in R.C. 4781.40(A), it would seem to indicate that the General Assembly intended a longer period of time to protect tenants when a park closes.

109 These were the facts in the case of Robinson, et al. v. Haas, Ross C.P. No. 98 CI 268, unreported, (declaratory judgment pleadings found in Chapter 6). The park operator and a neighboring paper mill announced the impending sale of the park and the City Water division was informed of the sale. The residents were then given 30-day notices to leave because the park was being closed prior to the sale. In the end, the park was kept open for 159 days until the last home was removed. The case was then dismissed.

110 New York State Private Housing Finance Law Article XX.
III. **INDIVIDUAL HOMES**

There are several notable differences between site development for individual manufactured or mobile homes and manufactured home parks. First, zoning regulations now permit the placement of an individual manufactured home in certain areas previously closed to placement, but may still prohibit the development of an entire manufactured home park. Second, restrictions against placement of an individual manufactured home on a particular piece of land will typically be found in deed covenants. Restrictions against placement of a manufactured home park, which are usually couched in zoning regulations, are communitywide in nature. Third, individual manufactured and mobile home sites are not regulated by the Ohio Manufactured Homes Commission and require only the proper utility connections rather than entire development plans.

As with the development of a manufactured home park, addressing zoning issues is the largest task in the creation of an individual home site. Because the vast majority of manufactured and mobile homes are located in rural and suburban areas in Ohio, most zoning questions will arise under township zoning regulations. Pursuant to R.C. 519.02, townships may regulate building and land use, which includes the right to prohibit mobile homes\(^{111}\) and formerly included the right to regulate manufactured homes.

Under the old law, restrictive zoning with respect to individual mobile home sites was found to be constitutional.\(^{112}\) Mobile homes could be excluded from entire townships, villages or cities except under certain circumstances.\(^{113}\) When a mobile home was already

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111 The Mahoning Court of Appeals determined that a recreational vehicle could be banned because it was defined as a “house trailer” when the deed restriction was made to prohibit “house trailers.” *DeRosa v. Parker*, 119 Ohio App.3d 332, 2011-Ohio-6024, cert. den., 131 Ohio St.3d 1485, 963 N.E.2d 825 (2012). The term “house trailer” no longer exists in Ohio law, having been eliminated in 1999. The particular definition in the *DeRosa* case existed until August 27, 1976. The deed restriction on “house trailers” was created in 1965. The court holding followed a more general principle that words in a deed restriction are given their meaning at the time the restriction is created. Id. at ¶10.

112 R.C. 519.02 and cases cited therein. See also discussion of zoning constitutionally, supra at n. 1−18 and accompanying text.

in place at the time the zoning ordinance was enacted, the home represented a nonconforming use that could not be extinguished.\textsuperscript{114}

In some cases, courts have found that a home that is being converted to real property through the county auditor, and that will no longer be mobile, must be considered as residential property rather than a mobile home for purposes of zoning ordinances.\textsuperscript{115}

A. Zoning

The discussion of zoning in regards to individual homes mirrors that of zoning in regards to manufactured home parks. The key concepts of existing use and economic viability also apply in relation to zoning for placement of individual homes. For existing homes, there is also an issue of whether the home is a nuisance in violation of local nuisance laws.

1. Existing Use

A property that is being used for a mobile home site at the time a zoning ordinance is enacted cannot be prohibited from this use by the zoning ordinance. Even if the home is not occupied for a period, the existing use is not extinguished.\textsuperscript{116} In 1995, the Allen County Court of Appeals ruled that the presence of mobile homes, even without residents,

\begin{itemize}
  \item Sylvester v. Howland Twp. Bd. of Zoning Appeals, 34 Ohio App.3d 270, 518 N.E.2d 36 (11th Dist. 1986); see also Garland v. Emerine, 11th Dist. Trumbull No. 2516, 1978 WL 215928 (May 22, 1978). In Stebleton v. Boblenz, 5th Dist. Fairfield No. 16-CA-93, 1993 WL 535398 (December 6, 1993), a restraining order to prevent placement of a home was overturned because the home was to become real property. Two years earlier, the court in Minear v. Randolph Township Board of Zoning Appeals, 11th Dist. Portage No. 90-P-2146, 1991 WL 70790 (May 3, 1991), upheld a finding that a zoning board could not rescind a zoning permit for a home that had lost its characteristics as a mobile home because of alterations made and because it was no longer a mobile home it did not violate the zoning ordinance.
\end{itemize}
was an existing use that prevented attempts to force removal of the homes. The township in this case enacted a zoning ordinance which restricted the use of the property after the installation of the homes, but before anybody lived in them. The court found that the nonconforming use existed prior to the enactment of the ordinance and reversed a criminal conviction against the landowner for violation of the zoning ordinance. In another nonconforming use case, the court found that an addition to an existing nonconforming use could not be prohibited simply because the addition was of another manufactured home rather than construction of an additional room or rooms.

The limits to nonconforming existing use may include the abandonment of the use. In Baker v. Blevins, the Second District Court of Appeals found that the abandonment of the nonconforming use prevented the property owner from renewing it after the passage of the zoning ordinance. In Baker, the township enacted a zoning ordinance with an existing mobile home on the land. However, the home was removed from the lot after passage of the ordinance and the zoning became effective over the site. More than two years later, when the property owner tried to reinstall the mobile home, the township obtained an injunction to prevent a violation of the ordinance. The appeals court agreed with the lower court that the subsequent placement of the home violated the ordinance and enjoined the property owner from returning the home to the lot.

In 2015, the Ohio Supreme Court determined that a village zoning provision that provided for discontinuance of the existing use of a lot after a six-month absence of a nonconforming mobile home in a mobile home park was unconstitutional. A lower

118 In re Strittmaier, 11th Dist. Portage No. 91-P-2393, 1992 WL 233221 (September 11, 1992). In this case, the woman wanted to add a mobile home to her existing mobile home to, in effect, create an arrangement similar to a double-wide home. The appeals court stated that it made no difference on the status as a nonconforming use that the addition was not construction but rather a prefabricated mobile home.
119 162 Ohio App.3d 258, 2005-Ohio-3664.
120 The ordinance was passed and became effective January 1, 2000; the home was abandoned June 16, 2000, and moved from the pad August 11, 2001. On September 12, 2003, the property owner attempted to relocate the home on the pad.
121 This case may turn on the specifics of the ordinance, however, because the township had put a two-year abandonment clause in it. If that clause was not included, there may have been a different result because there would have been no time limit to create an abandonment of the use.
court ruled in favor of the village, allowing discontinuance of the nonconforming existing use, but the Supreme Court ruled that such a provision deprived the park owner from its right to continue use as part of the mobile home park. This decision may have been based more on the fact that the lot was part of a park rather than simply a single site for a mobile home.

In 2013, the Fourth District Court of Appeals sidestepped the issue in Safest Neighborhood Association v. Athens Board of Zoning Appeals. The lower court ruled that a developer could not expand a nonconforming use by removing the mobile home on the site and replacing it with a two-story residential building.

2. Economic Viability

As with the zoning of manufactured home parks, there may be an economic viability argument made that the land cannot be economically used for anything except the placement of a mobile or manufactured home. Two cases examined the issue of economic viability in relation to the placement of a single mobile home rather than a park, with opposite results. The first decision came from the Seventh District Court of Appeals in Strohecker v. Green Township Board of Zoning Appeals. Relying on the economic viability factor of the decision of the Supreme Court of Ohio in Duncan v. Middlefield, the Strohecker court found that under the circumstances in this case, there could be little beneficial use of the property and that both the land owner and a realtor were unable to find a purchaser for the property that would pay near the asking price. As a result, the appellate court agreed with the lower court that the variance was proper.

In Dutiel v. New Lexington Zoning Board of Appeals, the owner of a property argued that the property was not economically viable for a use other than placement of a

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123 Id. at ¶6.
125 The court addressed only the issue of the neighborhood group’s standing to appeal the lower court decision and remanded the case on that basis rather than deciding whether a nonconforming use could be replaced with an expansion of the prior use.
126 7th Dist. Mahoning No. 97 CA 203, 1999 WL 167838 (March 24, 1999).
127 23 Ohio St.3d. 83, 491 N.E.2d 692 (1986) in syllabus.
mobile home. However, the court pointed out that the property could be used for any residence, not merely a mobile home, and the city had a right to restrict mobile homes from that residential area. Because the land had a possible use, the court rejected the economic viability argument.¹³⁰

A major change in zoning laws occurred in March 1999 when all political subdivisions of the State of Ohio were prohibited from banning permanently sited manufactured homes from any area zoned for single-family residences.¹³¹ In a pattern repeated in each of the sections of the Revised Code governing township, county and political subdivision zoning, the bans were prohibited.¹³² These bodies were allowed to continue to require such homes to conform to zoning requirements uniformly imposed on all other single-family residences, with minor exceptions.¹³³ However, any local requirements in conflict with the Manufactured Home Construction and Safety Standards Act are forbidden.¹³⁴ On the other hand, mobile homes may still be banned by zoning regulation.¹³⁵

Following the enactment of the statute preventing political subdivisions from prohibiting manufactured home placement in single-family residence areas, the City of Canton filed an action to have R.C. 3781.184 declared unconstitutional. Canton’s previously enacted Ordinance 2911.11 prohibited the placement of manufactured homes anywhere within the city limits. While the Fifth District Court of Appeals upheld the

¹³⁰ The land owner’s expert witness, a local realtor, testified that the lot had little value except for establishing a residence. The court pointed out that the land owner was not prohibited from placing a residence on the land, only a mobile home.

¹³¹ R.C. 303.212(B); 519.212(B)(1). Specifically, the law stated in part “…No political subdivision may prohibit or restrict the location of a permanently sited manufactured home in any zone or district in which a single-family home is permitted.” The key is that the definition of permanently sited homes require that they be at least 22 feet wide, 22 feet long and have a minimum 900 square feet. This, in effect, limits the placement to double-wide mobile or manufactured homes as no single-wide is 22 feet wide. For home-rule jurisdictions, the restrictions were overturned by the Supreme Court of Ohio’s decision in City of Canton v. State of Ohio, 95 Ohio St.3d 149, 2002-Ohio-2005.

¹³² R.C. 303.21(A) (county commissioners and zoning boards); R.C. 519.212(A) (township trustees and zoning boards).

¹³³ R.C. 303.212(B)(1); 519.212(B)(1); see the placement regulations upheld in Westfall v. Village of West Unity, 6th Dist. Williams No. WM-96-011, 1997 WL 43271 (January 21, 1997), and the placement, utility connection and maintenance regulations upheld in State v. Hix, 4th Dist. Pike No. 96 CA 575, 1997 WL 15226 (January 9, 1997).

¹³⁴ R.C. 3781.184(A). See also Chapter 2, section 1, supra.

¹³⁵ R.C. 303.212(B)(2); R.C. 519.212(B)(2).
constitutionality of the statute, indicating that while Canton could require manufactured homes to comply with most standards applicable to other types of housing, it could not ban them entirely, the Ohio Supreme Court reversed and found that home- rule jurisdictions such as Canton may restrict the placement of manufactured and mobile homes because the state could not alter their zoning by a state law that was not general in nature.

The inability to place two mobile homes on lots due to zoning restrictions was the basis for rescission of a land purchase contract in *Bell v. Turner*. In *Bell*, the purchaser of three lots rescinded a contract because the zoning board would not approve the application to place two homes on each lot, which was a specific condition for the purchase of the lots. The court rescinded the contract, the vendor’s appeal was dismissed, and the purchasers again obtained rescission. On the vendor’s subsequent appeal, the court of appeals reversed and remanded. The Court of Common Pleas again rescinded the contract, and the final appeal in 2013 involved financial issues after the rescission.

In other cases involving the inability to place homes on a lot, the Court of Appeals of Gallia County found that the inability to place a home on a lot due to zoning restrictions created an unenforceable lease. In the 12th District case of *Purcell v. Schaefer*, the purchasers found that the home was too big for the lot, which was a violation of the Lewisburg zoning ordinance. However, the sellers of the home and the local government arranged for a land transfer and other changes which would have corrected the zoning violation. Rather than apply for a zoning variance, the buyers filed suit for fraud, breach of

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136 *City of Canton v. State of Ohio*, 5th Dist. Stark No. 2000CA00076, 2000 WL 1528637 (October 1, 2000), slip op. at 4, revd., 95 Ohio St.3d 149, 2002-Ohio-2005. The central issue was whether the law was general or special in nature. Canton argued that the law was special, but the Court determined that, as it was applicable to all cities rather than just Canton, it was a law of general applicability and was within the power of the General Assembly to enact.


139 Id.


142 *Mitchell v. Thompson*, 4th Dist. Gallia No. 06CA8, 2007-Ohio-5362. When half of the home was put on the site, the Village issued a cease work order then denied a variance request by the lessees. The court also found that improvements made by the lessees were gratuitous gifts and the lessees were denied compensation for their work on the land.

143 12th Dist. Preble No. CA2013-09-007, 2014-Ohio-4894.
contract and slander of title. The jury found for the sellers, and the appellate court affirmed the verdict.  

A second type of restriction on site development for an individual manufactured home is a deed restriction or a covenant running with the land. Landowners often encumber their land with restrictions against the placement of particular types of housing, and such restrictions are considered legal in most cases. The use of the words, “temporary structure,” for example, has been held to exclude mobile homes from a township. In another case, the placement of a mobile home on land encumbered by a restrictive covenant prohibiting the erection of any building except a single-family residence was held to violate the covenant, and the home had to be removed. In other cases, however, courts have held that a mobile home constitutes a single-family residence for purposes of meeting subdivision requirements, especially if the mobile home is

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144 Id.
145 Such restrictions remain legal for lesser political subdivisions. R.C. 303.212(C); 519.212(C).
146 McBride v. Behrman, 28 Ohio Misc. 47, 272 N.E.2d 181 (C.P. 1971); see also Stary v. City of Brooklyn, 162 Ohio St. 120, 121 N.E.2d 11 (1954) (60-day temporary residence maximum). In McBride, the restriction in a deed covenant was against “unsightly structures and anything offensive to a high class residential district.” The court considered the term to encompass mobile homes. McBride at 57.
147 Swigart v. Richards, 87 Ohio Law Abs. 37, 178 N.E.2d 109 (C.P. 1961), where the court stated that “it would take a heap of claustrophilia to make a trailer a home.” Id. at 110. The court also quoted another opinion for the proposition that the use of mobile homes as permanent residences might lead to the creation of slums. Id. at 111. Such sentiments are typical of the anti-mobile home attitude prevalent in the past.
intended to be permanently affixed to the land and to become real property rather than to remain mobile.\textsuperscript{148}

In \textit{Benner v. Hammond},\textsuperscript{149} the Fourth District Court of Appeals reviewed a restrictive covenant which prohibited “trailers and temporary structures.” The Court pointed out that the home, as installed, must be considered rather than the terminology used for the home. Noting that mobile home owners can surrender their titles and make the home part of the real property as had been done in this case, the Court found the key question to be what the nature of the home was after its placement.\textsuperscript{150} Asking the question whether modern mobile homes are still properly referred to as “trailers” (which indicates transient use), the court interpreted the restrictive covenant against trailers, and then decided it did not encompass the mobile home in that case.\textsuperscript{151}

The opposite result was reached by the Ottawa County Court of Appeals in \textit{LuMac Development Corp. v. Buck Point Ltd. Partnership}.\textsuperscript{152} In \textit{LuMac}, the court found that a deed restriction against “trailers” was applicable to mobile homes because the fact that the nomenclature had changed did not defeat the intent of the grantor to restrict a certain type

\bibitem{groff-heath} \textit{Groff v Heath}, 116 Ohio App.3d 300, 688 N.E.2d 18 (11\textsuperscript{th} Dist. 1996) (deed restriction against “trailers” has no application when home to be placed on permanent foundation). See also \textit{Teets v. Ravenna Twp. Board of Zoning Appeals}, 11\textsuperscript{th} Dist. Portage No. 96-P-0063, 1997 WL 269319 (April 25, 1997), and \textit{Yeager v. Cassidy}, 20 Ohio Misc. 251, 253 N.E.2d 320 (C.P. 1969) (denying injunction against placement of a mobile home). In \textit{Yeager}, the mobile home was placed on a block and concrete foundation and met all of the other requirements of a constructed “residence” in the subdivision except for its method of manufacture. Ironically, the person who originally established the restrictive covenant testified at trial that he had not intended to exclude mobile homes per se. The court in \textit{Yeager} took a more enlightened view of mobile homes than did the court in \textit{Swigart}, supra. Similarly, in \textit{Enberg v. Canton Twp. Bd. of Zoning Appeals}, 78 Ohio App.3d 828 (5\textsuperscript{th} Dist. 1992), the court determined that a sectional home was not a “house trailer” for zoning purposes. The home was to be placed on a permanent foundation. The trial court and the appeals court agreed that the home was intended to become a permanent structure. Id. at 832. A similar argument failed in \textit{BLD Partners v. City of Dayton}, 2\textsuperscript{nd} Dist. Montgomery No. 15488, 1996 WL 139643 (March 29, 1996), which distinguished \textit{Enberg}, supra, because \textit{Enberg} involved a sectional (modular) rather than a mobile home. As of 1999, all of the homes would have been allowed under the new zoning laws, provided they met federal construction and safety standards and had the label affixed.


\bibitem{lu-mac} 61 Ohio App.3d 558, 573 N.E.2d 681 (6\textsuperscript{th} Dist. 1988).

\textit{Chapter 3} 3-29 \textit{r5/2016}
of housing. 153 The LuMac court determined that the use of vehicles as residences was the key issue. 154 Similarly, a homeowner who attempted to change his manufactured home into real property by surrendering the title and connecting the home to utilities and a permanent foundation could still not escape deed restrictions in a subdivision that prohibited mobile homes. In Ratcliff v. Adkins, 155 the appeals court upheld a contempt citation against the homeowner because the home did not meet the definition of a “residence” within the meaning of the deed restrictions. 156

In a 1995 case, Davis v. Duncan, the court found that an arrangement between two neighbors prohibiting placement of mobile homes was not a covenant that would run with the land so as to prohibit subsequent owners of the land from placing mobile homes on it. 157

The most recent word in the issue of deed restrictions is that found in Farrell v. Deuble 158 in which the appellate court determined that a lower court should have interpreted a deed restriction in favor of free use of the land. In Farrell, the court decided that the term “manufactured home” is not an ordinary word and that the dictionary definition of it is not a mirror image of the Revised Code definition found in R.C. 3781.06(C)(4). Because of the difference in the meaning of the term, and the lack of indication that the legal term was the variety of the term used in the deed restriction, the term was capable of contradictory interpretation. 159

Because of the enactment of the Manufactured Home Construction and Safety Standards Act in 1974 and the resulting improvement in mobile home construction, rulings prior to the date of their enactment reflect outdated thinking. Manufactured and mobile

153 Id. at 565.
154 The results may have varied because the Benner court viewed manufactured homes as residences, while the LuMac court viewed them as vehicles.
156 This did not change under the new law because the one exception to allowing placement of permanently sited manufactured homes’ deed restrictions remains.
158 175 Ohio App.3d 646, 2008-Ohio-1124.
159 The court stated that the word “manufactured home” as used in the restrictive covenant was “indefinite, doubtful and capable of contradictory interpretations.” Farrell v. Deuble, 175 Ohio App.3d 646, 2008-Ohio-1124 at ¶22.
homes now represent safe, permanent housing, not ugly “trailers.” Recognizing this, the City of Cleveland enacted an ordinance in 1995 which allows placement of these homes on sites that are too small for traditional single-family residences or apartment buildings. The ordinance clears the way for providing low-cost, decent housing, in addition to providing a potential use for abandoned lots, or lots on which substandard housing has been torn down.

3. Nuisance

More localities are turning to nuisance laws to try and deal with issues that do not fall neatly within zoning regulations. A home may meet zoning requirements but be in such bad condition that it is in violation of a nuisance regulation. In a recent example of a home ordered to be torn down by a local government, the court upheld an injunction by the Village of New Richmond requiring the demolition of a mobile home under their nuisance and zoning regulations. The home was cited as a “haven for insects and vermin,” a “fire hazard” and “unsafe for occupancy” and declared a public nuisance under the New Richmond ordinances. Denied a building permit to repair the structure, the home owner appealed to the Zoning Board but then did not appeal their denial to the courts. The Village then asked for the injunction and the homeowner appealed the lower court’s decision granting the injunction. Without ruling on the underlying nuisance issue, the appellate court decided the case was res judicata because of the failure of the home owner to appeal the zoning board’s adverse decision to the courts.

In a convoluted case decided in 2013, the Sixth District Court of Appeals had to determine whether a temporary variance would continue to allow more than one home on a private septic system. In Schwert v. Abramczyk, the Court of Appeals for Fulton County

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160 In Schwartz v. McAtee, 22 Ohio St.3d 14, 17, 22, 488 N.E.2d 479 (1986), the Ohio Supreme Court made it quite clear that the modern mobile home is not only different than the trailer of the past, but that most mobile homes, which are permanently placed, are no longer mobile.

161 Other cities such as Los Angeles have also changed their zoning laws to permit using mobile homes to promote affordable housing and help stabilize troubled neighborhoods. United States General Accounting Office, Potential Implications of Legislation Proposing to Dismantle HUD, Washington, D.C.: Government Printing Office, 1997, p. 87.


began its analysis with the fact that a Board of Health may make orders necessary to prevent or abate nuisances. 164 In the Schwert case, the septic tank was limited to a single family home, but the Board of Health had issued a temporary variance to allow the prior landowner’s mother to live in a mobile home connected to the septic in addition to the site-built home. After the land was sold, the Board of Health notified the new landowners that the temporary variance had expired upon the death of the elderly woman. The purchasers of the land claimed that the variance had become permanent by the Board’s error, but the court determined that the Board argument was correct in that, under the circumstances, the variance would have been void, not become permanent. The Court then reversed the summary judgment for the purchasers of the land and granted summary judgment to the Board of Health. 165

4. **Enforcement of Zoning Ordinance**

Zoning ordinances are generally enforced by injunction actions brought by townships under R.C. 519.23. This authority does not include the authority to create a crime for violating the zoning ordinance. 166 As such, a criminal conviction for violation of a zoning resolution was overturned in State v. Deacon. 167 However, a criminal conviction regarding an abandoned mobile home in the Village of Crown City was upheld in State v. Chapman, 168 because the ordinance was based on limiting nuisances rather than zoning.

In another case, a homeowner argued that the Village of Marblehead ordinance was a criminal statute and the Village could not pursue an injunction against his locating a 1963 “house trailer” on a main street without approval. The lower court enjoined the action and the appellate court affirmed on the basis that the “house trailer” was a structure and a person had to comply with the zoning ordinance before erecting a structure. 169

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164 R.C. 3709.20(A); Ohio Adm. Code 3701-29-07(c).
165 Schwert, supra, slip op. at ¶¶29–31.
166 State v. Pierce, 164 Ohio St. 482, 131 N.E.2d 102 (1956).
167 9th Dist. Lorain No. CA3729, 1985 WL 10942 (January 24, 1985).
169 Village of Marblehead v. Menier, 6th Dist. Ottawa No. OT-95-036, 1995 WL 665889 (November 9, 1995). The court found that the term “house trailer,” although deleted from Ohio law in 1984, was encompassed in the definition of “manufactured home” under the new statute.
However, in 2015, a landowner was convicted and sentenced for violating a Crown City local ordinance, and the appellate court upheld the conviction. *State v. Chapman.* The court found that a mobile home was a junk vehicle, and as a junk motor vehicle, it was subject to the ordinance. Because the landowner did not raise the zoning issue in the lower court, the case proceeded on a review of the criminal proceeding, and evidence rather than the nonconforming use.

IV. MANUFACTURED HOME DEALERSHIP PLACEMENT

The placement of a manufactured home brokerage or mobile home dealership is an issue that has been litigated only infrequently. In *Leichtman v. Hambden Township,* the township zoning inspector denied a permit to conduct business as a mobile home dealership in a commercial district. The Common Pleas Court of Geauga County found that the variance was properly denied, but held that the zoning restriction was unconstitutional. The Eleventh District Court of Appeals affirmed, explaining that it was unreasonable to permit the operation of three automobile dealerships in the township’s commercial district and to deny such permission to a mobile home dealership, which was essentially the same type of business.

The Ohio Manufactured Home Commission now has regulations that allow placement of dealerships in any location where zoning allows. Unlike past law, these dealerships may now be located inside a manufactured home park.

V. MANUFACTURED HOMES COMMISSION

The Ohio Manufactured Homes Commission was originally established to meet federal requirements to regulate certain aspects of installation of mobile homes on private property as well as in manufactured home parks. This included the right to train and

171 The home was on the land two years prior to the zoning ordinance, but the zoning issue was not raised in the lower court, and only the evidence and verdict challenges were reviewed by the appellate court.
172 The difference in terminology reflects the differing sections of applicable law. Sellers of new manufactured homes are now called brokers (R.C. 4781.01(N)) or dealers (R.C. 4781.01(O)).
173 11th Dist. Geauga No. 1095, 1983 WL 6056 (December 30, 1983). There may be other unreported cases concerning the same issue.
license manufactured home installers and inspectors. The statute also gave the Manufactured Homes Commission consumer mediation rights. In 2007, the Commission established uniform standards governing the installation of manufactured housing, regardless of where the housing is located.\textsuperscript{175} While there is a statutory exception to the use of licensed installers for a person installing their own home,\textsuperscript{176} nothing in the statute exempts the individual from the Commission’s other rules.\textsuperscript{177}

In an attempt to clarify the overlapping responsibilities of the Commission with the Ohio Department of Health, the Ohio Attorney General issued Opinion 2006-020 at the request of the Director of the Commission. The Commission wanted the authority to order the Ohio Department of Health to comply with rules promulgated by the Commission, but the Attorney General opined that the Commission could not ensure that the Department of Health would comply with rules adopted by the Commission.\textsuperscript{178} The General Assembly resolved the conflict by transferring all authority for manufactured home inspections to the Manufactured Homes Commission,\textsuperscript{179} and giving the Commission jurisdiction to regulate the licensing of manufactured home brokers, dealers and sales persons as well as title issuance.\textsuperscript{180}

At the same time, the Commission’s responsibility was expanded to include governing manufactured home dealers and brokers, sales of manufactured and mobile homes and the State transferred other oversight responsibilities from the Bureau of Motor Vehicles to the Commission.

A. Installation Standards

Part of the duty of the Manufactured Homes Commission was to establish standards for the installation of manufactured homes.\textsuperscript{181} Under the federal law, the standards must

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\textsuperscript{175} Ohio Adm. Code 4781-6 Installation. For a detailed discussion on installation standards, see Chapter 2(II).
\textsuperscript{176} R.C. 4781.11(B)(1).
\textsuperscript{177} In fact, R.C. 4781.11(C) specifically states that no person may install a foundation or manufactured housing support system unless it complies with the standards and receives all of the inspections and approvals required by the Commission.
\textsuperscript{179} R.C. 4781.26(v), 4781.04(A)(2).
\textsuperscript{180} R.C. 4781.17–4781.25.
\textsuperscript{181} R.C. 4781.04(A)(1).
not be less than those developed by the U.S. Department of Housing and Urban Development. The Commission simply incorporated the federal standards into their administrative rules.\textsuperscript{182}

These standards are applicable to the “installation, construction, use and occupancy and location of every new manufactured home installed in the state on private property or in a manufactured home park.”\textsuperscript{183} The standards are listed in Ohio Adm. Code 4781-6-02.3 et seq.

The regulations also give the Commission the right to adopt alternative installation standards, but these remain restricted by the requirement that they cannot be less than the federal standards.

One issue that has arisen is the initial exemption allowing persons to install their own homes on their own land without a certified inspector. The problem with the law and regulations is that they sound like you can install your own home without the Commission’s involvement, but that isn't the case. R.C. 4781.11(B)(1) states that an individual doesn't have to obtain a license as a manufactured home installer to install his or her own home. Section 4781.11(C), however, states that no person can install a foundation for a manufactured/mobile home unless it complies with Commission standards and receives all approvals and inspections. Because nobody is exempt from inspection and approval, and because the rules provide that no person can occupy a home until the inspection and approval is done, it effectively negates the right to install one’s own home.

\textbf{B. Inspection and Occupancy Requirements}

The Commission is responsible for inspecting the installation of every new manufactured or mobile home placed on a manufactured home lot or private land in Ohio. No person may occupy such a home until the Commission issues its official seal indicating that the installation has met the requirements of the Commission.\textsuperscript{184} To alleviate problems with the inability of people to live in the homes while awaiting the various inspections, the Commission developed temporary occupancy permits to allow occupancy for up to six

\begin{itemize}
\item \textsuperscript{182} Ohio Adm. Code 4781-6-01(A)(1) “Installation Standards” specifically incorporates the federal standards.
\item \textsuperscript{183} R.C. 4781.04(A)(3); Ohio Adm. Code 4781-6-01(A)(2).
\item \textsuperscript{184} Ohio Adm. Code 4781-7-01(B)(2) and (3); Ohio Adm. Code 4781-7-01(K)(1).
\end{itemize}
months if the people may reside in the home or portions thereof safely.\textsuperscript{185} Up to two six-month extensions may be granted.

The regulations require at least three inspections: one for the footings, an electrical inspection and a final inspection.\textsuperscript{186} The inspection duties are farmed out by the Commission to individuals and local building, health and other bodies whose employees are licensed by the Commission as inspectors. They are the ones who ultimately issue the seal, as the law denotes, or “occupancy permit” as motor vehicle law denotes the final approval of the manufactured home installation.

\section*{VI. SUMMARY}

As discussed above, manufactured home parks are subject to zoning restrictions, licensing requirements (including health code requirements), and flood plain restrictions. Likewise, individual manufactured and mobile homes may be subject to zoning restrictions and restrictive deed covenants.

\textsuperscript{185} Ohio Adm. Code 4781-7-01(C).

\textsuperscript{186} Ohio Adm. Code 4781-7-03. A consumer issue that arises is that the buyers are seldom told about the cost of such inspections when the dealer or broker is selling the home resulting in an outlay for inspections and compliance beyond the initial purchase and financing costs for the home.
CHAPTER 4
CONSUMER ISSUES IN MOBILE HOME LIVING

I. INTRODUCTION

This chapter reviews various consumer laws and issues for purchasers of mobile homes. It examines the federal and state sources of consumer law, as well as common law doctrines in the sale and financing of mobile home purchases, insurance, remedies for dealing with defective homes and other consumer issues.

II. MOBILE HOME SALES

To determine what law applies in mobile home sales, first identify the actors involved in the transaction. Because many of the consumer statutes apply only when a business entity acts as seller of the manufactured or mobile home, buyers in a casual sale must rely on the Uniform Commercial Code, contract, fraud and other non-statutory claims to obtain redress. Only dealers licensed by the State of Ohio may sell a mobile home from the original manufacturer.\(^1\) Such dealers, however, probably comprise only a small portion of sellers in the secondary mobile home market. Also participating in the secondary market are realtors, who may list and sell a previously owned home; manufactured and mobile home owners residing in a manufactured home park, who are permitted under landlord/tenant law to sell their own homes;\(^2\) and individual owners of these homes who reside outside of any mobile home park.

A. Consumer Sales Practices Act (CSPA)

Enacted in 1972, the CSPA is the basic consumer protection law in Ohio.\(^3\) It covers a variety of unfair, deceptive or unconscionable practices and provides specific remedies

\(^1\) R.C. 4781.16(A)(4). Under R.C. 4781.16(A)(3), individuals are now prohibited from purchasing new manufactured homes directly from the manufacturer.

\(^2\) R.C. 4781.40(H)(1).

\(^3\) R.C. 1345.01, et seq.
for consumers. In addition, it has a piggyback effect as violations of other consumer laws have been determined to be violations of the CSPA.  

Manufactured home brokers, formerly called dealers, are “suppliers” and purchasers of manufactured or mobile homes are “consumers” within the meaning of the CSPA. The sale of a mobile home is a “consumer transaction” within the CSPA’s definitions. Also, the sale of a modular home manufactured for attachment to the land at the time of sale from a dealer is a consumer transaction. However, sales of real property are not covered by the CSPA, so if a manufactured home is determined to be part of the real property, its sale is not covered by the CSPA.

A number of mobile home cases have been brought by the Ohio Attorney General’s office under the CSPA. For example, during 1975 and 1976, Attorney General Brown

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5 R.C. 1345.01(C).

6 R.C. 1345.01(D). A person who had not signed a purchase agreement except as a witness cannot be a consumer for either an attempt by a supplier to collect a debt after the consumer defaults or for filing a counterclaim against the supplier. D.A.N. Joint Venture III, L.P. v. Legg, 5th Dist. Delaware No. 03CAE8039, 2004-Ohio-2805.


8 Fuqua Homes, Inc. v. Evanston Building and Loan Co., 52 Ohio App.2d 399, 370 N.E.2d 780 (1st Dist. 1977). Because manufactured homes do not become real property until they are permanently sited, the initial sale of the home as a good would usually be covered as a consumer transaction.

9 R.C. 1345.01(A); see also Brown v. Liberty Clubs, Inc., 45 Ohio St.3d 191, 193, 543 N.E.2d 783 (1989).

10 For cases when a mobile home may be determined to be real property, see Chapter 2, Section IV(A).

11 R.C. 1345.07 gives the Ohio Attorney General authority to bring an action for declaratory relief, injunctive relief, civil penalties or a class action against a supplier independent of the consumer’s claim.
brought several actions against mobile home dealers who were violating the CSPA.\textsuperscript{12} Broad settlements in these cases required mobile home dealers to disclose sales terms under the Truth In Lending Act (TILA), to abide by the Retail Installment Sales Act (RISA), to follow laws requiring identification, receipts, and return of deposits, and to make truthful representation of homes for sale. These settlements form a background by which to view individual actions believed to violate CSPA.

In 1977, a court first determined that mobile homes are covered by the CSPA. In \textit{Potter v. Dangler Mobile Homes}, a purchaser of a mobile home requested a specific insulation package in the home he was purchasing and did not receive it.\textsuperscript{13} The buyer sued under the Uniform Commercial Code and the version of the CSPA then in effect. Determining that both laws applied, the court ruled in favor of the purchaser and awarded $3,445 in damages and $1,000 in attorney fees. The manufacturer made no defense and the resulting judgment stated that the conduct of the manufacturer, not the dealer, was at issue.

In 1978, the Carroll County Court of Common Pleas refused to piggyback laws as it held in \textit{Cross v. Superior Mobile Homes, Inc.} that no violation of the CSPA had been proven, despite the proven violations of the TILA.\textsuperscript{14} The court found that TILA disclosures were not made by the dealer and awarded the purchaser $1,000 damages and $100 in attorney fees under the TILA, but with respect to the purchaser’s CSPA claim, the court simply stated that there had been no act in violation of the CSPA.

For the next decade, there was a dearth of mobile home cases under the CSPA before two notable 1989 cases resulted in significant damage awards for purchasers of mobile homes.

\textsuperscript{12} See e.g., \textit{Brown v. Ohio Mobile Home Sales}, Franklin C.P. No. 76-CV-02-454 (November 5, 1979); \textit{Brown v. Panorama Mobile Home Center, Inc.}, Ross C.P. No. 75-C1-492 (February 9, 1979); \textit{Brown v. Stewart’s Mobile Home Sales, Inc.}, Belmont C.P. No. 75-CIV-321 (November 23, 1978); \textit{Brown v. Price Mobile Home Center, Inc.}, Ross C.P. No. 75-C1-291 (February 9, 1977); \textit{Brown v. Rona Enterprises, Inc.}, Licking C.P. Case No. 75-C1-291 (1977); \textit{Brown v. Route 33 Corp., et al.}, Madison C.P. No. 25,312 (July 1, 1974), all of which may be found in the public inspection file (www.opif.ohioattorneygeneral.gov) maintained by the Attorney General’s office.

\textsuperscript{13} 61 Ohio Misc. 14, 401 N.E.2d 956 (C.P. 1977).

\textsuperscript{14} \textit{Cross v. Superior Mobile Homes, Inc.}, Carroll C.P. No. 14380 (December 27, 1978), affd., 7th Dist. Carroll No. 417, 1979 WL 52524 (1979). But see Buckeye Federal Savings, supra. Since this case was decided, violations of TILA have been found to violate the CSPA. See \textit{Ohio Consumer Law} (2014-2015 ed.), §2:92.
In *Trifonoff v. Reese Mobile Homes*, a court of appeals granted a $90,000 award in a CSPA mobile home case. In *Trifonoff*, the mobile home dealer sold a home with an electric furnace, the door of which had been taken from a different type of furnace. Due to its incorrect fit, the door fostered carbon build-up and presented a fire hazard. The purchasers complained to the dealer, who promised on a number of occasions to repair the door, but failed to do so. A fire caused by the faulty door destroyed the home.

At trial, the jury awarded the purchasers $30,000 after finding that the actions of the dealer were deceptive in violation of R.C. 1345.02. The trial court further found that the failure to repair the furnace door and the failure to refund the money, in violation of Ohio Admin. Code 109:4-3-09, constituted a deceptive act. The CSPA provides for treble damages in the event of a violation of an administrative rule adopted pursuant to R.C. 1345.05(B)(2). Despite this provision of law, the trial court granted only an extra $200 without an explanation as to why such damages were not awarded. On appeal, the Court of Appeals for the Seventh District sustained the purchaser’s claim that the $30,000 award should have been trebled.

A mobile home dealer’s failure to return a deposit and failure to provide information on the deposit was at issue in *Hilton v. Chillicothe Mobile Homes, aka Elsea Home Center*. After finding that the CSPA applied to mobile home sales, the court found that

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16 The second largest judgment in a mobile home case ($73,205) was overturned in *Browning v. Five Star Motors, Inc.*, 10th Dist. Franklin No. 93AP-61, 1993 WL 379157 (September 28, 1993), due to an improperly granted default judgment. In a recent cases involving failure to repair a defective modular home, the Court awarded $25,000 for breach of contract and $20,000 for CSPA violations. *Estate of Lamont Cattano v. High Touch Homes, Inc.*, 6th Dist. Erie No. E-01-022, 2002-Ohio-2631.

17 R.C. 1345.09(B). This section provides, in part, that the “consumer may rescind the transaction or recover, but not in a class action, three times the amount of his/her actual damages or two hundred dollars, whichever is greater, or recover damages or other appropriate relief in a class action under Civil Rule 23, as amended.”

18 The trial court did not indicate why treble damages should not be awarded, but did award $200 for the violation. Logically, this could only have come under the $200 or greater damages provision under R.C. 1345.09(B), but the court offered no explanation of its actions to know for certain.

19 The appeals court pointed out that the $200 award came under the same general section of the Act and further decided that all the prerequisites for treble damages had been met. As the greater amount, the $30,000 should have been trebled.

20 Chillicothe M.C. No. 88-CVF-729 (April 26, 1989).
the dealer had violated the deposit rule set forth in Ohio Admin. Code 109:4-3-07, thus committing an unfair and deceptive act under R.C. 1345.02. In Hilton, the court awarded $2,100 in damages (three times the $700 deposit made by the customer) and $435 in attorney fees.21

In 1991, a municipal court held in Hall v. Equitable Savings22 that a mobile home dealer’s failure to integrate a 30-day warranty into its written contract was a violation of the CSPA. When the home was not repaired, the purchaser sought rescission of the purchase under the CSPA.23 The court found that the defendant bank was a holder in due course of a dealer’s retail installment contract, and allowed the consumer to raise the CSPA rescission claim. The court awarded $2,056.91 in damages to the purchasers, representing all monies paid under the original contract.

Similarly, the failure to provide a written contract in the sale of a mobile home was found to violate the CSPA, resulting in a $200 statutory award in Hopkins v. Chaney.24 The same year, sloppy rehabilitation services on mobile homes was determined to be a CSPA violation entitling the homeowner to treble damages.25 The court awarded $15,000 in damages to a mobile home owner whose home was damaged during rehabilitation work performed in an unworkmanlike manner by the supplier, who then refused to correct the substandard work.26

In a technical argument over the right to rescind a manufactured home purchase, the court in Nations Credit v. Pheanis found that a rescission may occur within a reasonable time after the consumer discovers, or should have discovered, the grounds for rescinding the transaction, regardless of the CSPA statute of limitations.27 In Nations Credit, the

21  In Cremeams v. Robbins, 4th Dist. Ross No. 99 CA 2520, 2000 WL 781215 (June 12, 2000), the court refused to allow a jury to consider failure to return the deposit as a CSPA violation because there was no jury instruction concerning it.


23  R.C. 1345.09(A).

24  Chillicothe M.C. No. 91 CVF 995, 1993 WL 837915 (M.C. 1993).


26  The jury found that there was $6,300 in damages, and trebled would have been $18,900. However, only $5,000 damages had been pled and the court awarded this amount which was trebled.

27  Nations Credit v. Pheanis, supra.
purchase of a mobile home was rescinded by the executor of the purchaser’s estate approximately two years after the original purchase. The executor attempted to rescind the contract within 30 days of discovering its sale by an unlicensed dealer, but the financial institution refused to honor the rescission. At trial, the court ruled in favor of the financial institution, but the appellate court found the right to rescind was based on time of discovery, not the date of the original contract.  

The same year, the Court of Common Pleas in Perry County found a purchase agreement unenforceable and rescinded it with the consent of the parties. The Court also found that certain practices were unfair and deceptive and enjoined the dealer from further violations of the CSPA. Included among the practices found unfair and deceptive were failing to disclose items required by the Truth in Lending Act, charging a late fee in excess of the amount then allowed by the Retail Installment Sales Act, failing to timely transfer title to a mobile home purchaser, failure to provide notices after repossession of the home, and failure to dispose of repossessed collateral at a public sale as required by RISA. One unique finding was that the failure to maintain a septic system for the manufactured home was unfair and deceptive under the CSPA.

A cluster of four cases between 1998 and 2000 involved numerous sales practices which were found to be unfair, deceptive or unconscionable in violation of the CSPA. In 1998, both the ability to make derivative CSPA claims for RISA violations and the statute of limitations was raised in Elsea v. Stapleton. After finding that RISA violations were

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28 Id. at 76.
29 Stitt v. Dutiel, Perry C.P. No. 22047 (March 15, 1995).
31 R.C. 1317.06(B). The law has been amended since 1995 and now allows the late fee to be an amount negotiated by the parties.
32 R.C. 4505.03 and 4505.19(B). See discussion at III(C), supra.
33 R.C. 1317.16 requires that any repossessed vehicle be sold at public sale with appropriate notices to the buyer. The Court also found a violation of the Uniform Commercial Code, R.C. 1309.48(B), for failure to provide proper notice of the seller’s intent to keep the collateral in full satisfaction of the indebtedness.
34 This decision was five years after the Ohio Supreme Court found in Heritage Hills v. Deacon, 49 Ohio St.3d 80, 551 N.E.2d 125 (1990), that the CSPA did not apply to real estate transactions. Although real property is being rented in the manufactured home park, it is arguable that the case revolved around the purchase of services, i.e., sewage disposal, which would bring it under the CSPA.
also CSPA violations, the court determined that the CSPA claim was not time-barred because it arose from the same transaction on which the manufactured home dealer originally brought suit.\textsuperscript{36} Along with allowing the defense, the court then granted $200 statutory damages due to the dealer’s violations of law.\textsuperscript{37}

Another case involving the same supplier was \textit{Burton v. Elsea, Inc.}\textsuperscript{38} in which several practices were alleged to be unfair, deceptive or unconscionable. The lower court ruled against the CSPA claims but the appellate court overturned the decision and found several of the practices to be violations of the CSPA.\textsuperscript{39} More importantly, there were a number of procedural decisions made in \textit{Burton}. While the lower court found that Burton had to show that the supplier intended to deceive the buyer, the appellate court found no such requirement in the CSPA.\textsuperscript{40} Similarly, the court overturned the lower court finding that Burton failed to prove that he had incurred damages, ruling that, at the very least, a proven violation allows the consumer to recover statutory damages.\textsuperscript{41}

The following year the Fourth District Court of Appeals ruled in \textit{Cremeams v. Robbins},\textsuperscript{42} that a person is not entitled to treble damages when he or she elects to rescind the purchase.\textsuperscript{43} In \textit{Cremeams}, the broker changed the price of the home and substituted numerous items in the home for the ones the consumer ordered.\textsuperscript{44} The consumers refused to sign the contract, the supplier refused to return the deposit and the lawsuit ensued. The jury found three CSPA violations entitling the buyers to damages. However, the appellate court indicated the case was not an action for damages, but one for rescission. The Cremeams had chosen not to sign the contract, discontinued payment and requested their

\textsuperscript{36} Id., slip op at 9-10. Unless the claim arises from the same transaction, the statute of limitations runs at the end of two years. R.C. 1345.10(C).
\textsuperscript{37} Id., slip op at 12. Statutory damages may be awarded pursuant to R.C. 1345.09(B).
\textsuperscript{38} 4th Dist. Scioto No. 97CA2556, 1999 WL 1285874 (December 27, 1999).
\textsuperscript{39} Misstatement of the condition of the home, failure to integrate promises into the contract and doing business under an unregistered fictitious name were all found to be violations of the CSPA.
\textsuperscript{40} Id., slip op. at 22.
\textsuperscript{41} Id., slip op. at 23. The statutory damages in R.C. 1345.09(B) are $200 or actual damages, whichever is greater.
\textsuperscript{42} 4th Dist. Ross No. 99 CA 2520, 2000 WL 781215 (June 12, 2000).
\textsuperscript{43} R.C. 1345.09(B) gives the consumer the election of either rescission or damages.
\textsuperscript{44} The changed items included cabinets, tiles and flooring and a skylight had been added that the buyers did not want. Id.
deposit back. These facts showed their intent was to choose rescission rather than damages.45

In 2000, the Lucas County Common Pleas Court found a broker liable for a shopping list of CSPA violations in Felix v. Mobile Homes for Sale.46 Finding at least seven CSPA violations, the court awarded $11,353.76 in damages and $11,585 in attorney fees. Included among the violations were the broker’s operating unlicensed under a fictitious name, failure to deliver the title to the home within 40 days, failure to integrate all material oral representations into the contract47 and misrepresenting Ms. Felix’s rights, obligations or remedies under the contract.48 After finding that she had suffered anxiety, fear and mental distress, the court awarded damages for her emotional distress.

Three years later, a lower court found that a series of actions taken by the seller of a mobile home violated the CSPA. In Vanhoose v. Advantage Homes,49 the Ross County Common Pleas Court found that actions taken by the seller rose to the level of CSPA violations and awarded $20,000 for rescission of the purchase as well as attorney fees.50 The violations included the failure to disclose the well and septic system costs in the contract, failure to meet the requirements for down payment receipts,51 and not providing a copy of the retail installment sales contract at the time of its execution.52

An arbitration decision denying treble damages but granting rescission of a manufactured home purchase was upheld in 2006 by the Court of Appeals of Guernsey County. In Smith v. Palm Harbor Homes,53 the appellate court determined that the arbitrator had correctly decided that the purchaser had rescinded the purchase and could

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45 Under R.C. 1345.09, a buyer must choose between rescission and pursuing damages and cannot have both remedies. The facts in Cremeams clearly indicated an attempt to rescind the purchase.
46 Lucas C.P. No. CI-00-2240, 2000 WL 33672907 (October 27, 2000).
47 The supplier failed to transfer roof and siding warranties to the buyer.
48 She had an obligation, not stated in the contract, to pay $592.92 in mobile home taxes.
49 Ross C.P. No. 01 CI 275, 2003 WL 24270520 (July 17, 2003).
50 No specific amount of attorney fees was listed in the judgment entry. The award was subsequently negotiated away by the attorney as part of a settlement made in the appellate case.
51 Violation of Ohio Admin. Code 109:4-3-07. Violation of this regulation promulgated to enforce the CSPA is defined as a deceptive act.
52 The court noted that this violation of RISA, R.C. 1317.02, was also an unfair and deceptive practice under R.C. 1345.02.
53 5th Dist. Guernsey No. 05 CA-31, 2006-Ohio-5863.
not also claim treble damages under R.C.1345.09.\textsuperscript{54} The appellate court did, however, overrule the arbitrator’s denial of attorney fees and costs under R.C. 1345.09(F)(2).\textsuperscript{55}

The next year a jury verdict finding violations of the CSPA resulted in an award of $153,242.76 for a manufactured home purchaser.\textsuperscript{56} To date, this is the largest award ever given in a mobile home CSPA case, surpassing the \textit{Trifonoff} verdict. Because the buyers requested rescission, they were not granted treble damages but were awarded money for incidental damages.\textsuperscript{57} Also in 2007, the federal court in Columbus granted summary judgment against a manufactured home dealer for violating the delivery rule found in the administrative provisions promulgated pursuant to the CSPA. In \textit{McWhorter v. Elsea, Inc.},\textsuperscript{58} the court found that failure to deliver tie-downs and skirting for the home for ten months after the sale violated the requirement that these extras be delivered within eight weeks of the sale.\textsuperscript{59}

Manufactured and mobile home sales cases should always be reviewed for possible CSPA claims, not only because of the ability to recover treble damages, but also because so many sales practices are covered under the law. Whether the claim is for integration of warranties, misstatement of warranty rights, failure to supply the product with

\textsuperscript{54} The court pointed out that the consumer had an election of remedies under R.C. 1345.09(A) and had elected to rescind the transaction rather than keep the home and seek treble damages.

\textsuperscript{55} The trial court upheld the denial of attorney fees and costs stating that the arbitrator could decide facts but not make legal decisions in the face of a statute allowing the fees. The arbitrator had used the wrong standard in reviewing the issue, deciding that the CSPA violation must be with knowledge of the seller, which went against the court’s prior rulings that the law does not state that a supplier must act with knowledge that his acts violated the law. \textit{Smith v. Palm Harbor Homes, 5th Dist. Guernsey No. 05 CA 31, 2006-Ohio-5683, slip op. at ¶34.}

\textsuperscript{56} \textit{Drenning v. Blue Ribbon Homes}, 6th Dist Fulton No. F-06-001, 2007-Ohio-1323. The award included $91,000 for rescission, $10,000 incidental damages, $36,986 interest, $55,567.76 attorney fees and $1,575 expert fees. The court applied an offset for the amount received by the purchasers from a settlement with the manufacturer.

\textsuperscript{57} This was not a case where a person must choose between rescission and damages. The jury found violations of the Uniform Commercial Code and granted incidental damages. Citing \textit{Mid-America Acceptance Co. v. Lightle}, 63 Ohio App.3d 590, 599, 579 N.E.2d 721 (10th Dist. 1989), the court ruled that rescission could be accompanied by incidental damages to make a party whole. S.D. Ohio E.D. No. 2:00-CV-473, 2007 WL 1101249 (April 11, 2007).

\textsuperscript{58} The dealer argued that the down payment was insufficient to cover the sales tax and therefore the dealer had no obligation to deliver the equipment because it had not been paid. The court stated that the sales tax was part of the “cash price” and the down payment was part of the cash price. Id., slip op. at 21. The dealer could have required a down payment large enough to cover whatever part of the cash price it chose.
characteristics specifically requested, or basic deceptive and unconscionable practices, this statute is a basic tool for the attorney with a mobile home sales case.

**B. Retail Installment Sales Act (RISA)**

Manufactured and mobile home cases have also involved RISA claims and defenses, and in one case, RISA was held applicable to an underlying transaction involving the manufactured home. Even though a bank was involved in the retail installment sale, the court in *Glouster Community Bank v. Winchell* found that RISA was applicable. Normally, pursuant to R.C. 1317.01(P) a transaction between a financial institution and its customer is exempted from RISA coverage. However, in this case the bank was the titled owner of the home and was selling it to a consumer. The court determined that because the bank was not merely lending money, but rather was engaged as a retail seller (as defined in R.C. 1317.01(I)), it was within the coverage intended by RISA. Citing the fact that RISA was a remedial statute offering broad protections for consumers and punishing illegal acts of sellers, the court then found that the retail contract was unenforceable because of the illegal clause requiring the buyer to pay attorney fees in the case of default.

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61 *103 Ohio App.3d 256, 659 N.E.2d 330 (4th Dist. 1995).*

62 R.C. 1317.01(P) provides, in part, that “[c]onsumer transaction means a sale, lease, assignment or other transfer of an item of goods, or a service, except those transactions between persons, defined in sections 4905.03 and 5725.01 of the Revised Code, and their customers....” (emphasis added) R.C. 5725.01(A) includes a definition of “financial institution,” which “includes every person who keeps an office or other place of business in this state and engages in the business of receiving deposits, lending money, and buying or selling bullion, bills of exchange, notes, bonds, stocks or other evidences of indebtedness with a view to profit....” See *Huntington National Bank v. Cole*, 44 Ohio App.3d 28, 540 N.E.2d 735 (6th Dist. 1987); *Lake National Bank v. Galliher*, 11th Dist. Lake No. 9-055, 1982 WL 5679 (October 22, 1982); *City Loan v. Greene*, 6th Dist. Lucas No. L-81-283, 1982 WL 6336 (April 2, 1982).


64 Id. At the time of the decision, R.C. 1317.07 made it a violation of RISA to contract for an illegal fee and R.C. 1317.08 made the contract unenforceable if R.C. 1317.07 was violated. See, e.g., *Stitt v. Dutiel*, Perry C.P. No. 22947 (March 15, 1995). Changes in RISA in 1999 make illegal fees and security interests unenforceable only to the extent that such charges and security interest exceed statutory limits. R.C. 1317.08 (amended 3-22-99). This law was followed by the court in *Elsea v. Stapleton*, supra.
In contrast to Winchell, RISA was held to be inapplicable to a transaction involving the purchase of a mobile home in Bank One of Columbus, NA v. Myers.\textsuperscript{65} In Myers, the mobile home was defective and unsafe, but the bank had only financed the purchase. R.C. 1317.031, enacted in 1980, enables the obligor under a purchase money loan installment note or a retail installment contract to assert defenses against any holder of the note or the contract, including a holder in due course\textsuperscript{66} and including a financial institution.\textsuperscript{67} The mobile home in Myers was purchased in 1979, prior to the enactment of R.C. 1317.031. The appeals court held that, because the purchase occurred prior to the enactment of R.C. 1317.031, the provision did not apply to the transaction in question and the purchaser could not assert her breach of warranty claims against the bank as defenses relating to the dealer’s violations.

In Derr, dba Derr’s Mobile Home Service v. Smith, the Clark County Court of Appeals denied a deficiency judgment for a mobile home dealer because the dealer had failed to follow the repossession notice provisions set forth in R.C. 1317.12.\textsuperscript{68} The mobile home dealer was granted a writ of restitution on an eviction, which was questionable given the sales agreement, and the dealer sued for $501 in unpaid “rent.” The trial court ordered

\textsuperscript{65} 14 Ohio App.3d 196, 470 N.E.2d 485 (10th Dist. 1984).

\textsuperscript{66} The Holder-in-Due-Course Rule, 16 C.F.R. Part 433, is a requirement of the Federal Trade Commission that covers most consumer transactions. It requires that a consumer contract include specific language found at 16 C.F.R. 433.2(a) that any holder of the consumer credit contract is subject to all claims and defenses which the debtor could raise against the seller of the goods or services. For a general discussion on the holder-in-due course rule, see Robie, ed., Ohio Consumer Law (2014–2015 ed.), Chapter 18. When the notice is not included a contract that a third-party held, claims could not be raised against the holder of the contract. Pratt v. North Dixie Manufactured Housing, Ltd., 6th Dist. Wood No. WD-02-054, 2003-Ohio-2363.

\textsuperscript{67} R.C. 1317.031 provides that:

\begin{quote}
Notwithstanding section 1303.35 of the Revised Code, a buyer who executes a purchase money loan installment note or a retail installment contract in connection with a consumer transaction may assert against any holder, assignee, or transferee of the note or contract, specifically including any holder in due course, as defined in section 1303.32 of the Revised Code, of the note or contract any defense that the buyer may assert against the seller that is authorized by this chapter.
\end{quote}

\textsuperscript{68} 2nd Dist. Clark No. 1815, 1983 WL 4947 (September 7, 1983). R.C. 1317.12 provides, in part, that “if collateral for a consumer transaction is taken possession of by the secured party on default, the secured party shall, within five days after taking possession, send to the debtor a notice setting forth specifically the circumstances constituting the default and the amount by itemization that the debtor is required to pay to cure the default.” See also, Stitt v. Dutiel, Perry C.P. No. 22947 (March 15, 1995).

\textbf{Chapter 4} \hspace{1cm} 4-11 \hspace{1cm} \textit{r5/2016}
that the home be sold and that 65% of the proceeds be paid to the purchaser and 35% to the
dealer under R.C. 1309.50 (now R.C. 1309.625).

The appeals court modified the judgment under the Uniform Commercial Code
(UCC) repossession requirements. Although the UCC was the law under which a
judgment on the counterclaim was granted for the home buyer, the buyer had argued that
the dealer was not entitled to a deficiency judgment under R.C. 1317.12. The appellate
court found, however, that since the dealer had not disposed of the collateral, RISA did not
apply.

A more recent case based on RISA is that of Elsea, Inc. v. Stapleton. In Stapleton,
the retailer included a clause for attorney fees in the sales contract. Because this was not
one of the permitted charges under RISA, the inclusion of the improper clause was a
violation of RISA. The buyer was entitled to declare the contract unenforceable because of
the violation.

The use of RISA can be a powerful tool in mobile home cases. The transaction
should be scrutinized to see whether the law applies, and whether there are illegal fees or
charges written into the contract. Whether or not those charges have been collected, the
contract and security interest covering a mobile home may be void under RISA.

C. Uniform Commercial Code (UCC)

Manufactured and mobile homes are “goods” for purposes of Article 2 of the UCC. Some
sections of R.C. 1302 create important rights for mobile home owners. Because they
are goods, both manufactured and mobile homes are covered by the warranty provisions
set forth in R.C. 1302.26–1302.28. Implied warranties may be disclaimed pursuant to

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69 See discussion infra at III.
71 R.C. 1302.01(A)(8) defines “goods” as:
   “Goods” means all things (including specially manufactured goods) which are movable at
   the time of identification to the contract for sale…
   Because a mobile home is both identifiable and moveable at the time of sale, it is a “good” for
   purposes of R.C. Chapter 1302.
72 R.C. 1302.26 (express warranty); 1302.27 (implied warranty of merchantability); 1302.28
   (implied warranty of fitness for a particular purpose). See Potter v. Dangler Mobile Homes, supra;
   see also Montgomery v. Mobile Home Estates, 6th Dist. Williams No. WMS-83-19, 1999 WL 7844
   (April 20, 1984).
R.C. 1302.29. A buyer may revoke acceptance of the home provided that such revocation is done in accordance with R.C. 1302.66. At the same time, sellers’ remedies are available if the buyer defaults on the purchase of a mobile home. For purposes of security interests, there is a definition of “manufactured home transaction” which covers both manufactured and mobile homes.

While most UCC cases are discussed under sections on repossession and warranties, cases should be mentioned here to show how the UCC applies to manufactured and mobile home sales. In the case of a fire that destroyed a mobile home during the sales process, the court reviewed the Uniform Commercial Code to determine who must bear the loss. In *Burnett v. Purtell*, the certificate of title had been transferred but the seller still had the keys to the property and furnishings in the home. Reviewing R.C. 1302.53, the court determined that the seller had not tendered sufficient delivery because the seller, despite transferring the title, effectively controlled the property.

**D. Contract**

Previously a common law concept outside the scope of the UCC provisions, contract rights in mobile home sales were codified in the motor vehicle statutes in 1986, then transferred to the Manufactured Home Commission in 2010. Although not commonly called to mind in mobile home cases, R.C. 4781.24 governs the content of contracts for sales of motor vehicles, requiring certain disclosures and the inclusion of all agreements before sale is completed. In the same legislation, manufactured home dealers were given the right to contract for a documentary charge to be the lesser of the amount allowed in a

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73 In *Montgomery v. Mobile Home Estates*, supra, the attempt to disclaim implied warranties was not done correctly, which resulted in the survival of the purchaser’s warranty rights. R.C. 1302.29 sets forth the requirements for an exclusion or modification of warranties, including that the exclusion or modification must be “by a writing and conspicuous.” R.C. 1302.29(B). See also *Burton v. Elsea, Inc.*, 4th Dist. Scioto No. 97CA2556, 1999 WL 1285874 (December 21, 1999).


76 R.C. 1309.102(A)(53) defines manufactured home to include both types of homes while R.C. 1309.102(A)(54) defines the transaction. See *Apple Creek Banking Co. v. Junior M. Smith, Inc.*, 5th Dist. Wayne No. CA 2094, 1985 WL 4647 (December 18, 1985).

retail installment contract or 10% of the contract price minus taxes, title, registration fees and negative equity credits.\textsuperscript{78}

The cases that have been decided under contract law have not included this modern provision of law, but rather have relied on common law contract provisions.

In \textit{Bulger v. Bulkowski}, the owner of a mobile home filed suit claiming that an alleged purchaser had breached a contract to purchase the home.\textsuperscript{79} The buyer signed a contract with a broker, then attempted to rescind it, and claimed that there had been no meeting of the minds. The buyer filed a third party complaint against the broker for indemnification for the deposit paid. The seller, Ms. Bulger, sold the home to another party during the course of the lawsuit, so that the dispute concerned what, if any, damages were appropriate with respect to the alleged breach of contract. The trial court held that there had been no meeting of the minds, and granted summary judgment in favor of the buyer. The court of appeals reversed, ruling in favor of the seller’s motion for summary judgment, and remanded the case to the trial court for a calculation of damages. The court of appeals held that there had been no misunderstanding of the terms of the contract. According to the court, the only apparent misunderstanding concerned the buyer’s right to rescind.\textsuperscript{80} The failure to deliver a mobile home in a timely manner also constituted breach of contract in \textit{Witt v. J & J Home Centers, Inc.}\textsuperscript{81} In that case, the dealer failed to deliver a home, inform the buyers that the dealer could not supply the home, and return the deposit. The court found that the dealer's failure to perform was a breach of contract, and awarded $2,000 damages to the buyers. Failure to fully install a mobile home was considered a breach of contract in \textit{Young v. Spring Valley Division of Stites Enterprises}.\textsuperscript{82}

The Fourth District Court of Appeals addressed not only the CSPA but also contract claims in \textit{Burton v. Elsea, Inc.}, supra. In \textit{Burton}, the contract issue was whether an “As Is” clause which appeared only on the supplier’s copy of the contract was part of the contract and whether a limited warranty could be integrated into a purchase agreement with an

\textsuperscript{78} R.C. 4781.24(B).


\textsuperscript{80} This case would not have fallen under the newer law for two reasons. First, it preceded the enactment of the statute; and second, casual sales are excluded from the statutory contract provisions of R.C. 4517.26.

\textsuperscript{81} 11\textsuperscript{th} Dist. Geauga No. 95-G-1939, 1996 WL 297032 (April 26, 1996).

\textsuperscript{82} 4\textsuperscript{th} Dist. Highland No. 98CA25, 1999 WL 390590 (June 3, 1999), app. den., 87 Ohio St.3d 1406, 716 N.E.2d 1168 (1999).
integration clause purporting to make the purchase agreement the only valid agreement. Finding that a contract, especially one that limits the liability of the seller, must be interpreted against the drafter of the contract, the Court further found that the parol evidence rule could not allow altering or modifying the written contract. The integration clause purported to claim that the purchase agreement included only the applicable terms and excluded all other agreements, so the limited warranty could not be read into the purchase agreement.

One of the basic principles of contract law was used by the Second District Court of Appeals to determine a contract dispute in *Chateau Estates v. Baumann*. In this case the dealer/park operator was attempting to enforce a guarantee of rent payment by a third party who had signed the lease as the titleholder of the home. Because the contract was ambiguous in determining the obligations of the third party signatory, the court refused to find him liable for rent on the principle that ambiguities in contract terms must be held against the party who drew up the contract.

The unconscionability of a contract provision was the basis for a judgment against a seller of a mobile home in *Kantner v. Kanoor*. The seller, who was also the park operator, included a forfeiture provision if the resident was 30 days late in payment of rent. The contract also included a demand for attorney fees if the buyer defaulted. The Court ruled that there were two separate transactions, one consumer and one landlord, and found that the attorney fee demand was prohibited under both the Landlord/Tenant Law and RISA. The buyer was awarded $5,792.59 plus interest and her attorney fees of $2,209.50.

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83 The court cited *Glaspell v. Ohio Edison Co.*, 29 Ohio St.3d 44, 505 N.E.2d 264 (1987), for the general proposition which is considered to be “black letter law” in Ohio.

84 *Burton v. Elsea Inc.*, 4th Dist. Scioto No. 97CA2556, 1999 WL 1285874 (December 27, 1999), slip op. at 10–12.


86 The park argued that they intended the third party to be a guarantor of the rent, but the Court stated that there must be an intention manifested by the signer to guarantee the rent. One party’s intention could not bind the other without proof of subjective intent that the third party intended to be likewise bound.


88 The seller’s deficiency judgment suit was denied for failure to comply with R.C. 1317.12 after the buyer defaulted.
In 2008, the Knox County Court of Common Pleas ruled that a buyer who closed on a purchase contract without the Disclosure Statement required in the contract waived the disclosure requirement.89

E. Land Contracts

One emerging problem in manufactured and mobile home law involves the “sale” of these homes using land contracts or lease/purchase agreements. The problem arises when a buyer has an agreement that is not governed by the land contract statute90 and also has no proof of ownership, i.e., title. Because the buyer does not receive the title until the home is paid off, the buyer is left with no proof of ownership against any other person who has the certificate of title. There have been cases in which a person is the third or fourth buyer on a “land contract” and has no legal interest in the home. Also, low-income persons often default on at least one term of the contract and lose everything because the liquidated damages clause often states that all payments will be considered rent upon any default.

R.C. Chapter 4505 requires a seller to transfer title to motor vehicles whenever the seller purports to have made a sale or transfer of the motor vehicle.91 In all cases in which there is a transfer of a used manufactured or mobile home, the application for certificate of title must be filed within 30 days after issuance of the certificate of occupancy.92 If the transaction is between the original dealer or manufactured home broker and a general

89 Petrick v. Monahan, Knox C.P. No. 07BR01-0010 (July 17, 2008). The buyer tried to recover damages for condition problems in the home which should have been listed in a Disclosure Statement. However, the court ruled that since she closed on the sale without the disclosure, she waived the right to have the disclosures regarding the conditions in the home.

90 R.C. 5313.01, et seq. See Shepard’s Mobile Home Park Ltd. v. Sigmon, 5th Dist. Licking No. 14-CA-61, 2014-Ohio-4367. By definition, property being sold on a land contract includes a dwelling erected on the property. R.C. 5313.01(B). Although there has been no specific case concerning mobile homes, recreational vehicles on site do not meet this definition of dwelling as they are motor vehicles. Simes v. Beaver Valley Resorts, Inc., 2nd Dist. Clark No. CA 2925, 1992 WL 274656 (October 6, 1992). The other problem may be that neither mobile nor manufactured homes are “erected” on real property but placed there. The law’s provision of allowing permanently sited manufactured homes to become real property should alleviate this problem for sales made after a home has been classified as real property.

91 R.C. 4505.19(A)(2).

92 R.C. 4505.06(A)(5)(c) (new homes) and R.C. 4505.06(A)(5)(d) (used homes). As a manufactured home is no longer defined as a motor vehicle, the issue of title transfer remains unclear as does the possible inconsistency with the land contract laws for this type of home. Mobile homes are still within the R.C. 4501.01(O) definition of motor vehicle and remain subject to title transfer laws as amended.
purchaser, the title must be obtained in the name of the purchaser upon application and be issued within five business days after the application.\textsuperscript{93} Failure to do so is a criminal offense.\textsuperscript{94} Penalties include a fine of up to $5,000 or imprisonment.\textsuperscript{95} The remaining inconsistency with a land contract (besides the fact that dwellings are required to be on the real property and most manufactured homes and mobile homes are considered motor vehicles), is that the title in a land contract does not pass until the contract is completed, which is often years after the initial purchase, while the motor vehicle law requires the title transfer within 30 days.

Additionally, while R.C. 1351.01 through 1351.09 govern lease/purchase agreements, the term “lease/purchase agreement” as defined in R.C. 1351.01, specifically excludes the lease of a motor vehicle.\textsuperscript{96} Therefore, these agreements are governed by Ohio’s motor vehicle laws, and title must be transferred within the time period specified. A contract that calls for anything else is unenforceable because it violates both motor vehicle laws\textsuperscript{97} and the land contract statute,\textsuperscript{98} unless the home has been classified as part of

\textsuperscript{93} R.C. 4505.06(A)(4). An attempt to transfer the title by a bill of sale to “create” a title is impermissible as the real title must be transferred. \textit{Schisler v. H. & R. Investments, 5th Dist. Richland No. CA- 2815, 1991 WL 115987} (June 12, 1991). Ohio’s statute no longer includes manufactured homes under the motor vehicle code but rather the building code, yet manufactured home brokers remain regulated by the Bureau of Motor Vehicles pursuant to various sections of Chapter 4505.

\textsuperscript{94} R.C. 4505.19(A)(2) makes it a criminal offense “to purport to sell or transfer a motor vehicle without delivering to the purchaser…a certificate of title.”

\textsuperscript{95} Id.

\textsuperscript{96} R.C. 1351.01(F) provides that:

“Lease-purchase agreement” means an agreement for the use of personal property by an individual primarily for personal, family, or household purposes for an initial period of four months or less that is automatically renewable with each lease payment after the initial period and that permits the lessee to acquire ownership of the property. It does not include any of the following:

(4) A lease of a motor vehicle as defined in section 4501.01 of the Revised Code.

Some people call the contracts “rent-to-own” in an attempt to sell these homes, but by definition a rent-to-own transaction is a lease-purchase agreement which excludes motor vehicles. See Robie, ed., \textit{Ohio Consumer Law} (2014–2015 ed.), §12.03.

\textsuperscript{97} \textit{Hopkins v. Chaney}, supra, states, “It is found that per R.C. §4505.03 and 4505.19(B) that a purported ‘rent to own’ is unenforceable where no transfer of title is contemplated until all payments are made.” Similarly, although in an automobile rather than mobile home case, the same law was applied in \textit{Lewis v. Ramsey}, Montgomery C.P. No. 92-3237 (C.P. 1993), when a person attempted to sell three automobiles on land contracts. See also, \textit{Skyland Hills Corp. v. Clendenin}, Stark C.P. No. 04 CVF 7995, 2005 WL 2949 (August 12, 2005).

\textsuperscript{98} R.C. 5313.01(A) defines land contract as the sale of real property, which is defined in R.C. 5313.01(B) as being improved by virtue of a dwelling having been erected on it.
the real property prior to sale. The home purchaser in such a situation must either have the
title given to her by the seller, obtain a proper purchase agreement, or take legal action to
obtain the title.

There is an argument that certain sales of manufactured homes could now be covered
under R.C. 1351 because manufactured homes are no longer defined as motor vehicles.
While still licensed under motor vehicle laws, manufactured homes do not fall within the
exception to the definition of lease-purchase agreement. For that reason, practitioners
should first determine whether the agreement was signed after March 30, 1999, and
whether the home is covered under the definition of motor vehicle. If the home is not
within the motor vehicle definition, careful attention should be paid to the content of the
agreement in light of R.C. Chapter 1351.99

It is conceivable that a lease purchase agreement would be valid under Article 2A of
the UCC, enacted in Ohio in 1992 as R.C. 1310.01 through 1310.78. However, R.C.
1310.02(B)(1) and (2) provide that if there is any conflict between R.C. 1310 and any
provision of R.C.1345 and 1351, the latter statute controls.100 As the lease-purchase law is
subject to certificate of title statutes, this would seem to require the title transfer within 30
days, which would defeat the purpose of a lease-purchase agreement.

F. Other Common Law Theories

There have been occasional cases involving sales of mobile homes in which the
seller relied on common law tort theories for recovery of damages.

99 The agreement should include disclosure requirements found in R.C. 1351.02, should not
include the prohibited provisions found in R.C. 1351.03 and 1351.04. Damages and attorney fees
are available under R.C. 1345.08.

100 R.C. 1310.02 provides that:
(A) Sections 1310.01 to 1310.78 of the Revised Code apply to any transaction, regardless
of form, that creates a lease.
(B)(1) A lease, although subject to sections 1310.01 to 1310.78 of the Revised Code, is
also subject to Chapters 1548, 4505 and 4585 of the Revised Code, any applicable
certificate of title statute of another jurisdiction as provided in section 1310.03 of the
Revised Code, and Chapter 1345, Chapter 1349, or 1351 of the Revised Code.
(2) If there is a conflict between the provisions of sections 1310.01 to 1310.78 of the
Revised Code, other than section 1310.03, division (C) of section 1310.32, and
division (C) of section 1310.33 of the Revised Code, and any statute referred to in
division (B)(1) of this section, the provisions of that statute control.
(3) A failure to comply with any applicable statute has only the effect specified in that
statute.
In *Spencer v. Trailer Mart*,\(^\text{101}\) the court overturned summary judgment for a mobile home dealer because of alleged breach of contract and fraud. A sales dealer, who also owned the manufactured home park, required, as a condition for new residents to reside in the park, that it be the exclusive agent in a sale of any mobile home located in the park. The dealer signed an agreement with the home owner to sell the home for $15,000. As the agent, the dealer did not sell the home,\(^\text{102}\) but upon the bank’s repossession, the dealer bought the home for himself, paying $13,500, and then sold it to a third party for $16,500. The home owner found out that the offer for $16,500 had been made prior to the repossession, but the dealer had refused it and allowed the subsequent repossession.

The lower court granted summary judgment to the dealer, but the appellate court overturned the decision. The appeals court found that questions of breach of contract, breach of fiduciary duty, potential fraud, good faith, and the meaning of the initial agreement to purchase the home were questions of fact which remained to be decided. For this reason, summary judgment was improper. After this ruling, the case ended with a substantial payment of damages to Ms. Spencer.

In another case, a homeowner claimed that there was fraud in a transaction because he received a Four Seasons home rather than a Skyline home. Arguing “bait and switch” the homeowner failed in his attempt to show fraud because he had agreed to the change and had modified the contract to include additional square footage in the substitute home.\(^\text{103}\)

It is also possible that a fraud case can result in a claim under the Deceptive Trade Practices Act.\(^\text{104}\) A case under this little-used law can be brought against any “person” who has taken certain deceptive actions, including representing that goods have characteristics or benefits or are of a particular standard, quality or grade when they are

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\(^{101}\) 8th Dist. Cuyahoga No. 47123, 1984 WL 5016 (March 29, 1984).

\(^{102}\) The dealer had listed the sale price as $19,700 despite the home owner’s failure to sell it at $15,700. The dealer then refused to tell the home owner the asking price. The price made the sale difficult, but when offered more than the price the home owner would accept, the dealer refused. After the repossession and four days after the purchase of the home at the repo sale, the dealer sold the home to the same purchaser for $16,500. *Spencer*, slip op. at 5.

\(^{103}\) *Lang v. D & J Homes*, 494 F.Supp.2d 799 (S.D. Ohio W.D. 2007). Mr. Lang admitted that he understood when signing the second contract that he would be getting the Four Seasons home rather than the Skyline home and accepted the new contract with enhanced terms to reflect the change in home. Id. at 806.

\(^{104}\) R.C. 4165.01, et seq.
This might be useful in prosecuting cases in which used homes are sold with promises by the salesperson that the home has certain qualities, characteristics or benefits when it does not have them.

G. Antitrust Law

Federal and state antitrust laws have been invoked with mixed results by mobile home owners claiming violation of rights in mobile home sales.

In *Ware v. Trailer Mart, Inc.*, a mobile home owner alleged that the operator of a manufactured home park illegally “tied” mobile home purchases by prospective tenants to leases in its park; that is, that the manufactured home park would rent a space only on the condition that the tenant purchase a mobile home from Trailer Mart. The district court held, in part, that the plaintiff had not suffered an injury to his “property” within the meaning of the Clayton Act, and granted summary judgment in favor of the manufactured home park on this point. The court of appeals reversed and remanded the case to the district court, holding that a consumer may suffer such an injury, and thus has standing to sue under federal antitrust laws. The court of appeals also reversed the district court with respect to the granting of summary judgment on the basis that the plaintiff had

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105 R.C. 4165.02(A)(7) and (9). There is a list of specific violations in R.C. 4165.02, but not all would apply to most manufactured or mobile home sales.

106 623 F.2d 1150 (6th Cir. 1980).

107 623 F.2d at 1152.


109 Section 4 of the Clayton Act, 15 U.S.C. 15a, provides that “[a]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor…and shall recover threefold the damages by him sustained.” (emphasis added) Defendant’s argument, accepted by the trial court, was that only a commercial venture could suffer an injury within his business or property within the meaning of Section 4.
not alleged\textsuperscript{110} or proved that the defendant manufactured home park had “appreciable economic power” in the market for the tying product (mobile home rental space).\textsuperscript{111}

However, in a somewhat similar case, \textit{Stinchcomb v. Sahara Mobile Home Corp.}, a district court held that there was no possible way that a plaintiff could prove the requisite market power, and granted summary judgment on the antitrust claim in favor of the defendants.\textsuperscript{112} In \textit{Stinchcomb}, the plaintiff alleged that the arrangement, which required one to buy a home from Sahara Mobile Home Park and purchase utility service from Lake Utilities Company, both of which were owned by the same individual, was an illegal tying arrangement. Apparently ignoring the Sixth Circuit Court of Appeals’ holding in \textit{Ware}, the district court granted summary judgment on the antitrust claims in favor of the park, the dealer, and the utility company.

In \textit{Jameson v. Sommers’ Mobile Home Sales, Inc.}, the facts were similar to \textit{Ware} in that the park controlled the sale of homes and the right to lease space within the park.\textsuperscript{113} The park operator required all persons selling their homes to use his dealership as seller. The issue decided, however, was not antitrust liability but class certification. The district court held that there could be no antitrust class action case because the plaintiffs had to establish individual facts regarding each lessee and the lease offered. Because the terms of leases differed, and there was not a single lease, there was no commonality. Without commonality, there could be no class.\textsuperscript{114}

\textsuperscript{110} The plaintiff had alleged in his amended complaint that:

“[t]he defendant has \textbf{market power over the mobile home lot sites} by virtue of a number of factors including, the great demand for mobile home sites in the area; the limited number of parks in the area; and therefore the limited number of unoccupied mobile home sites available for rentals; the defendant’s ownership and control of unique mobile sites; the strategic convenient location and attractiveness of the park.” \textit{Ware}, 623 F.2d at 1153.

\textsuperscript{111} Id. Among other things, a plaintiff alleging an illegal tying arrangement must show that the defendant has “appreciable economic power” in the market for the tying product. Id. at 1152. The court of appeals’ opinion notes that neither party had briefed the economic power issue, but that the district court relied on a lack of economic power on the part of defendant in its opinion. Id. at 1154.


\textsuperscript{114} The case was ultimately decided as a landlord/tenant claim for sales interference by the park against the tenant. See discussion infra in landlord/tenant section on sales interference.
An alleged tying arrangement was also attacked under Ohio law in *State ex rel. Brown v. Napco.*\(^{115}\) Ohio’s antitrust statutes, commonly referred to as the Valentine Act, are contained in R.C. 1331.01 et seq. The Valentine Act prohibits certain “trusts,” a term which is defined in R.C. 1331.01(B), in part, as “a combination of capital, skill, or acts by two or more persons” for any of the purposes enumerated in that section. *Napco* involved an alleged tying arrangement between a dealership and the manufactured home park. A prerequisite for a person to live in the park was purchasing the home from Napco. The trial court granted Napco’s motion to dismiss on the basis that there was only one entity, whether it acted as dealer or park operator, and that there could be no tying arrangement because the Valentine Act requires two or more entities to act together. The Court of Appeals reversed, holding that there were at least two separate entities, the dealership and the manufactured home park, so as to bring the case under the Valentine Act. This case holds some importance now that the state manufactured home landlord/tenant law also prohibits tying arrangements and a violation of the landlord/tenant law should enable a person to claim a violation of the Valentine Act as well. Violation of R.C. 4781’s prohibition on forcing an individual to buy or sell through any dealership in order to live in a park would seem to also violate the Valentine Act as interpreted in *Napco.*

III. **FINANCING**

In addition to the various rights available to manufactured and mobile home purchasers under the consumer protection statutes and common law, manufactured and mobile home purchasers may also find protections under special financing laws that apply to these purchases.

A variety of federal agencies provide or guarantee financing for the purchase of manufactured homes. HUD,\(^{116}\) the VA,\(^{117}\) and the Rural Housing and Community Development Service\(^{118}\) all have programs governing the financing of manufactured home

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\(^{115}\) 44 Ohio App.2d 140, 336 N.E.2d 439 (11th Dist. 1975).


\(^{117}\) 38 U.S.C. 3712.

\(^{118}\) 7 C.F.R. 1924, Subpart A, Exhibit J; rehabilitation loans and grants are authorized under 42 U.S.C. 1474, subject to RHS regulations found at 7 C.F.R. 3560.70.
purchases. Federal savings associations may also make manufactured home loans.\textsuperscript{119} Savings and loans are also subject to special Office of the Comptroller of the Currency rules regarding their financing of mobile homes.\textsuperscript{120} Among the financing protections available to home buyers are requirements in the Housing and Economic Recovery Act of 2008 that financing will not be allowed for homes in manufactured home parks unless the original lease is for not less than three years and the lease can be renewed for successive one-year terms. The lease must also require 180 days’ prior notice before closing a manufactured home community.\textsuperscript{121}

The Truth in Lending Act (TILA)\textsuperscript{122} also applies to manufactured home financing. The definition of “dwelling” in TILA\textsuperscript{123} expressly includes manufactured and mobile homes so that all aspects of the laws which cover dwellings also cover these homes. For example, a manufactured home dealer which failed to disclose mandatory terms in a financial statement was found to have violated TILA.\textsuperscript{124} Certain other specific issues are covered under financing laws, including interest limitations and a preemption of state law concerning due-on-sale prohibitions in other manufactured and mobile home financing.\textsuperscript{125}

One controversial issue in the application of federal manufactured home financing law concerns the preemption of state interest rate limitations. A financial institution may

\begin{footnotesize}
\begin{enumerate}
\item[120] 12 C.F.R. 560.30 provides for manufactured housing financing.
\item[121] 12 U.S.C. 1703(b)(2)(b). No federal loan insurance will be allowed for loans on homes in manufactured home parks unless the lease includes the specific provisions mentioned.
\item[122] 15 U.S.C. 1601, et seq.
\item[123] 12 C.F.R. 226.2(a)(19). In several Ohio cases, TILA was applied to financing of mobile home sale. See Copley v. Rona Enterprises, 423 F.Supp 979 (S.D. Ohio 1976), and Cross v. Superior Mobile Homes, Inc., Carroll C.P. No. 14380 (December 27, 1978).
\item[124] McWhorter v. Elsea, Inc., Civil Action No. 2:00-CV-473, 2007 WL 1101249 (S.D. Ohio E.D. 2007). The dealer had the clients sign a purchase agreement without financial disclosures that bound the buyers to whatever terms were later presented without giving the buyers a chance to rescind the contract after receiving the disclosures. But see Castle v. Rona Enterprises, 49 Fed. Appx. 24 (6th Cir. 2002) in which the Court found that a mobile home dealer did not have to disclose the payment schedule in one place, but could have various payments mentioned throughout the Purchase Agreement. Thus the inclusion of disclosure boxes that showed only 84 payments, with additional terms elsewhere in the contract raising that to 89 payments, was not a violation of the disclosure requirements of TILA.
\item[125] 12 U.S.C. 1701j-3; see also City Loan Co. v. Roof, Vinton C.P. No. 79 CV 10-46 (March 10, 1982), slip op. at 6.
\end{enumerate}
\end{footnotesize}
avoid state interest rate ceilings\textsuperscript{126} with respect to its RHS- or VA-insured loans if the financial institution complies with the consumer protection provisions of the federal Depository Institutions Deregulation and Monetary Control Act (DIDMCA).\textsuperscript{127}

In 2010, Congress enacted the Dodd-Frank amendments to provide that “state consumer financial laws” are preempted only if, “in accordance with the legal standard for preemption” in Barnett Bank of Marion County NA v. Nelson, Florida Insurance Commissioner, et al.,\textsuperscript{128} the state consumer financial law prevents or significantly interferes with the exercise by the national bank of its powers.\textsuperscript{129} Under these amendments, the Office of the Comptroller of the Currency could preempt state law only if it determines, on a case-by-case basis, that a particular law meets the Barnett standard.\textsuperscript{130} The National Consumer Law Center indicated that this reverses broad regulations that preempt all state predatory lending laws and a variety of other state laws addressing abuses in the consumer arena.\textsuperscript{131}

Other charges are regulated by federal and state law as well. Under federal law, in order to avoid the application of state interest laws, a financial institution may not charge prepayment penalties.\textsuperscript{132} Moreover, in the event that the loan is prepaid, a rebate must be given on the portion of the obligation attributable to interest calculated according to an actuarial method defined in the federal regulations.\textsuperscript{133} Deferral charges are limited to 1% of an installment payment or part thereof.\textsuperscript{134}

\textsuperscript{126} See R.C. 1343.01 (“Maximum rate of interest; exceptions”); R.C. 1343.011 (“Discount points on residential mortgage loans, limitations; definitions”).
\textsuperscript{129} 12 U.S.C. 1465.
\textsuperscript{130} The importance of this change is that the bill eliminated the Office of Thrift Supervision and gave the OCC the power to regulate those financial institutions formerly under the OTS.
\textsuperscript{131} National Consumer Law Center, Consumer Credit Regulation, 2d edition, Boston: NCLC, 2015, Section 3.2.2.5.
\textsuperscript{132} 12 C.F.R. 590.4(d). This regulation was changed in 2002 to clarify that it applies only to commercial banks, credit unions and federal savings institutions. The regulations at 12 C.F.R. 590.4(d) have not been altered since the transfer of the regulatory authority to the Office of the Comptroller of Currency by the Dodd-Frank Act. State-regulated financial institutions are not bound by the prepayment provisions. See 67 FR 60542–55.
\textsuperscript{133} 12 C.F.R. 590.4(c) specifies the “actuarial method” which is defined in 12 C.F.R. 590.4(a)(2).
\textsuperscript{134} 12 C.F.R. 590.4(g).
With respect to **when** a late charge may be assessed, federal law permits an assessment of such charges to be made after the 15th day beyond the scheduled or deferred payment due date “to the extent that applicable state law does not provide for a longer period of time.”\(^{135}\) Under Ohio law, RISA specifies a period of 10 days;\(^ {136}\) therefore, the 15-day period called for by the federal regulations applies. To the extent that state law does not provide for lower maximum charges, federal law provides that late charges may be collected at the rate of 5% per installment.\(^ {137}\) Under RISA, late charges are capped at 5% of the installment, up to $3 per installment,\(^ {138}\) unless the contract specifies alternative delinquent charges agreed upon by the parties.\(^ {139}\) In such a case, the contract must clearly and concisely inform consumers of the amount of delinquent charges and the conditions under which they will be charged.

With respect to the **amount** of the late charge, then, Ohio law controls and the maximum late charge is $3 (or a contractually agreed-upon amount) per installment unless the alternative charges are above 5%, at which time federal limits would control. It should also be noted that, under federal law, a late charge may only be imposed once on an installment, and no additional late charge will be allowed even if the installment remains unpaid more than one month.\(^ {140}\)

If a financial institution follows the federal consumer protection regulations, it is allowed to exempt itself from state laws concerning the interest rate, points, finance

\(^{135}\) 12 C.F.R. 590.4(f)(2).

\(^{136}\) R.C. 1317.06(B) provides that:

5. (B) Every retail seller may, at the time of making any retail installment sale, contract for the payment by the retail buyer of lawful delinquent charges as follows:

- (1) No charges shall be made for delinquent payments less than ten days late.
- (2) Five cents for each dollar for a delinquent payment that is more than ten days late may be charged, but in no event shall a delinquent charge for any one installment exceed three dollars.

A provision for the payment of interest on any installment not paid in full on or before its scheduled due date at a rate not to exceed one-and-one-half percent interest per month is not a delinquent charge and is expressly authorized.

\(^ {137}\) 12 C.F.R. 590.4(f)(4). In the past, the federal government provided for a late fee of 5% per installment to a maximum of $5. In September 2002, the OTS published final rules eliminating the dollar charge and allowing 5% per installment regardless of the dollar amount. 67 FR 60554 (Sept. 20, 2002).

\(^ {138}\) R.C. 1317.06(B).

\(^ {139}\) R.C. 1317.062(A).

\(^ {140}\) 12 C.F.R. 590.4(f)(3).
charges or other charges.\textsuperscript{141} This means that RISA’s limits would not apply when a financial institution follows the federal regulations outlined above.

Challenges to various aspects of the contracts have been made, but most are dismissed for failure to state a claim.

In \textit{Grant v. General Electric Credit Corp.},\textsuperscript{142} the Eleventh Circuit Court of Appeals held that the terms and conditions of the financing contract satisfied the prerequisites for federal preemption of Georgia usury law, despite the fact that the contract did not explicitly set forth the rights guaranteed to the debtor under federal law. The challenged contract contained a clause stating that, upon default:

\begin{quote}
Seller may declare immediately due and payable any and all installments due or to become due hereunder, less the unearned portion of the part of the FINANCE CHARGE…provided that Buyer shall be given notice of right to cure default before Seller is permitted to exercise that right.\textsuperscript{143}
\end{quote}

The debtor claimed that the contract violated federal regulations in that it did not set forth the debtor’s rights with respect to receiving 30 days’ notice prior to acceleration, the right to cure default for 30 days, the right to 30 days’ notice prior to repossession or foreclosure, and the right of prepayment without penalty.\textsuperscript{144} The court of appeals held that the right to accelerate upon default was “expressly conditioned in clear, mandatory terms upon the debtor’s receipt of notice of right to cure a default prior to acceleration,” and that because the contract did not affirmatively misrepresent the debtor’s federal statutory

\begin{footnotes}
\item[141] 12 C.F.R. 590.4(b)(1).
\item[142] 764 F.2d 1404 (11\textsuperscript{th} Cir. 1985) (per curiam).
\item[143] Id. at 1406.
\item[144] Id. at 1406–09.
\end{footnotes}
guarantees, the creditor was entitled to the protection of the federal preemption scheme authorized by DIDMCA.\footnote{145}

Federal preemption of state law under DIDMCA was similarly allowed in \textit{Moyer v. Citicorp Homeowners, Inc.},\footnote{146} \textit{Atkinson v. General Electric Credit Corp.},\footnote{147} and \textit{Burris v. First Financial Corp.}\footnote{148} It is uncertain at this time whether the courts will reach the same conclusions after the passage of the Dodd-Frank amendments in 2010.\footnote{149}

\footnote{145} Id. at 1409. The court of appeals in \textit{Grant} compared the facts of the case to those in \textit{Quiller v. Barclays American/Credit, Inc.}, 727 F.2d 1067 (11\textsuperscript{th} Cir. 1984), reh'g en banc granted, (1984), 727 F.2d 1072, reinstated en banc, 764 F.2d 1072 (1984), cert. den., 476 U.S. 1124, 106 S.Ct. 1993, 90 L.Ed.2d 673 (1986), in which the court of appeals held that:

\[
\text{a creditor cannot obtain the benefits of preemption if the financing agreement contains express provisions authorizing conduct contrary to the statute or regulations.}
\]

\textit{Grant}, 764 F.2d at 1405 (quoting \textit{Quiller}, 727 F.2d at 1071). According to the court of appeals in \textit{Grant}, the contract at issue in \textit{Quiller}:

\begin{quote}
\text{inaccurately stated the creditor’s rights under the federal preemption scheme by permitting a creditor (1) to foreclose on the loan ‘without notice’; (2) to repossess ‘without notice or demand for performance or legal process’; and (3) to demand payment of the full balance upon the debtor’s default or the creditor’s insecurity ‘without notice.’}
\end{quote}

Id. at 1409.

\footnote{146} 799 F.2d 1445 (11\textsuperscript{th} Cir. 1986). In \textit{Moyer}, the court of appeals reversed a district court ruling that, with respect to two of the three contracts at issue, federal law did not preempt Georgia law. The court of appeals held that the contracts satisfied the requirements of 12 C.F.R. 590.4(d) (relating to right to prepay) and 12 C.F.R. 590.4(h) (relating to right to 30 days’ notice prior to repossession, foreclosure or acceleration). With respect to the third contract, the court of appeals affirmed the district court’s ruling that Georgia law, and not South Carolina law, should apply. South Carolina law permitted the interest rate charged by Citicorp, but Georgia law did not. The court of appeals enforced the third contract’s provision that Georgia law should apply in light of the facts that the contract was executed and made payable in Georgia, and that the contract itself provided for application of the law of the state in which the seller’s place of business was located (Georgia).

\footnote{147} 866 F.2d 396 (11\textsuperscript{th} Cir. 1989), cert. den., (1990), 493 U.S. 815, 110 S.Ct. 64. In \textit{Atkinson}, the court of appeals held, in part, that just because the contract provided that Georgia law would govern did not mean that the application of federal law was barred. The court of appeals reasoned that the parties intended that Georgia law would govern contract matters not covered by DIDMCA. 866 F.2d at 398. The court of appeals explained that the federal regulations themselves “acknowledge that they do not cover many aspects of the contract and that these should be governed by state law,” citing 12 C.F.R. 590.4(b)(2)(i)(A). Id. at 399. The court of appeals also held that the contract at issue satisfied the notice requirements of 12 C.F.R. 590.4(h), following \textit{Moyer}, supra. Id.

\footnote{148} (E.D. Ark. 1990), 733 F.Supp. 1270, 1274, affd., 928 F.2d 797 (11\textsuperscript{th} Cir. 1991), cert. den., 112 S.Ct. 195 (1991) (following \textit{Grant} and \textit{Moyer}, “the Court finds that the contracts in question are not violative of the DIDMCA requirements and that First Financial is entitled to rely upon the preemption provided in section 501.”)

\footnote{149} See discussion, supra at Chapter 3, Section II(D).
Another area of concern in mobile home financing is the growth of predatory lending, long thought to be in the realm of urban areas. Several studies released between 2002 and 2004 reveal that there is a widespread practice of predatory practices in regards to mobile home financing.\textsuperscript{150} The practices included falsified down payment information, misrepresentation of loan terms, misrepresentation of the price of the home, packing loans with insurance, points and other charges that left the consumer with negative equity for several years after purchase, and even the old “bait and switch” tactic of providing a consumer with a home different in make, model, year or size than what was promised. A September 2014 report by the Consumer Financial Protection Bureau examined the reason for the cost disparity.\textsuperscript{151} The report found that 65% of manufactured home purchasers financed their purchase with chattel loans, meaning that the homes did not receive the protections of real estate law. Also, 68% of these purchases, compared to 3% of site-built homes, were “higher priced mortgage loans” under the Home Mortgage Disclosure Act.\textsuperscript{152}

A 2015 study by the Center for Public Integrity and the Seattle Times found that much of the manufactured home financing in the United States is controlled by a single company and its subsidiaries. It pointed out that Clayton Homes, operating under at least 18 names, controlled construction of half of the manufactured homes in the United States and the financing of the great majority of sales of manufactured homes.\textsuperscript{153}

Ohio law regulates the financing of mobile home loans to a small extent. R.C. 1151.294, which regulates the investment of savings and loan associations in mobile home loans, concern both the chattel paper from a dealer, as well as individual direct retail financing by the savings and loan. In 2009, the General Assembly added regulations over

\textsuperscript{152} Id.  
mortgage loan originators but excluded manufactured and mobile home dealers who only provide or transmit paperwork rather than actually originating the loans.154

IV. REPOSSESSION/REPLEVIN/FORECLOSURE

The ability of a secured creditor to repossess or replevy a mobile home or a manufactured home not classified as real estate makes this area of consumer law strategically important to your clients. If the home is taken wrongfully, the client must either put up a substantial bond or endure a long period outside the home while the court determines the fate of the home. For this reason, in defending against repossessions and replevin actions, the advocate needs to review a number of legal strategies in order to act quickly to save the home or prevent a deficiency judgment.

Repossession of a manufactured or mobile home is, in theory, like that of an automobile—a creditor with a secured interest has the right to come and take the home without notice if there is a default in payment. The taking can be done at any time, but must be done without breach of the peace.155 In reality, this is very difficult with manufactured or mobile homes because most of the time there are people living in them, and a breach of the peace is a certainty if anybody resists the taking of the home.

154 In a series of sections in R.C. 1321 and 1322, the General Assembly regulated mortgage originators. However, in parallel sections of R.C. 1321.51(N)(2), 1321.51(P)(2) and 1322.01(E)(2) the General Assembly excluded from the definition of loan originator, mortgage broker and mortgage loan broker any person engaged in the retail sale of manufactured homes, mobile homes or industrialized units, if, in connection with financing those retail sales, the person only assists the borrower by providing or transmitting the loan application and does not...(i) offer or negotiate the residential loan rates or terms; (ii) provide any counseling with borrower about residential mortgage loan rates or terms; (iii) receive any payment or fee from any company or individual for assisting the borrower obtain or apply for financing to purchase the manufactured home, mobile home or industrialized unit [or] (iv) assist the borrower in completing the residential mortgage loan application.

155 R.C. 1309.609(B)(2) provides, in part, that “a secured party may act…without judicial process if it acts without breach of the peace.” If the home is repossessed while the owners are away, the possessor must still return the personal property to the persons who were buying the home. For practical reasons of storage, cost and the potential for conversion lawsuits, this would mitigate against most mobile home repossessions. Also because a manufactured home is no longer a motor vehicle, it would be increasingly harder to repossess it as the motor vehicle laws no longer apply. The other factor is with the new secured transaction law, manufactured and mobile home transactions have been combined by definition which seems to maintain the ability to repossess the home.
Replevin, on the other hand, allows the creditor to ask the court to seize the home on a short notice. A home buyer can ask for a hearing, which is usually within five to ten days, and can resist the replevin.\footnote{See Appendix, Document 6, for an example of a motion which raises various legal issues in a replevin defense.} The key, however, is to find a way for the home purchaser to keep the home while the case continues on the underlying issues.

The title transfer provisions of Ohio law, struck down in 2000, have been revived to some extent by the law governing abandoned manufactured homes. Prior provisions allowed a secured creditor to merely request that a clerk of courts issue a new title to the home with no notice or hearing rights to the home owner. This practice was deemed an unconstitutional deprivation of property without due process in \textit{Leslie v. Lacy}.\footnote{\textit{Leslie v. Lacy}, 91 F.Supp.2d. 1182 (S.D. Ohio W.D. 2000), dism. as moot on app. sub nom \textit{Williams v. Leslie}, 28 Fed. Appx. 387 (6th Cir. 2002).} However, in the statutes regarding allegedly abandoned manufactured homes, the 2007 amendments to Chapter 1923 require the clerk of courts to transfer title to manufactured homes without a sale if a home is worth less than $3,000\footnote{R.C. 1923.14(B)(4)(c).} or if the home has not sold after two attempts by the Sheriff pursuant to the procedures set forth in the law.\footnote{R.C. 1923.14(B)(3)(e).}

This part of the chapter will look at the applicability of the UCC and RISA in repossession/replevy cases, the validity of security interests, notices requirements, sales and deficiency judgments.

\section*{A. Applicability of Laws}

For purposes of Article 9 of the UCC, a manufactured or mobile home is a “consumer good”\footnote{\textit{In re Bryan} (Bankr. S.D. Ohio 1976), 20 UCC Rep. Serv. 571; R.C. 1309.102(A)(23) (goods are “consumer goods” if they are “used or bought for use primarily for personal, family or household purposes”).} and a security interest may be created in it.\footnote{\textit{Apple Creek Banking Co. v. Smith}, 5\textsuperscript{th} Dist. Wayne No. 2094, 1985 WL 4647 (December 18, 1995).} Under Article 9, therefore, if the buyer of a good with a security interest defaults, the secured party has the right to take possession of the collateral.\footnote{R.C. 1309.609(A)(1) (providing, in part, that “After default, a secured party may take possession of the collateral”).} This includes mobile homes as goods under...
As an alternative, the secured party may render equipment unusable and dispose of collateral on a debtor’s premises pursuant to R.C. 1309.610.

RISA is also applicable to manufactured and mobile home repossession cases under the general circumstances, making it applicable to any mobile home sale. In other words, if the secured party is not a financial institution dealing solely with its customer on financial matters, but is a seller and the buyer has purchased the home as a consumer good, RISA will apply. Even when the seller is a bank, RISA can apply because the financial institution has then gone beyond the exemption allowed by R.C. 1317.01.163

**B. Validity of Security Interest**

Normally, under the UCC, a security interest in a manufactured or mobile home may attach and will be valid. However, under RISA, a security interest may be invalid in part or entirely, or may be terminated due to the legal process of changing a manufactured home into real property.164

The question of validity of security interest involves many questions, including the proper filing of the security interest,165 the timeliness of filing, whether there is a secured interest at the time of the legal action, and whether the security interest has been voided through the action of law. In terms of the latter issue, this was best illustrated in the case of *Glouster Community Bank v. Winchell*166 which voided a security interest under RISA. Under RISA, if a contract includes any charges that are not allowed under R.C. 1317.07,167 the security interest will be invalid under R.C. 1317.08 to the extent that the security

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164 Under R.C. 4505.11(H), the holder of the security interest must either agree to take a lien on the real property or be paid off prior to certifying the manufactured home as real property.
165 Since 2001, a properly filed financing statement is generally valid for 30 years. R.C. 1309.515(B). Previously, a continuation statement was required every five years. See *In re Evans*, 370 B.R. 138 (Bkrtcy S.D. Ohio 2007).
167 R.C. 1317.07 states in pertinent part:

No retail installment contract...shall evidence any indebtedness in excess of the time balance fixed in the written instrument in compliance with section 1317.04,... but... may evidence...any agreements...for the payment of delinquent charges,...taxes, and any lawful fee actually paid out, or to be paid out, by the retail seller to any public officer for filing, recording, or releasing any instrument securing the payment of the obligation.... No retail seller, directly or indirectly, shall charge, contract for, or receive form any retail buyer, any further or other amount for...
interest exceeds the amount allowed under R.C. 1317.06 and 1317.07. These charges need not be collected, but only contemplated in the language of the contract. If a security interest is declared invalid because of illegal charges, the creditor may not repossess or replevy the home.

In cases involving Chapter 13 filings by manufactured and mobile home owners, there is an additional protection in bankruptcy law. For persons who have not joined their home to the real estate, but still hold title to the home, the antimodification rule provides that the bankruptcy court cannot approve a Chapter 13 plan which modifies the terms of a mortgage loan on the principal residence of the filers. The term “principal residence” includes both the manufactured and mobile homes in which the filers live.

Because the mortgage cannot be modified in Chapter 13 filings, a manufactured or mobile home which is not part of the real estate cannot be added to it for bankruptcy purposes. Neither can it be separated from the real estate to attach a fixture filing. When a manufactured home is affixed to realty through the appropriate legal process, it becomes a part of the real estate and the question becomes whether the home can be taken because the security interest has been abrogated when the home ceased to be a good. One Ohio case determined that the fixture filing law is not applicable to these manufactured homes.

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168 R.C. 1317.08(A)(1) and (2) state in pertinent parts:

No retail installment contract which evidences an indebtedness greater than that allowed by sections 1317.06, 1317.061, 1317.062, and 1317.07…and no retail installment contract in connection with any charge prohibited by sections 1317.01 to 1317.11 of the Revised Code has been contracted for or received, shall be enforceable with respect to that excess indebtedness or charge against any retail buyer, or any other person who as surety, indorser, guarantor, or otherwise is liable on the obligation…and no security interest created by any such retail installment contract that is greater than that allowed under sections 1317.06, 1317.061, 1317.062 and 1317.07 of the Revised Code shall be enforceable with respect to that excess security interest against any retail buyer or any of the aforementioned persons in default under the terms of the retail installment contract.

169 Winchell, supra. The issue remains whether this will prevent repossession or replevy if the security interest is found to be only partially invalid under R.C. 1317.08.

170 R.C. 1309.334. Even when the title was not properly surrendered, the intent to make the home real property was sufficient to deem it as real property. Rickett v. Ohio Real Estate Appraiser Board, 10th Dist. Franklin No. 07-AP-667, 2008-Ohio-3169.

while recently the Attorney General issued an opinion that it may well be applicable.\textsuperscript{172} The current law seems to resolve the dispute by requiring the holder of the security interest to approve the process of changing the status of the manufactured home to realty.

One appellate court determined that a home can be considered a fixture even though the title had never been surrendered.\textsuperscript{173} In this case there was other evidence to indicate the fixture status, including a 2002 appraisal that stated the home was permanently affixed, its listing of the legal description on a mortgage, and the security holder’s UCC fixture filing after cancelling the title lien. The court also determined that surrender of the title was not a prerequisite to creating a valid fixture in a mobile home.\textsuperscript{174}

In the case of a prior owner of a home affixing the land to the realty, the bankruptcy court found that the home was part of the realty and not personalty as argued by the creditor.\textsuperscript{175} This was changed with bankruptcy law amendments in 2005 to disregard the dichotomy between those homes that have been affixed and those that have not, so that any manufactured or mobile home that is the “debtor’s principal residence” is part of the bankruptcy estate for purposes of a claim by the secured creditor.\textsuperscript{176} Despite the federal law change as to what is considered the “debtor’s principal residence,” in 2008 the Sixth Circuit Court of Appeals found that the revised definition did not change the scope of the antifitication provision, and the filing applied only to real property while the

\textsuperscript{172} 1996 Ohio Atty. Gen. Ops. No. 036. The opinion dealt with the general question of whether a county recorder must accept such a filing, and the Attorney General opined that under R.C. 309.32(A)(1), a manufactured home becomes a fixture and the perfection of a security interest in fixtures requires filing a financing statement. It did not address the issue of whether the Millersport Bank decision was correct or not, but merely determined that recorders must accept fixture filings on mobile homes which have become part of the real property. Under the newest version of the UCC, a security interest may be created in fixtures or goods that become fixtures. R.C. 1309.334(A). The new UCC provisions also allow a security interest in accessions and collateral that become accessions. Accessions are defined as those goods physically united with other goods in a manner that the identity of the original goods is not lost. R.C. 1309.102(A)(1).


\textsuperscript{174} Citing Rickett v. Ohio Real Estate Appraiser Board, 10th Dist. Franklin No. 07AP-667, 2008-Ohio-3169.

\textsuperscript{175} In re Cluxton, 2004 Bankr. LEXIS 1954 (S.D. Ohio W.D. 2004). The debtor wanted the common law fixture analysis to apply but the court ruled that R.C. 4505.11(H)(1) superseded the common law and that if a title was surrendered pursuant to Ohio law, the home was part of the realty, not a fixture. Id. at 9.

\textsuperscript{176} In re Davis, 373 B.R. 46 (S.D. Ohio W.D. Bkrptcy 2007). The anti-modification provision of the bankruptcy statute, found at 11 U.S.C. 101(13A) was amended to focus on the residence rather than its status as real or personal property. This case also has a good summary history of the antificitation statute.
manufactured home properly remained personal property subject to the secured claim of the finance company in the bankruptcy court. The provision applies only to real property; consequently, the home remained personal property subject to the secured claim of the finance company in the bankruptcy court. 177

Because state law determines the status of a manufactured home, if the title still exists and has not been surrendered to the Clerk of Courts, the home is not real property for bankruptcy purposes. For this reason, a creditor’s objections to a Chapter 13 Plan designating the home as personal property were rejected and the antimodification protections did not protect the creditor’s claim from being modified to reflect the fact that the home was not real property in Wallingford v. Green Tree Servicing, LLC. 178

Another issue involves the time that a security interest is valid. The fact that a home may be covered by a certificate of title, i.e., the home as a motor vehicle, doesn’t mean that the lien on the goods is perfected. 179 In Ohio, R.C. 4505.13(B) provides that the lien is perfected when the notation of the security interest is placed on the face of the certificate of title. Failure to meet the 20-day period for perfecting the lien prevented a secured creditor

177 In re Davis v. Green Tree Servicing, LLC, 386 B.R. 182 (6th Cir. 2008). Although procedurally the issue was whether the debtors had to amend a Chapter 13 plan as ordered by the bankruptcy court, subjectively the issue was whether or not the security interest of the finance company was a priority claim. The record was unclear whether or not the mobile home had been attached to the realty, but the certificate of title was not surrendered. Since Ohio only allows a home to become realty and avoid the security interest on personal property if the title has been surrendered or the home has become a fixture under traditional fixture analysis (citing In re Cluxton, 327 B.R. 612 (6th Cir. 2005), the court upheld the finance company’s position that it had a priority secured interest in the mobile home. See also In re Reinhardt, 563 F.3d 558 (6th Cir. 2009). In Reinhardt, the contract had a specific provision that the home could not become part of the real property. The debtor filed for a “cramdown” of Vanderbilt’s secured mortgage and the appellate court upheld the lower court ruling that because the home was not real property, it could not be subject to provisions of 11 U.S.C. 1322(b)(2) which allow a court to modify the rights of secured holders. Vanderbilt had argued that it fell within the anti-modification exception because its claim was “secured only by a security interest in real property that is the debtor’s principal residence.” However, the home, which was the principal residence of the debtors, could not be real property under Ohio law or the contract, so the exception would not apply. Id.


179 Mere possession of a title to the home does not alone determine whether the home is a fixture. State ex rel. Chester v. Evans, 5th Dist. Licking No. 11-CA-5, 2011-Ohio-3675 (July 25, 2011).
from being able to recover a home from bankruptcy. A corollary issue is that, since 2001, a security interest in a manufactured home is generally valid for 30 years. Prior to that time the financing statement had to be filed every five years to keep a valid security interest on the mobile home. Secured parties may have lost their security interests on homes covered by pre-2001 financing statements if they were not renewed after five years. As such, in 2007, the U.S. Bankruptcy Court for the Southern District of Ohio found that Green Tree Servicing, Inc. did not have a valid lien on a mobile home to give it priority for payment of its claim.

A security interest is also unenforceable if a debtor has no rights in the collateral at the time the creditor attempts to enforce it. The bankruptcy case of In re Shupe illustrates this. In the Shupe case, a mortgage company filed a claim against the Chapter 13 filing of Ms. Shupe based on a January 12, 2000 certificate of title notation of the security interest and a refinancing contract signed by the debtor and dated September 18, 2002. However, in July 2000, Ms. Shupe sold the entire property and closing occurred, which included the transfer of her interest in both real property and the manufactured home. As a result, she had no power to convey any security interest in the home in 2002, which meant the mortgage company held only an unsecured interest in the Chapter 13 proceeding.

180 In re Frances E. Musser, Debtor v. Origin Financial, LLC, 2004 Bankr. LEXIS 875, 52 Collier Bank. Cas.2d 502 (S.D. Ohio W.D. 2004). In this case, the RISA contract was signed September 23, 2001, but the title application was not mailed until October 8, 2002, delivered to the clerk of courts on October 15, 2002, and the title was issued November 1, 2002. Assuming the date on the contract was incorrect, as it appears the purchase was in 2002, the clerk of courts did not receive the application for 22 days and the title was not issued until 39 days after the contract was signed. Under 11 U.S.C. 547(c)(3), the Trustee would have been unable to avoid the security interest if the title had been issued within 20 days after the debtors took possession of the home, but almost twice that amount of time had passed.

181 R.C. 1309.515(B).


184 Because she signed the closing statement without attending a closing, only later did Ms. Shupe become aware that the original creditor, Conseco, had not been paid from the proceeds of the 2000 sale of her property. She refinanced with the 21st Mortgage Corporation in 2002 to lower her interest rate and monthly payment. At the time of the refinance, she had no legal interest in the manufactured home and could not transfer any security interest.
Another anomaly was found in the case of *In re Slawter*,\(^ {185} \) in which the bankruptcy trustees had not acted regarding the land on which a homeowner was delinquent in payments. Friendly Village moved for relief from the automatic stay, but the time had expired for the trustee to assume or reject an executory contract and an unexpired lease. The creditor argued that the debtors had assumed the lease by their continued occupancy. The court found that Chapter 7 does not allow a debtor to assume a lease, only the trustee. The court then granted the relief from the stay and ordered the trustee to abandon the leasehold.

One special issue in regards to security interests is the abandoned manufactured home law which includes protections for holders of secured interests in manufactured housing. If a park operator is filing under the abandoned home sections of law, notices must be sent to the lienholders of the action.\(^ {186} \) The lienholder may then stop the sale by commencing a replevin action and paying all the back rent to the park operator.\(^ {187} \) However, the liens will be removed upon transfer of the home if a sale is held and the lienholder did not redeem the home.\(^ {188} \)

C. **Notices**

1. **UCC**

Whether the mobile home is repossessed or replevied and turned over to the creditor, the secured party must give notice to the debtor. The notice must provide a specific notification of the time and place of any public sale, or reasonable notification of the time after which any private sale or other disposition is to be made.\(^ {189} \) “Reasonable notification” is now defined in R.C. 1309.612 as ten days or more before disposition of the collateral. However, the secured party is not required to hold the collateral for a specified period of time before its disposition. The statute also does not specify, in most cases, a

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\(^ {186} \) R.C. 1923.14(B)(1) and (3).

\(^ {187} \) R.C. 1923.14(B)(6).

\(^ {188} \) R.C. 1923.14(B)(4)(c). Because the lienholder would not be able to collect anything from either the park operator or the purchaser of the home through this system, it would seem that in most cases the lienholder would file the replevin action to recover the home.

\(^ {189} \) R.C. 1309.614. Note, however, that the secured party need not send notice of a sale if the “collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.” R.C. 1309.611(D).
period in which collateral must be sold. Note, however, that R.C. 1309.620 provides that if a debtor has paid either 60% of the cash price in the case of a purchase money security interest in consumer goods, or 60% of the principal amount of the obligation in a non-purchase money security interest, the collateral must be sold within 90 days.\textsuperscript{190}

If less than 60% has been paid, the secured party may, after default, propose to keep the collateral in satisfaction of the debt.\textsuperscript{191} The secured party must send a written notice of the proposal to the debtor.\textsuperscript{192} The debtor has 20 days to respond to the secured party’s proposal, in the form of a written objection.\textsuperscript{193} If the secured party receives such notice, the secured party must dispose of the collateral.\textsuperscript{194} Absent a written objection, the secured party may retain the collateral in satisfaction of the debt.\textsuperscript{195}

2. \textit{RISA}

RISA’s notice provisions are set forth in R.C. 1317.12. Pursuant to R.C. 1317.12, if a secured party takes possession of collateral after default in a consumer transaction, the secured party must, “within five business days after taking possession, send the debtor a notice setting forth specifically the circumstances constituting the default and the amount by itemization that the debtor is required to pay to cure his/her default.”\textsuperscript{196} If the secured party fails to give the required notice, s/he may not recover the costs of retaking possession and is not entitled to a deficiency judgment.\textsuperscript{197} The debtor may cure the default within 20 days following the secured party’s repossession or within 15 days after the secured party sends the notice required by R.C. 1317.12 by delivering to the secured party all due

\textsuperscript{190} R.C. 1309.620(E)–(F).
\textsuperscript{191} R.C. 1309.620(A). For consumer goods, a secured party may not accept collateral in partial satisfaction of the obligation but must accept it in full satisfaction. R.C. 1309.620(G).
\textsuperscript{192} R.C. 1309.620. In the case of non-consumer goods, the secured party must also send notice of his/her proposal to any other secured party from whom the secured party has received written notice of an interest in the collateral. Failure to give this notice was deemed a violation of the CSPA in \textit{Stitt v. Dutiel}, Perry C.P. No. 22947 (March 15, 1995).
\textsuperscript{193} That is, the secured party must \textbf{receive} a written objection within 20 days after the secured party’s proposal was sent.
\textsuperscript{194} R.C. 1309.620.
\textsuperscript{195} Id. The debtor must consent to the acceptance after default if no notice of objection is returned within 20 days. R.C. 1309.620(D). Any notice required by R.C. 1309.614 or R.C. 1317.16 may be included as part of the notice required by 1317.12.
\textsuperscript{196} R.C. 1317.12.
\textsuperscript{197} R.C. 1317.12.
and past due installments, unpaid delinquency or deferred charges, actual and reasonable costs of repossession (provided that the portion of such expenses exceeding $25 need not be delivered at that time but shall be added to the time balance), and a deposit by cash or bond in the amount of two installments to secure the timely payment of future installments by the debtor.\(^\text{198}\)

Disposition of the collateral under RISA “shall be by public sale only.”\(^\text{199}\) The method, manner, time, place and terms [of the sale] shall be commercially reasonable.\(^\text{200}\) Failure by the creditor to conduct such a sale prevents the creditor from obtaining a deficiency judgment under RISA.\(^\text{201}\)

R.C. 1317.16(B) requires the secured party to send notice to the debtor and to any other persons known to have an interest in the collateral at least 10 days prior to the sale, by certified mail, return receipt requested, at his/her last known address.\(^\text{202}\) The notice must include the time and place of the sale, the minimum price for which the collateral will be sold, and a statement that the debtor may be held liable for any deficiency resulting from such sale.\(^\text{203}\) In addition, at least 10 days prior to the sale, the secured party must cause to be published, in a newspaper of general circulation in the county where the sale is to be held, a notice of the sale listing the items to be sold.

R.C. 1317.16(C) states that “[e]xcept as modified by this section, sections 1309.610, 1309.611, 1309.615, 1309.617 and 1309.624 of the Revised Code governs disposition of collateral by the secured party.”\(^\text{204}\)

\(^\text{198}\) R.C. 1317.12.
\(^\text{199}\) R.C. 1317.16. Compare this provision with R.C. 1309.610 (“If commercially reasonable, a secured party may dispose of the collateral by public or private proceedings, by one or more contracts, as a unit of parcels, at any time and place and on any terms.”) Failure to do so was enjoined as a deceptive act in violation of the CSPA in \textit{Stitt v. Dutiel}, Perry C.P. No. 22947 (March 15, 1995).
\(^\text{200}\) R.C. 1317.16(B).
\(^\text{202}\) Note that R.C. 1317.16(B) does not use the term “business days.” Compare R.C. 1317.12 (“the secured party shall, within five \textbf{business} days after taking possession, send to the debtor a notice…”) (emphasis added).
\(^\text{203}\) Id.
\(^\text{204}\) R.C. 1317.16(C).
If the original commercial paper comes from a financial institution to its customer, the creditor will only be required to comply with the UCC notice; if the paper comes from a dealer or other third party, the creditor must comply with the UCC and RISA notice provisions.205

3. **Comptroller of Currency Regulations**

A third notice provision is found in regulations originally promulgated by the Federal Home Loan Bank Board.206 These regulations provide that a bank holding a federally backed mortgage may not repossess, foreclose or accelerate the loan until after 30 days’ notice, sent by certified mail, if given in a form specified at 12 C.F.R. 590.4(h)(2). As a practical matter, this notice would precede notice given under either RISA (R.C. 1317.12) or the UCC (R.C. 1309.612).207 The notice must inform the debtor that to cure the default, she must make the payments currently in default and any late or deferral charges. If the debtor cures the default within 30 days, she may default a second time and start the process over again. However, a creditor is required to give a debtor only two chances to cure in any one year.208 As noted above, only debtors under federally backed mortgages are entitled to this notice.209

205 See generally, Robie, ed., Ohio Consumer Law (2014-2015 ed.), §19:36; see also Blon v. Bank One, Akron NA, 35 Ohio St.3d 98, 519 N.E.2d 363 (1988). When the paper is directly from the bank to the customer, regardless of who arranged the deal, RISA will probably not apply because of the exclusion of financial institutions from the coverage of RISA.

206 12 C.F.R. 590.4. The Federal Home Loan Bank Board was abolished and replaced by the Office of Thrift Supervision as of August 9, 1989, under the Financial Institutions, Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 1203 Stat. 183. The Office of Thrift Supervision was then abolished under the Dodd-Frank amendments in 2010 and the duties of the office transferred to the Office of the Comptroller of the Currency. However, the regulations found at 12 C.F.R. 590.4 have remained the same despite the transfer of regulatory authority. For a detailed discussion of the federal financing regulations, see “Mobile Home Loans and Credit Sales,” in Kathleen Keest, The Cost of Credit. (Boston: National Consumer Law Center, 2000), Section 3.5.3.4.

207 The notice provisions under RISA and the UCC take effect upon the repossession of collateral by a secured party following a default by the debtor.

208 The general requirements are found in 12 C.F.R. 590.4(h)(1); the specified form of the notice is found in 12 C.F.R. Section 590.4(h)(2).

209 The creditor is probably safer following the federal notice requirements. Under 12 C.F.R. 590.4(h)(2)(B), the federal law must be followed if both federal and state law cover the same matters, because the federal law preempts. The other alternative is when the law covers different matters, in which case both laws must be followed. 12 C.F.R. 590.4(b)(2)(A). In either case, the federal law must be followed.
D. Redemption of Property

R.C. 5721.25 allows certain persons to redeem the land from a foreclosure. Included in the statute is the phrase “any other person with an interest” in the property. R.C. 5721.181, which discusses the form of notice in foreclosure cases, includes the phrase “any person entitled to redeem the land.” These sections of law became the focus of a case that reached the Ohio Supreme Court when a mortgage holder attempted to prevent confirmation of a sale after foreclosure, arguing that it was entitled to redeem the land.210 A mortgage holder filed with the Coshocton County Common Pleas Court to stay a confirmation proceeding, cancel the foreclosure sale and redeem the land. The lower court agreed and granted the motion, but the appellate court overturned the stay/cancellation. The mortgage holder appealed to the Ohio Supreme Court, which reversed based on the foreclosure statutes. Because a mortgage holder is a “person with an interest” in the land under R.C. 5721.25, they were also “person entitled to redeem the land” and entitled to notice of the proceedings under R.C. 5721.181.

E. Sale of Repossessed Homes

The sales of repossessed manufactured and mobile homes must comply with either the UCC provisions found in R.C. 1309.601 to 1309.628 or the RISA provisions of R.C. 1317.16(B). Because the RISA provisions offer more protections for the homeowner, the consumer will benefit if the sale can be brought under the specific provisions of RISA.

Before the issue of sale is reached, unless otherwise agreed in writing after the default, the debtor has the right to redeem the collateral prior to sale by fulfilling “all obligations secured by the collateral as well as the reasonable expenses and attorney fees of the secured party in arranging for the sale.”211

A concise statement of the law concerning sale of repossessed collateral is that “every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable.”212 Under RISA, the sale must be a public sale only. The

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210 In re Foreclosure of Liens for Delinquent Land Taxes v. Parcels of Land Encumbered with Delinquent Tax Liens, 140 Ohio St.3d 146, 18 N.E.2d 1151 (2014).
211 R.C. 1309.623.
212 R.C. 1309.610(B).
UCC does not specify the type of sale, only that it must be reasonable. Under the UCC, this may mean selling the home through newspaper advertisements, on a manufactured home sales lot, or at a public or private auction. It is hard to determine whether the best price would be realized on the sales lot, but in theory, persons viewing the home on the lot would already be interested in purchasing a manufactured home and have access to the home. At a public auction, more often than not the buyers are brokers with resale and profit in mind rather than making the home their residence.

When any aspect of sale is not done in good faith, a seller may be liable to the buyer for damages. As an example, the court in *Schwartz v. Capital Savings & Loan*\(^\text{213}\) found that the failure to hold a public sale of homes after advertising the sales as public sales was not good faith but fraudulent activity in violation of sales requirements of Sections 1309.37 and 1317.16 of the Revised Code.\(^\text{214}\)

**F. Sale of Replevied Homes**

Homes which are replevied under R.C. Chapter 2737 are returned to the possession of the holder of the secured interest. Because the home is not a perishable item, the court may not order a sale of the home but must return it to the holder of the secured interest.\(^\text{215}\) This does not relieve the creditor of responsibility to follow the UCC and RISA because replevin is merely a judicial repossession used when the collateral cannot be recovered by self-help methods and its coverage ends once the creditor has recovered the collateral.

**G. Deficiencies**

The two laws which govern repossession and sale of manufactured homes treat deficiencies differently. Noncompliance with the provisions of RISA prevents the creditor from obtaining a deficiency judgment.\(^\text{216}\) However, under the UCC, the secured party must account to the debtor for any surplus resulting from the disposition of the collateral

\(^{213}\) 56 Ohio App.2d 83, 381 N.E.2d 957 (10th Dist. 1978).

\(^{214}\) Id. at 84.

\(^{215}\) R.C. 2737.13 allows a court to order the sale of perishable property, but otherwise the court must either return the property to the debtor who posts proper bond under R.C. 2737.11 or deliver it to the secured creditor as part of a final judgment. R.C. 2737.14.

\(^{216}\) R.C. 1317.12 specifically bars a deficiency judgment for violations of the notice and right to cure laws. For other violations, while not stated specifically, the same pattern is followed. See, e.g., *Ford Motor Credit Co. v. Potts*, 47 Ohio St.3d 97, 548 N.E.2d 223 (1989).
and, conversely, the debtor is liable for any deficiency. Compliance with the provisions of R.C. 1309.601 to 1309.628 entitles the secured party to calculate the amount of any deficiency on any proceeds of the disposition of the collateral. 217 If the secured party fails to comply with the provisions of R.C. 1309.601 to 1309.628, the amount of any deficiency shall be considered equal to the amount of the costs of collection, enforcement, disposition or acceptance. In other words, R.C. 1309.626 creates a rebuttable presumption that the appropriate value shall be presumed to equal the secured indebtedness if the creditor is challenged and does not prove that it followed the requirements of law. This presumption may be overcome by the secured party’s introduction of credible evidence that he or she complied with the law regarding collection, enforcement, disposition or acceptance. 218 If the secured party succeeds in rebutting the presumption, the burden shifts to the debtor to show that the proceeds are significantly below the range of prices that could have been realized if the secured party complied with R.C. 1309.601 to 1309.628. The end effect is that, should the secured creditor not sell the vehicle in accordance with law in a commercially reasonable manner, the debtor can either escape a deficiency or reduce it substantially.

H. Damages

If a creditor does not abide by the provisions of the UCC or RISA in repossession and sale of a manufactured or mobile home, the home buyer is entitled to damages. 219 If the collateral is a consumer good, the UCC damages include an amount not less than the “credit service charge plus ten percent of the principal amount of the debt,” or the “time price differential plus ten percent of the cash price.” In either case, the consumer can recover the service charge and ten percent of the principal amount. 220 There are other additional amounts which may be recoverable depending upon the circumstances of the case. R.C. 1309.625(B) allows recovery of any loss which is caused by the debtor’s failure

217 R.C. 1309.615(F). If the law is not followed, the surplus or deficiency is calculated on the amount that would have been realized if the law had been followed. Id.
218 R.C. 1309.626(B).
219 R.C. 1309.625.
to comply with Chapter 1309, but if the deficiency is eliminated under R.C. 1309.626, the buyer may not recover “any amount for noncompliance with the default provisions relating to collection, enforcement, disposition or acceptance.” This does not seem to negate the part of the law which allows recovery of the credit service charge plus ten percent of the principal amount or the time-price differential plus ten percent of the cash price.\(^\text{221}\) Also, in addition to any damages recoverable, the debtor may receive $500 statutory damages from any person who fails to do certain required acts.\(^\text{222}\)

There may also be damages available under the Consumer Sales Practices Act because violations of each of the other laws have been found to violate the CSPA.\(^\text{223}\)

Commercial reasonableness in the sale of the mobile home after repossession was the central issue in the bankruptcy case, *In re Bryan*.\(^\text{224}\) The federal court determined that the sale was not commercially reasonable because “there was a complete absence of good faith and reasonable diligence” on the part of the secured party. The party who purchased the mobile home from the bank for $9,500 had previously offered the debtor/home owner $15,500 for the home and the appraised value of the home was between $14,000 and $16,000. Other notable facts included the following: the bank’s post-repossession sale was made on a lot in the area where homes were placed prior to being transported elsewhere for sale; the home was sold on a date other than the date on the notice; the sale occurred in less time than normally required for sale of mobile homes; the sale was conducted in an unusual manner when compared with other mobile home sales by the bank; and the purchaser was a family relation of an officer of the bank.\(^\text{225}\)

In *Derr v. Smith*, an appellate court held that contract language which altered statutory rights under R.C. Chapter 1309 and which provided for the forfeiture of the

\(^{221}\) The R.C. 1309.625 provisions state that for secured party violations, a debtor may receive “in any event an amount not less than” these formulas may produce.

\(^{222}\) R.C. 1309.625(E). These include failure to comply with additional duties of a secured party who has control of the collateral, failure to send an explanation of the calculation if the failure is part of a practice or pattern of noncompliance, or failure to send a record to a consumer waiving the secured party’s right to a deficiency.

\(^{223}\) See Chapter 4, Section II(A), supra.


\(^{225}\) Id. The court had previously determined that a private sale was permissible because the case involved a financial institution not covered by RISA. Pursuant to RISA, disposal of the collateral shall be by public sale only (R.C. 1317.16(B)), but transactions between financial institutions as defined by R.C. 5725.01 and their customers are not “consumer transactions” within the meaning of R.C. 1317.01(P) and are not covered by RISA.
mobile home upon default by the debtor was ineffective. In doing so, the court upheld the trial court’s award of 65% of the sales price to the debtor as damages. Further, the borrower in Derr had paid more than 60% of the purchase price for the mobile home and was therefore entitled to the protection of R.C. 1309.48(A) (now R.C. 1309.620(A)) which requires a secured party to sell a repossessed mobile home within 90 days or face a conversion action by the debtor. When the creditor attempted to claim that the debtor owed “rent” and attempted to evict her, Ms. Smith filed a counterclaim for UCC violations. The court held that the debtor’s rights under Chapter 1309 were paramount and that she was entitled to damages under R.C. 1309.50(A).

In both the Derr and Bryan cases, the courts assessed penalties pursuant to R.C. 1309.50(A), but the courts interpreted the language of the statute differently. In Derr, the debtor was awarded the time price differential plus ten percent of the cash price. The court gave this as a minimum award because of the strict wording of R.C. 1309.50(A). The Bryan court, however, construed the statute narrowly to exclude the finance charge that had not been paid and allowed only ten percent of the cash price plus the finance charges paid between purchase of the home and its sale after repossession. Using the accrued finance charge (interest paid) only, rather than either the “credit service charge” (total interest) or the “time price differential” the bankruptcy court awarded the trustee much less than the statute would seem to indicate was due.

I. Foreclosure

Increasingly, as mobile and manufactured homes are integrated into the real estate, foreclosure issues have arisen. In cases in which only the land on which the home is placed is being foreclosed, a home can be moved or the secured lender can file a replevin

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227 Id., slip op. at 7. It is probable that the outcome would have been the same under the new version of the UCC since the requirements remain concerning sale after 60% of the purchase price has been paid. See R.C. 1309.625.
228 Derr, supra, slip op at 8, 10.
230 It is possible that because the homeowner was in bankruptcy anyway, the court may have been more willing to reduce the amount available to the home purchaser. The bankruptcy court determined that the UCC provision was a penalty and strictly construed the law rather than liberally construing it as consumer protection legislation.
action. But if a home has been affixed to the land under R.C. Chapters 4503 and 4505, both the home and the land become the subject of the foreclosure. Once a homeowner has surrendered the title to the home pursuant to R.C. 4505.11(H), it is part of the real estate and a foreclosure of the real estate includes the home as a fixture.\(^{231}\)

An attempt to prevent foreclosure by arguing that the bank had not surrendered the title so that the borrowers could refinance did not prevent foreclosure in \textit{Vanderbilt Mortgage & Finance, Inc. v. Lloyd}.\(^{232}\) The court viewed this claim as an equitable defense and presumed the lower court had considered the equities below. The court also noted that Mr. Lloyd did not have the title to the home in his name and his co-debtor, who did have the title in her name, had not appealed.\(^{233}\)

In a case which calls into question pro se actions in a foreclosure, a homeowner sued PNC Bank, claiming wrongful foreclosure in violation of federal regulations.\(^{234}\) The plaintiff never alleged that the property qualified as a manufactured home and, from the footnote in the case, apparently was not a manufactured home entitled to the protections of the federal law cited.\(^{235}\)

Manufactured home parks may also be foreclosed if the owners default on a mortgage or note. The default in payments by the owner of several manufactured home parks in Franklin and Pickaway Counties resulted in foreclosure and sale of four parks in 2011.\(^{236}\) While the park owners argued that the successor holder of the note could not foreclose, and that the admission on default should not be admissible, the appellate court affirmed the lower court foreclosure and sale.

\(^{231}\) See, e.g., \textit{Equitable Federal Savings & Loan Assoc. v. Hopton}, 5th Dist. Stark No. CA-6664, 1985 WL 7309 (October 18, 1985). Although R.C. 4505.11(H) did not exist at the time of the \textit{Hopton} decision, the same basic factors were present—annexation to the land, intention to make the home part of the land and application of the use to the land.

\(^{232}\) 5th Dist. Holmes No. 10 CA 24, 2011-Ohio-4165 (September 14, 2011).

\(^{233}\) \textit{Vanderbilt Mortgage & Finance, Inc. v. Lloyd}, slip op. at fn 2.


\(^{235}\) The district court looked at public records in determining the home was not a manufactured home.

V. **CONSUMER REMEDIES FOR DEFECTIVE HOMES**

Consumers have a number of avenues available to them with respect to defects in their homes:

- Rescission or revocation of acceptance
- Warranty rights under either the UCC or the Magnuson-Moss Warranty Act
- A tort action claiming negligence or personal injury when the mobile home is defective;\(^{238}\)
- Contract, and/or
- In many states, but to a lesser degree in Ohio, product liability suits.

There may also be additional remedies under federal regulations. Rather than attempting to refer the reader to numerous cases from around the country, this section will be a limited discussion of rights in general and Ohio cases involving those rights. For a more in-depth, although somewhat dated, review of consumer remedies, one can find these other cases and strategies in two articles on consumer remedies from the 1980s.\(^{239}\)

A. **Rescission and Revocation of Acceptance**

The two major consumer laws both offer a right to end the transaction if the laws are violated. Pursuant to the CSPA, a consumer may rescind the transaction if the act was prohibited as unfair, deceptive or unconscionable.\(^{240}\) However, a consumer may not both rescind and sue for damages as explained in *Cremeams v. Robbins*.\(^ {241}\) In any action to rescind the transaction, the consumer must do so within a reasonable time after he or she discovers or should have discovered the grounds for it and before there is any substantial

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\(^{238}\) This is particularly true where injury has occurred due to a condition within the home leading to physical bodily injury. See, e.g., *Hervey v. Normandy Development Co.*, 66 Ohio App.3d 496, 585 N.E.2d 570 (11th Dist. 1990) (formaldehyde exposure caused injury, but the source of the formaldehyde was not immediately known).


change in the condition of the good. With mobile homes, this is seldom a problem except for fire, flood or other catastrophes, because their condition does not drastically change in normal use and most defects are found relatively soon after the buyer moves into the home.

The UCC provides two ways to terminate the purchase of a manufactured home. A buyer may reject goods within a reasonable time of delivery or tender if the goods are unsatisfactory. If the rejection occurs before the buyer actually has received the home, she receives a security interest in the money paid and may reject the home but retain title to it until her money is returned.

The second method provided under the UCC for terminating a transaction is revocation of acceptance. If a buyer has accepted a good but finds that it has a nonconformity that substantially impairs its value, the buyer may revoke acceptance of the good he has accepted if he assumed that the nonconformity would be cured, or if he was unaware of the nonconformity due to the difficulty of discovery or assurances of the seller. As with rescission under the CSPA, the revocation must be within a reasonable time after the buyer discovers the impairment and before any substantial change in the condition of the good. In *Goddard v. Manson*, the title to a mobile home was never transferred because the seller did not have clear title. The buyer was allowed to revoke acceptance of the home purchase because he could never have the full use and enjoyment of the home without being able to register it in his name, pay taxes, or sell it should he choose to do so.

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242 R.C. 1345.09(D). The determination of whether the time was reasonable is on a case-by-case basis. See *Nations Credit v. Pheanis*, 102 Ohio App.3d 71, 656 N.E.2d 998 (2nd Dist. 1995) (two years after purchase was reasonable under the facts).
243 R.C. 1302.61. This must be within a reasonable time after the delivery and the buyer must notify the seller of the rejection. Although for proof purposes, the buyer should send a written notice, it need not be in any particular form of writing but may also be implied from conduct. *Kabco Equipment Specialists v. Budgetel, Inc.*, 2 Ohio App.3d 58, 440 N.E.2d 611 (10th Dist. 1981).
245 R.C. 1302.66.
246 3rd Dist. Crawford No. 3-01-10, 2001-Ohio-2303 (October 31, 2001).
247 Id.
Although discussed under the warranty section, *Montgomery v. Mobile Home Estates* is another case in which this process was examined and revocation of acceptance was allowed.\(^ {248}\) In the case of *Booth v. K & K Homes*,\(^ {249}\) the appellate court remanded a case for decision on whether a revocation of acceptance was appropriate when the home developed major problems within two weeks of purchase. The appellate court remanded the case because the lower court had dismissed the complaint based on the seller’s argument that the buyers continued to live in the home after purported revocation of acceptance. Citing numerous decisions from other states, the court determined that the continued residence of the buyers was permissible under R.C. 1302.85 (UCC 2-711) and did not defeat revocation of acceptance of a defective mobile home.

Ohio law also provides for rescission in the sales of used manufactured or mobile homes. If the broker does not have a title in his or her name at the time of the sale of the used home, the “retail purchaser has an unconditional right to demand the dealer rescind the transaction if the dealer fails to deliver a title within 40 days of the sale or the title indicates it is a salvage vehicle, and that fact was never revealed to the buyer.”\(^ {250}\) Rescission may also occur if the home was a repossessed home and the title is not transferred within 40 days after the dealer receives the title from the repossessing party or the date of the issuance of the occupancy permit, whichever occurs later.\(^ {251}\) In the case of the missing title, the purchaser must request rescission within 60 days from the time the title is put in the dealer’s name, while the purchaser has 180 days if the home is a salvage vehicle and that fact was never revealed to the buyer.\(^ {252}\) The statute governing the rescission of a home under the repossession provisions does not state a particular date for notice.\(^ {253}\) In all of the cases under R.C. 4505.181, if the dealer fails to rescind within seven business days after receipt of the rescission request, the purchaser may apply to the Attorney General for reimbursement from the title defect rescission fund.\(^ {254}\)

\(^{250}\) R.C. 4505.181(B)(1) and (2).
\(^{251}\) R.C. 4505.181(B)(5).
\(^{252}\) R.C. 4505.181(C)(1) and (2).
\(^{253}\) R.C. 4505.181(C)(3).
\(^{254}\) R.C. 4505.181(D).
B. **Warranties**

Warranty rights accrue to consumers under Ohio’s UCC provisions, the Magnuson-Moss Warranty Act and other federal regulations. Ohio law provides that express warranties are created by promises made by the manufacturer or seller of goods, or descriptions of the goods, either of which becomes part of the basis of the bargain. Implied warranties are that the goods will either be merchantable or that they are fit for a particular purpose known to the seller. The UCC allows implied warranties, but not express warranties, to be disclaimed. While the courts will try to determine whether the language is consistent whenever reasonable, they will not allow disclaimer of express warranties that can be shown by the facts. The failure to integrate a warranty into a contract for the sale of a manufactured home is a violation of R.C. 1345.02.

1. **Magnuson-Moss Warranty Act**

The importance of the Magnuson-Moss Warranty Act is not with its direct application to consumer transactions involving manufactured homes, but in its prohibition of a disclaimer of implied warranties under state law when a written warranty is provided. Because written warranties, usually one year in length, are given by

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255 R.C. 1302.26–1302.28.
257 Manufacturers that sell homes financed with Rural Development funds must not only provide a warranty but must guarantee that their warranties are in addition to, not in derogation of, any other warranty rights that borrowers have. Rural Development Multifamily Housing Loan Origination Handbook, §11.25.
258 R.C. 1302.26(A).
259 R.C. 1302.27. To be merchantable the goods must, among other things, pass without objection in the trade and be fit for the ordinary purposes for which such goods are used. R.C. 1302.27(B)(1) and (3). For a manufactured home, this means it must be fit for habitation.
260 R.C. 1302.28.
261 Many sellers state in their documents that there are no express warranties, but these can be proven by facts showing their creation under R.C. 1302.26.
262 R.C. 1302.29(A) covers the situation in which both an express warranty and a disclaimer are found. An example of a court using this section is *Burton v. Elsea, Inc.*, 4th Dist. Scioto No. 97CA2556, 1999 WL 1285874 (December 27, 1999), in which the court found that an express warranty on the furnace and water lines could not be disclaimed but warranties on other matters could be.
manufacturers, there can be no disclaimer by the manufacturers of implied warranties under Ohio law. Dealers who give written warranties (which are rare) are bound by the same limitations. For construction defects, the manufacturer is most often responsible so the availability of the manufacturer’s written warranty is more important to the consumer. However, class remedies would be rare because at least 100 plaintiffs must be named for a complaint in a class action, and most often warranty problems are in individual cases.265

The first major warranty case for mobile home owners in Ohio was Montgomery v. Mobile Home Estates,266 a rare case in which a purchaser filed suit in state court alleging violations of the federal Magnuson-Moss Warranty Act. The financing contract of a broker contained a disclaimer which purported to exclude implied warranties of fitness and merchantability. The court of appeals held that the attempt to exclude the implied warranties violated the Magnuson-Moss Warranty Act. The disclaimer complied fully with state law, but the violation of federal law rendered the disclaimer ineffective.267 The buyers revoked their acceptance of the goods under Ohio law, but the dealer refused to accept the revocation. The court of appeals determined that the buyers were entitled to rescind the transaction as a matter of law.

The direct application of Magnuson-Moss to manufactured home consumer transactions has been muddied by the Sixth Circuit Court of Appeals decision in a Tennessee case involving a manufactured home purchase. While the case involved a home which was attached to real property, the majority opinion did not limit its decision that Magnuson-Moss did not apply to manufactured home purchases because they were not consumer goods.268 The minority opinion outlined what should be the correct position in that such transactions in Ohio and other states are purchases of consumer items titled as

265 Such was the case in Hatfield v. Oak Hill Banks, 115 F.Supp.2d 893 (S.D. Ohio E.D. 2000), in which the federal court dismissed the complaint for a class action under Magnuson-Moss. The court pointed out that the bar was only to litigating the case in federal court due to the 100-plaintiff requirement of 15 U.S.C. 2310(d)(3)(C) and the amount in controversy requirements of 15 U.S.C. 2310(d)(3)(A) and (B). Plaintiffs submitted only 59 “declarations of fact” regarding customers of Elsea, Inc. and estimated they had 80 such declarations, but none had joined the case as class plaintiffs, while the statute specifically requires 100 or more named plaintiffs. Hatfield at 896.


267 15 U.S.C. 2302(a)(2) prohibits a disclaimer of implied warranties under state law when a written warranty is provided. Because such a disclaimer was made despite a written warranty, the disclaimer was ineffective under the Magnuson-Moss Warranty Act, and thus the state warranties applied despite the attempt to disclaim them.

268 Bennett v. CMH Homes, Inc., 770 F.3d 511 (6th Cir. 2014).
motor vehicles until they are subjected to state laws making them part of the real property. Because the Sixth Circuit decision is binding in Ohio, the distinction will have to be argued if litigators wish to argue the direct application of the federal warranty law in manufactured home transactions.

2. **UCC/Ohio Warranties**

In *Potter v. Dangler Mobile Homes*, another UCC case, the court determined that the seller had violated the implied warranty of fitness for a particular purpose. Because of winter heating bills, the buyer had requested an insulation package greater than that normally included in the home. When the dealer failed to provide it, the customer was awarded damages for warranty breach by the seller.

The court in *Burton v. Elsea, Inc.* found that the Limited Mobile Home Warranty disclaiming warranties had no effect because the purchase agreement explicitly stated in writing that it contained the entire agreement while the limited warranty was a separate document. Further, while express promises were made about the furnace and water line, the purchase agreement tried to disclaim them by writing on the back of the contract that there were no express warranties. The court found that the negation language was inoperable as to the furnace and water lines and that there existed an implied warranty of fitness for an ordinary purpose because it had not been disclaimed. Because the roof leaked, the court found that the home Elsea furnished was not fit for the ordinary purpose of providing shelter from the weather and the jury could have found a breach of warranty against the seller.

C. **Tort Liability**

Traditional tort principles have been invoked to decide suits filed by mobile home owners who have suffered injuries to person and property. In *Burton v. Kinane Homes, Inc.*, the home buyer became ill almost immediately after moving into the mobile home.

269 Id., Stranch, J., dissenting.
271 4th Dist. Scioto No. 97CA2556, 1999 WL 1285874 (December 27, 1999).
272 Id., slip op., at 14.
273 Id., slip op. at 18.
Upon notifying the seller of the situation, she was told that she needed to air the home out, which did not solve the problem. Eventually it was discovered that the buyer was having a reaction to formaldehyde emissions from the materials used in the construction of the home. More than two years after she began to have the reaction, she filed a personal injury claim alleging a defect in the manufacturing of the home. The trial court granted summary judgment in favor of the seller because the two-year statute of limitations had expired. The court of appeals affirmed, citing the same reason.

In the case of *Bennett v. Knisley*, suit was brought under the CSPA and warranty provisions of the UCC, but the case was apparently decided on contract or negligence grounds. In *Bennett*, while moving a home to its site, a mobile home transporter damaged it in transit, and damaged the water system and the landscaping of the real property and the ditch along the road as well. Despite assurances that he was insured against any damages, the transporter had neither a permit to move the home nor the insurance required by the state. The trial court did not specify what violations of law occurred, only that the transporter had damaged the home and, after trial, a judgment was issued apparently on a negligence theory. The homeowner was awarded damages of $4,000.

In a case in which half of a doublewide was destroyed by lightning during transit and installation, an insurance company was found liable for negligence in failing to properly advise the homeowners of coverage for the home during that period. The homeowners asked about available insurance and were told that there was no additional insurance to cover the home while it was being moved and installed. Later testimony showed that there was insurance available and the homeowners would have purchased it but relied on the agent’s information that it was not available. The court found that it had competent and  

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275 Id., slip op. at 19.
276 Id., slip op at 4. The court of appeals held that the home buyer knew she had a physical injury, and that she had complained to the seller, who was the correct party. The buyer did not have to wait for proof that it was the formaldehyde that caused the injury prior to filing her claim for injury, and in waiting, she lost her claim. A similar decision was reached in another case involving formaldehyde, *Hervey v. Normandy Development Co.*, 6 Ohio App.3d 496, 585 N.E.2d 570 (11th Dist. 1990). In *Hervey*, a home owner suffering from formaldehyde exposure did not challenge a summary judgment dismissing the manufacturer from the suit until after three years later. The case was settled with the remaining defendants.
277 Ross C.P. No. 91 CI 357 (September 17, 1992).
credible evidence to establish the negligence of the insurer and that the loss was proximately caused by the insurance company’s negligence.

In *Stahl v. Neff*,\(^{279}\) a case between neighboring homeowners, a court awarded $3,000 damages for the property damage caused by negligent repairs. Stahl’s home was damaged when struck by debris from Neff’s home during a windstorm. The court found that the repairs being made on Neff’s home were not properly done and the wind loosened debris which should have been secured.

### D. Products Liability

Ohio has a products liability law which holds a manufacturer strictly liable for defective products resulting in injury or damage to consumers.\(^{280}\) While the major issue in such cases is the condition of the product, to date there have been no Ohio decisions involving manufactured homes under this products liability law. This may be because manufactured homes are not inherently dangerous when leaving the seller’s hands, although there may be a case in which the issue could be successfully raised should toxic substances or other dangerous conditions exist in a home when it is delivered to the consumer.

### E. Contract

Occasionally the contract is the only instrument on which a claim is made. In *Petrick v. Monahan*,\(^{281}\) the required disclosure statement was not provided to a purchaser of a mobile home. The buyer closed on the contract without the disclosure and later tried to sue on the lack of the statement. The court found that the buyer waived her right to the statement by closing without it. The buyer also lost her claim that the seller prevented her from making timely inspections of the home and had made false or misleading statements about the home.

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\(^{279}\) 3rd Dist. Seneca No. 13-08-09, 2008-Ohio-5195.

\(^{280}\) R.C. 2305.33.

\(^{281}\) Knox C.P. No. 07BR01-0010 (July 17, 2008).
F. **Other Remedies**

While contract claims may provide remedies for homeowners, most cases are decided under consumer laws with clearer damages. However, contract claims may still be raised. In one case, the court decided that the buyer’s willingness to close the deal with the seller waived her rights under the contract. 282 In this case, the contract required a Seller’s Disclosure Statement but the seller did not provide it. The buyer closed without receiving it and then tried to sue when conditions appeared that might have been revealed if she had received the disclosure. The courts decided that her actions waived the disclosure requirements.

Although not found anywhere in the Ohio Revised Code, in one unusual Ohio case, the court ordered what was essentially a repair and bill order. The case was filed as a warranty case, and all but one issue was settled. On the final issue, the court ordered that if the dealer did not repair the skylight, the homeowners could have it repaired and billed to the dealer. 283

Consumers may also find a remedy for defective manufactured or mobile homes in federal regulations for homes purchased under the FmHA (now Rural Development) financing program. In late 1991, the Rural Housing Service (RHS) amended its regulations to create a complaint-handling procedure for dwellings covered by warranties, including manufactured and mobile homes. 284 In addition to dispute resolution mechanisms, the RHS has created a mechanism for homeowners who have purchased homes with construction defects to receive compensation. 285

VI. **INSURANCE**

Mobile home insurance is less regulated than mobile home financing. Generally speaking, regulation of the insurance industry takes place at the state level. Ohio does not regulate manufactured or mobile home insurance as a special category of insurance.

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282 Petrick v. Monahan, Knox C.P. No. 07BR01-0010 (July 17, 2008).
283 Canter v. J. M. Mobile and Modular Homes, Inc., Chillicothe M.C. No. 92 CVH 968 (January 3, 1994).
284 7 C.F.R. 1924.260.
Federal law regulates only the insuring of loans for purchase of the homes, as discussed earlier, and insuring of loans for the manufacturer of mobile homes.\textsuperscript{286}

The initial question in insurance cases is whether the person’s interest is insurable. Certainly a person with title to the home has an insurable interest, but lack of proof of ownership makes the home uninsurable.\textsuperscript{287} The person making the insurance claim in \textit{Hampton} had never actually purchased the home, which was a prerequisite to payment under the replacement cost provisions of the homeowner’s insurance policy.

Manufactured home insurance is, by and large, governed by statutes and cases involving home owner insurance applicable to homes other than manufactured or mobile homes. However, there have been several Ohio cases involving mobile homes.

In \textit{Grafton Township Trustees v. Wells}, a home owner guaranteed to a township, in the form of a surety bond, that he would remove his mobile home upon the expiration of a temporary storage permit.\textsuperscript{288} When the permit period had expired and the home had not been removed, the township trustees were awarded a judgment in the amount of $4,000 against the home owner and the insurance company that had issued the bond, and obtained an order for the removal of the home.\textsuperscript{289} The appellate court affirmed the lower court decision.

In \textit{Buckeye State Mutual Insurance Co. v. Tuttle}, an insurance company sought a declaratory judgment that it was not required to defend its insured in connection with an injury suffered by a visitor who fell on the steps leading up to a manufactured home.\textsuperscript{290} The court of appeals, affirming the district court’s summary judgment, held that the insurance company had a contractual duty to defend and/or indemnify its insured. In doing so, the appellate court rejected the insurance company’s arguments that the policy was void because the use of metal steps rather than cement steps had increased the risk to the insurer, and because the manufactured home had been moved from a manufactured home park to land owned by the insured.\textsuperscript{291} With respect to the first argument, the court of appeals held that there was no increased risk because of metal steps, and noted that there

\textsuperscript{286} 12 U.S.C. 1744.
\textsuperscript{287} \textit{Hampton v. Safeco Insurance Co. of America}, 644 Fed. Appx. 321 (6\textsuperscript{th} Cir. 2015).
\textsuperscript{288} 9\textsuperscript{th} Dist. Lorain No. CA3375, 1982 WL 2837 (November 17, 1982).
\textsuperscript{289} Id., slip op. at 4.
\textsuperscript{290} 5\textsuperscript{th} Dist. Richland No. CA 2772, 1991 WL 6285 (January 17, 1991).
\textsuperscript{291} Id., slip op. at 5.
was no language in the contract that increased risks voided the policy. With respect to the second argument, the court of appeals held that the policy’s general language about the described location did not limit the policy to the manufactured home park.

Similarly, in *Cross v. Motorists Mutual Insurance Co.*, the Franklin County Court of Appeals held that an insurance policy was not void. The case involved an explosion and fire which destroyed a house trailer. The house trailer, what would now be described as a recreational vehicle suitable for use during a vacation but not for permanent residence, had been used for seven months as a temporary residence. The issue at trial was whether the house trailer had been used for vacation purposes or as a permanent residence because the policy restricted coverage to use as a vacation home. The insurance company argued that the use of the trailer as a home violated the terms of the insurance policy, rendering the policy void. The trial court granted summary judgment in favor of the insurance company. The court of appeals reversed, holding that the use of the trailer as a temporary residence was not the same thing as using it as a residence for permanent habitation. The court of appeals remanded the case for a determination of whether the insurer should be held liable under the policy with respect to the death of the plaintiff’s husband.

A wind storm caused damage to the roof and awning of a mobile home on the date coverage was extended to cover the awnings in *Hoisington v. Western Casualty & Surety Company.* The agent accepted the insured’s payment of the premium and a full coverage rider which included the awning coverage which had been attached to the policy. After sending the insured a check, the insurer canceled the check because awning coverage had previously been excluded. At trial, the municipal court found that the agent's actions in selling a full coverage policy waived the prior exclusion and the insurer could not attempt to enforce the exclusion on awnings. The fact that the insurer had sent a check to cover all damages indicated that the policy included full coverage; therefore, the homeowner was entitled to the entire amount of damage, including the awnings.

In *Britton v. Gibbs Associates*, a homeowner was awarded $30,312 in damages from an insurer after lightning sparked a fire that destroyed half of the doublewide home. The

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292 88 Ohio App. 113, 90 N.E.2d 166 (2nd Dist. 1949) (Franklin County was in the 2nd District at that time).
293 Massillon M.C. No. 84-CVI-2277 (January 4, 1985), aff’d. 5th Dist. Stark No. CA 6630, 1985 WL 7275 (October 21, 1985).
294 4th Dist. Highland No. 08CA 9, 2009-Ohio-3943.
homeowner had been told by the agent that only one type of insurance was available and they didn’t need additional insurance, yet when the fire occurred the claim was denied under the “in transit” exception. The court found negligent misrepresentation on the part of the agent and awarded the homeowner the damages.

The next year, the Columbiana County Court of Appeals decided a case determining which of two parties would receive the proceeds of an insurance policy payable due to the destruction of the home by fire. The lower court granted the entire amount to the vendor of the land contract which included the home on real property. The appellate court overruled the lower court because the vendee’s contract had not yet ripened in that the vendor was not yet owed the entire amount of the contract and there was no acceleration clause. The vendee wanted to use half of the proceeds to replace the manufactured home and the court found that she was entitled to use the funds to replace the dwelling. The vendee could have used the remainder of the proceeds to continue making payments under the land contract until it matured. Yet the lower court had given the entire proceeds to the vendor, and the appellate court entered judgment for the vendee in the amount it would cost to replace the home.

The right of an insurance company to replace a mobile home that had been destroyed by fire was upheld in Boone v. American Loyalty Insurance Company. The fact that the homeowners would rather have their mortgage paid than receive a new home was not a material fact to prevent summary judgment when the policy allowed the insurer to replace the home after damage or destruction.

VII. ARBITRATION

One problem that has arisen in manufactured home law, as well as most consumer law, is that increasingly mandatory arbitration clauses are being inserted into contracts. The purpose of arbitration is to avoid excess costs and lengthy delays, but the process can result in the loss to the consumer of legal rights that could have been exercised in a court

296 Id. at ¶34.
of law. Unfortunately, courts now regularly enforce such clauses at the expense of mobile home purchasers.298

There is some relief for those who purchase new homes. Magnuson-Moss provides for specific nonbinding dispute resolution mechanisms prior to judicial remedy for breach of warranty.299 The advantage to consumers with Magnuson-Moss is that new homes have warranties that fall under the law and there may be relief from mandatory arbitration clauses under this law. In an Alabama mobile home case, the federal appeals court determined that a binding arbitration clause was unenforceable when it conflicted with this part of Magnuson-Moss.300 One federal court in Ohio refused to follow the 11th Circuit decision in Davis because it believed Congress delegated the authority to the agency to interpret Magnuson-Moss and the court should defer to the agency’s determination.301 An opposite view was taken by one state appellate court which ruled in a case involving computer equipment that they would not defer to the Federal Trade Regulation because it flies in the face of a strong public policy promoting arbitration and Congress has not taken a position on the matter.302

It is clear from the Supreme Court decision in Green Tree Financial Corp. v. Randolph303 that arbitration is a favored remedy for the industry and consumers will increasingly face requirements for mandatory arbitration. In Randolph, the Court overturned the Eleventh Circuit Court of Appeals decision that the arbitration agreement was unenforceable because it failed to ensure that the consumer could enforce statutory rights under federal law. As a result, unless the agreement can be found to be unconscionable, mobile home buyers in Ohio will often be forced to surrender rights and pay sums of money to a system that cannot guarantee them protections that a court of law would guarantee them.

An example of a person forced into arbitration because “all disputes” had to be arbitrated can be found in Alkenbrack v. Green Tree Servicing, LLC. 304 In this case, the home buyer had filed bankruptcy and believed he had reaffirmed the debt on the home. Green Tree continued to send monthly statements after the bankruptcy case. When Mr. Alkenbrack attempted to refinance his loan, he found that the debt had not been reaffirmed. He then moved out of the home and sued Green Tree for all sums paid after the discharge in bankruptcy. The trial court denied Green Tree’s arbitration motion on the basis that the claims were in fraud and conversion rather than contract, and the contract was no longer enforceable due to the discharge in bankruptcy. The appellate court overturned the lower court decision saying that the tort claims could not be maintained without reference to the contract so were subject to arbitration.305

Occasionally moving the case to arbitration can benefit the home owner. In one such case, the homeowner requested that the court force Greenlawn Companies, Inc. into arbitration rather than allow it to proceed with a legal action to force the home buyer out of the home.306 Because the arbitration clause included “all controversies and claims arising out of or in any way relating to…ownership, occupancy, habitation…of the home,” the court stayed the action and ordered the parties to comply with the arbitration agreement.

In one case since Randolph, a federal court found that arbitration decision did not force a person to accept arbitration at the cost of her rights under TILA. In Camacho v. Holiday Homes, Inc., the court found that while Congress had not specifically precluded arbitration under that law, buyers’ rights under that law were not subject to waiver or deferral.307 Because the arbitration was financially inaccessible to the buyer of the home, she could not vindicate her statutory rights under TILA. Citing Randolph, the court found that there was substantial evidence that the cost of arbitration would have posed an insurmountable financial barrier because it would have made all forums inaccessible to her.

305 Id. at ¶23. The security interest continued in the home despite extinguishment of the actual debt; therefore, the arbitration clause could still be enforced when the homeowner made his allegations against the Plaintiff. The court did leave open the possibility that the arbitration agreement had been waived by Green Tree’s actions which included discovery and filing for summary judgment as well as waiting for ten months after the case was filed to request arbitration.
306 Greenlawn Companies, LLC v. Felder, Chillicothe Muni. No. 09 CVG 1656 (October 26, 2009).
if she was forced to forego court due to the arbitration clause, and forego arbitration due to the costs. In Ohio, courts have been split on decisions regarding the financial expense of arbitration. The Sixth Circuit Court of Appeals determined that arbitration may be unenforceable because it is cost-prohibitive, while a state appellate court determined that in an individual case the costs were prohibitive, making the arbitration clause unconscionable. In one post-Randolph case regarding mobile homes, the court determined that arbitration provisions were valid and that, without evidence of burdensome costs, the arbitration would take precedence over court action. In another, arbitration was allowed even though the debtor had been through bankruptcy and received a discharge of the debt but continued to live in the home.

One area in which a stay for arbitration was not allowed was that in which the supplier committed fraud and misrepresentation in obtaining the signature on the arbitration agreement. In Shasteen v. Palm Harbor Homes, the Shasteens eventually had to sign three purchase agreements.

The second agreement had a price for the home of $128,948. They were told they had to sign the arbitration agreement before the final purchase agreement was signed. Immediately after signing the arbitration agreement, they were given a purchase agreement with the price of $139,547 for the home. Both the husband and wife testified they would never have signed the arbitration agreement if they knew Palm Harbor was raising the price of the home. The court ruled that the arbitration agreement was obtained by misrepresentation and refused to enforce it.

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308 Morrison v. Circuit City Stores, 317 F.3d 646 (6th Cir. 2003) (unconscionable to the extent that costs deter a substantial number of litigants from vindicating their rights).
310 Marcinko v. Palm Harbor Homes, 4th Dist. Pike No. 01CA677, 2002-Ohio-3313. In this case, the homeowner claimed that they had to pay a filing fee of up to $5,000 to arbitrate, but produced no evidence to substantiate the statements in their pleadings. Id., ¶16. Evidence regarding a secondary issue concerning integration of the arbitration agreement in the sales agreement showed that the sales agreement referred to an arbitration provision signed prior to the signing of the sales agreement.
311 Alkenbrack v. Green Tree Servicing, LLC, 11th Dist. Geauga No. 2009-G-2889, 2009 WL 4756349 (December 11, 2009). Because the security interest continued in the home despite extinguishment of the debt, the arbitration clause could still be enforced when the home owner made fraud allegations based on the contract.
313 Id. at ¶10.
Another area in which arbitration provisions are invalid is where issues do not fall within the arbitration agreement. As such, a court determination that the arbitration agreement referred only to financial disputes could not force arbitration of a consumer’s claims that a manufactured home manufacturer was negligent and breached warranties. Similarly, another court found that issues regarding the title of the home after the initial purchase, and potential fraud claims against the dealer, were beyond the contract terms and thus arbitration was not appropriate.

The result of arbitration is noticeable already in Ohio manufactured home cases. At least one appeals court has declared mandatory arbitration to be the final method of determination of issues regarding quality and workmanship, and in the *Ishmael* case, another agreed after initially rejecting both the rationale and the decision. A third refused to overturn a denial of arbitration because the damages in the arbitration clause were capped, which prevented any true sense of “arbitration” by a neutral person. A fourth ruled that arbitration was not an available remedy because one party claiming the right had

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315 *Northland Insurance Co. v. Palm Harbor Homes, Inc.*, 12th Dist. Clinton No. CA2006-07-021, 2007-Ohio-1655. The arbitration provision stated that, “Both parties agree to binding arbitration should any dispute arise as a result of this Agreement,” but the bulk of the agreement involved financial arrangements for the purchase of the home.

316 Id. The court ruled that tort claims alleging defective manufacture of the home which caused its destruction by fire did not rely on the existence of the contract to be decided and therefore were outside of the arbitration provisions. They then decided that breach of warranty claims were based on products liability, not contract and were also outside the arbitration provision.


filed the case, thereby waiving its right to arbitrate, and the other party failed to request a stay until one month after judgment had been issued by the court.\footnote{Bowman v. Gordon, 3rd Dist. Van Wert No. 15-04-14, 2005-Ohio-1604. The buyer filed the complaint while the seller waited until after a judgment was issued to demand arbitration. The court ruled that the seller waive the right to arbitrate by participating in the court case.}

Some arbitration clauses may be used to prevent a replevin of the home. In a case in which the clause stated that all controversies or claims relating to the purchaser or occupancy would be sent to arbitration, the buyers invoked the stay pending arbitration to prevent replevin of the home.\footnote{Greenlawn Cos. Inc. v. Felder, Chillicothe Muni. Ct. No. 09 CVG 1656 (October 27, 2009).}

Arbitration as an alternate forum does not mean that a consumer is left without recourse. A home purchaser whose home was improperly set up and damaged as a result won an arbitration award for $22,000, confirmed in 2007 in Howard v. Advantage Homes.\footnote{The arbitration forum was the Better Business Bureau pursuant to a contract between the dealer and the BBB. The purchaser was granted $20,000 for damages to the home and $2,000 as costs for the inspection, analysis and preparation for trial done by the expert witness. The award was confirmed in Howard v. Advantage Homes, Ross C.P. No. 05 CI 392, 2000 WL 4359904 (August 21, 2007).}

\section*{VIII. MEDIATION}

Pursuant to Congressional mandate, a mediation program for manufactured home construction and installation problems became effective February 8, 2008.\footnote{24 C.F.R. Parts 3280, 3282, 3288.} Under the law, states could opt to administer a mediation program provided its rules were not weaker than the federal standards. To this end, the General Assembly included in the Manufactured Homes Commission law the provision that the Commission would operate Ohio’s mediation program.\footnote{R.C. 4781.04(A)(10).} The administrative rules found in Ohio Admin. Code 4781-10-01 outline the procedures for mediating disputes within one year of installation of the home. The rules provide procedures for voluntary mediation of disputes\footnote{Ohio Adm. Code 4781-10-01(D).} and nonbinding arbitration if the mediation fails.\footnote{Ohio Adm. Code 4781-10-01(E).} A purchaser is not required to engage in this process.
but may exercise legal alternatives instead.\textsuperscript{328} Similarly, a person is not required to agree to the arbitrator’s recommendation but may pursue other avenues once the procedure ends.

IX. **OTHER CONSUMER ISSUES**

There are other issues concerning manufactured homes, such as bankruptcy exemptions, the duty of persons to others under the necessaries doctrine and defective title remedies which may arise from time to time.

With regard to bankruptcy exemptions, Ohio law allows an exemption for the primary residence, including a manufactured or mobile home, of up to $136,925 per person.\textsuperscript{329} However, at the time of filing of bankruptcy, the home must be the primary residence. This has occasionally been challenged in bankruptcy cases with only limited success. In one case, the court allowed the exemption in land on which a mobile home was placed prior to the filing.\textsuperscript{330} In another, an attempt to claim the exemption for the home under both the homestead exemption and the household furnishings exemption was not permitted.\textsuperscript{331} Finally, when the value of a lien on a mobile home was within $10 of payments already received from the debtor, the rights of the debtor to redeem for only the $10 was granted.\textsuperscript{332}

Other issues concerning manufactured homes have also been litigated in the bankruptcy courts. In one case, a court determined that a home had been transferred fraudulently to avoid a debt and unless the home was turned over to the trustee or the

\textsuperscript{328} One consideration would be the time left on the warranty to ensure that it does not expire during the mediation process. Neither the rules nor the statute include a stay on the running of the warranty.

\textsuperscript{329} R.C. 2329.66(A)(1). Exemptions are adjusted every three years and published in the Register of Ohio.

\textsuperscript{330} *In re Saylor*, 7 B.R. 86 (S.D. Ohio 1980).

\textsuperscript{331} The debtor claimed an automobile and a mobile home for the large exemptions and then attempted to use the same to avoid nonpossessory, nonpurchase money order liens. Bankruptcy courts in other states have found similar distinctions. When a person attempted to move a home onto land after filing for bankruptcy, the court in *In re Thurmond*, 71 B.R. 596 (Bankr. D. Ore. 1987), rejected the exemption. Similarly, moving into a home after filing did not earn the exemption in *In re Baker*, 71 B.R. 312 (Bankr. W.D. La. 1987).

debtor remitted $11,000, the discharge would be denied. In another case, a trustee was denied the right to set aside a bank lien on a home that the debtor had not moved into until 20 days prior to the bankruptcy filing. Finally, a debtor who was physically removed from a mobile home pursuant to a pre-petition forcible entry and detainer action was denied his claim that the bailiff had violated the automatic stay by dispossessing him and his property from the home.

Reviewing the necessaries doctrine, the Court of Appeals of Montgomery County decided that a mobile home was not a necessary for minors who married and who purchased a mobile home while living with the husband's parents. Distinguishing a South Dakota case on a similar issue, the court found that the home was not a necessary since the minors had shelter with the parents. Thus the contract was disaffirmed.

In regard to damages and other actions regarding titles, manufactured and mobile home owners have two avenues open to them. If a title is not delivered within 40 days after the sale of the home, the home owner may rescind the purchase and receive a full refund. Also, if the title to the home is defective, a home buyer may receive damages from the seller’s bond required by R.C. 4781.25.

333 In re Marshall, 198 B.R. 705 (Bankr. N.D. Ohio, 1996). The home was transferred without consideration to the daughter by the debtor about four months before the bankruptcy filing. The court found that the elements of the fraud exception to discharge were met and ordered either the home or its value turned over to the trustee.

334 In re Ashworth, 277 B.R. 801 (Bankr. S.D. Ohio 1998). The debtor did not move into the home after its delivery and the trustee tried to argue that the bank’s lien was not timely perfected under 11 U.S.C. 547(c)(3)(B), (20 days prior to filing the bankruptcy). However, the court noted that the lien was on the certificate of title at least a month prior to the bankruptcy filing and in Ohio the security interest on a mobile home attaches whenever the lien is listed on the title.

335 In re Davis, 247 B.R. 690 (Bankr. N.D. Ohio 1999). Despite finding that the bailiff violated the automatic stay provision, Id. at 696, the court found that the bailiff had judicial immunity, and that the removal was not a willful violation of the automatic stay. Id., fn 2.

336 Ballinger v. Craig, 95 Ohio App. 545, 121 N.E.2d 66 (2nd Dist. 1953). The buyers were age 19, which made them minors at the time.

337 Lindsay v. Hubbard, 49 N.W.2d 299 (S.D. 1951) (in which minors living away from home and receiving no support from parents were not allowed to disaffirm the contract because it was for a necessary, i.e., shelter.

338 R.C. 4505.181(B)(1) (new homes), (B)(4) (used homes). The buyer may also rescind with a full refund if it has a salvage title but the fact was not disclosed to the buyer before the purchase.
X. **DAMAGES**

Because most consumer cases concerning manufactured and mobile homes are brought under more than one consumer law, the following chart is intended to show the damages awarded and the basis of the award for each case.
<table>
<thead>
<tr>
<th>Case</th>
<th>Applicable Laws</th>
<th>Award</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bennett v. Knisley</td>
<td>common law negligence — transportation of home</td>
<td>$4,000.00</td>
</tr>
<tr>
<td>Britton v. Gibbs Associates</td>
<td>negligent misrepresentation</td>
<td>$30,312.00</td>
</tr>
<tr>
<td>Cassis v. Knecht</td>
<td>Consumer Sales Practices Act</td>
<td>damages: $225.00</td>
</tr>
<tr>
<td>Cremeams v. Robbins</td>
<td>Consumer Sales Practices Act Conversion</td>
<td>damages: $3,630.00 attorney fees: $3,668.37</td>
</tr>
<tr>
<td>Croley v. Oakwood Mobile Home Sales</td>
<td>Uniform Commercial Code</td>
<td>$11,310.34</td>
</tr>
<tr>
<td>Cross v. Superior Mobile Homes, Inc.</td>
<td>Truth in Lending Act</td>
<td>damages: $1,000.00 attorney fees: $100.00</td>
</tr>
<tr>
<td>Derr v. Smith</td>
<td>Uniform Commercial Code</td>
<td>$2,246.50</td>
</tr>
<tr>
<td>Elsea v. Stapleton</td>
<td>Consumer Sales Practices Act</td>
<td>$200.00</td>
</tr>
<tr>
<td>Felix v. Mobile Homes for Sale</td>
<td>Consumer Sales Practices Act</td>
<td>damages: $11,353.76 attorney fees: $11,585.00</td>
</tr>
<tr>
<td>Gaskill v. Doss</td>
<td>various consumer laws Conversion</td>
<td>damages: $1,495.00 attorney fees: $8,331.75</td>
</tr>
<tr>
<td>Goddard v. Manson</td>
<td>breach of contract</td>
<td>damages: $8,400.00</td>
</tr>
<tr>
<td>Hall v. Equitable Savings</td>
<td>Consumer Sales Practices Act</td>
<td>damages: $2,056.91 attorney fees: $217.75</td>
</tr>
<tr>
<td>Hilton v. Chillicothe Mobile Homes</td>
<td>Consumer Sales Practices Act</td>
<td>damages: $2,100.00 attorney fees: $435.00</td>
</tr>
<tr>
<td>Hoisington v. Western Casualty</td>
<td>breach of contract—insurance</td>
<td>$777.35</td>
</tr>
<tr>
<td>Hopkins v. Chaney</td>
<td>Consumers Sales Practices Act</td>
<td>$495.00</td>
</tr>
<tr>
<td>Howard v. Advantage Homes</td>
<td>Consumer Sales Practices Act contract</td>
<td>damages: $20,000.00</td>
</tr>
<tr>
<td>Kantner v. Kanoor</td>
<td>contract</td>
<td>damages: $5,792.59 attorney fees: $2,209.50</td>
</tr>
<tr>
<td>Lockard v. Kno-Ho-Co</td>
<td>Consumer Sales Practices Act</td>
<td>damages: $15,000.00</td>
</tr>
<tr>
<td>Montgomery v. Mobile Home Estates</td>
<td>Uniform Commercial Code; Magnuson-Moss Warranty Act</td>
<td>$9,088.60</td>
</tr>
<tr>
<td>Pirigyi v. McKean</td>
<td>breach of contract; Quantum meruit</td>
<td>$586.83</td>
</tr>
<tr>
<td>Potter v. Dangler</td>
<td>Uniform Commercial Code; Consumer Sales Practices Act</td>
<td>damages: $3,445.00 attorney fees: $1,000.00</td>
</tr>
<tr>
<td>Skipper v. Bowling</td>
<td>negligence</td>
<td>$4,400.00</td>
</tr>
<tr>
<td>Smith v. Palm Harbor Homes, Inc.</td>
<td>Consumer Sales Practices Act</td>
<td>rescission: $56,595.00</td>
</tr>
<tr>
<td>Stitt v. Dutiel</td>
<td>Consumer Sales Practices Act Retail Installment Sales Act Uniform Commercial Code</td>
<td>damages: $1,740.00</td>
</tr>
<tr>
<td>Trifonoff v. Reese Mobile Homes</td>
<td>Consumer Sales Practices Act</td>
<td>$90,200.00</td>
</tr>
<tr>
<td>Vanhoose v. Advantage Homes</td>
<td>Consumer Sales Practices Act Retail Installment Sales Act</td>
<td>rescission: $20,000.00</td>
</tr>
</tbody>
</table>

Table 5
XI. ATTORNEY FEES IN CONSUMER CASES

As seen in the table above, attorney fees have been awarded in several consumer cases. Most of these cases have been brought under the CSPA, although one was under TILA. In two cases, the award of attorney fees has been challenged, one successfully. The court in *Gaskill v. Doss* upheld an award of attorney fees despite the fact they were about six times the award of damages.\(^{339}\) Rather than the discrepancy between the figures, the court looked at the actual hours which were required to handle the case.\(^{340}\)

Attorney fees were denied in *Friend v. Elsea, Inc.*\(^{341}\) because the lower court found that Elsea did not violate the CSPA. The appellate court upheld the lower court finding that Elsea did not knowingly commit any act or practice in violation of the CSPA because there was no showing that Elsea intentionally did any of the alleged acts.

In *Mullins v. Huffman*\(^{342}\) the court ordered that the title be signed over to the home buyer. When the seller did not turn over the title, an action was brought to show cause why the seller did not comply with the court order. The court found the seller in indirect contempt and awarded damages of $35 for a new title and $2,587.50 in attorney fees for the legal aid society that enforced the court order.

XII. CONCLUSION

This chapter has examined the variety of consumer laws applicable to manufactured and mobile homes. In Ohio, many of the laws applicable to sales of motor vehicles, as well as rights under consumer protection legislation, form the basis of consumer law for mobile homes, while manufactured homes are covered under consumer rights and much more limited motor vehicle laws, as long as they have not been classified as real property. There are specific cases which have interpreted those laws in regards to each of these types of homes.

In addition, federal statutes such as the Magnuson-Moss Warranty Act and regulations concerning financing of homes give further direction to consumer advocates for manufactured and mobile home owners. Federal laws impact on state law in some

\(^{339}\) 5th Dist. Fairfield No. 00 CA 4, 2000 WL 1886286 (December 26, 2000).

\(^{340}\) Id. The court cited the rationale for the Ohio Supreme Court decision in *Bittner v. Tri-County Toyota, Inc.*, 58 Ohio St.3d 143, 569 N.E.2d 464 (1991).

\(^{341}\) 4th Dist. Pickaway No. 98CA29, 2000-Ohio-1956.

\(^{342}\) Franklin Co. Muni. No. 20008 CVG 047984 (November 17, 2009).
cases, such as in application of the warranty provisions of the Magnuson-Moss and the Federal Trade Commission’s holder-in-due-course rule.

Regardless of what law applies, most often there are remedies available for manufactured and mobile home consumers with problems related to the purchase, financing, and condition of their homes.
Manufactured home landlord/tenant law is an evolving creature. Since the initial enactment of the Manufactured Home Landlord/Tenant Act in 1979, the General Assembly has come to understand that life in manufactured home parks is different from life in other types of rentals, if for no other reason than the fact that many residents own the homes and rent only the land. With the Ohio Supreme Court decision in Schwartz v. McAtee,\(^1\) the courts also realized the difference in the two living situations and applicable laws. As a result, many of the law’s provisions have been amended to reflect the changing view of manufactured homes. A major amendment in 1986 included a categorization of rights by living arrangement.\(^2\) Flood plain requirements were added in 1992. Revisions enacted in 1998 changed the definition of a manufactured home park to eliminate coverage of certain living arrangements that were formerly considered a manufactured home park. Legislation in 2003, 2004 and 2007 added requirements concerning abandoned mobile homes and their disposal from manufactured home parks and altered the definition section of the landlord/tenant law.

I. **APPLICATION OF MANUFACTURED HOME LANDLORD/TENANT LAW**

Generally, the manufactured home park landlord/tenant law is found in R.C. Chapter 4781 and applies strictly to manufactured home parks. For persons renting manufactured and mobile homes not located in parks, Chapter 5321 applies.\(^3\) However, the

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1. 22 Ohio St.3d 14, 488 N.E.2d 479 (1986). ¶1 of syllabus: “Chapter 5321 does not govern the relationship between manufactured home park operators and their tenants.”
2. The amendments in 1986 changed the wording to include definitions of the words “tenant,” “owner,” and “resident.” In the past, there was only a single classification for those living in manufactured home parks.
3. Chapter 4781 applies only to those in manufactured home parks while R.C. Chapter 5321 requires rental of a dwelling. For those not in manufactured home parks that own the home and rent only the land, neither law applies.
determination of whether the manufactured home park law applies to a particular rental situation begins with an examination of the various definitions found in R.C. 4781.01.

The most important definition in the landlord/tenant law is that of “manufactured home park.” R.C. 4781.01(D) defines a manufactured home park as a tract of land on which three or more mobile homes are located. In an attempt to circumvent this law, some persons have subdivided the land so that no more than two homes are on any single tract of land. Prior to 1999, this situation was covered by a 1991 Ohio Attorney General opinion that a mobile home park exists, even when subdivided, if it comes from a common tract of land or has been subdivided in an attempt to avoid application of the landlord/tenant law. Citing the Attorney General’s opinion, the Ottawa County Court of Appeals determined that even when lots were sold, if the utilities, roadways and common areas remained under the control of a single entity, the development remained a manufactured home park. In prior cases, the Chillicothe Municipal Court determined that contiguous common tracts can create a mobile home park, while the Perry County Court determined under the Attorney General’s opinion that an alleged park actually did not exist. Also, when two tracts were purchased from different sellers, and together those contiguous tracts had three mobile homes, the land was not considered a manufactured home park as it was not a single tract, nor subdivided tracts formerly part of the property of a single owner.

In 1999, the definition of “manufactured home park” was changed. Now the first sentence of the former definition is all that remains and only those tracts of land on which three or more manufactured or mobile homes used for habitation are parked will be

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6 Martin v. Woods, Chillicothe M.C. No. 92 CVG 714 (September 4, 1992). The plaintiff owned and rented out five mobile homes on contiguous parcels. He brought an eviction action under R.C. 5321, but the court accepted the statutory defense in R.C. 3733.13 after finding that the property was a manufactured home park. Id.
7 Dutiel v. Childress, Perry Cty. Ct. Nos. 93 CVG 101 and 102 (December 16, 1994). There were four contiguous lots with seven mobile homes on the land in Dutiel. But see, Clinton County Gen. Health Dist. v. Rolfe, 83 Ohio App. 3d 366, 614 N.E.2d 1128 (12th Dist. 1992). The key was that the lots were for sale and the roads in this case were dedicated and thus met the exception in R.C. 3733.01(A).
considered as manufactured home parks.\textsuperscript{9} Subdivided land in which the lots are sold or for sale are now specifically exempted from the definition of manufactured home park.\textsuperscript{10}

In 2007, amendments to Chapter 1923 further changed the definition of a manufactured home park in relation to eviction law. In order to extend the abandoned home statute to cover manufactured homes not in parks, the General Assembly amended the definition to include situations in which there are one or two manufactured or mobile homes on land subject to rental agreements between the home owners and the owners of the tract of land.\textsuperscript{11} Related definitions which were also amended include that of the park operator\textsuperscript{12} and tenant.

Other definitions of importance are the three “status” definitions—tenant, owner and resident. An owner owns the home and rents the lot only.\textsuperscript{13} A tenant rents the home from the park operator.\textsuperscript{14} A resident can be either a tenant or owner.\textsuperscript{15} These definitions become important because of the applicability of some protections of the law only to home owners and not tenants, while other parts apply to all residents.\textsuperscript{16}

\footnotesize
\begin{itemize}
  \item \textsuperscript{9} R.C. 4781.01(D).
  \item \textsuperscript{10} R.C. 4781.01(D)(2) and (3). It appears that if the land is merely subdivided and the tracts continue to have rentals rather than being for sale or sold, the Attorney General’s opinion and the prior cases may still control and the entire tract may still be considered as a manufactured home park because the subdivision did not meet the exceptions of the new law. However, “if the roads on which the lots are located are dedicated or the property meets subdivision and zoning requirements,” it is not a manufactured home park.
  \item \textsuperscript{11} R.C. 1923.01(C)(11). Any land on which a manufactured or mobile home owned by a person other than the land owner is located is not a manufactured home park for eviction purposes. In cases in which the deed has already been transferred, this may undercut the authority of the Ohio Attorney General in 1973 Ohio Attorney General Ops. No. 73-042 which included lots sold under land contracts as part of a manufactured home park.
  \item \textsuperscript{12} R.C. 1923.01(C)(12). The park operator is now defined to include the owner of any plot of land on which one or more manufactured or mobile homes is located pursuant to a rental agreement with the owner of the home.
  \item \textsuperscript{13} R.C. 4781.01(U).
  \item \textsuperscript{14} R.C. 4781.01(T). The definition of tenant for purposes of evictions did not include those in manufactured home parks under the definition found in R.C. 1923.01(C)(1). This definition has now been amended to include those tenants for purposes of the drug-related provisions of eviction law. R.C. 1923.01(C)(1) as amended now includes manufactured home park residents as tenants “as used in division (A)(6) of section 1923.02 and section 1923.051 of the Revised Code….”
  \item \textsuperscript{15} R.C. 4781.01(V).
  \item \textsuperscript{16} For example, the renewable annual lease applies only to owners as do provisions on purchases and sales protections; residents, who include both tenants and owners, receive the protections against retaliation, self-help, and eviction procedural rights.
\end{itemize}
There have been several cases in which the definitions of “tenants” and “residents” were at issue. In reviewing the status of a purchaser of a home in a manufactured home park, the Licking County Municipal Court determined that the purchaser was neither a tenant nor resident until approved by the park operator.17 Because the park operator had never approved the purchaser, none of the rights of the landlord/tenant law could apply and the buyers of the home were only possessors. Under the rules of the park, they were not legal residents and were subject to eviction without any rights under the landlord/tenant law. In a more recent case, a party was determined to be neither a tenant nor a resident because his name was never on the lease and he never paid rent.18

In a middle-ground case, one court found that new residents were tenants at will of the park operator and, as such, has no rights under a rental agreement.19 In *Haas v. Rapp*, the court found that the mobile home had been sold by the owner to people who claimed to be residents of the manufactured home park. However, the park operator refused to enter into a rental agreement with the purchasers and the court found that the refusal was not unreasonable. As the occupants were tenants at will, the park operator had a right to evict them when they ignored her notice to leave the premises.

In *Apel v. Wolf*, manufactured home residents with contracts purporting to be a “Mobile Home Lease with Option to Purchase” were determined to be tenants under R.C. 3733.01(J), now R.C. 4781.01(T), even though one contract indicated that it “switched owners of the home.”20 The court wondered how a lessee could be an “owner” as well as a tenant and settled on the tenant definition for purposes of the case.

Other definitions in 4781.01 that are important to the landlord/tenant law are as follows: “manufactured home,”21 which now has the same definition as that found in R.C. 3781.06(C)(4); “mobile home,” which has the same definition as found in R.C. 4501.01(O); “manufactured home park operator,”22 which is defined as the one who is licensed pursuant to health department regulations and the statute, and “residential

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21 R.C. 4781.01(C).
22 R.C. 4781.01(M).
premises,”23 which are defined as the lot and the grounds, areas and facilities for the use of residents or the use of which is promised to residents.

The definition of residential premises is important because the rules regarding access to the home will differ as between those who own their homes and those who are tenants. Similarly, the right of owners of manufactured homes and mobile home to take action to obtain, or to require upkeep of facilities in the manufactured home park, will be affected by the determination of the type of residential premises in which they reside.24

II. STATUTORY RESPONSIBILITIES OF THE PARTIES

Both parties to a rental agreement in a manufactured home park have responsibilities assigned by statute.25 R.C. 4781.38 and 4781.39 list the responsibilities of the park operator and residents of manufactured home parks respectively. However, because the responsibilities refer to housing, health and safety codes, the construction standards for manufactured home parks are incorporated into their duties, especially those of the park operator. All of the facilities that are required of manufactured home parks under Public Health Council rules and regulations are imposed through this duty and it becomes the responsibility of the park operator to construct and maintain these facilities.26

A. Park Operator

The basic duties of a park operator under 4781.38 mirror the landlord responsibilities under Chapter 5321 with a few exceptions.

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23 R.C. 4781.01(W). The access rights in R.C. 4781.38 discuss residential premises which would seem to exclude the park operator from the inside of a home which is not rented.
24 Although there is not a specific suit in which this has been the sole issue, it has been raised in the context of some rent escrow cases. See discussion of rent escrow, infra.
25 As of 2009, the Ohio Department of Development and Ohio Housing Finance Agency are required to educate tenants and residents of manufactured home communities of their rights and responsibilities, conflict resolution, negotiations with the park operator and developing resident organizations. R.C. 174.03(A)(4).
26 See Chapter 3, Section II(B)(2), supra.
1. **A park operator must comply with the requirements of applicable building, housing, health and safety codes [R.C. 4781.38(A)(1)]**

   This integrates the minimum facility requirements of the Public Health Council, Environmental Protection Agency and Manufactured Homes Commission regulations into the landlord/tenant law. While both park operators and residents are responsible for the conditions in the manufactured home park because both must obey the health codes, the major burden is on the park operator due to his/her obligation to provide certain facilities. The lack of these facilities has been grounds for court action in terms of provision of water, sewage disposal, solid waste disposal, drainage problems, electrical lines and outlets, lighting, roads, sidewalks, playgrounds and vermin infestation.

   Of these, water and sewer problems are most often the subject of lawsuits brought by the residents. In water cases, the courts have granted damages to residents for reduction in

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28 See, e.g., *Benson v. Oaks Mobile Home Park*, 11th Dist. Portage No. 1156, 1983 WL 6313 (March 15, 1982). One assumes the park will likewise be liable for meeting the rules to be issued in 2005 by the Ohio Manufactured Homes Commission.

29 *Smith v. Mismas, et al.*, Bedford M.C. Nos. 82 CVF 1537 to 1579 (June 11, 1982).


34 *Smith*, supra.


36 *Smith*, supra; see also *Tackett v. Boltenhouse*, Chillicothe M.C. No. 86 CVG 120 (October 9, 1986).
value due to bad water, settlements have been worked out in which the parties agreed to connect the mobile home park to a better source of water supply, and escrow funds have been released to a park operator who corrected the water problems. Usually the park operator agrees to correct sewer problems or the court orders the problem corrected. The court awarded damages rather than any other relief in Benson v. Oaks Mobile Home Park because the resident had already left the park. The appellate court disagreed with the park operator and affirmed the lower court, finding that the park failed to repair the sewer system which made the lot uninhabitable.

In an important decision involving conditions in a manufactured home park, the park operator was ordered to pay $2,000 in damages when a home had no water for some period of time, then only a garden hose, no hot water and sewage backing up in the toilet. In

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37 Gibson, supra. The court reduced the rent $60 per month for three months and $35 per month for five months due to conditions. The water was badly discolored and pressure was reduced several times while occasionally there was no water at all due to pressure problems. See also, Non Employees of Chateau Estates Resident Assoc. v. Chateau Estates, Ltd. (May 16, 2003), 2nd Dist. Clark No. 2002-CA-68, 2003-Ohio- 2514, remanded, 2nd Dist. Clark No. 2004-CA-19/20, 2004-Ohio 3781, remanded, 2nd Dist. Clark No. 2005-CA-02, 2005-CA-05, 2005- CA-33, 2005-Ohio 3739, remanded, 2nd Dist. Clark No. 2005-CA-109, 2006-Ohio-3742, remanded, app. 162 Ohio App.3d 1409, 2007-Ohio-318. In Chateau Estates, the court reduced the rent of each resident $13 per month to buy bottled water because of arsenic in the water. It also ordered testing and corrections to the problem.

38 Haas v. Johnson, Chillicothe M.C. No. 90 CVG 1024 (March 11, 1991). The park agreed to connect to the city water after years of warnings from the EPA and legal action filed as a counterclaim by tenants in an eviction action.

39 Quinlan, supra. The court ordered the funds released after the park operator had corrected the problems. The problems included contaminated water which led to an EPA boil order, brown water and pressure problems. The park installed larger pipes to resolve the pressure problems and a new water system.

40 Smith v. Mismas, Bedford M.C. Nos. 82 CVF 1537 to 1579 (June 11, 1982). In Smith, the park operator agreed to have the EPA determine what violations existed and agreed to correct any violations that might be found. See also, Hopkins v. Haas, Chillicothe M.C. No. 95 RE 3 (July 12, 1995).

41 Tackett, supra. Although the case was ultimately settled, the temporary restraining order forced the park to repair the sewer line and repair the drain pipes to prevent sewage leaking under the home.


43 Id., slip. op at 3.

another, the court found that a park operator who did not keep the park well-drained, which caused flooding, could be sued. 45

2. **A park operator must make repairs and do what is reasonably necessary to keep the premises in a fit and habitable condition [R.C. 4781.38(A)(2)]**

While home owners in a manufactured home park are responsible for their own homes, the park operator must make repairs in defective conditions in the homes she rented. 46

3. **A park operator must keep the common areas in a safe and sanitary condition [R.C. 4781.38(A)(3)]**

The common areas include the roads, buildings, playground areas and other areas open to all residents. In *Jakacki v. Raineri*, the park operator was solely responsible for repair and upgrade of those common areas that needed repair. 47 A class action was upheld against a park which failed to maintain common areas, which led to flooding problems. 48

4. **A park operator must maintain electrical and plumbing fixtures and appliances as well as septic, sanitary and storm sewers, and well or water systems supplied or required to be supplied by him [R.C. 4781.38(A)(4)]**

The duty to maintain utility systems has not been extended to a requirement that the park operator pay for maintaining the systems. Consistent with R.C. 4781.40(B), payment for utility services is not covered by statute or regulation, but is left up to the parties to agree. Electrical system upgrades that were ordered by the local health departments were determined to be the responsibility of the park operator, but he was allowed to pass on the

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45 *Arndt v. P & M Ltd.*, 11th Dist. Portage No. 2007-P-0038, 2007-P-0039, 2008-Ohio-2316. The court said that a park operator’s duty is to do what is reasonably necessary to prevent recurring flooding. Id. at 55.
48 *Arndt v. P & M Ltd.*, 163 Ohio App.3d 179, 2005-Ohio-4481. The residents suffered loss of use and loss of enjoyment damages as a class while others suffered individual flood damages.
cost of upgrades to the residents in two separate cases.\footnote{Eastgate Mobile Home Park Residents Association v. Klekamp, Clermont C.P. No. 87-CV-000289, 1988 WL 583172 (April 26, 1988), affd., 12\textsuperscript{th} Dist. No. CA9250-060, 1994 WL 298266 (1994); Woodlake Associates v. Heringhausen, Perrysburg M.C. Escrow Case No. 175 (March 24, 1989), affd., 6\textsuperscript{th} Dist. Wood No. WD-89-27, 1991 WL 3810 (January 18, 1991). Procedurally, the Woodlake case involved three separate actions. In Woodlake Associates, supra, the court dismissed the escrow on the basis that the park operator was not obligated to pay for the upgrade. The county then took action and the common pleas court—in 
{\textit{Wood County Health Department v. Woodlake Associates}}, Wood C.P. No. 89-CIV-332 (July 11, 1990)—found that the issue was res judicata due to the earlier decision in the rent escrow case, but prior to the appellate decision on the rent escrow. This case was appealed, and in 6\textsuperscript{th} Dist. Wood No. WD-90WD79, 1991 WL 253810 (November 15, 1991), the appellate court affirmed the lower court decision. For further discussion, see Chapter 3, Section II(B)(2), supra.} When a manufactured home park operator hired a private company to maintain water meters and do private billing for the water system, the residents filed an action against the park operator in \textit{Anderle v. Ideal Mobile Home Park, Inc.}\footnote{114 Ohio App.3d 385, 683 N.E.2d 348 (8\textsuperscript{th} Dist. 1996), cert. den. (1996), 77 Ohio St.3d 1526, 674 N.E.2d 376 (1997).} The court determined that this section of the law does not place responsibility on the park to pay for services necessary to maintain the water system.\footnote{Id.} However, when the resident had to pay for repairs to park wiring from the pole to the meter due to an improper supply line, the resident was granted return of the money paid for the repairs.\footnote{Nichols v. Malone, Marietta Muni. Ct. No. 00 CVG 1022 (November 14, 2001).}

The Health Department or Environmental Protection Agency (EPA) may order a park operator to maintain a water system in a safe and sanitary manner.\footnote{See generally, Ohio Adm. Code 4781-12-12.} When a park failed to maintain the system to eliminate arsenic in the water, the Stark County Health Department had the right to order corrections in accordance with EPA provisions for water supply systems.\footnote{Walker v. Stark County Health Dept., 5\textsuperscript{th} Dist. Stark No. 2007 CA 00236, 2008-Ohio-886. See also, Non-Employees of Chateau Estates Resident Assoc. v. Chateau Estates, Ltd., 2\textsuperscript{nd} Dist. Clark No. 2002-CA-68, 2003-Ohio-2514 (May 16, 2003), app. den., 99 Ohio St.3d 1505, 792 N.E.2d 194 (2003), 99 Ohio St.3d 1510, 792 N.E.2d 198 (2003), 99 Ohio St.3d 1546, 795 N.E.2d 684 (2003).}

In a more unusual case, a manufactured home park went into bankruptcy and the residents were faced with termination of their utilities by the city. As a way to protect the
residents, the Common Pleas Court of Jackson County restrained the city from terminating the utilities, and ordered the rent escrowed for payment of utility bills owed to the city.\(^{55}\)

5. **A park operator must not abuse the right of access to the premises**  
   \([R.C. 4781.38(A)(5)]\)

   The differences between the landlord/tenant law for manufactured home parks and the original law may be found in the issue of access to the premises, which are defined differently for manufactured home parks.\(^{56}\)

**B. Resident**

The duties and responsibilities of a resident (which includes both home owners and tenants) are as follows:

1. **A resident must keep the premises s/he occupies safe and sanitary**  
   \([R.C. 4781.39(A)(1)]\);  
2. **A resident must dispose of rubbish and garbage in a safe, sanitary manner**  
   \([R.C. 4781.39(A)(2)]\);  
3. **A resident must comply with provisions of housing, health or other codes applicable to residents**  
   \([R.C. 4781.39(A)(3)]\);  
4. **A resident must refrain from and forbid invitees from damaging the park property**  
   \([R.C. 4781.39(A)(4)]\); and  
5. **A resident must not disturb the neighbors’ peaceful enjoyment of the park**  
   \([R.C. 4781.39(A)(5)]\).

Interpreting R.C. 3733.101(A)(2), now R.C. 4781.39(A)(2), courts have found that, under the Ohio Administrative Code, a park operator may shift his/her duties to the

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\(^{55}\) *Fizer v. Luckett*, Jackson C.P. No. 84 CIV 37 (April 30, 1984). The temporary restraining order enjoined the city from terminating utilities (water, sewer, electric service) due to amounts owing the city or at the request of the park operator. All residents were made customers of the city for payment of utilities directly to the city rather than the park operator. The residents were allowed to escrow their rent and the park operator was restrained from taking action against the residents. The case was ultimately settled and dismissed.

\(^{56}\) This definition is problematic in that the General Assembly did not seem to see the difference between home owners and tenants but merely bunched them together as residents in this section. Clearly a park operator needs to be able to enter the home of tenants for the various things listed, but a park operator should rarely, if ever, need to enter a home that belongs to an “owner.” It would be the owner’s responsibility to do repairs to the home. The court in *Easley v. Thompson*, 11th Dist. Portage No. 96-P-105, 1996 WL 648734 (October 18, 1996), addressed this dichotomy when it ruled the tenants failed to show unreasonable entry when they made no allegation of entry into the home itself but only onto the lot.
residents by providing solid waste containers for their personal use as opposed to using dumpsters.\textsuperscript{57}

R.C. 4781.39(B) refers to a resident’s obligation not to unreasonably withhold consent for the park operator to enter the manufactured home to inspect utility connections. However, as the utility connections are outside the home, this provision makes little sense. It is probably a carryover from the R.C. 5321.05 language that was copied when most provisions of Chapter 5321 were incorporated into similar provisions in Chapter 3733, now Chapter 4781. The rest of that section provides for entry onto the premises for repairs, etc., which would seem to allow only entry onto the land as the premises are defined.

III. **RENTAL AGREEMENTS**

A. **Terms of Agreement**

Under the manufactured home park landlord/tenant law, a park operator must offer a rental agreement to home owners both prior to beginning residence in the park and prior to the expiration of the owner’s existing agreement.\textsuperscript{58} This lease guarantees occupancy “for at least one year in the absence of Defendant’s breach or statutory violation.”\textsuperscript{59} The preferred agreement must be for a term of one year or more, but the operator need only offer it to home owners. In contrast, tenants are not entitled to this type of rental agreement.

A park operator must offer the annual rental agreement, but the home owner need not accept it.\textsuperscript{60} If the home owner refuses, the park operator need not make any further offers. If the owner accepts, the park operator must make offers at the expiration of each agreement.\textsuperscript{61}

The failure to offer a rental agreement prevented a park operator from collecting a rental increase in *Superior Mobile Homes v. Russell*.\textsuperscript{62} Although the residents had been


\textsuperscript{58} R.C. 4781.40(A)(1). See generally Simco Management Corp. v. Snyder, 7\textsuperscript{th} Dist. Mahoning No. 98 CA 210, 2000 WL 309396 (March 20, 2000), slip op. at 3.


\textsuperscript{60} R.C. 4781.40(A)(2).

\textsuperscript{61} Id. Previously the agreement had to be offered in the same manner as the original lease, but since 2007, a park operator is only required to offer the new agreement by ordinary mail or in person.

given proper notice of a rent increase, the statute prohibits increases during the term of the agreement, which is usually a year. Because the park operator had not offered such an agreement, the court determined that the resident was procedurally in the same position as a resident who had received a rental agreement for a year and could not have a rental increase during the term of the agreement.\textsuperscript{63} The failure of a park operator to offer a lease also “deprived appellant of claiming a contractual justification for the frequent and onerous rule changes” in \textit{Bennington v. Austin Square}.\textsuperscript{64} Similarly, in \textit{Reck v. Lucas},\textsuperscript{65} the failure to offer an annual lease resulted in a large overpayment of rent which prevented an eviction because the resident was not in arrears due to the overpayment.

R.C. 4781.40(A)(1) indicates that the initial agreement to be offered must be at least one year at a time. In terms of subsequent rental agreements, R.C. 4781.40(A)(2) indicates the term must be “mutually agreed upon.” In \textit{Gitler v. Gerity},\textsuperscript{66} the court decided that this section, read in conjunction with 4781.40(A)(2), meant residents were not entitled to a renewal of an annual tenancy, but only to what was agreeable between the parties.\textsuperscript{67} If the \textit{Gitler} court’s reasoning is followed, park owners can negate the law by refusing to agree to any extension, or agree only to month-to-month tenancies, in order to eliminate any rights beyond month-to-month tenancies for home owners under the law.

Similarly, there must be some specific information within the agreement. The agreement shall disclose the name and address of the park operator, and the agent if applicable.\textsuperscript{68} Even if the rental agreement is oral, this information must be given to the

\textsuperscript{63} The issue at this point was on the damages due each party. The court found that the park was due unpaid rent, but credited the overpayment, i.e., improper rent increase, against the rent due.
\textsuperscript{64} 5\textsuperscript{th} Dist. Stark No. 2005 CA 00095, 2006-Ohio-75, slip op. at ¶16; second case, 5\textsuperscript{th} Dist. Stark No. 2009 CA00260, 2010-Ohio-5198.
\textsuperscript{65} Auglaize Cty. Muni. No. 2006 CVG 00235 (August 25, 2006). The park operator never offered a written lease, but under the park rules imposed seven $10-per-month increases in rent due to late payments by the residents. Pursuant to R.C. 4781.40(B) no fees, including rent, could be increased during the term of the rental agreement. Because there was no written rental agreement offered, the increases in fees were illegal.
\textsuperscript{66} 6\textsuperscript{th} Dist. Lucas No. L-94-260, 1995 WL 458690 (August 4, 2005).
\textsuperscript{67} Id. The court said that any extension must be for a term upon which the home owner and the park operator both agreed.
\textsuperscript{68} R.C. 4781.51(A).
resident in writing. Further, the rights of residents must be contained in a general statement specified by the statute.\textsuperscript{69}

\textbf{B. Rules}

Each park operator must promulgate written rules for a manufactured home park.\textsuperscript{70} The rules may not be arbitrary, capricious or unreasonable.\textsuperscript{71} They must be posted in the manufactured home park in a conspicuous place and must also be delivered to a resident prior to the signing of the rental agreement, whether the resident is an owner or a tenant.\textsuperscript{72} There is no distinction between who is entitled to these rules. While tenants are not covered under the part of the law concerning the offer of rental agreements, all residents are subject to rules promulgated by the park operator.

The reasonableness of rules must be interpreted on a case-by-case basis due to the vast variety of rules promulgated by manufactured home park operators. One recent interpretation of R.C. 3733.11(C), now 4781.40(C), demonstrates this. In \textit{West Ridge Green v. Ortiz}, a park rule limiting the right of residents to have pets tied outside for no more than 30 minutes at a time was deemed not to be unreasonable, arbitrary or capricious.\textsuperscript{73} The park had 300 homes situated closely together and the court found that such a restriction did not violate the law under the circumstances.

The court indicated that in other parks, where there is more room or fewer residents, the rule might be unreasonable but in this particular park it was not.

In 1999 and 2001, several courts determined that rules were unreasonable, arbitrary or capricious. Most concerned rules restricting the age of homes allowed to remain in a manufactured home park after sale by the owner. These are discussed in the section on age and condition of homes, supra. In another case, a jury found that pet rules and fees of a manufactured home park were unreasonable, arbitrary and capricious.\textsuperscript{74}

\textsuperscript{69} R.C. 4781.51(B).
\textsuperscript{70} R.C. 4781.40(C).
\textsuperscript{72} Id.
\textsuperscript{73} 9th Dist. Lorain No. 94CA5819, 1994 WL 432162 (April 20, 1994).
\textsuperscript{74} \textit{Bowen v. Stan B & Ray V Ltd.}, Portage C.P. No. 98 CV 667 (January 26, 2001).
An interesting rules case involved a “no pets” rule of the manufactured home park in *Leichtman v. Fike.* In that case an appeals court overturned the eviction of a senior citizen who violated the park pet policy. Finding that the resident corrected the violation within 30 days, the appellate court overturned the jury decision on the basis that the law allowed an opportunity to cure a violation of rules. Going further, however, the appeals court also held that a “no pets” policy was arbitrary and unreasonable. A second court followed suit in a similar case in 1992.

One eviction was dismissed because the manufactured home park rules did not specify how a utility shed should look and how one could obtain approval of a park operator. In *Summit Mobile Home Park v. Brode,* the court indicated that the residents did not act in bad faith in having a utility shed in variance with the park operator’s demands because the rules were not specific enough to identify either the correct shed type or the correct method of approval.

The failure of park operators to conspicuously post rules and deliver them to the residents of manufactured home parks is a defense to an eviction action. While the issue in *Trailer Mart v. Semanach* was mainly a question of admissions policies, the court noted that the park was required to post the rules which included restriction on the residence of children in certain areas. In *Tea v. Wilhelm,* the court decided that although the rules had been violated by the resident, there was no proof that the amended rules had been served on the residents or posted in the park. That, combined with notice deficiencies in offering a right to cure rules violations, doomed the park operator’s case.

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76 Id, slip. op. at 5. The court concluded there was no basis to find that the dog was a violation of health or safety, but that the park operator was simply establishing unnecessary rules which lowered the quality of life for the residents. Id. In *West Ridge Green Co. v. Ortiz,* supra, the court found rules limiting pets were reasonable and evicted a family for violations of the rules.
77 *Miller Mobile Homes v. Denardy,* Cleveland M.C. No. 92 CVG 15699 (October 23, 1992); see also *Hamlet Mobile Home Park v. Rose,* Portage Co. M.C. No. R93 CV 1786 (March 14, 1994).
C. Fees and Charges

Along with the agreement, the park must make a full disclosure of fees, charges and assessments, including the rental fee, prior to the execution of a rental agreement. To change these fees, the park operator must give the residents a written notice at least 30 days in advance, but the park operator still cannot increase the fees during the term of the annual lease or other rental agreement. The challenges to rental agreements relate to the question of the rules and fees. Most often the fee questions involve utility fees, but there have also been cases involving the rental fees.

In *Huntsberry v. Countryside Estates*, the court held that a special electrical fee was illegal because it did not meet the R.C. 3733.11(B), now 4781.40(B), requirements for implementation of new fees. In another case, a late fee of 61% of the rent was found to be unconscionable.

In 1996, the Newton Falls Municipal Court found that a surcharge for “taxes and insurance” did not comply with the disclosure requirements of 3733.11(B), now 4781.40(B). After noting how manufactured home taxes decline each year, the court in *Apel v. Wolf*, said that the park operator failed to explain the basis for the insurance surcharge. Plaintiffs were then granted damages of $510 in taxes and surcharges that they had paid. In 2009, a park operator was denied late fees, attorney fees and lawn

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81 R.C. 4781.40(B). If a park operator does not give the notice, failure to pay cannot be used as grounds for eviction.


83 In *Huntsberry v. Countryside Estates*, 12th Dist. Butler No. CA 85-08-088, 1986 WL 7105 (June 23, 1986), the park operator added a utility surcharge which it believed it could charge under R.C. 3733.11(B) with a 30-day notice. The court determined the charge was actually a retroactive increase without notice. The court felt that the increase was unreasonable and arbitrary. Id., slip. op. at 4–5.

84 In *Properties Ltd. v. Coffee*, Marion M.C. No. 93 CVG 8597 (November 16, 1993), the court struck down a $15 per month utility surcharge. In addition, the late fee of up to 61% was struck down but the court allowed a late fee limited to 25% of the monthly rent. A local court likewise refused to enforce a late fee of $1 a day. *Dutiel v. King*, Perry Co. Ct. No. 03-CVG-179 (2003).

85 *Apel v. Wolfe*, Newton Falls M.C. No. CVG960027, 1996 WL 740085 (September 10, 1996). The tax structure was changed in 1999 to eliminate this automatic statutory depreciation.

86 Id.
mowing fees because there was no agreement covering them. \(^87\) In 2011, the same park operator was found to have waived late fees by continuing to accept late rent without objection. \(^88\)

One area in which there is increasing litigation involves the payment of undisclosed rental fees. Several cases have examined whether or not a manufactured home park may collect rent if the fees are not disclosed in writing. \(^89\) In *Callahan v. Croxford*, \(^90\) *Estep v. Tisdale* \(^91\) and *Evangelinos v. Nixon*, \(^92\) the courts prevented evictions because the rental fees were undisclosed.

However, in *Dearwester’s Gem City Estates v. Nelson*, the court found that the fees were owed because the resident had actual knowledge of them. \(^93\) Recently in *Simco Management Corp. v. Snyder*, the resident was required to pay rent because receipts were given with the rental amount stated on them. \(^94\) The latter two decisions show how courts will strain to find the duty to pay rent. In *Dearwester’s Gem City*, the court totally ignored the requirement that the fees be disclosed in writing while the court in *Simco* stated the law as it stands (must be disclosed in writing) but determined a rental receipt was a writing sufficient to meet the law. However, it did not address the remainder of the sentence which requires the disclosure be made **before** a rental agreement is executed and the resident assumes occupancy. In 2004, the Court of Appeals for Montgomery County

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\(^{89}\) In addition to the discussion here, the failure to pay undisclosed rental fees may not be used as a cause for eviction by a park operator. R.C. 4781.40(B).

\(^{90}\) Athens M.C. No. 2006 CVF 00621 (July 31, 2007).

\(^{91}\) Chillicothe M.C. No. 93 CVG 700, 1993 WL 837913 (November 29, 1993).

\(^{92}\) Belmont Cty. Ct. No. 95CVG00076, 1997 WL 810049 (January 11, 1997), affd., 11th Dist. Belmont No. 95CVG8076.


reiterated the basic law, but found that a resident had actual knowledge of the rent because
he had paid it for many months without dispute.  

D.  **Statutory Prohibitions**

   1.  **Prohibited Lease Terms**

   Certain clauses are prohibited in a rental agreement. Residents may not waive their
legal rights by signing a rental agreement.  
This is meant to prevent a park operator from
shifting the cost of upkeep and repairs of manufactured home park facilities to residents.
In addition, there shall be no warrant of attorney to confess judgment in the agreement, nor will any agreement for a resident to pay the park operator’s attorney fees be recognized. While the park operator may accept some of the resident’s responsibilities under law, he cannot force a resident to waive his/her rights, or accept the park’s responsibilities, even under an offer of free rent.

   In a 2015 Ross County case, the Chillicothe Municipal Court issued a summary
judgment striking down a number of lease clauses in a manufactured home park. In
Howard Companies v. Liles, the court determined that at least five clauses violated the
landlord/tenant law and were illegal and unenforceable.

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95  *Harrison Parks, Inc. v. Bozarth*, 2nd Dist. Montgomery No. 20-147, 2004-Ohio-2190. See also *Johnson v. Leedom*, Pickaway C.P. No. 2006-CI-074 (April 4, 2007). While restating the law, the court found that rental receipts with the amount filled in was a written disclosure sufficient to meet the requirements of the law.

96  R.C. 4781.47(A).

97  R.C. 4781.47(B).

98  R.C. 4781.47(C).

99  R.C. 4781.47(F).

100  In *Arndt v. P & M Ltd.*, 11th Dist. Portage No. 2007-P-0039, 2007-P-0038, 2008-Ohio-2316, the court found that a park operator may not use an “as is” clause in the rental agreement to avoid his statutory duties. (Citing R.C. 3733.15(A) & (F), now R.C. 4781.47(A) & (F).

101  R.C. 4781.47(E).

102  Chillicothe Muni. Ct. No. 14 CVF 1486 (May 20, 2015). The clauses shifted legal duties from the park operator to the tenants, eliminated some notice provisions and varied the required Notice to Leave the Premises language, authorized self-help by the park operator, and allowed the park operator to raise the rent during the term of the tenancy.
2. **Freedom of Choice in Services**

While a park operator may promulgate rules on a variety of topics for the manufactured home park, there are some areas in which the park operator may not interfere with the rights of residents to choose the provider of services. A park operator may require home owners to have certain accessories such as skirting and sheds, and can set the standards for these accessories, but he cannot require the home owner to purchase these from the park operator.\(^{103}\) The home owner must be able to purchase the goods from a vendor of the owner’s choice and the goods must be readily available.\(^{104}\)

Similarly, if a home owner chooses to make any interior improvements or install any electric or gas appliance in the manufactured or mobile home, the park operator cannot restrict the installation, service or repair of the item, or charge any fees for the installation unless the park operator does the work at the home owner’s request.\(^{105}\) The park operator does have the right to refuse the service or appliance if adequate utility services are not available for the installation or improvement.\(^{106}\)

Finally, a park operator is prohibited from requiring a home owner to use the services of the park operator or any other specific person to perform any service, including installation of the manufactured or mobile home in the manufactured home park.\(^{107}\)

The interplay between these rights is seen in *Friendly Village v. Duty*, in which a home owner was denied the right to construct an addition to his home.\(^{108}\) The court found that the park rule requiring approval of an addition was reasonable and that the addition would encroach on the neighbor’s yard.\(^{109}\) Also the court believed a park operator must have the discretion to determine appropriate standards for additions as long as that discretion was not exercised arbitrarily or discriminatorily.\(^{110}\)

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\(^{103}\) R.C. 4781.40(D).

\(^{104}\) Id.

\(^{105}\) R.C. 4781.40(E).

\(^{106}\) Id.

\(^{107}\) R.C. 4781.40(G).


\(^{109}\) Id. at 558.

\(^{110}\) Id. at 559. When the park operator does not object to a structure, it is deemed tacit approval of the construction. *McMahan v. McCabe*, 2nd Dist. Clark No. 97CA 109, 1998 WL 320988 (June 19, 1998).
If a rule is unconscionable, a court may strike it from a rental agreement pursuant to R.C. 4781.48(A). This section of the law has not been used much because of the provision against unconscionable rules in R.C. 4781.40(C), but recently an attempt to prevent a large rent increase as unconscionable was brought under this section of law. In Schindler v. Columbia-Brook Park Mgt., LLC, the court found that there was no precedent in Ohio to bring rent cases within this section on unconscionability, and so declined to make a finding under it.

3. Prohibition Against Intimidation and Retaliation

Under R.C. 4781.49, a park operator may not engage in tactics considered to be intimidation. This includes either the threat of, or the actual termination of, utilities or services, exclusion from the premises, seizure of property, or the threat of any unlawful act. In addition to the prohibition on intimidation, a park operator may not retaliate against a resident by increasing rent, decreasing services, refusing to renew a rental agreement, or bringing an action for eviction from the park. Liability for violation


112 The final outcome in this case was when the appellate court ruled in Pojman v. Columbia-Brook Park Mgt., 8th Dist. Cuyahoga No. 88666, 2007-Ohio-4044, app. den., 116 Ohio St.3d 1458, 878 N.E.2d 34 (2007), that the court properly analyzed the rent, not the rent increase, in determining that there was no unconscionability in the action the new park operators took to raise the rent substantially.


114 Euclid Beach Ltd. v. Brockett, 8th Dist. Cuyahoga No. 75047, 1999 WL 1129086 (December 9, 1999), app. den., 88 Ohio St.3d 1486, 727 N.E.2d 134 (2000) (utility termination); Childers v. Russell, Montgomery C.P. No. 01-4142, 2002 WL 31950741 (February 7, 2002 interim order), 2002 WL 32757694 (July 10, 2002 final order) (utility termination); Monaco v. Schultz, Tuscarawas C.P. No. 98CV101425, 2001 WL 1677087 (January 30, 2001) (utility termination); Johnson v. Adams, Jackson Cty. M.C. No. 92 CVG 324 (August 4, 1992) (owners of a mobile home were restrained from terminating utilities and blocking access to the home in an attempt to remove the tenants). The Johnson case was settled after issuance of the restraining order.


116 R.C. 4781.36(A).
of these provisions includes damages and attorney fees as well as providing a defense to eviction actions.

The protections in the retaliation section, R.C. 4781.36, are triggered if the resident has complained to an appropriate government agency about a violation of housing, health, safety, and building codes that materially affected health and safety or complained to a park operator about violations of his/her obligations under the rental agreement. The resident is also protected if she joins other residents for the purpose of collective action on any of the terms or conditions of the rental agreement.

Because there is no presumption of retaliation in Ohio, it has been very difficult to link the protected actions with the park operator’s actions. For example, in Webb v. C. & J. Properties, the homeowner had complained to the local health department about raw sewage under the home. The next month the park operator gave a notice to terminate the tenancy. The court found that there was a temporal proximity in the events but no actual proof that the termination was because of the health department complaint. The court also found that because the condition was corrected, it did not constitute a violation that materially affected health and safety when the park operator took his action to terminate the tenancy.

117 R.C. 4781.49(C) (intimidation) and R.C. 4781.36(B) (retaliation).
118 R.C. 4781.36(B)(1).
121 R.C. 4781.36(A)(3).
123 The court seemed to focus on the time of the landlord’s action while the statute seems to focus on the circumstances which cause the landlord to retaliate. Nobody disagreed that the raw sewage was a problem when the resident contacted the Health Department. Under the court’s theory, the only cases in which a resident could claim retaliation would be if the park operator had not corrected the condition when the termination of tenancy was proposed.
E. **Sales Interference**

Manufactured or mobile home owners face three major roadblocks if they wish to buy a home and move it into a park, or keep a home in the park when they purchase it from another resident. A park operator may, through a variety of means, interfere with the sale of the home when a current resident sells his or her home to a person who wishes to move into the park. A park may have age standards for homes, which often masquerade as quality standards. The park may have entrance and exit fees which require payment to the park operator to move a home in or out of the park.

In terms of individuals being admitted to live in a park, rather than problems with the home itself, there are fair housing issues concerning age, race and familial status. Additional restrictions may be imposed due to the credit history or other background information that a park operator obtains concerning the purchaser of a home within the park. Finally, there may be sales interference masquerading as otherwise legitimate restrictions.

1. **Procedures in Home Sales**

The sale of a home by persons other than the owner is addressed in R.C. 4781.40(M) which allows realtors and manufactured home brokers to sell homes for park residents. This seems to conflict with the motor vehicle dealer licensing requirements of R.C. 4517.02(A)(1) and (2). After one dealer was denied the right to sell a home in a park she did not own, the Ohio Attorney General issued an opinion designed to clear up the apparent conflict in the law. According to the Attorney General, manufactured and mobile homes on the secondary market may be sold by a manufactured home broker regardless of their location. Used homes may be sold in parks, regardless of whether the dealer owns the manufactured home park in which the home is located.

As manufactured homes are converted to real property, some sales issues previously dealing with other types of housing arise. Under real property laws, for example, a

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126 Id. at 3.
127 Id. at 4. R.C. 4781.40(M) begins with the phrase “Notwithstanding any other provision to the Revised Code” which indicated the General Assembly intended to allow an exception to the dealer licensing requirement of R.C. 4781.16.
property disclosure form must be filled out and submitted to the buyer at the time of sale. Manufactured and mobile homes not converted to real property will remain exempt under the definitions included in this law, but homes which are designated in the future as real property appear to be included.

One issue that has not yet arisen in Ohio case law is the display of “for sale” signs and park prohibition of signs. While some manufactured home parks in Ohio prohibit for sale signs, no cases have yet tested such prohibitions. In both Florida and Massachusetts, courts have struck down such prohibitions, including the Massachusetts Supreme Court determination that such a practice violated the state deceptive practices act.

2. Manufactured/Mobile Home Sales Provisions in the Statute

The rental agreement section of the manufactured home park landlord/tenant law, R.C. 4781.40, has a number of provisions concerning the sale of manufactured and mobile homes and the admissibility of either the home or the purchaser of a home into the manufactured home park. These provisions, stated in terms of the park operator’s duties under the law, are outlined in the table below:

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128 R.C. 5302.30.
129 “Residential real property” means real property that is improved by a building or other structure that has one to four dwelling units. R.C. 5302.30(A)(4). As long as the structure remains a motor vehicle rather than a building, it would be exempted from this definition, but once it is under the building code, it would appear the disclosure law would apply.
130 Old Bridge Corp. v. Dugan, 2nd Dist. No. 84-999, 463 So.2d 1200 (Fla. App. 1985); Blair v. Mobile Home Communities, Inc. 2nd Dist. No. 76-1388, 345 So.2d 1101 (Fla. App. 1977).
132 Id. The state law prohibiting sales interference was found constitutional when the park owner challenged it. The park prohibited “for sale” signs and refused to approve new purchasers. The residents filed an action under the state uniform deceptive practices act and the Supreme Court of Massachusetts agreed with the residents’ view.
R.C. 4781.40(A) prior to admission of the home, must offer an annual lease; if the home is already in the park, must offer an annual lease prior to expiration of present agreement

R.C. 4781.40(B) must fully disclose all fees, charges and assessments prior to the execution of rental agreement and assuming occupancy in the park

R.C. 4781.40(C) must deliver rules prior to signing of rental agreement

R.C. 4781.40(F) cannot require purchase of home from any specific person

R.C. 4781.40(G) cannot require park operator or other specific person to install the home

R.C. 4781.40(H) sales interference prohibited—cannot:
(1) deny owner right to sell the home in park;
(2) require removal of home on basis of sale;
(3) unreasonably refuse to enter rental agreement with purchaser;
(4) actually charge fee not disclosed in rental agreement or written disclosure; and
(5) charge entrance/exit fees above cost

R.C. 4781.40(J) cannot force owner to sell, lease or sublet to any specific person or through any specific agent

R.C. 4781.40(K) prohibits commission for sale unless home owner uses park operator as agent

R.C. 4781.40(M) allows manufactured home broker or realtor to sell home for a resident of a manufactured home park

As some of these are discussed in greater detail elsewhere, the current discussion will be limited to R.C. 4781.40(F), (H), (J) and (K).

Each of the four provisions on sales interference was designed to meet specific problems that have arisen in the past. Consumer surveys taken by the Housing Advocates, Inc., of Cleveland, from 1979 to 1982, under a grant from the Department of Health, Education and Welfare, revealed that a variety of these sales tactics were being pursued by mobile home parks. Tying arrangements forced purchasers to buy their homes from specific persons in violation of R.C. 4781.40(F). Some operators required that park residents use them as sales agents, or made it virtually impossible to sell the home otherwise. Commissions and entrance/exit fees were common in amounts of several hundred or several thousand dollars. Park operators refused to enter into rental agreements with persons purchasing homes already in the manufactured home park or ordered homes

Some denied the residents the right to sell their homes or to post signs in their homes advertising the sale. The result was a number of lawsuits by purchasers and residents of parks trying to end the practices, then finally the General Assembly amended the law in 1987 to prohibit such actions.

3. Denial of Right to Sell Home

It did not take long after the passage of the manufactured home park landlord/tenant law in 1979 to begin the legal process of determining rights under the sales interference section of the new law. In twin cases in Lorain County in 1980, a park operator required sales through his dealership and demanded a commission on private sales. The Common Pleas Court in the cases decided that the park operator was liable for sales interference on both counts, for violations of the predecessor sections to R.C. 4781.40(F) and (K).

The next year, a case involving a resident’s right to sell his home and attempted termination of a month-to-month tenancy were tried before a referee in the Franklin County Municipal Court. Finding sales interference, the court decided that the best solution would be to allow the residents to sell their home and move, thus ending the problem of sales interference as well as attempted eviction.


136 Jameson, supra. Jones, supra. The park policy, as admitted in discovery, was that:

Sommers Mobile Home Sales, Inc. would have to act as the agent for the sale of their mobile home in order for the new owner to remain in the park beyond thirty (30) days. If they sold their home to a new owner without Sommers Mobile Home Sales, Inc. being their agent, the new owner would have to remove the home from the park within thirty (30) days of the sale.


In *Euclid Beach Ltd. v. Brockett*, the manufactured home park had a rule that gave the park operator the right to have a home removed from the park if one resident died and the surviving spouse sold the home.\(^{138}\) While this rule was not the basis of the decision against the park, the jury found, among other things, that the park had prevented the widow from selling her home by refusing to accept prospective buyers.

While not a strict denial of the right to sell the home, a manufactured home park operator discouraged potential buyers from buying the home from a family in *Deer Lake Mobile Park v. Wendel*.\(^ {139}\) In this case, the court found the park operator liable for tortious interference with contract and awarded actual damages, punitive damages, interest and attorney fees.

4. **Refusal to Enter into Rental Agreement with Purchaser**

The issue most often litigated is that of the park operator refusing to enter into an agreement with the purchasers. The reasons behind such refusal are often the turning point of a case. For example, in *Priode v. Degenhart*, the Greene County Common Pleas Court allowed a park operator to deny an agreement with a single woman based on her lack of credit history and her lack of independent living.\(^ {140}\) The court felt that it was not unreasonable to deny a single woman with a child when she had no credit or independent living history, and thus ruled against the sellers who had claimed sales interference.

In several appellate decisions from Auglaize, Clark and Cuyahoga Counties, the courts ruled on whether there was an unreasonable denial of a rental agreement to purchasers of mobile homes. In *Trailer Mart, Inc. v. Semanach*, the jury found for the defendants on both the eviction and damages issues and the appellate court gave nominal damages to the defendant for the sales interference.\(^ {141}\) In this case, the interference was essentially arbitrariness, attempting to force removal of the home purchased by a family


\(^{140}\) *Priode v. Degenhart*, Greene C.P. No. 87 CV 189 (January 12, 1988). In this case, a father was actually purchasing the home for his daughter and the park operator did not do a credit check on the father. The park operator’s financial arguments were based on the upkeep of the home, but he did not even check the woman’s credit.

from an “adults only” section while allowing other families with children to remain if they purchased a home from the park operator/dealer.\footnote{Juengel v. Christian, 2nd Dist. Clark No. 1973, 1985 WL 7639 (February 8, 1985).}

In \textit{Juengel v. Christian}, the Clark County Appellate Court determined that the rules of the park did not constitute interference with sales, but that the testimony about interference concerned the acts of the park operator.\footnote{The error claimed on appeal was that the rules violated 3733.11(C), now 4781.40(C), and that the court erred by finding against the weight of the evidence. The appellate court decided that the issue was not in the rules but how they were applied, i.e., the acts of the park operator, and the actions of sales interference had not been pled. The court flatly stated "the rules themselves did not cause any damage," and thus overruled the assignment of error. Id. at 3.} Because the appeal was based on the application of the rules rather than the acts of an individual, the appellate court affirmed the lower court's decision that no sales interference was established.\footnote{Toledo M.C. No. CVG-90-18516, 1992 WL 778468 (February 27, 1992).}

In 1992, the Toledo Municipal Court revisited the credit problem addressed in \textit{Priode}, supra, and made an opposite determination. In \textit{Parklane Associates v. Licata}, the court found that there was sales interference in the park operator's refusal to enter into an agreement with a young family purchasing a mobile home.\footnote{Id., slip. op. at 5. For a case allowing denial of admission based on bad credit, see \textit{Santilla v. Sahara Mobile Home Park and Sales}, 11th Dist. Lake No. 93-L-028, 1993 WL 407233 (September 30, 1993), cert. den., 69 Ohio St.3d 1444, 632 N.E.2d 912 (1994).} Gary Licata, the father of Troy Licata, purchased the home in 1987 and was not required to submit an application or have a credit check. His son moved into the home and occupied the premises until May 1, 1990, when Laura Endslove and David Haye entered into a purchase agreement on the home. The couple was denied a rental agreement even after offering a co-signer.

After the couple moved into the home without a rental agreement, the park operator attempted to evict them. The court ruled that the denial was unreasonable, in part because:

\begin{quote}
The Plaintiff's rules and regulations make no allowance for young, first time home owners who have no credit or rental history; thus denying such prospective tenants from ever establishing an acceptable rental or credit history.\footnote{The jury had decided against the park on the eviction and the appellate court discussed sales interference only in the context of potential damages. As the tenants continued to live in the park and were damaged only in a denial of their rights, the court awarded nominal damages only. On remand, the lower court granted one dollar in nominal damages. Such arbitrary acts now provide a statutory defense to eviction in R.C. 4781.45.}
\end{quote}
The park operator was found to be violating R.C. 3733.11(H)(3), now 4781.40(H)(3), by unreasonably denying a rental agreement to the purchasers of the home.\textsuperscript{147}

False statements made about the condition of a mobile home were the basis of a judgment in favor of a seller in \textit{Sprague v. Ward}.\textsuperscript{148} The park operator had made the statements in order to interfere with the sale of the resident’s home. As a result, the seller was awarded $2,381.39 in damages by the lower court. Without specifying the statements and how they interfered with the sale, the appeals court simply affirmed the award.

In \textit{Kantner v. Gibson},\textsuperscript{149} a park operator’s attempt to evict a home purchaser which had not been approved was determined to be unreasonable by the Court of Appeals for Auglaize County. In this case, the park operator simply refused to allow the purchaser to live in the park.\textsuperscript{150} The court said the eviction was premature since the purchaser was never told why the application was denied, and was not given a chance to supplement the application. The park operator had informed her that she would be refused and served a three-day notice before the application was submitted; she was never given a copy of the guidelines and many of the reasons cited by the park operator had been remedied.

\textbf{5. \textit{Age and Condition of Homes}}

None of the sales interference sections of the Ohio law are designed to prevent a park from ordering the removal of manufactured or mobile homes when they are in poor condition or do not meet the standards of the park. Other states that have decided whether such conditional standards are permissible have found that reasonable age and condition standards are acceptable. Closest to Ohio’s law on this point is Maryland, where the

\textsuperscript{147} Ironically, the failure of a purchaser to prove the existence of a manufactured home park prevented him from claiming the benefits of R.C. 3733.11(H)(3) in \textit{Shane v. Tempel}, Paulding Cty. Ct. No. CVG 9700135 (1997).


\textsuperscript{149} 3rd Dist. Auglaize No. 2-07-17, 2007-Ohio-6232.

\textsuperscript{150} The park operator argued that Ms. Gibson had not provided income or credit information and had not informed him that she was living with her parents. While she filled out the application and the park operator did accept rent for one month, he never notified her why her application was denied or how to correct the deficiencies in it.
highest court found that standards are allowed if reasonable.\textsuperscript{151} Other states have followed a similar rule.\textsuperscript{152}

During 1999 and 2000, several appellate court decisions brought Ohio into line with other states on the issue of rules governing manufactured home age and conditions. Two of these decisions came from the Eleventh District Court of Appeals which found that such restrictions were arbitrary because they did not consider anything but the age of the home which had no relevance to the aesthetic standards the park claimed they were attempting to uphold.\textsuperscript{153} The fact is that older homes may be aesthetically better or in better condition than homes newer than the arbitrary age limit.\textsuperscript{154}

In \textit{Freyermuth v. Navarre Village Homes Austin Square Inc.}, the rule provided that homes more than twelve years old must be moved out upon sale.\textsuperscript{155} The lower court found that the rule violated R.C. 3733.11(C) because it was unreasonable, arbitrary or capricious. The appellate court took a different approach but reached the same conclusion.

In 2006, the Sixth District Court of Appeals joined the other appellate courts in finding that such a rule was arbitrary and unreasonable. In \textit{LeMay v. Seckler},\textsuperscript{156} the Court determined that a rule which required removal of a mobile home from a manufactured

\textsuperscript{151} \textit{Cider Barrel Mobile Home Court v. Eader}, 287 Md. 571, 414 A.2d 1246 (1980). The reason this case is important to Ohio is that the sales interference law at that time read the same as Ohio’s. Although the court denied the right to remove the home in \textit{Eader}, Maryland courts have granted that right to mobile home parks as well. See, e.g., \textit{Van Sickle v. MOM, Inc.}, 74 Md. App. 700, 539 A.2d 1169 (1988). In Ohio, a summary judgment for a park operator was reversed for determination whether automatic removal due to the age or dimensions of a mobile home was violative of R.C. 3733.11(H)(2) and (3), now 4781.40(H)(2) & (3). \textit{Ritzman v. Mikel}, 6\textsuperscript{th} Dist. Ottawa No. OT-81-19, 1982 WL 6340 (April 2, 1982).

\textsuperscript{152} \textit{Eamillo v. Liberty Mobile Home Sales, Inc.}, 208 Conn. 620, 546 A.2d 805 (1988). In this case, the park operator denied the resident the right to sell a home older than a 1976 model, but then offered to buy the home itself. The statute allowed resale as long as the home was safe, sanitary and aesthetically reasonable given the other homes in the park. The resident won the right to sell the home and maintain it in the park.

\textsuperscript{153} \textit{Czerwonko v. Sahara Mobile Home Park & Sales, Inc.}, 137 Ohio App.3d 266, 738 N.E.2d 461 (11\textsuperscript{th} Dist. 2000); \textit{White v. Superior Homes, Inc.}, 11\textsuperscript{th} Dist. Trumbull No. 98-T-011, 1999 WL 1320188 (December 10, 1999).

\textsuperscript{154} Often these rules are found in dealer-operated parks in which they are used to eliminate older homes so that newer ones may be sold by the dealer-owner. An age standard might be appropriate for homes older than the Manufactured Home Construction and Safety Standards Act because of the safety problems that existed in some older homes.


\textsuperscript{156} 6\textsuperscript{th} Dist. Ottawa No. OT-04-032, 2005-Ohio-3068.
home park upon sale if the home was built prior to 1977 was illegal under the standards in R.C. 3733.11, now R.C. 4781.40. The homeowner spent $6,500 on upgrades to comply with safety standards and park rules prior to listing the 1972 home for sale. Despite the upgrades to the home, the resident was informed by the park operator that if the home was sold, it would have to be removed from the park and that no purchaser would be accepted as a new park resident.\footnote{Id., slip op. at ¶4.} The lower court found the rule unreasonable and arbitrary. On appeal, the park operator argued that the rule was meant to guarantee compliance with the 1974 Construction Safety and Standards Act, but the appellate court affirmed the lower court’s decision.\footnote{The standards became effective in 1977. The Court noted that the decisions in \textit{White}, supra, and \textit{Czerwonko}, supra, were that “age” alone as a standard was violative of R.C. 3733.11(C). In this case, the rule could have addressed issues such as the condition of the home. But as devised, the rule did not allow a home owner to establish “that their home was built, or improved, to be in compliance with HUD’s Safety Standards Act of 1974.” \textit{LeMay}, slip op. at ¶18.}

The Stark County Court of Appeals was faced with another type of discrimination based on $12,000 in required upgrades to a home when the resident sold it. In \textit{Bennington v. Austin Square},\footnote{5th Dist. Stark No. 2005 CA 00095, 2006-Ohio-75. The park operator continued the practice despite the appellate court finding and in 2010 the trial court awarded the Benningtons $9,680 in damages and the appellate court remanded the second appeal to the trial court for a review of the attorney fee claim. \textit{Bennington v. Austin Square, Inc.}, 5th Dist. Stark No. 2009CA00260, 2010-Ohio-5198.} the park operator required upgrades to a standard that was based solely on his personal preferences.\footnote{The trial court found that the upgrade rules had no relation to the actual condition of the homes, citing as an example the requirement to have thermo pane windows when nothing was wrong with the existing windows.} The trial court found these upgrade rules to be unenforceable and restrained the park operator from enforcing them. In addition, because the upgrade rules were only being enforced against homeowners who were selling their homes rather than all home owners, the trial court found that the rules were arbitrarily enforced and were an attempt to circumvent the appellate court’s prior ruling in \textit{Freyermuth v. Navarre Village Homes Austin Square.}\footnote{Id., slip op at 8, citing \textit{Freyermuth v. Navarre Village Homes Austin Square, Inc.}, 5th Dist. Stark No. 1999CA00187, 2000 WL 94048 (January 24, 2000).} The appellate court agreed with
the trial court and also found the rules to be unreasonable, arbitrary and capricious on the grounds of selective enforcement.\footnote{Testimony indicated that the park operator only required certain home owners to upgrade. The trial court found that if the upgrades were truly necessary for health and safety reasons as argued by the park operator, they should have been applied to all residents. \textit{Bennington}, slip op. at ¶21.}

6. \textit{Fees and Commissions}

Fees for the sale of a home, or moving a home into or out of the manufactured home park are prohibited unless the park operator actually performs the service, and then fees may be collected only to the extent of the actual work done.\footnote{R.C. 4781.40(H)(5) prohibits entrance and exit fees; R.C. 4781.40(K) prohibits commissions unless the park operator acts as seller.} There have been some Ohio cases upholding this law and finding that entrance fees, by whatever name they are called, are prohibited by law.\footnote{\textit{Anderle v. Ideal Mobile Home Park, Inc.}, 101 Ohio App.3d 122, 683 N.E.2d 348 (8th Dist. 1995); \textit{Miller Mobile Homes, Inc. v. Reeves}, Cleveland M.C. No. 92 CVG 15700, 1993 WL 837914 (March 31, 1993). For more general information see Colton, Roger & Stephen, “Challenging Entrance and Transfer Fees in Mobile Home Park Lot Rentals,” \textit{Clearinghouse Review}, July–August 1999, 180–189.}

7. \textit{Limits on Sales Interference Claims}

Two cases indicate the limits of sales interference claims. The Mentor Municipal Court refused a claim of sales interference by a woman who lined up three potential purchasers after the court had issued a writ of restitution in \textit{Mentor Trailer Park v. Clark}.\footnote{Mentor M.C. No. 79 CVG 492 (June 7, 1979). The fact that the eviction case had already been decided prior to the attempt to sell was certainly a major factor in denying the sales interference claim. In the \textit{Roe} case, supra, the eviction has been determined in favor of the resident prior to the attempt to sell, while in \textit{Clark} the resident had lost the eviction proceeding.} Determining that the park operator could not order a home removed “solely on the basis of the sale,” the court pointed out that the sale was never reached until after the home was ordered removed. To do other than deny the sale and uphold the eviction would grant a benefit to a noncomplying tenant that was not intended.

In \textit{Toland v. Wortman}, the court held that a resident of a manufactured home park must comply with the notice requirements prior to selling the home in the park and that purchasers must comply with the application requirement and have the park operator pass
on their suitability as residents.\textsuperscript{166} This does not permit a park operator to circumvent the requirements of R.C. 4781.40 and unreasonably withhold consent to new residents, but the \textit{Toland} court felt that in the facts of the case before it, the purchasers had not followed the law and therefore were never entitled to the protection of R.C. 3733.11, now R.C. 4781.40. One wonders why, if the \textit{Toland} court was correct and the purchasers had no protection under the law, the law was set up to prohibit a park operator from having a home removed on the basis of the sale, and prohibit unreasonable refusals to rent to purchasers.\textsuperscript{167}

\textbf{8. Fair Housing}

Fair housing laws create an additional issue to be considered regarding the admission of persons, not homes, to a manufactured home park. Both federal\textsuperscript{168} and state\textsuperscript{169} law prohibit discrimination in housing, although the grounds vary between the state law and federal law.\textsuperscript{170} The issue of race has been the “hot issue” and both federal\textsuperscript{171} and state\textsuperscript{172}...

\textsuperscript{166} Licking Cty. M.C. No. 90-CVG-997(September 6, 1990).
\textsuperscript{167} It would seem that the court eliminated 3733.11(H)(3), now 4781.40(H)(3) from the law because if a purchaser is not entitled to the protection of that section of law, not yet being a resident, no purchaser would ever have the right to prevent an unreasonable refusal of the right to a rental agreement.
\textsuperscript{168} 42 U.S.C. 3601–3614.
\textsuperscript{169} R.C. Chapter 4112 governs civil rights in public accommodations in general; R.C. 4112.01(H) fair housing in specific.
\textsuperscript{170} The state law, for example, incorporated the 1988 Fair Housing Act Amendments in 1992, but left some differences between the two laws. For example, at this time, Ohio law does not exempt certain types of dwellings as does federal law. Most notable would be the applicability of the case in which the property owner has four or fewer rental units, covered by Ohio law, but exempt under federal law.
\textsuperscript{171} \textit{United States v. Warwick Mobile Home Estates, Inc.} 537 F.2d 1148 (4\textsuperscript{th} Cir. 1976), remanded, then affd on app., 558 F.2d 194 (4\textsuperscript{th} Cir. 1977). Courts in both the Northern and Southern Districts of Ohio have ruled on cases involving racial discrimination in mobile home parks. In 1978, the Southern District of Ohio found racial discrimination in the refusal to lease a home to a biracial couple and awarded $25,000 in compensatory damages and $25,000 in punitive damages. \textit{Pollitt v. Bramel}, 669 F.Supp. 172 (S.D. Ohio W.D. 1987). The Northern District of Ohio found that discriminatory comments, differences in ownership rights and discriminatory parking practices could form the basis of a fair housing complaint. \textit{Green v. Westgate Village Mobile Home Park}, Civil Action No. 3:98cv07475 (N.D. Ohio W.D. 2000). While the decision was a procedural one to overturn a summary judgment decision, the court found enough evidence to show that racial discrimination was possible. The white plaintiff was told by the manager of the park that it was improper for him to be living with a woman, especially a “black whore.” Following this discussion, the park manager interfered with Mr. Green’s purchase of a mobile home and enforced parking regulations against him, but not against other residents of the park. Id., slip op. at 6.
courts have determined that discrimination on a racial basis is illegal for manufactured home parks. In terms of the age of residents, the law permits adult-only parks under certain circumstances, but in the Fair Housing Amendments of 1988, families with children have protection of the civil rights laws in rental or purchase with a few exceptions.

In one case from the early 1990s, a federal court found that a manufactured home park operator was violating the Fair Housing Laws by discriminating against families with children. Although the park operator claimed it was exempt under the law, the court found that the park did not provide the services to older adults that are required for such an exemption. The park’s claim that nearby off-site facilities and services should be considered was dismissed because the park itself was not providing them. In 2011, the U.S. District Court for the Northern District of California found that local ordinances

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172 *Ohio Civil Rights Commission v. Lysyj*, 38 Ohio St.2d 217, 313 N.E.2d 3 (1974). In this case a resident was asked to move after having a black friend visit her in the mobile home park.

173 Under the law at the time, the park was “housing for older persons” if all residents were over age 62 and the secretary of HUD determined it was intended only for senior citizens or at least 80% of all units were occupied by a person over age 55 and there were substantial facilities and services designed to meet the physical and social needs of older persons. 42 U.S.C. 3607(b)(2); see also 24 C.F.R. 100.300–304. However, the law changed in December 1996 and eliminated the requirements for facilities and services so that now the only requirement is that 80% of the residents be over age 55 and that there be a declaration that the park is for senior citizens only.


175 The eviction case against a woman and her son was enjoined, and the fair housing discrimination was permanently enjoined. Other plaintiffs included a mobile home broker and the Toledo Fair Housing Center. *Park Place Home Brokers v. P-K Mobile Home Park*, 773 F.Supp. 46 (N.D. Ohio 1991).

176 The services claimed by the park were general snow removal, grass cutting, good lighting, and strict rules enforcement. Id.; see also *Hooker v. Weathers*, 990 F.2d 913 (6th Cir. 1994).

177 On the bulletin board were numbers for meal delivery, transportation and monthly events at the senior center. The park did have a van to transport residents to programs in the Toledo area. In *Hooker*, the court remanded with a general statement that the park had not shown it met the “other persons” exemption. Today this park would be exempt as senior citizen housing due to the elimination of the services and facilities requirement.
allowing a municipality to declare a park as senior housing violated the Fair Housing Act’s discrimination based on family status.178

The Ohio Civil Rights Commission has ruled at least twice on family status discrimination cases in manufactured home parks. In one case, a park operator twice refused to allow the sale of a home in a proclaimed adult-only section of the park to two families with children.179 The agency determined that the area that had been set aside did not meet any of the exceptions to the familial status prohibition of discrimination, and awarded the complainant $17,928 in actual damages, $7,500 in punitive damages, and $11,258 in attorney fees for the Ohio Attorney General’s office.180 In another case, the agency determined that granting adults additional hours at the swimming pool did not decrease the rights of children and denied the familial discrimination claim.181

On a federal level, two decisions in cases brought under the Fair Housing Act show that manufactured home parks must reasonably accommodate disabled persons. In United States v. Freer,182 a park was enjoined from continuing to withhold consent for a resident to install a wheelchair ramp. Another court returned a case to the lower court to determine whether a park operator was required to waive fees for long-term guests who were care givers required to live with a disabled person.183 A settlement in a third federal case

178 Waterhouse v. City of American Canyon, No. C-10-10-01090, 2011 WL 2197977 (N.D. Cal. 2011). In a case reversed from the norm, a park was purchased and the management decided to end its “senior only” status. In response, the city enacted a series of moratoria forbidding the conversion of the senior park to an all-age park. The park operators sued the city and the court found that the city had imposed an onerous process to convert to a non-senior facility. The city defended itself by saying they were not preventing seniors from moving into a park, but only required that the park reject non-seniors from residence.


180 Actual damages included $6,000 which was the difference between the purchase price under the conditional contract and the final selling price, $6,518 in interest, $410 additional insurance payments and lot rental, and $5,000 for emotional distress.

181 Falbo and Cappelletty v. Raintree Village, Civil Rights Comm. No. 8582-8583 (June 21, 2001). In this case the park provided extra evening hours for adults to swim without the presence of children, but did not change the existing hours which allowed children to use the pool during the day.


183 U.S. v. California Mobile Home Park Management Co., 29 F.2d 1413 (9th Cir. 1994). The live-in aide was a reasonable and necessary accommodation for the resident as required by 42 U.S.C. 3604(f)(3)(B). The problem arises because most manufactured home parks ban long-term guests to avoid problems with unauthorized occupants. In the instant case, the long-term guest was actually a necessity for the resident’s independent living and thus the park should have made reasonable accommodations for the resident.
eliminated late fees for persons receiving disability payments after the rental due date.\textsuperscript{184} In 2012, a federal court approved a preliminary injunction for a disabled person allowing her to have a live-in aide and preventing the park from evicting her because of the aide. In the final court judgment, the court awarded the resident $262,307 in damages.\textsuperscript{185}

Recently sexual harassment by a park operator against a resident was determined to violate federal and state fair housing laws and the resident was awarded nominal and punitive damages and attorney fees for the park operator’s harassment.\textsuperscript{186}

IV. \textbf{REMEDIES OF RESIDENTS}

Manufactured home park residents have three statutory remedies available for violations of the law by the park operator. The rent escrow provisions found in R.C. 4781.41 to 4781.43 are similar to those found in the original landlord/tenant law provisions found in Chapter 5321. Unlike tenants whose rights are governed by Chapter 5321, however, manufactured home park residents have greater ability to recover damages for park operator violations. If a park operator breaches any of his/her obligations under R.C. 4782.38, the resident has a claim for damages.\textsuperscript{187} Further, R.C. 4781.40(I) provides for damages for violations of any of the rental agreement provisions in R.C. 4781.40(A) to (H) by the park operator.\textsuperscript{188}

\textsuperscript{184} \textit{LeGare v. Cypress Point, LLC}, Case No. 3:08-cv-01591-JGC (N.D. Ohio W.D. 2008). The settlement recognized that persons receiving only disability income could mail their rent payment later as a reasonable accommodation.

\textsuperscript{185} \textit{Parris v. Pappas}, Case No. 3:10CV1128, 2010 WL 5157326 (D. Conn. 2012). In addition, the court awarded $89,392.50 in attorney fees. \textit{Parris v. Pappas}, 844 F.2d 262 (D. Conn. 2012). The park operator then filed for bankruptcy, but the court found the debt to be non-dischargeable. \textit{In re Delaney}, 504 B.R. 738 (Bkrtcy. D. Conn. 2014).

\textsuperscript{186} \textit{Cook v. Clark}, Ross C.P. No. 94-CI-161 (February 27, 1997) ($1 nominal damages, $2,000 punitive damages and $3,150 attorney fees).

\textsuperscript{187} R.C. 5321.04 limits tenants to damages for illegal entry only while this provision allows damages for habitability violations. However, under the catch-all provisions of R.C. 5321.12, other damage claims may be permitted. The manufactured housing law simply provides a statutory right to damages for conditions violations without resorting to common law or other related claims in order to pursue damages based on bad living conditions.

\textsuperscript{188} There is no similar provision in Chapter 5321. This allows for damages for park operator interference with sales as well as improper fees or other rental agreement violations.
A. **Rent Escrow**

When there are problems with the conditions of the mobile home park, or the park operator has not corrected problems as requested by the resident, R.C. 4781.41 to 4781.43 provide specific remedies to the residents. The options of the residents are similar to the options available to tenants under Chapter 5321, with the exception that termination of the rental agreement is not available in mobile home law.

1. **Procedure**

If the park operator fails to fulfill any of his/her obligations under R.C. 4781.38 or the rental agreement, the living conditions in the park are such that the resident reasonably believes the park operator has failed to meet those obligations, or if a governmental agency has cited the park operator for violations of health, safety or housing codes that could materially affect health and safety of the residents, a resident may avail himself of the rent escrow procedure. Before using the escrow procedure, the resident must first give or send a notice of intent to the park operator at the place where the rent is normally paid, unless the R.C. 4781.51 notice was not given to the resident. The notice must specify the acts, omissions or code violations of the park operator.

If the park operator fails to correct the conditions within a reasonable time, i.e., 30 days or less, depending on the severity of the condition, the resident may then elect a remedy from the list provided in R.C. 4781.41(B). If the resident is current in rent, the resident may escrow his/her rent with the court and apply to the court for a reduction of

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189 R.C. 4781.41(A).

190 R.C. 4781.41(A) directs the notice to the person or place where rent is normally paid. R.C. 4781.51(C) provides the waiver of the notice if the resident is not notified according to R.C. 4781.51(A) or (B). If the notice is not specific as to the violations, the court will not have the jurisdiction to hold the rent according to the court in *Gettysburg Homeowners Association v. Ellenburg Capital Corp.*, 80 Ohio App.3d 555, 609 N.E.2d 1315 (12th Dist. 1992). In this case, the notice simply referred to the laws and codes but did not specify how the park violated them. Id. at 558–89.

191 For a sample escrow notice, see Appendix, Document 8.
rent as well as an order for the park operator to remedy the condition. If the resident is not current in rent, he may still seek relief in the form of a temporary restraining order or other injunctive relief under Civ. R. 65.

The clerk of court will notify the park operator once the escrow has occurred and the operator may request release of the escrowed rent. Procedurally, the resident may then file any claims against the landlord as in other civil cases. Within 60 days, the matter will be heard and the court will either release the rent, continue to hold it, or release part of it for the park operator to correct conditions. The park operator may use the money to make mortgage payments and other payments related to correcting the deficiencies in the park.

One issue that has arisen is which courts may hear rent escrow cases. While the statute clearly states that rent may be escrowed in the municipal or county court, the resident in Superior Mobile Homes v. White attempted to put his money into escrow with the common pleas court during a related action in that court. The court cited Woodlake Associates v. Heringhausen in concluding that statutory requirements for rent escrow are mandatory and because the man had attempted to deposit the rent in the wrong court rather than pay the park operator, he would be evicted.

Another challenge concerned the types of issues that may be addressed through rent escrow proceedings. In Schindler v. Columbia-Brook Park Mgt., Inc., the local court found that the escrow law does not provide tenants a right to challenge rent increases but only addresses the ability to protect the residents from building, safety and housing code

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192 See Bennett v. Croxford, Athens M.C. No. RE250, 1996 WL 934601 (October 14, 1996) (reduced rent $60 per month; if repairs not made within five months, reduction to zero rent); Pikewood Manor v. Jones, Elyria M.C. No. 79 CV 2309 (January 20, 1982) ("complete reduction of rent"). For an example of rent reduction and an order to escrow rent which arose from a temporary restraining order hearing, see DeVoll v. Greathouse Property Mgt., Muskingum Cty. Ct. No. CVF 9800422 (October 8, 1998). If the resident is not current in rent or does not deposit rent, relief under this statute will be denied. Hawkins v. Crawford, Athens M.C. No. RE 227 (September 27, 1994).

193 R.C. 4781.43.

194 R.C. 4781.44.

195 R.C. 4781.41(B)(1).


violations. However, the appeals court ruled that the local court had no jurisdiction to decide anything and dismissed the case because it rightfully should have been transferred to the common pleas court.

The park operator may challenge the action of the residents, claiming the rent escrow case was begun in bad faith. When a case is brought improperly, the park operator may receive damages and attorney fees. As a result, many times park operators routinely make this claim as a defense.

One such attack on the rent escrow rights of manufactured home park residents was turned back in *Wickham v. Woodlyn Acres*. In *Wickham*, the park operator claimed that environmental violations could only be pursued through the Ohio Environmental Protection Agency pursuant to R.C. Chapter 6109. The court found, however, that a resident could pursue escrow under the landlord/tenant law for any condition that violated a park operator’s duties under R.C. 4781.38. That section includes requirements that the park operator comply with other state laws as well as maintain in good and safe working order water systems supplied by him or her.

Another attack centered on the right to escrow rent even when the resident cited the wrong statute. In *Stoots v. Huber Mobile Home Park*, the applicant had written the request to escrow pursuant to R.C. 5321.07 rather than R.C. 4781.41. The court determined that the escrow was not doomed simply because the wrong law was cited. Except for listing

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199 *Columbia-Brook Park Mgt. v. Schindler*, 8th Dist. Cuyahoga No. 81092, 2003-Ohio-1156. The appellate court vacated the ruling and dismissed the case, pointing out that the residents’ claim for over $25,000 was above the jurisdictional limits of the Municipal Court. As a result, the case should have been transferred to the Court of Common Pleas.

200 R.C. 4781.43(D).


202 The water was discolored with contaminants above the maximum allowable level under EPA regulations.


204 *Stoots v. Huber Mobile Home Park*, 2nd Dist. Greene No. 1180, 1981 WL 2863 (July 27, 1981). The Fifth District Court of Appeals recently made the same finding in *Courts v. Buckeye Lake Estates Mobile Home Park*, 5th Dist. Licking No. 01-CA-0021, 2002-Ohio-2889. In this case the escrow action had been filed pursuant to R.C. 5321.07 rather than R.C. 4781.41, but the court found that the two laws were the same and that the error was harmless because the provisions were almost identical and the “review and consideration of the evidence would have been the same under either statute.” Id. at 7.
the correct section of the law, the resident had done everything required under 4781.41. In *Swogger v. Merkel*, another case, the park operator attempted to claim the escrow was invalid because the notice of noncompliance did not state that the residents would escrow their rent. The court in *Swogger* merely stated that the law provides for escrow and the park operator’s ignorance of the possibility was no excuse.

A similar issue arose when a park operator challenged the underlying notice on which rent escrow was based. A residents’ association sent a letter to the park operator listing problems with deterioration of the streets, failure to remove vacant homes, vermin and pest problems, lack of maintenance of the water system and failure to provide safe recreational areas. The park operator attacked the notice as insufficient because it did not cite specific instances or problems. The Second District Court of Appeals, however, found that the statute is designed to sufficiently notify the park operator of the problem, but does not require identification of every pothole or stray animal.

The question of whether a court must end the rent escrow when the park operator has substantially complied with the repair orders was the heart of the decision in *Willow Rest Trailer Park Inc. v. Willow Tenants Association*. In this case, the park operator had corrected 16 of the 17 problems listed at the beginning of escrow. Only those homes that were still facing flooding of their lots were allowed to continue the escrow while the money for all the other families was released.

One manufactured home park operator argued that the residents must follow rent escrow procedures and may not obtain an injunction to remedy the problems of conditions in a manufactured home park. The court in *Arndt v. P & M Ltd.*, however, pointed out

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205 Id.
208 Id., slip op. at 3.
210 Id.
211 163 Ohio App.3d 179, 2005-Ohio-4481 (11th Dist.).
that the landlord/tenant law, R.C. 4781.38(B)(2) expressly provides for injunctive relief aside from the rent escrow scheme.212

While a park operator is entitled to attorney fees if a resident improperly begins rent escrow,213 in Rex Hill, Inc. v. Cherry, the court determined that the resident had improperly begun rent escrow, but called the finding instructive, not dispositive, and refused to award damages or attorney fees to the park operator.214 In Smith dba Glenwillow v. Vilk, however, the appellate court not only upheld an award of costs and nominal damages to the park operator, but also tacked on an additional $100 for a frivolous appeal.215

A court’s assignment of costs of the escrow to residents was overturned in Woodside Terrace Mobile Home Owners Association v. Woodside Terrace Co., Ltd.216 The lower court dismissed the escrow without allowing the procedural rights under 4781.41 and without any finding as to why the dismissal was granted. The court then assessed costs against the residents. Overturning the lower court, the appellate court determined that without a finding of wrongdoing by the residents under R.C. 4781.41(C), the court could not tax costs against them.

1. Results of Escrow Cases

A mere outline of the statutory resident remedy section is just bare bones without the flesh that the case law has developed. In the determinations made under R.C. 4781.41, the courts have alternatively released rent pending repairs217 and have ordered continued

212 Id. The court stated that the rent escrow statute merely created “remedies not otherwise available at law, i.e., allowing residents to deposit their rent into escrow and granting the trial court broad power to order compliance.” Id. at 188. Because the residents chose to follow R.C. 4781.38(B), they were not required to follow the rent escrow procedures.

213 R.C. 4781.43(C).


215 Smith v. Vilk, 8th Dist. Cuyahoga No. 46759, 1983 WL 2902 (December 15, 1983). There had been a negotiated settlement attempted, but not reached. The court finally held hearings, entered a judgment for the park operator and $1 nominal damages and costs. The costs of the case were $1,208.55. Attorneys for the 42 residents claimed that the costs were set by R.C. 3733.121(D) (now 4781.43) at 1% of the fees, but the court stated that the statute referred only the costs of the escrow case, not the legal costs of the parties.


217 Tenants v. Norval Co., Sylvania M.C. Nos. 84 CV 5 to 64, 85 CV 1 to 58 (January 15, 1985).
escrow. Another court released part of the rent while keeping some for specific repairs it ordered under R.C. 3733.12(B)(2), now R.C. 4781.41(B)(2). Another dismissed the escrow of 21 families after repairs were made, but retained the money for 14 families until further repairs were completed.

In June 1988, the Lawrence County Municipal Court accepted the tenant’s rent escrow under R.C. 4781.41 in *Gibson v. Suiter.* The next month, the park residents amended their complaint to request an order to remedy conditions, an order to reduce the rent, and an order to use the deposited rent to make repairs. Not until April 1989 did the referee release rent, and then he released all of the rent to the park operator after finding that most of the repairs were done. The case proceeded on the damages claim in June 1989.

The Perrysburg Municipal Court had a similar procedural posture in *Shouhayib v. Yarger.* After residents escrowed their rent, the park operator applied to terminate the escrow. Trial was held and the court determined the park operator was violating EPA water quality requirements and continued the rent escrow.

In a microcosm, the *Gibson* and *Shouhayib* cases demonstrate how the rent escrow law is supposed to work. The residents notified the park about conditions, and then filed their rent with the court. They requested a variety of relief as the statute allows. The park operator then requested that the money be released. Eventually the repairs were made, the money was released, and the case went to trial on the damages.

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219 *Swogger v. Merkel,* Carroll Cty. M.C. No. 4139, 1989 WL 572092 (November 4, 1989). The court released $1,252.05 but retained $1,020 to secure performance of its order to repair the roads and correct drainage problems.
220 *Quinlan v. Mobile Manor Mobile Home Park,* Cuyahoga Falls M.C. Landlord/Tenant No. 40, 1983 WL 191087 (January 11, 1983). The court dismissed the park operator’s complaints under 4781.44 that the claims were brought in bad faith or that the residents created the problem. By finding that the problems existed, the court virtually eliminated the park operator’s claim.
B. Receivership

Residents of a manufactured home park or those holding secured interests in the property may request that a receiver be appointed to operate a manufactured home park. This may occur in both landlord/tenant and foreclosure contexts.223

Residents of a Clermont County manufactured home park filed a class action complaint against their park operators in August 2011, alleging that the park operator had failed to maintain the three parks they owned in a habitable condition. Several parties intervened and in September 2011, a receiver was appointed to operate the parks during the litigation. In February 2012, the court granted summary judgment to the residents as to liability only and the residents continued to pay their monthly rent and fees to the receiver. In March 2012, the park operator gave a deed in lieu of foreclosure to FSTB, one of its lenders, and over time a dispute ensued as to the distribution of funds held by the receiver. In April 2012, the court ordered the rents released to the residents, and the lender moved to garnish the funds along with other assets of the former park operators. A final judgment in favor of the residents was granted by the lower court in September 23, 2013, and one of the lenders appealed. The appellate court overturned the lower court order and granted the funds to FSTB, whose lien was first in time and included in both its August 2008 promissory note and in the deed in lieu of foreclosure a provision that the park operator conveyed all its interests in rents to FSTB.224

C. Injunctive Relief

The manufactured home park landlord/tenant law also allows a resident to request injunctive relief as an alternative to only depositing money with the court.225 A resident may alternatively apply to the court for an order directing the park operator to remedy the condition, an order reducing the periodic rent, or an order to use the deposited rent to...


225 See Arndt v. P & M Ltd., 163 Ohio App.3d 179, 2005-Ohio-4481. R.C. 3733.10(B) expressly provides for injunctive relief aside from the rent escrow scheme.
remedy the condition.\textsuperscript{226} Along with the injunctive relief, the resident may also escrow rent if permitted by the court.

In cases of poor living conditions, the law also allows a request for injunctive relief if the park operator violates any of his/her duties to maintain the property.\textsuperscript{227} In one recent case the lower court ordered connection to a municipal water system, testing and notice of any problems with water during the process. The appeals court then remanded the case for determination of the terms of testing, notice and short-term relief for the residents.\textsuperscript{228}

Courts have ordered repairs where the park operator has not corrected the problems and settlement cannot be reached. Failure to correct standing water problems led to a 50\% reduction of rent in \textit{Bennett v. Croxford}.\textsuperscript{229} Reduction of rent to zero and an order to repair and damages were granted by the court in \textit{Hopkins v. Haas}.\textsuperscript{230} In \textit{Swogger v. Merkel}, the park was ordered to correct drainage problems it had not previously corrected.\textsuperscript{231} The court recommended a complete elimination of rent after finding that drainage problems existed which were not conducive to good habitation in \textit{Pikewood Manor v. Jones}.\textsuperscript{232} In \textit{Jakacki v. Raineri}, the court found the park operator in violation of laws concerning roads, lighting and common areas/playgrounds.\textsuperscript{233}

\textsuperscript{226} R.C. 4781.41(B)(2).

\textsuperscript{227} R.C. 4781.38(B). Notice that this is much broader than what is allowed under the corresponding section of the regular landlord/tenant law found in R.C. 5321.04. In the law applicable to other types of rental housing, tenants may only seek an injunction for a landlord’s violations of the provisions governing access to the home, while R.C. 4781.38(B) applies to a park operator’s violations of “any provision of this section.” See, e.g., \textit{Arndt v. P & M Ltd.}, 163 Ohio App.3d 179, 2005-Ohio-4481, remanded, appeal after remand, 2008-Ohio-2316; \textit{Blake v. Townsend}, Belmont Cty. Ct. No. 06 CVH 00165 (June 19, 2006), in which the court ordered the park operator to make repairs.

\textsuperscript{228} \textit{Non-Resident Employees of Chateau Estates Resident Assoc. v. Chateau Estates, Ltd.}, 2\textsuperscript{nd} Dist. Clark No. 2002-CA-68, 2003-Ohio-2514, remanded, then aff’d., 2\textsuperscript{nd} Dist. Clark No. 2004CA19-20, 2004-Ohio-3781 ($13 per person per month for bottled water was sufficient), remanded, 162 Ohio App. 455, 2005-Ohio-3739 (timetable for resolution could be changed by lower court). The latter court decided that a water filtering system was the most expeditious way of resolving the problem. 162 Ohio App.3d at 464.

\textsuperscript{229} Athens M.C. No. RE150, 1997 WL 810094 (April 18, 1997).

\textsuperscript{230} Chillicothe M.C. No. 92 CVF 11 (February 27, 1992).


\textsuperscript{232} Elyria M.C. No. 79 CV 2309 (January 20, 1982).

The court in *Jones v. Superior Mobile Homes Inc.* ordered the park operator to repair broken pads.\textsuperscript{234} Mrs. Jones, a long-time resident, had her home shift because of pad damage caused by drainage undermining the concrete. When the park operator refused to repair the damage, the resident filed a rent escrow action and the court ordered the repairs. Unique to this case was the order that the park operator had to either put the Jones home on a new pad or provide alternate housing and payment of services while they repaired the concrete pad.\textsuperscript{235}

### D. Damages

Under both statutory and common law theories, residents may recover damages from park operators. The possibility of damage recoveries under the statutes and common law tort theories is discussed briefly below. A chart (Table 9) in Section VI(b) summarizes cases involving damage awards in manufactured and mobile home cases.

1. **Contract**

A resident may receive damages when the park operator violates the rental agreement\textsuperscript{236} or fails to remedy any of the conditions which are the park operator’s responsibility under R.C. 4781.38.\textsuperscript{237} Most of the cases concerning conditions in manufactured home parks have been discussed in the sections involving park operator duties, resident responsibilities, and rent escrow cases.\textsuperscript{238} Similarly, damages may be obtained for park operator retaliation or illegal conduct under R.C. 4781.36 and 4781.49.

2. **Tort Liability**

Liability may also accrue under tort law. R.C. 4781.46 provides that any party may recover damages for the breach of contract or breach of any duty imposed by law. The similar statute in the original landlord/tenant law has been determined to apply common


\textsuperscript{235} Id., slip. op. at 3.

\textsuperscript{236} R.C. 4781.40(I).

\textsuperscript{237} R.C. 4781.38(B).

\textsuperscript{238} See Chapter 5, Sections II(A), II(B) and IV(A), supra.
law liabilities in tort to injuries sustained on residential premises. Because the cases arise in tort, the two-year statute of limitations applies rather than the longer statute of limitations for violation of a statute. As such, the Fourth District Court of Appeals upheld the dismissal of an action involving damage from trees that fell onto a mobile home in a park because the negligence statute of limitations had run, even though the resident filed the claim as a violation of the landlord/tenant statute.

In mobile homes cases, two different types of tort liability may be raised. Most cases litigate negligence issues, but other torts claims may be raised. Recently a court awarded a claimant $12,250 in damages on a claim of tortious interference with contract. While both tort and contract issues were raised, the court apparently made its decision on a tort basis, not a contract basis, and therefore punitive damages could be awarded.

In terms of tort liability, the best statement of the general tort law regarding landlords may be that found in Ohio Landlord/Tenant Law by Frederick White. Much of the litigation involving mobile homes has resulted in findings for the landlord or manufactured home park due to the difficulty of proving the necessary knowledge of defects on the part of park operators.

Park operators who rent lots for mobile homes or the mobile homes themselves, have been determined to have no liability for injuries due to poison ivy, ice and snow, and fire. Park operators have also been found not liable in tort for injuries due to dog attacks.

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240 Pummill v. Carnes, 4th Dist. Ross No. 02CA2659, 2003-Ohio-1060. The court cited the Supreme Court decision in Shroades v. Rental Homes, Inc., 68 Ohio St.2d 20, 427 N.E.2d 774 (1981), that violations of the statutes in regards to conditions in a rental situation was negligence per se. The statute of limitations for negligence is two years rather than six years if the claim was based on the violation of a statutory duty. Pummill at ¶33.
241 Deer Lake Mobile Park v. Wendel, 11th Dist. Geauga No. 2002-G-2438, 2003-Ohio-6981. The lower court granted $5,000 in actual damages; $2,000 in punitive damages, $250 interest and $5,000 attorney fees.
244 Straley v. Keltner, 109 Ohio App. 51, 164 N.E.2d 186 (2nd Dist. 1959). The court held that the tenant had assumed the risk by walking on ice-covered concrete to dispose of the trash.
245 Skipper v. Bowling, 5th Dist. Stark No. CA 6625, 1984 WL 7248 (January 17, 1984). The landowner did not originally own the rented home that burned down. He purchased it from the original owner and was unaware of the defect which caused the fire. Without that knowledge, he could not be found liable in tort.
by pets owned by tenants in the park\textsuperscript{246} and criminal acts of others.\textsuperscript{247} When there were questions of fact regarding whether an accumulation of ice and snow,\textsuperscript{248} a fall in a hole on the land with a mobile home,\textsuperscript{249} a fall on a private road owned by the park operator,\textsuperscript{250} a fall due to wet ground near a retaining wall\textsuperscript{251} or the use of park property for sledding\textsuperscript{252} were due to park operators’ violations of the landlord/tenant law, the court reversed summary judgments for park operators and remanded the cases for trial. Summary judgment for a park operator was also reversed when the failure to make changes in a flood-prone area damaged homes.\textsuperscript{253} Similarly, a summary judgment for a park operator was reversed to determine whether the injuries occurred in the park or on a public roadway.\textsuperscript{254}

Recently a tenant in a manufactured home park was awarded $300 for damages to her personal property due to the park operator's failure to repair the roof on the manufactured home. According to the court in \textit{Apel v. Wolf}, promised repairs to the roof

\textsuperscript{246} \textit{Garrard v. McComas}, 5 Ohio App.3d 179, 450 N.E.2d 730 (10\textsuperscript{th} Dist. 1982). The dogs were owned by another resident of the park who may have been violating the pet policy. Even if there was no policy, however, the court found that the park operator did not own the dogs and had no liability. See also, \textit{Jowers v. Eastgate Village Ltd.}, 12\textsuperscript{th} Dist. Clermont No. CA98-10-095, 1999 WL 374131 (June 7, 1999) (bite occurred in resident’s home, not in common areas); \textit{Burgess v. Takacs}, 125 Ohio App.3d 294, 708 N.E.2d 706 (8\textsuperscript{th} Dist. 1998); \textit{Thompson v. Irwin}, 12\textsuperscript{th} Dist. Butler No. CA97-05-101, 1997 WL 666079 (October 27, 1997); and \textit{Bundy v. Sky Meadows Trailer Park}, 12\textsuperscript{th} Dist. Butler No. CA 89-01-002, 1989 WL 125379 (October 23, 1989).

\textsuperscript{247} \textit{Morris v. Anthony Estates}, 6\textsuperscript{th} Dist. Wood No. WDC-84-15, 1984 WL 7911 (June 15, 1984). The home was removed by unknown parties in a criminal act after a court had ordered eviction of the home. The park did not participate in the removal and did not take control of the home.

\textsuperscript{248} \textit{Base-Smith v. Lautrec, Ltd.}, 12\textsuperscript{th} Dist. Butler No. CA2013-07-115, 2014-Ohio-349.

\textsuperscript{249} \textit{Middaugh v. Morrow}, 4\textsuperscript{th} Dist. Scioto No. 1342, 1981 WL 2649 (December 4, 1981).

\textsuperscript{250} \textit{Wood v. Crestwood Assoc., LLC}, 2\textsuperscript{nd} Dist. Allen No. 1-09-37, 2010-Ohio-1253.


\textsuperscript{252} \textit{Trimble v. Holiday Homes}, 10\textsuperscript{th} Dist. Franklin No. 95 APE-12-1647, 1996 WL 257459 (May 16, 1996).

\textsuperscript{253} \textit{Arndt v. P & M. Ltd.}, 11\textsuperscript{th} Dist. Portage Nos. 2007-P-0038 and 2002-Ohio-P-0039, 2008-Ohio-2316. The court determined that purported violations of a legislative obligation, in this case the flood plain regulations, are analyzed within a claim for negligence. \textit{Id}. at \textsuperscript{38}. Damages may be recovered by the residents for the breach of the duty to ensure that the park is not subject to recurrent flooding. \textit{Id}. at \textsuperscript{44}. The court also left the door open to the residents’ claims for punitive damages because the facts could prove actual malice necessary to support the claim. \textit{Id}. at \textsuperscript{91}. After the trial court ruled in favor of the park operator, the appellate court affirmed the judgment. \textit{Arndt v. P & K, Ltd.}, 11\textsuperscript{th} Dist. Portage No. 2013-P-0027, 2014-Ohio-3076.

\textsuperscript{254} \textit{Hall v. Zambrano}, 9\textsuperscript{th} Dist. Wayne No. 13CA0047, 2014-Ohio-2853.
of the home were either not performed or were inadequately performed, the result being damage to the tenant's personal property.\textsuperscript{255}

In contrast, the park operator in \textit{Hoeflich v. Hedrick} had no liability when a resident fell on an elevation between a grassy area and the roadway.\textsuperscript{256} In this case, the woman had known of the elevation difference for two years and could not prove that her fall was proximately caused by the condition. Citing \textit{Baldauf v. Kent State University},\textsuperscript{257} the court agreed that her knowledge of an obvious condition in the six-inch deviation was not a concealed defect so as to make the park liable for her injuries. Falling into a slight indentation in the ground was not grounds for tort liability in \textit{Sterling v. Stevens}.\textsuperscript{258}

In 2002, the Third District Court of Appeals twice addressed a case involving tort liability in a manufactured home park. In the first case, the court overturned a lower court decision which granted summary judgment to a manufactured park operator who rented a home to a family who was subsequently injured by carbon monoxide poisoning. The lower court found that, because the park operator had no notice of a carbon monoxide problem, the park was entitled to summary judgment. The appellate court determined that there was a dispute regarding whether the park operator had notice because a prior problem existed with the furnace and there was a dispute of evidence whether the park operator’s handyman had correctly repaired the problem.\textsuperscript{259} After remand, the lower court again found in favor of the park operator and the appellate court on the second appeal affirmed the summary judgment.\textsuperscript{260} In a different action for negligent repairs, one homeowner was found liable to a neighboring home owner in \textit{Stahl v. Neff}.\textsuperscript{261}

\textsuperscript{255} \textit{Apel v. Wolf}, Newton Falls M.C. No. CVG960027, 1996 WL 740085 (September 10, 1996).
\textsuperscript{256} \textit{Hoeflich v. Hedrick}, 5\textsuperscript{th} Dist. Richland No. 95-CA-45, 1996 WL 132278 (March 15, 1996).
\textsuperscript{257} 49 Ohio App.3d 36, 550 N.E.2d 517 (11\textsuperscript{th} Dist. 1988).
\textsuperscript{258} 7\textsuperscript{th} Dist. Jefferson No. 02 JE 47, 2003-Ohio-5153.
\textsuperscript{259} \textit{Trammell v. McDonald}, 3\textsuperscript{rd} Dist. Defiance No. 4-01-26, 2002-Ohio-1422.
\textsuperscript{260} \textit{Trammell v. McDonald}, 3\textsuperscript{rd} Dist. Defiance No. 4-04-15, 2004-Ohio-4805. Interestingly, the local court determined the case based on R.C. 5321.04, which does not apply in cases in which the tenant is a resident of a manufactured home park as was the case here.
\textsuperscript{261} 3\textsuperscript{rd} Dist. Seneca No. 13-08-09, 2008-Ohio-5195. One home had been damaged in a windstorm when debris from a neighboring home hit it.
3. **Illegal Actions by Park Operator**

Certain courts that have addressed acts alleged to violate R.C. 4781.49, have held park operators responsible for intimidation of residents. In *Stein v. Fairview Community Park Co.*,\(^{262}\) the court granted a restraining order to prevent illegal threats from being carried out. In a case where the illegal threat was put into action, a jury awarded $563 in compensatory damages to a resident.\(^{263}\) In another case where property was seized and the resident excluded from the home, $493 damages and $500 punitive damages were awarded the resident.\(^{264}\) Malicious telephone harassment and other unidentified harassment resulted in an award of $100 compensatory and $1,000 punitive damages in *Nichols v. Malone*.\(^{265}\)

In 2003, the Sixth District Court of Appeals reversed a summary judgment decision because a park operator had removed and destroyed a home without a writ of restitution.\(^{266}\) In 2007, the Athens Municipal Court granted a judgment for compensatory and punitive damages when a park operator removed a water meter, thereby cutting off water service in an attempt to constructively evict the resident.\(^{267}\)

In several recent cases, residents received large damages awards. Two residents of a Montgomery County manufactured home park received $3,000 each plus attorney fees for wrongful termination of utility service.\(^{268}\) A $9,500 judgment for a lockout and conditions problems was awarded by the Jackson Municipal Court in *Lester v. Swisher*.\(^{269}\) Tenants of

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\(^{262}\) Cuyahoga C.P. No. 33061, 1981 WL 167766 (September 23, 1981). The landlord had threatened to remove the resident’s home.


\(^{265}\) Marietta Muni. Ct. No. 00 CVG 1022 (November 14, 2001).

\(^{266}\) *Eller v. Continental Investment Partnership*, 151 Ohio App.3d 729, 2003-Ohio-894 (6th Dist.). With the implementation of the new law concerning abandoned mobile homes, park operators now have a procedure they must follow if they wish to remove and destroy a vacant home. See Section 5(A)(8), supra.

\(^{267}\) *Callahan v. Croxford*, Athens M.C. No. 2006 CVF 00621 (July 31, 2007).

\(^{268}\) *Childers v. Russell*, Montgomery C.P. No. 01-4142, 2002 WL 32757694 (July 10, 2002). In this case, the park operator was closing the park but he terminated water service to force the residents out sooner. Connie Childers and Debra Geisel were each awarded $3,000 compensatory damages and the attorneys received $4,927.45 and $1,826.25 respectively.

a mobile home were awarded $5,000 in compensatory and $5,000 in punitive damages by the Tuscarawas County Court of Common Pleas in *Monaco v. Schultz*\textsuperscript{270} when the landlord terminated utility service and subsequently refused to restore it.

Although *Monaco* was a private landlord/tenant lease of a mobile home, a manufactured home park was also found liable for violations of the landlord/tenant law in *Euclid Beach Ltd. v. Brockett*.\textsuperscript{271} After her husband died, Mrs. Brockett attempted to sell her home but met resistance by the park operator. Over time, the park operator refused rent then attempted to evict her, refused to allow her to sell her mobile home, and finally terminated electrical service, which caused water problems due to a freezing water meter. The jury awarded the resident $30,000 in compensatory and $7,500 punitive damages, and $8,800 in attorney fees.

In December 1992, the United States Supreme Court added an additional protection to the rights of Ohio mobile home owners, although indirectly. In Illinois, the Cook County Sheriff’s Department stood by while a landlord illegally removed a mobile home from a park. The home owners then sued the Sheriff’s Department for violating their constitutional due process rights. A unanimous Supreme Court declared that such an action by the Sheriff’s Department was a seizure by them in conspiracy with the park operators, and overturned a lower court decision denying the home owners the right to sue for damages.\textsuperscript{272} The impact in Ohio is that law enforcement authorities who are called to the scene of illegal actions by park operators will risk suit if they stand by and allow the illegal act in violation of the landlord/tenant law.

Retaliation against residents under R.C. 4781.36 has been both claimed and decided most often in terms of conduct by a park operator. Court decisions have gone both ways turning on the specific facts in a case. For example, in *Fay Gardens Mobile Home Park v.*

\textsuperscript{270} Tuscarawas C.P. No. 1998CV10425, 2001 WL 177087 (January 30, 2001). The plaintiff was nine months pregnant and she feared the effect a lack of heat would have on a baby. As a result of stresses related to the housing problem, she sought counseling and was determined to be suffering mental distress. When a request was made for the landlord to restore water service or face the possibility of court action, the landlord said they would see her in court.

\textsuperscript{271} 8\textsuperscript{th} Dist. Cuyahoga No. 75047, 1999 WL 1129086 (December 9, 1999), app. den., 88 Ohio St.3d 1486, 727 N.E.2d 734 (2000).

Complaints to an appropriate governmental agency create the right for tenants to raise a defense against retaliation by a park operator. An eviction was overturned in Voyager Village v. Williams because the resident had a right to raise retaliation on the basis of both complaints to the health department and tenant activities. In Braff Mobile Home Park Co. v. McFarland, the court found that there was no direct evidence of complaints about the water or tenant activities and thus found no retaliation for an eviction action. In another case, the court stated that the park operator’s conduct rose to the level of retaliation after tenant complaints to a housing inspector.

In an unusual case, the Ohio Civil Rights Commission ordered a park operator to cease retaliatory conduct and to pay actual and punitive damages. The park operator appealed, but the administrative proceeding and lower court opinions were upheld by the appeals court.

Complaints to the landlord prior to an eviction have been the basis of successful

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273 14 Ohio App.3d 144, 470 N.E.2d 162 (12th Dist. 1983). The jury found retaliation in both cases, but the court remanded one on jurisdictional grounds (amount over county court jurisdiction) and determined on the other that R.C. 3733.091 precluded retaliation because if the party operator had a right to evict, there could be no retaliation. There was a dissent on the right of the resident to raise a damages claim in retaliation.

274 Mobile Manor Mobile Home Park v. Metts, Cuyahoga Falls M.C. No. 82 CVG 1484 (August 20, 1982). The tenant was on a month-to-month tenancy, but there is no claim that a default in rent existed as in Newman.

275 3 Ohio App.3d 288, 444 N.E.2d 1337 (2nd Dist. 1982). There was evidence that the resident had complained to the health department and was active in a tenant organization.

276 Braff Mobile Home Park Co. v. McFarland, 11th Dist. Lake No. 8-265, 1982 WL 5815 (July 23, 1982). The court refused to allow the jury to hear the retaliation defense. The resident had not offered a transcript and the findings of fact did not support him.

277 In Community Gardens Park and Sales, Inc. v. Roe, Franklin Cty. M.C. No. M81-09- CVG-027176 (November 6, 1981), the court found that the notice to leave was delivered the same day the housing inspector had inspected the park. Further, the park had put in new gravel in every other driveway in the park but the defendant’s. In addition, the park operator had knowledge of the complaint about the electrical problems before issuing the notice to leave.

retaliation claims.\textsuperscript{279} However, complaints to a park operator about matters not protected in the statute cannot form the basis of the defense to an eviction.\textsuperscript{280}

4. **Common Law Remedies**

Often illegal acts on the part of a manufactured park operator also lead to claims of common law violations. For example, if property is seized, claims for conversion and trespass to chattels may be appropriate. In *Conley v. Caudill*, compensatory damages of $5,000 were awarded to the homeowner.\textsuperscript{281} In another case, a mobile home was stored pursuant to a writ of restitution, and the homeowner had access to the home in storage after it was moved, preventing a finding of conversion.\textsuperscript{282}

5. **Security Deposits**

Because R.C. 4781.50 and R.C. 5321.16 are functionally identical, much of the security deposit litigation from standard rental units has been applied to manufactured home parks. Because rented manufactured and mobile homes on single lots are not covered by R.C. 4781, these cases are decided under R.C. 5321.16. An example of this is *Johnson v. Drum*,\textsuperscript{283} in which the court awarded a former resident his deposit which was wrongfully withheld as well as damages in an equal amount due to the wrongful withholding by the park operator.

\textsuperscript{279} *Country Club Village v. Gall*, 11\textsuperscript{th} Dist. Portage No. 958, 1980 WL 154220 (October 20, 1980) (complaints about water); *Croxford v. Litchfield*, Athens M.C. No. CIG 89-8-8 (August 2, 1990), 4\textsuperscript{th} Dist. Athens No. 1491, 1992 WL 20818 (January 24, 1992), cert. den., 64 Ohio St.3d 1417, 593 N.E.2d 7 (1992) (complaints about electrical wiring); *Pierce v. Derickson*, 5\textsuperscript{th} Dist. Licking No. CA 3105 (June 10, 1985) (court did not list facts, but mentioned the lower court found retaliation). The appellate issue concerned attorney fees.

\textsuperscript{280} *Troy v. Casale*, 11\textsuperscript{th} Dist. Trumbull No. 2976, 1982 WL 5894 (March 31, 1982). The statute limits the complaints to specific reasons. The court found here that the complaints were of personal conflicts between the resident and the park management.

\textsuperscript{281} *Conley v. Caudill*, 4\textsuperscript{th} Dist. Pike No. 02CA697, 2003-Ohio-2854. In this case, the home had been removed and destroyed by the park operator.

\textsuperscript{282} *Keesey v. Superior Mobile Homes, Inc.*, 5\textsuperscript{th} Dist. Tuscarawas No. 1999 AP 070044, 2000 WL 492096 (March 20, 2000).

\textsuperscript{283} 11\textsuperscript{th} Dist. Trumbull No. 2009-T-0038, 2009-Ohio-6147. Although the home was a manufactured home, because it was not under the manufactured home law, the deposit was awarded under R.C. 5321.16(B). See also *May v. Metcalf*, 5\textsuperscript{th} Dist. Knox No. 11-CA-8, 2011-Ohio-5937.
However, some decisions have been issued under the manufactured home park statute. As early as 1982, the Appeals Court for Portage County granted a former manufactured home tenant damages which included both security deposit and other damages.\textsuperscript{284} In \textit{Miller Mobile Homes, Inc. v. Reeves},\textsuperscript{285} the Cuyahoga Falls Municipal Court awarded the return of the former resident’s $150 security deposit as part of a damages calculation. Deductions of items considered normal wear and tear were overturned in \textit{Schaedler v. Shinkle}.\textsuperscript{286}

\section*{V. REMEDIES OF PARK OPERATORS}

As with residents, the landlord/tenant law provides some specific remedies for park operators. A park operator may sue a resident for actual damages for resident violations of their obligations.\textsuperscript{287} This right is in addition to the right of injunctive relief if the resident fails to abide by the provisions allowing the park operator access to the premises for utility connection inspections or other purposes.\textsuperscript{288} The park operator may also terminate the rental agreement.\textsuperscript{289}

If the park operator wishes to terminate the agreement, s/he can rely on specific provisions of the law, but also must comply with specific procedural duties in order to do so. The park operator can terminate a resident’s agreement if the resident is in default of rent,\textsuperscript{290} a violation of health codes is caused by the resident or invited guest,\textsuperscript{291} the tenant

\begin{footnotesize}
\begin{enumerate}
\item Benson v. Oaks Mobile Home Park, 11th Dist. Portage No. 1156, 1983 WL 6313 (March 15, 1983). The award of $907.50 did not distinguish between the deposit and breach of contract damages but only stated that the Plaintiff had brought the case for damages including the security deposit.
\item Cuyahoga Falls Muni. Ct. No. 92 CVG 15700, 1993 WL 837914 (March 31, 1993). The court awarded damages for both sides and offset the total for a $74 award for the former resident. The court did not double the damages which may have been because the amount wrongfully withheld was less than the total offsets including the deposit.
\item 12th Dist. Brown No. CA99-09-025, 2000 WL 1283776 (September 11, 2000). The deductions included cleaning of the home and carpet.
\item R.C. 1923.01(A).
\item R.C. 4781.39(B). An injunction was issued against a home owner who built an addition ordering its removal because it was built in violation of park rules. Friendly Village v. Duty, 75 Ohio App.3d 555, 599 N.E.2d 878 (6th Dist. 1992).
\item R.C. 4781.39(C); see also R.C. 4781.45.
\item R.C. 4781.37(A)(1).
\item R.C. 4781.37(A)(2).
\end{enumerate}
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or owner is in violation of health codes or park rules, or the resident is holding over the term. The Court of Appeals in Ottawa County ruled in 2012 that a resident who had entered into a novation contract after the breach of the lease gave up his right to challenge the validity of an eviction.

Procedurally, there is little difference between manufactured home cases and those for residents of apartments or other types of homes. Much of the two landlord/tenant laws are similar, and R.C. Chapter 1923 applies to all evictions. Jurisdiction remains the same for a court to hear an eviction action. Equity decisions, discussed infra, show the same considerations by the court on equitable factors regardless of the type of residence.

A. Eviction

Eviction is the most common remedy used by park operators. A park operator may evict a resident of a manufactured home park for holding over the term, for being in default of rent under an oral tenancy, or for having committed two material violations after the park operator has complied with the notice provisions of R.C. 4781.45.

1. Jurisdiction

Ohio law provides that jurisdiction over an eviction action lies equally with county courts, municipal courts, or courts of common pleas of the county in which the park is located. The court of record has not been questioned in eviction cases, but various other aspects of jurisdiction have been. Issues concerning proper notices, proper parties

292 R.C. 4781.37(A)(4).
293 R.C. 4781.37(A)(3).
295 R.C. 1923.02(A)(1).
296 R.C. 1923.02(A)(2) and (B).
297 R.C. 1923.02(A)(10).
298 R.C. 1923.01(A). A challenge to county court jurisdiction failed in *Sears v. Fechuck*, 5th Dist. Tuscarawas No. 1999 AP 080048, 2000 WL 874727 (June 6, 2000). The appellants claimed a county court had no jurisdiction because equitable title was at issue. The appellate court found specific jurisdiction under R.C. 1923.01(A) and 1923.02(A).
299 Id.; see also R.C. 1901.18(A)(18).
300 R.C. 1923.01(A).
before the court,\(^{302}\) and the application of R.C. 1923.02(A)(1) to mobile home park residents have been the center of jurisdictional disputes.

Jurisdictional questions in mobile home evictions center around the two jurisdictional sections of the Revised Code. R.C. 1923.01 determines when a court has the right to hear a forcible entry and detainer case and R.C. 1923.02 determines who is subject to forcible entry and detainer actions. In one case involving general jurisdiction, the court determined that an eviction was improper because the trial court did not hold an inquiry as to whether the resident was unlawfully holding the park operator’s real property.\(^{303}\)

The heart of personal jurisdictional arguments in mobile home cases comes from the application of R.C. 1923.02(A)(1) which allows the eviction of tenants or residents holding over their terms. Prior to the decision in Schwartz v. McAtee,\(^{304}\) the statute read “tenants holding over their terms” were subject to eviction. After Schwartz, the statute was amended to include residents of mobile home parks holding over their terms. The issue has not been decided on the statutory basis, though, as there is still the nagging question of how a manufactured home park resident holds over her term. To better clarify the issue, it is important to note the Schwartz case analysis by a unanimous Ohio Supreme Court.\(^{305}\)

The Schwartz opinion states that one must look to R.C. 1923 for eviction jurisdiction, not R.C. 3733, now 4781. The court states that:

RC Chapter 3733 does not and cannot confer jurisdiction on a court in an action for forcible entry and detainer. Any claim for such relief must be alleged in accordance with the terms of RC Chapter 1923.\(^{306}\)

Prior to Schwartz, there was a split in the courts over the “holdover” language found in R.C. 4781.37 and formerly R.C. 1923.02(A)(3). Those cases finding that eviction for holding over was proper included Francisco v. Manchik,\(^{307}\) M & C Mobile Village v.

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\(^{303}\) First Realty Property Mgt. Co. v. Smith, 11th Dist. Portage No. 2003-P-0088, 2004-Ohio-4537. In this case, an eviction was based on the park operator’s statement that the resident had violated a payment agreement rather than the hearing (“inquiry”) required by R.C. 1923.01.

\(^{304}\) 22 Ohio St.3d 14, 488 N.E.2d 479 (1986).

\(^{305}\) Justice Holmes concurred in part, but no dissenting opinion was issued.

\(^{306}\) Id. at 19.

\(^{307}\) 10th Dist. Franklin No. 85AP-682, 1985 WL 3874 (November 21, 1985). In Francisco, the court allowed a park operator to terminate a tenancy on a 30-day notice and create a holdover tenancy under R.C. 5321.17(B).

The Schwartz decision changed the nature of the inquiry away from the holdover jurisdiction to how a holdover tenancy may be created in a manufactured or mobile home case. Schwartz required that to find a holdover there must be a violation of R.C. 4781.39 by the tenant, a notice of violation by the park operator of the violation, and a failure to cure the violation by the resident. Only then could a park operator evict. This created a good cause requirement for eviction from a manufactured home park. MLR Properties, Inc. v. Baer and Stillberger v. Springman made it clear that this was the standard to be applied.

Following Schwartz by three years, the General Assembly altered both R.C. Chapters 1923 and 3733 (now 4781) to create new holdover language so that R.C. 1923.02(A)(1) now provides for eviction of a holdover resident from a manufactured home park and R.C.

9th Dist. Summit No. 9048, 1979 WL 207533 (January 31, 1979). The M & C court circumvented the required lease language for manufactured home parks and allowed homes in the park prior to the enactment of the landlord/tenant law to be subject to eviction based on the expiration of a month-to-month tenancy.

Trumbull C.P. No. 83 CV 1308 (February 2, 1984). The Wyngate Manor decision simply states that the month-to-month tenancy can be terminated relying solely on law from prior to the enactment of the landlord/tenant statute.


Canton M.C. No. 82 CVG 1881 (May 28, 1982). The Pleasant View court may have decided differently if the park operator had made specific allegations that the tenants had breached their rental agreement and brought them under R.C. 1923.02(A)(10). Without them, the park operator could not evict.

6th Dist. Lucas No. L-80-388, 1981 WL 5695 (June 2, 1981). The Ward decision came closest to the eventual Schwartz decision when it limited eviction from manufactured home parks solely to violations of R.C. 1923.02(A)(10). It simply eliminated the possibility of a holding over because manufactured home parks were only referred to in one section of the forcible entry and detainer jurisdiction statute.

Schwartz v. McAtee, 22 Ohio St.3d 14, 488 N.E.2d 479 (1986). If the deficiency is not cured, there is no need for a second notice but the park operator may proceed to evict for the uncured violation. Thompson v. KMV II, Ltd., 11th Dist. Portage No. 2001-P-0125, 2003-Ohio-1096.


4781.37(A)(3) indicates a park operator may bring an action for possession if the resident is holding over the resident’s term.\textsuperscript{316} The legislature did not, however, change the statute in terms of how a holdover tenancy is created. One assumes the Schwartz decision still stands,\textsuperscript{317} although it is arguable whether or not the failure to accept an annual lease and subsequent creation of a month-to-month lease by manufactured home park residents can lead to a holdover without good cause. Most courts still require good cause to evict.\textsuperscript{318}

Recently, a local court had to determine whether a court had jurisdiction over an eviction when the park operator claimed only breaches of the rental agreement rather than the rules of the park. R.C. 1923.02(A)(10) grants jurisdiction over residents who have breached the rental agreement and makes no reference to the notice provisions of R.C. 4781.45, while R.C. 1923.02(A)(11) requires proper notice if a resident violates rules of the park. The court determined that a park operator cannot “sidestep the jurisdictional requirements” by merely incorporating the rules by reference into the lease, and such an act would fly in the face of the legislature’s enactment of R.C. 4781.45 to prevent easy and quick terminations of tenancies in manufactured home parks.\textsuperscript{319}

In a 2005 decision, the Athens Municipal Court found that Schwartz v. McAtee\textsuperscript{320} is still good authority and that an attempt to terminate a periodic tenancy without cause was

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\item [316] One court that examined an eviction in light of R.C. 3733.09, now 4781.36, stated that a mobile home park operator cannot evict unless they establish one of the grounds for an eviction under that section. May v. Sampsel, 5\textsuperscript{th} Dist. Knox No. 06-CA-000034, 2007-Ohio-2805. The court then found that the park operator attempted to evict the resident for cause and had not established any of the basis listed in R.C. 3733.091, now 4781.39, preventing the court from having jurisdiction. Ironically, the lower court had ruled R.C. 3733.11(A)(1), now 4781.40, unconstitutional, but the appellate court ruled the issue moot in light of the lack of jurisdiction the court had in the first place.
\item [317] In Richards v. Eckelberry, Licking Cty. M.C. No. 00CVG0132 (November 9, 2000), for example, the court found that “a tenant cannot become a holdover tenant unless he fails to fulfill an obligation imposed by 3733.101 (now 4781.36) which affects health and safety in a material way, the park operator gives the resident written notice of non-compliance in accordance with Ohio Revised Code Section 3733.13, (now 4781.45) and the tenant fails to remedy the non-compliance by the date specified, which shall be not less than thirty days.” Id., slip op. at 2.
\item [318] See, for example, May v. Sampsel, 5\textsuperscript{th} Dist. Knox No. 06-CA-000034, 2007-Ohio-2805.
\item [319] Stites Enterprises v. Dixon, Chillicothe Muni. Ct. No. 04 CVG 1659 (December 16, 2004). The court stated it “can not allow the Plaintiff to avoid this statutory requirement by merely incorporating the rules and regulations into the lease itself and then serving a 3-day notice for a breach of lease.”
\item [320] 20 Ohio St.3d 14, 488 N.E.2d 479 (1986).
\end{itemize}
\end{footnotesize}
The court stated that “Plaintiff must plead and prove cause for eviction. A manufactured home park lot periodic lease will never expire on its own or with mere notice.” In 2013, another court granted a dismissal partially on the park operator’s failure to follow Schwartz.

2. **Notice**

The effect of the R.C. 1923.04 notice on jurisdiction was raised in two mobile home cases, with opposite results. In the regular landlord/tenant law, the lack of proper notice under R.C. 1923.04 has been found to deprive a court of jurisdiction over the case. This logic was followed by a county court in *Barnett v. Smith*, in which the failure to give such a notice prevented the plaintiff from maintaining an eviction action. Because of premature filing of the R.C. 1923.04 notice, the Jackson County Municipal Court dismissed the park operator’s eviction case.

The issuance of R.C. 1923.04 notices that left only two days between proper notice and the filing of the case were determined not fatal to an eviction in *J & M Trailer Court v. Dissette*. One notice had been served eight days prior to the filing, but the one on which the park operator relied was served only two days prior to the eviction filing. The appeals court ruled that the second notice was proper to give jurisdiction and any attack on its

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321 *Ramm v. Shreves*, Athens Muni. Ct. No. 2005 CVG 00845 (May 5, 2004). The court concluded that “Schwartz has not been overruled, modified or distinguished by the Ohio Supreme Court.” Id., slip op. at ¶C and that despite changes made by the legislature to R. C. Chapter 3733 (now 4781), “some parts of the statutes applicable to this case remain unchanged, most notably the lack of an equivalent statute to 5321.17 in Chapter 3733.” Id., slip op. at ¶B. See also *Daniels v. Decker*, Harrison Cty. Ct. No. 08 CVG 00042 (June 10, 2008) (“Plaintiff may not unilaterally terminate a month-to-month tenancy”). Id., slip op at 2.

322 *G.S. Holdings, Ltd. v. Rutherford*, Clark Cty. Muni. Ct. No. 13-CVG-1535 (July 10, 2013). The motion was also based on equitable grounds (refusal of rent).

323 See generally, Iskin, Ohio Eviction and Landlord/Tenant Law, 4th ed, pp. 19–31 and cases cited therein. R.C. 1923.04 requires service of the Notice to leave the Premises at least three days prior to filing the case. If the case is filed prematurely, the court lacks jurisdiction. See *Shimko v. Marks*, 91 Ohio App.3d 458, 632 N.E.2d 990 (1993) (apartment); an example of a local court decision on the same point for manufactured housing is *Howard v. Helterbride*, Chillicothe M.C. No. 94 CVG 285 (June 24, 1994). See also *Bloomingburg Mobile Home Parks v. Conner*, Washington Ct. House Muni. Ct. No. 14 CVG 488 (September 2, 2014).


325 *Strickland v. Fisher*, Jackson Cty. Muni. Ct. No. 05 CVG 1344 (August 9, 2005). The court stated that “the mandatory condition precedent of ORC 1923.04 notice was not properly given.”

validity or improper timing of the filing of the case should have been made prior to the hearing. The court reasoned that the premature filing did not affect the subject matter jurisdiction, so the case was properly decided by the lower court.  

3. **Right to Cure**

To evict for violation of a rental agreement, a resident’s obligations or park rules, the park operator must first give a notice and opportunity to cure pursuant to R.C. 4781.45. The notice must also include specific language about the possibility of eviction if there is a second material violation within six months.

In decisions under this statute, failure to provide the notice prevented eviction of residents in *MLR Properties v. Baer* and *Peterson v. Woods*. An incorrectly worded notice was found defective in *Properties Ltd. v. Paquette*, while less than 30 days’ notice was insufficient in *United Mobile Homes v. Scruggs* and *Martin v. Woods*. On the other hand, a notice labeled “Warning” was held to be sufficient in *Highland Estates Mobile Home Park v. Miller*.

4. **Parties**

The proper party problems that arise in manufactured home park eviction cases come from the variety of parties involved. Normally there is the park operator and either a tenant, owner, or resident, depending on the section of law to which one refers. This is complicated when individuals sell their homes or sublease them in violation of park rules.

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327 Id., slip. op. at 2–3. This clashes with other courts that have stated that content or service of the notice deficiencies is a complete defense to an eviction. *Gibbes v. Freeman*, 8th Dist. Cuyahoga No. 52745, 1987 WL 16530 (September 3, 1987); see *Iskin*, supra, 4th ed, at pp. 19–31 and cases cited therein.


329 Adams Cty. Ct. No. 08028 (June 1, 1988).

330 Franklin Cty. M.C. No. M8908CVG-29204 (September 8, 1989). See also *Continental Investment Partnership v. Hukill*, Delaware Muni. Ct. No. 06 CV 131 (March 8, 2006). In *Hukill*, the notices cited rules violations but no facts as to how the resident violated the rules. Also, the date for termination of the tenancy was not included in the notice. Id., slip op. at 3-4.

331 Athens M.C. No. 93-CVG3-8 (April 10, 1993).

332 Chillicothe M.C. No. 92 CVG 714 (September 4, 1992).

333 Findlay M.C. No. 92-CVG-1054 (January 22, 1993).
A vendee or sublettor may also become a party. The resulting issue is whether the court has jurisdiction over the parties when the eviction statute refers to tenants or residents.

In *Costantino v. Lyons*, individual home owners attempted to evict a resident of the mobile home. However, the home was being sold under an “Agreement of Sale.” As such, the plaintiffs were found to be vendors/sellers and the resident was a vendee/buyer. Based on this, the lower court lacked jurisdiction under R.C. 1923.02 to evict because there was no tenant or resident. The eviction order was overturned by the appeals court. Similarly, the Chillicothe Municipal Court ruled in *Reed v. Carroll* that when it is a sale, not a lease of a mobile home, it is not a landlord/tenant case and the purchaser was not a person subject to eviction.

When the purchase portion of a lease-purchase agreement was found to be invalid as a violation of Ohio’s lease-purchase and motor vehicle laws, the Canton Municipal Court found that there was still a valid lease agreement and allowed a park operator to recover rent and late fees.

A park operator attempted to evict a sublettor in *Cooper v. Curtis*, but the eviction was overturned because the park operator could not evict a sublettor, only a resident. If

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335 A tenant must have a rental agreement, and an installment contract is not a rental agreement, thus preventing the application of R.C. 1923.02(A)(2). The home was not in a park so R.C. 1923.02(A)(10) did not apply. The court thus had no personal jurisdiction. Id., slip. op. at 5. See generally, *Mix v. Mix*, 11th Dist. Portage No. 2003-P-0124, 2005-Ohio-4207.

336 R.C. 1923.02(A) lists persons subject to eviction. All include the words “tenant” or “resident” in reference to mobile homes. In a recent case, the eviction action was dismissed because the buyer “had some kind of contractual agreement for purchase” and for that reason, the buyer was “not a person subject to forcible entry and detainer.” *Mankin v. Nunley*, Chillicothe M.C. No. 99-00555 (July 19, 1999). See also, *Lunsford v. Hurt*, Jackson Cty. Muni. Ct. No. CVE 0500914 (June 1, 2005).


a person owns the home, the park operator cannot terminate the tenancy using a 30-day notice provided by R.C. 5321.17(B), and thus the court had no jurisdiction to evict.\textsuperscript{340}

When the home is not located in a manufactured home park, the owner of the land and the owner of the home are not both necessary parties in an eviction. As such, the owner of a rented mobile home on the land of a third party could still evict the tenant without having to join the land owner.\textsuperscript{341}

In 2007, the General Assembly extended the jurisdiction over manufactured home owners in regards to the abandoned home provisions of Ohio law. R.C. 1923.01’s definitions of tenant, manufactured home park\textsuperscript{342} and park operator\textsuperscript{343} were modified to allow these provisions to apply to individuals renting single plots of land not in manufactured home parks so that the landlords can make claims against manufactured and mobile homes for abandonment in any type of land rental.

\textsuperscript{340} The park operator attempted to remove subtenants of a home owner by giving a 30-day notice pursuant to R.C. 5321.17(B). The appellate court found that a park operator could use such a notice to evict his own tenant, but not a home owned by another, as R.C. 5321.17(B) did not apply to mobile home owners. Id., slip. op. at 5. However, with the passage of revisions to the law after this decision, the General Assembly added the word “tenants” to specify the people covered by Chapter 3733. One court found that a court had jurisdiction in this situation when the eviction is based on non-payment of rent rather than a simple termination of tenancy under R.C. 5321.17. \textit{Reinhart v. Fout}, Circleville Muni. No. CVG 0401177 (October 1, 2004).

\textsuperscript{341} \textit{Dane v. Christman}, Athens Cty. Muni. No. 2006CVG00369 (May 11, 2006). Although the land owner in \textit{Dane} requested that the home owner, Dane, remove the home, the landlord could evict the tenant from the home for nonpayment of rent.

\textsuperscript{342} A new section R.C. 1923.01(C)(11) was added to define manufactured home parks not only as the same as in R.C. 4781.01, but also as any tract of land upon which one or two manufactured homes used for habitation are parked pursuant to rental agreements between the owners of the home and the land.

\textsuperscript{343} A new section R.C. 1923.01(C)(12) was added to define park operators not only as the same as in R.C. 4781.01, but also as a landlord of premises on which one or two manufactured homes used for habitation are parked pursuant to rental agreements between the owners of the home and the land owner.
5. **Defenses**

a. **Legal**

R.C. 4781.45 also provides statutory defenses to an eviction. If a park operator fails to give the proper notice, the eviction will be denied.\(^{344}\) Also, under this section, a tenant may raise the defense of arbitrary enforcement of the rules. A park not only is required to have rules that are not arbitrary or capricious, but also it is prohibited from enforcing the rules arbitrarily. Such a defense can defeat an eviction.\(^{345}\)

The arbitrariness of the rules or their enforcement against residents was the issue reviewed by the Findlay Municipal Court in 1993. In *Highland Estates Mobile Home Park v. Miller*, the court found that the park manager attempted to enforce a rule against one tenant while allowing the same violation by at least seven other home owners.\(^{346}\) Under R.C. 4781.45(D), this was a defense to the eviction. In addition, skirting “standards” cited by the park operator didn’t legally exist as they were not specifically written, and violations were determined solely at the manager’s discretion.\(^{347}\)

If a park alleges material violations of rules and the case is not proven, the park will lose the eviction.\(^{348}\) As to what constitutes a material violation, one court stated that violations were material when the conduct “directly impacted the important health and

\(^{344}\) Continental Investment Partnership v. Hukill, Delaware Muni. Ct. No. 06 CV 131(March 8, 2006). Two notices in the case failed to include a “description of the violation” and none of the three included “a date on which the agreement was to terminate.” Similarly, in *MHC5, LLC v. Martin*, Clermont Muni Co. No. 2011CVG03184, 2011 WL 18636259 (October 26, 2011), the notice did not set forth any alleged violation by the resident.


\(^{346}\) *Highland Estates Mobile Home Park v. Miller*, Findlay M.C. No. 92 CVG 1054, 1993 WL 837917 (July 18, 1993), slip op. at 7.

\(^{347}\) Id., slip op. at 6.

safety interests of the other tenants.” The next year, a resident’s attempt to include a requirement that the material violations affect the health and safety of other residents was rejected by the same court in *Hamlet Mobile Home Park v. Sigmund*. In *Sigmund*, the court stated that the statute required only two material violations regardless of whether they affected the health and safety of others. In a third case, a court refused to evict a homeowner for allowing her daughter and granddaughter to live with her despite a “two-person” rule of the manufactured home park, finding that there was a breach of the rules but that it was not material. More recently, a court reviewed all of these issues and prior decisions, and determined that a violation of a rule that was determined not to be unreasonable was sufficient to evict a resident.

Similarly, when there is no rent arrearage, the resident should prevail in a nonpayment case. Retaliation is a defense to an attempt by a park operator to evict a resident.

A few other defenses have been raised in mobile home evictions. If the party bringing the action is not the real party in interest or an attorney representing the real...

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350 188 Ohio App.3d 29, 691 N.E.2d 1091 (11th Dist. 1997). Reading *All Seasons* and *Hamlet* together, one assumes that this court would take the approach that there are material violations which do not affect the health and safety of other residents.

351 *Buckeye Lake Estates Mobile Home Park v. Abel*, Licking Co. M.C. No. 01 CVG 1777, 2002 WL 32001271 (February 15, 2002). The court stated that “Material means something of real importance or great consequence.” It then found, first, that simply stating a violation is material does not make it so and, second, that allowing the relatives to stay beyond 14 days, when the park was aware of that residence, the violation was de minimus and could not be the basis for eviction.

352 In *Fostoria Mobile Estates, Inc. v. Neff*, Fostoria M.C. No. CVG 0600706 (November 6, 2007), the resident added a second mobile home onto his existing home without permission of the park operator. The Court found that a rule prohibiting adding on an additional home was not unreasonable, arbitrary and capricious. Pursuant to R.C. 1923.02(A)(10) a park operator may evict a resident who has breached the terms of the rental agreement after appropriate notice and opportunity to cure under R.C. 3733.13.


354 *Community Gardens*, supra.

355 *Embrey v. Kreps*, 8th Dist. Muskingum No. CA 80-30, 1981 WL 6194 (March 30, 1981). The plaintiff was the park manager who claimed to be a representative of the owner. The tenant claimed she was not, and thus summary judgment was precluded. The decision overturning the lower court required an initial determination of whether the park manager was a real party in interest.
party in interest,\footnote{Sheridan Mobile Village, Inc. v. Larsen, 78 Ohio App.3d 203, 604 N.E.2d 217 (4th Dist. 1992).} the eviction case may not proceed. In another case, residents attempted to offset the park operator’s claims with their own damage claims to prevent eviction, but use of this statutory balancing test under R.C. 1923.061(B) failed when an appellate court found that the resident’s damages are irrelevant if the park operator proves a lease violation at the trial.\footnote{Payne v. Douglas, 4th Dist. Pickaway No. 80 CA 29, 1981 WL 6083 (November 21, 1981).}

In an opinion recognizing the changing role of pets in our society, a court in Geauga County refused to evict a senior citizen for having a pet because they are like family members.\footnote{Leichtman v. Fike, 11th Dist. Geauga No. 1106, 1984 WL 7338 (April 27, 1984).} In \textit{Leichtman v. Fike}, the court found that it was unreasonable and arbitrary to prohibit pets, and that such a rule is dictatorial and unnecessary in a mobile home park.\footnote{Id., slip. op. at 5.} However, 11 citations for violating a city ordinance banning operating a kennel in a residential district was grounds for eviction.\footnote{Day v. Baker, 12th Dist. Butler No. CA2003-06-10, 2004-Ohio-5529.}

Whether a park operator can evict a resident for nonpayment may depend on whether the park operator has delivered a copy of the rental charges to the resident. Pursuant to R.C. 4781.40(H)(4), a park operator must deliver these to a resident prior to the residency in a mobile home park. In \textit{Estep v. Tisdale},\footnote{Chillicothe M.C. No. 93 CVG 700, 1993 WL 837913 (November 29, 1993).} the court found the failure of a park operator to deliver those fees and charges prevented an eviction because the resident could not be in default for nonpayment of the charges.\footnote{R.C. 4781.40(B) gives a statutory defense to eviction for nonpayment of charges which were not properly disclosed. See, \textit{Dearwester’s Gem City Estates v. Nelson}, 2nd Dist. Montgomery No. 14320, 1994 WL 681104 (December 7, 1994) (when tenant had actual knowledge of fees, statutory defense not available).} Three years later, the Belmont County Court...
made a similar finding in *Evangelinos v. Nixon*.\(^{363}\) In 2007, the Athens Municipal Court followed this line of reasoning in *Callahan v. Croxford*.\(^{364}\)

The Court of Appeals in Montgomery County also found that “R.C. 3733.11(B) (now 4781.40(B)) provides a defense to an eviction,” although it was not the deciding issue in *Dearwester’s Gem City Estates v. Nelson*.\(^{365}\)

In an unusual case, a homeowner argued that a bankruptcy filing triggered the 120-day notice requirement of R.C. 4781.40(A), and also argued under a “Manufactured Home Owner’s Bill of Rights” that the court had no right to evict him.\(^{366}\) The homeowner argued that under this “Manufactured Home Owner’s Bill of Rights,” which is not part of Ohio law but arises from an AARP publication, the court could not enforce an eviction order for 30 days after it was issued. The homeowner failed to cite any legal authority, the lower court ruled that the park had a right to evict, and the appellate court affirmed the eviction.

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**b. Equity**

A number of eviction cases have turned on equitable issues. The Supreme Court of Ohio’s decision in *Schwartz v. McAtee*\(^{367}\) set the tone for this with its review of how mobile homes are mostly immobile now and how the cost of the home and possible losses far outweigh the loss of the traditional rental apartment or house tenancy.\(^{368}\) Certainly the loss of a mobile home lot in a park is more severe, especially in the counties where zoning is closed to mobile homes, because that loss may mean the loss of the entire investment. For this reason, courts seem more willing to consider equity in favor of the home owner.

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\(^{363}\) Belmont Cty. Ct. No. 95CVG00076, 1997 WL 8100491 (January 11, 1997).

\(^{364}\) Athens M.C. No. 2006 CVF 00621 (July 31, 2007). The court stated, “Although it appears inequitable that no lot rent should be paid, Defendants’ failure to follow the directive of R.C. §3733.11 mandates this result.”

\(^{365}\) 2nd Dist. Montgomery No. 14320, 1994 WL 681104 (December 7, 1994).

\(^{366}\) *Woodside Terrace v. Lutz*, 6th Dist. Lucas No. L-13-1243, 2015-Ohio-4068. The argument seems to claim the 120-day period for eviction when a park operator sells the park for a use other than a manufactured home park.

\(^{367}\) 22 Ohio St.3d 14, 488 N.E.2d 479 (1986).

\(^{368}\) *Schwartz*, supra, at 16–18. The opinion discusses articles, statistics, and cases from other states in which these characteristics of today's mobile homes reveal the possible loss. The court in *Dearwester’s Gem City* dismissed the issue of potential problems by saying all tenants who are evicted are inconvenienced or suffer hardships. *Dearwester’s Gem City Estates*, supra, at 3.
In *J & M Trailer Court* and *Stillberger*, both mentioned earlier, the eviction was prevented despite court refusal to consider legal arguments. In *J & M Trailer Court*, the court found that the acceptance of rent late several times was a possible modification of business practices so as to allow the tenants to offer the late rent. In *Stillberger*, the homeowner had also paid rent late several times and waiver of the rental due date resulted.

An agreement between the park operator and resident to allow a grace period gave a court grounds to prevent eviction during the grace period. In this case, the plaintiff waived the right to evict during the grace period.

Acceptance of either partial or full payment of rent after issuance of a Notice to Leave the Premises waives the right of a park operator to evict. In *Phillips v. Board*, the park operator accepted partial payment of rent for the month, thus the proper notice to leave was never issued.

In *MLR Properties, Inc. v. Hemmelgarn*, *Cook v. Hall* and *Superior Mobile Homes v. Russell*, the entire rent was accepted after the issuance of the notice, thus waiving the notice. Several courts have determined that when late rent payment was retained by the park operator and no notice was given to the resident that the payment was not accepted.

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369 *J & M Trailer Court v. Dissette*, 9th Dist. Medina No. 1556, 1987 WL 16917 (September 9, 1987). A second equitable claim concerning the availability of a special educational environment for a handicapped child was never reached because the eviction was overturned on the waiver grounds. On remand, the family was evicted for other reasons. But see, *Payne v. Douglas*, 4th Dist. Pickaway No. 80 CA 29, 1981 WL 6083 (November 24, 1981), in which the court allowed an eviction despite a pattern of late rent payment because the landlord served three-day notices on the tenant after the late payments.

370 *Stillberger v. Springman*, Findlay M.C. No. 90 CVG 1644, 1990 WL 692200 (October 23, 1990). But see *Lancaster Mobile Estates Ltd. v. Robinson*, Fairfield Cty. M.C. No. 00CVG01545 (October 27, 2000), in which the court found that the rent was paid beyond the previously established grace period so the park operator did not need to accepted.


374 *Stark Cty. M.C. No. 97-5296 (October 10, 1997).*

not accepted, the park operator waived his right to pursue an eviction. In another recent case in which there was uncertainty whether there was any remaining rent owed, but there was clear evidence rent had been accepted after the issuance of the Notice to Leave the Premises, the eviction was overturned. However, the release of escrowed rent by the court is not considered acceptance of future rent so as to void the Notice to Leave.

Under an equity theory, the refusal of a park operator to accept the late payment of rent with the penalty charges was not sufficient grounds to evict a resident when the park operator could be made whole in *Zane Village Mobile Home Park v. Hedrick*. While the park operator was entitled to monetary damages for rent and utilities owed, it could not refuse payment and then evict. Similarly, the failure to offer rent was excused when the offer would have been futile.

In *Callahan v. Ickes*, the Cambridge Municipal Court relied on several equitable and legal grounds to prevent an eviction. Not only was a 30-day notice of termination (which provided a legal defense under R.C. 3733.13 (now 4781.45)) lacking, but also the landlord refused rent and accepted the rent subsidy from HUD, which waived the notice.

In *Westgate Village Mobile Home Park v. Sander*, the Fostoria Municipal Court considered the questionable materiality of the breach, the long-term rental payments and

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377 *Bryant v. Dale*, 4th Dist. Lawrence No. 98CA36, 1999 WL 731824 (September 17, 1999).


380 *Greenbriar Estates v. Eberle*, 130 Ohio Misc.2d 11, 2005-Ohio-1139. The park operator told the residents he would not accept their rent. The court found that the attempt to offer rent was excused and the park operator was denied the right to evict for nonpayment of rent. See also, *Continental Investment Partnership v. Hukill*, Delaware Muni. Ct. No. 06 CV 131 (March 8, 2006).

381 *Callahan v. Ickes*, Cambridge M.C. No. 95 CVG 235 (October 17, 1995).

382 The landlady accepted the subsidy from Cambridge Metropolitan Housing Authority, but did not have a lease executed by CMHA. While the court found that HUD’s lease was not in effect, it determined on equitable grounds that because the landlord accepted the subsidy, she waived the notice to terminate the tenancy.
hardships to the home owner when it denied an eviction on equitable grounds.\textsuperscript{383} However, because there was a history of resident nonresponse to park notices of violations, it did find the resident responsible for payment of the court costs.\textsuperscript{384}

Finally, the failure of a park operator to mitigate its damages reduced the damages for unpaid rent to six months in \textit{May v. Petrick}.\textsuperscript{385} The park operator claimed rent from December 2006 to May 2009 yet took no action to evict during this period. The court determined there was no reasonable effort by the park operator to mitigate her damages by not acting for 30 months and limited the unpaid rent to six months.

c. Procedure

When a resident timely requested a magistrate to make findings of fact and conclusions of law, the judge could not proceed with the eviction until these were done and a final court order was entered.\textsuperscript{386} However, a default judgment for damages was proper without a hearing when the motion set forth the itemized damages and demonstrated that the amount was ascertainable.\textsuperscript{387}

6. 1923.15 Inspection/Prohibition of Re-rental

Another issue concerns the right of a resident to request inspection of the rental premises pursuant to R.C. 1923.15 as part of the eviction case. As with other rental properties, a mobile home or manufactured home park may be inspected pursuant to court order.\textsuperscript{388}

When an eviction of a home owner is granted by a judge or jury, the order technically applies to the home not the person. Where a park attempted to retain the home but keep the home owner out of it, the Court had to clarify this issue, restore the pad to the owner, but order removal of the home from the pad.\textsuperscript{389}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{383} Fostoria M.C. No. CVG-960217(July 12, 1996).
\item \textsuperscript{384} Id., slip op. at 4.
\item \textsuperscript{385} 5\textsuperscript{th} Dist. Knox No. 2009CA00031, 2010-Ohio-1642.
\item \textsuperscript{386} \textit{Waliga v. Goon}, 5\textsuperscript{th} Dist. Ashland No. 13-COA-008, 2013-Ohio-5687.
\item \textsuperscript{387} \textit{McMahan’s Mobile Home Park v. Mabberly}, 2\textsuperscript{nd} Dist. Montgomery No. 25998, 2014-Ohio-1448.
\item \textsuperscript{388} \textit{Leonard v. Johnson}, Jackson Cty. M.C. No. 91 CVG 578 (January 30, 1992).
\item \textsuperscript{389} \textit{McMahan v. Templeton}, Clark Cty. M.C. No. 92 CVG 2891 (October 15, 1992).
\end{itemize}
\end{footnotesize}
A park operator has remedies similar to those of residents to seek damages for violations of rental agreements and injunctive relief on the issue of entry to the premises. The park operator has a further remedy of terminating the agreement and evicting the resident. However, in doing so, he must follow the notice provisions of R.C. 4781.45 and evict pursuant to the jurisdictional requirements of R.C. Chapter 1923.

7. **Writ of Restitution**

A corollary issue in the eviction is exactly what is covered when a writ of restitution is issued. In most evictions, the tenants are removed from the premises, but if the home is owned by the residents, the eviction removes the home from the lot.\(^\text{390}\) The confusion in this case led at least one court to clarify a prior order that the owners could not lose their property rights, but the home would be removed from the pad.\(^\text{391}\) Additionally, the law on abandoned mobile homes has changed the language requirements and time table for issuance of writs of restitution.\(^\text{392}\)

A good explanation of the effect of the writ is found in *Laro v. Leisure Acres Mobile Home Park*,\(^\text{393}\) which states that in a mobile home eviction case, not just the residents, but the home is “evicted” and removed as well.

The fact that a judgment entry did not include specific language issuing a writ under the abandonment statute was considered harmless error in *Oak Park Mgt. Corp. v. Via*.\(^\text{394}\)

8. **Abandoned Mobile Homes**

With the passage of the law concerning abandoned mobile homes, a new classification of eviction rights and remedies for mobile home owners was created. When a manufactured or mobile home is deemed “abandoned,” it becomes subject to possible removal, sale or destruction, or transfer to the park operator.

\(^\text{390}\) The court in *Christian v. Christian*, 4th Dist. Lawrence No. 03CA21, 2004-Ohio-2994, pointed out in its decision concerning this issue that the park operator was not awarded the home but the writ of restitution pertained only to the real estate.

\(^\text{391}\) Id.

\(^\text{392}\) See Chapter 5, Section A(8), Abandoned Mobile Homes, supra.

\(^\text{393}\) 650 A2d 432 (N.H. 1995).

\(^\text{394}\) 9th Dist. Wayne No. 07CA0022, 2008-Ohio-2493.
a. Jurisdiction

A jurisdictional statement was added to R.C 1923.02 to allow evictions against manufactured park residents or their estates when they have been absent from the park without notice to the park operator and without payment of rent for 30 consecutive days prior to the commencement of the action.\(^{395}\) This does not interfere with, or replace, the right of a park operator to proceed with an eviction on any other ground alternatively or joined in the same action.\(^{396}\)

In 2007, definitions were added to R.C. 1923.01 to bring abandoned manufactured or mobile homes on private land under the statute. The definition of a manufactured home park was changed to define a park for eviction purposes as any manufactured or mobile home on land pursuant to a rental agreement between the owner of the home and the owner of the land.\(^{397}\) Similarly, the same language about one or two homes being on land under a rental agreement was added to the definition of the park operator, making landlords into park operators under the law.\(^{398}\)

b. Service of Complaint

Changes in the law also changed how notices regarding eviction must be served when the abandonment of the home is caused by the death of the resident. If the resident has died, the R.C. 1923.04 Notice to Leave the Premises must be served both by leaving it at the premises and sending it by ordinary mail to specified persons if known to the park operator.\(^{399}\) Because the statute explicitly lists estates as well as residents, one wonders if an obituary is sufficient notice to the park operator to prevent the invocation of this section of law.\(^{396}\) The Chapter 1923 definition states that “manufactured home park” has the same meaning as in Section 4781.01 of the Revised Code and also means any tract of land upon which one or two manufactured or mobile homes used for habitation are parked, either free of charge or for revenue purposes, pursuant to rental agreements between the owners of the manufactured or mobile homes and the owner of the tract of land.\(^{397}\)

The new definition of park operator adds the same language with the exception of applying it to “a landlord who is not licensed as a manufactured home park operator pursuant to Chapter 4781 of the Revised Code.” This allows a person to be a park operator without coming under Health Department requirements for a manufactured home park if they only have one or two manufactured or mobile homes on their land.\(^{398}\)

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\(^{395}\) R.C. 1923.02(A)(12). Because the statute explicitly lists estates as well as residents, one wonders if an obituary is sufficient notice to the park operator to prevent the invocation of this section of law.

\(^{396}\) R.C. 1923.02(A)(10).

\(^{397}\) R.C. 1923.01(C)(11). The Chapter 1923 definition states that “manufactured home park” has the same meaning as in Section 4781.01 of the Revised Code and also means any tract of land upon which one or two manufactured or mobile homes used for habitation are parked, either free of charge or for revenue purposes, pursuant to rental agreements between the owners of the manufactured or mobile homes and the owner of the tract of land.

\(^{398}\) R.C. 1923.01(C)(12). The new definition of park operator adds the same language with the exception of applying it to “a landlord who is not licensed as a manufactured home park operator pursuant to Chapter 4781 of the Revised Code.” This allows a person to be a park operator without coming under Health Department requirements for a manufactured home park if they only have one or two manufactured or mobile homes on their land.
Service of the Complaint to remove a deceased resident’s home is now under a new section of R.C. 1923.06. It requires a person seeking the eviction to provide to the clerk of courts the name of the executor or administrator of the estate if known, or the names and addresses of family members if known. If the information is not known, the person must file an affidavit stating that these persons and addresses are unknown. The clerk is then required to serve the persons listed by ordinary mail and cause service of the notice by publication to be made in a newspaper of general circulation. Service is deemed complete on the date of the last publication of the notice or the date of mailing, whichever is later.

C. Judgment

At the end of any eviction action, whether tried by a judge or jury, a judgment in favor of a park operator must now include authority for a park operator to have an appropriate law enforcement official remove the home from the park, sell it, order its destruction, or transfer ownership of the home in accordance with law.

The following chart sets out the sequence that begins with the issuance of the judgment entry.

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399 R.C. 1923.04(C). If an estate has been opened, the specified person is the administrator or executor. R.C. 1923.04(C)(1). If no estate has been opened the notice is to the deceased resident’s spouse and any other members of the deceased resident’s immediate family. R.C. 1923.04(C)(2).

400 R.C. 1923.06(F)(1)(a), (b). Immediate family is defined as the spouse, siblings, children, stepchildren, parents and grandparents. R.C. 1923.06(I).

401 R.C. 1923.06(F)(1)(c).

402 R.C. 1923.06(F)(2).

403 R.C. 1923.06(G)(4).

404 R.C. 1923.09.

405 R.C. 1923.10.

406 R.C. 1923.09(B) (trial by judge) and R.C. 1923.11(B) (trial by jury). The failure of a judge to specifically authorize the park operator to remove the home from the park was considered harmless error in Oak Park Mgt. v. Via, 9th Dist. Wayne No. 07CA0022, 2008-Ohio-2493. See also, Marysville Estates v. Bruce, 3rd Dist. Marion No. 14-13-12, 2013-Ohio-4112, in which the court ruled that a park operator is not required to request a writ of execution in the initial eviction case in order to use this procedure.
<table>
<thead>
<tr>
<th>Time Period</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Day 1</td>
<td>Judgment Entry signed with authority to remove, sell, transfer or destroy home and personal property</td>
</tr>
<tr>
<td>Day 4</td>
<td>Operator gives notice to owner to remove home within 14 days</td>
</tr>
<tr>
<td>Days 4 to 19</td>
<td>Operator searches public records for other persons with possible legal interest in mobile home, compiles list of relatives in estates and lists of personal property with last-known owners</td>
</tr>
<tr>
<td>Day 19</td>
<td>Home owner’s last day to remove home</td>
</tr>
</tbody>
</table>
| Day 20       | Park operator requests Writ of Execution—must certify written notice and search for persons with legal interest  
                Writ issues—law enforcement officials may remove and store or leave on site for sale; if estate case, must follow Probate Court orders |
| Day 21       | Clerk of courts issues warning letter to owner; residents removed from home                       |
| Days 21 to 81| Bailiff commences proceedings for sale—notice of sale to owner  
                Notice to persons with legal interest, notice to county auditor and treasurer  
                If value less than $3,000, law enforcement official may order sale or destruction of home or transfer ownership to park operator  
                Publication of sale in paper for ten days prior to sale (R.C. 2329.13(A)(2))  
                Sale of home (may be two attempts made)—if no sale, bailiff transfers title to park operator |
| Day Before Sale | home owner’s final right to redeem expires  
                Last day for property owners to remove personal property |
| After sale    | Distribution of proceeds  
                Court makes “careful examination” of sale — if approves, final judgment entry issues and clear title transferred to buyer |

**chart prepared by Jim Buchanan with input by Frank Avellone**

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### d. Pre-writ Procedure

Little has changed if a park operator chooses to proceed in accordance with the existing procedure allowing for removal of the home from the park. The writ will issue and the home must be removed within 10 days from the issuance of the writ.\(^{407}\) However, if a park operator chooses to proceed under the abandonment provisions of the law, a separate procedure and time table are required before a writ of restitution may be issued.\(^{408}\)

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\(^{408}\) R.C. 1923.12 and R.C. 1923.13(B).
In cases in which the resident is deceased, the procedure is subject to the probate court for the first year and the park operator may only remove and store the home and make a claim against the estate for the costs of removal and storage, but may not sell, transfer or destroy the home during that time.409

A park operator that wishes to use the new procedure for abandoned homes must begin by waiting three days after the judgment entry is signed. If the home has been abandoned or left unoccupied for those three days, the park operator may then deliver a written notice to the titled owner of the home by personal delivery or ordinary mail to the owner’s last-known address.410 The notice has specific language411 and must give the owner 14 days to remove the home. In addition, the park operator must search all appropriate public records and make diligent inquiry to determine if any other person has an interest in the home,412 and then notify them as well.413 If personal property is left and the park operator wishes it to be sold as well, the park operator must list the items of abandoned personal property and the last known owners of the property.414

e. Writ of Execution

Assuming the home remains after the 14 days expire, the park operator must then certify to the court his compliance with the search and notice requirements and then may obtain the writ of execution. This process takes a minimum of 17 days from the judgment as opposed to the immediate issuance of writs in normal eviction procedures.

The writ is addressed to the appropriate law enforcement officials and instructs them to remove the residents from the home if necessary,415 and seize not only the home but also all personal property and vehicles of the resident. The law enforcement official must then

409 R.C. 1923.12(D)–(E).
410 R.C. 1923.12(B).
411 Id.
412 R.C. 1923.12(C). Usually this would include a search of the title for lienholders or anybody else with an interest shown on the title. Diligent inquiry might, for example, reveal a spouse not on the title but with a right to live in the home, such as in an order of exclusion arising from a domestic violence case.
413 Id.
414 R.C. 1923.12(C).
415 Because this procedure is for abandoned or unoccupied homes, one wonders how there would be occupants to remove.
decide whether to have the home removed from the lot and stored until sale or disposal, or retained on the lot until the sales procedure can be carried out. The clerk of court must also send a copy of the writ to all persons who have an interest in the home as listed on the pre-writ investigation.

f. Low-Value Homes

The next step in the process depends on the value of the mobile home. In homes with a value of less than $3,000, the law enforcement official may still order the sale of the home, but may also simply order it destroyed or present the title to the clerk of courts to be transferred to the park operator free and clear of all security interests, liens, encumbrances and back taxes.

g. Sales

When the value of the home is greater than $3,000, the law enforcement official must then begin enforcement of the writ in accordance with the sales provisions of R.C. 1923.14. The sale of the home and the abandoned personal property must be in accordance with the procedures for sales of goods on execution under Chapter 2329 of the Revised Code. In addition to the notices required under that chapter, law enforcement officials must also serve a notice of time, date and place of sale to all persons with a legal interest in the home or the personal property. No stay of execution or exemption from sale under R.C. 2329.66 is permissible. If the home is sold, the Clerk of the Court of Common Pleas is to issue a title regardless of what court made the initial order for the sale of the home.

Assuming the mobile home does not sell the first time, a second sale must be held. If no bidders appear either time, the certificate of title will be transferred to the park operator free of any security interest, liens, encumbrances, and any overdue taxes and penalties.

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416 R.C. 1923.13(B) and R.C. 1923.14(B)(2).
418 R.C. 1923.13(B) and R.C. 1923.14(B)(4).
419 R.C. 1923.14(B)(3).
420 Id.
If the home belonged to a deceased resident, other time limits are built into the law. First, if an estate has been filed, the home must be disposed of in accordance with the Probate Court orders.\textsuperscript{423} The law allows for additional time and delay in the movement, transfer or sale of the home.\textsuperscript{424}

In either case, the buyer of the home has no right to keep it in a manufactured home park by virtue of its purchase.\textsuperscript{425}

\textbf{h. Distribution of Proceeds}

Once the home and any abandoned personal property are sold, the distribution of the proceeds from the sale is made. This distribution arrangement differs than those found elsewhere in Ohio law.\textsuperscript{426} The proceeds must first pay for the cost of removal and sale of the home, then tax liens are paid. If any remains, security interests and other liens and encumbrances will be paid. The park operator is then entitled to recover its judgment and costs. If any money remains it is to be turned over to the county’s unclaimed funds account.\textsuperscript{427}

\textbf{i. Redemption}

At any time prior to the issuance of the writ of execution, a home owner may redeem the home by paying any outstanding tax liens and the court costs of the eviction case, unless indigent, and remove the home from the park.\textsuperscript{428} After the issuance of the writ, and before the sale, destruction or transfer of the home, the homeowner may redeem the home by paying the tax liens, court costs (unless indigent), and all costs of removal or storage of the home. He or she must then remove the home from the park or storage.\textsuperscript{429} Similarly, the owner of abandoned personal property may remove it until the day prior to the sale of

\textsuperscript{423} R.C. 1923.12(D).
\textsuperscript{424} R.C. 1923.14(B)(3).
\textsuperscript{425} R.C. 1923.14(B)(3)(e).
\textsuperscript{426} For example, a sheriff’s sale upon attachment of other property. See R.C. 2715.37.
\textsuperscript{427} R.C. 1923.14(B)(3)(a)–(e). Even in the case of an estate sale after the first year, the funds would not go to the estate or the heirs but to the county unclaimed funds account.
\textsuperscript{428} R.C. 1923.14(B)(5).
\textsuperscript{429} Id. This may work well for homes valued over $3,000, but because the law enforcement official may simply order some procedures with homes valued at less than $3,000, this may give no actual redemption right to the home owner.
the home. If a person other than the home owner is the actual owner of personal property, they can redeem it by proving their ownership right and retrieving the property until the day before the sale.

j. Liability

Law enforcement officials acting under a writ of execution are immune from civil liability for any damages to the home or personal property of the home owner. The park operator is not liable for any damage to the home or property unless the park operator or its agents or employees acted with malicious purposes, in bad faith, or in a wanton or reckless manner.

B. Damages

A park operator may also sue for damages for breach of a resident’s obligations under R.C. 4781.39. This right is in addition to recovery for non-payment of rent and other damages to the property that a park operator may receive. An example of this is McMahan’s Mobile Home Park v. Mabberly, in which a park operator received a default judgment of $1,968.91 for rent, damages and attorney fees. In another example, a park operator received $10,000 in rent and damages when a tenant did not reply to the complaint, and the court felt the damages were proven sufficiently for a default judgment.

However, as with eviction, the proper party is the resident, not another person. For that reason, the court in Turner v. Oskowski determined that the son of a deceased tenant, even though an heir, did not owe $11,540 in unpaid rent and late charges.

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431 R.C. 1923.14(B)(7)(b). The proof of ownership must be satisfactory to the officer handling the sale.
432 R.C. 1923.14(B)(2).
433 Id.
434 2nd Dist. Montgomery No. 25998, 2014-Ohio-1448. The issues raised by the tenant were procedural and were overruled with the damages affirmed.
436 2nd Dist. Clark No. 96-CA-38, 1998 WL 184644 (March 27, 1998). The court found the promise to pay rent was personal to the tenant and any action had to be brought against the tenant, or in this case, his estate. Id., slip op at 3. Theoretically the estate could be sued and the legacy to the son would be affected, but the heirs could not be sued directly on the contract.
In an unusual decision, the Licking County Municipal Court found that a park operator was entitled to damages in the amount of rent not paid prior to an eviction, but denied rent for the time period during which the park operator refused the resident’s rent. Similarly, a park operator was denied 30 months of back rent because she had not acted to evict as a mitigation of her damages.

VI. OTHER ISSUES

There are a few other issues involving mobile home parks that have not been mentioned. Security deposits, for example, have not been a major issue as most of the law concerning the deposits for mobile homes is exactly the same as that for other types of rentals. R.C. 4781.50 parallels R.C. 5321.16 and the law developed in the earlier cases under 5321.16 covers deposits in mobile home cases.

Similarly, there are sections in both laws which provide that state law controls over any conflicting ordinances. Although there have been no cases under the landlord/tenant law, the conflicting health code standards were discussed earlier, and state law supersedes local law.

A. Attorney Fees

The remaining issue concerns attorney fees. The landlord/tenant law provides attorney fees for both the park operator and resident under specific circumstances. A park operator may obtain attorney fees for a resident's violations of obligations or for wrongful rent escrow, but may not receive them for a default in rent. A resident may

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437 Shepard’s Mobile Home Court Ltd. v. Bryner, Licking Cty. M.C. No. 99CVG01069 (February 6, 2001). No basis for this decision was stated.
439 For a mobile home deposit case, see Benson v. Oaks Mobile Home Park, 11th Dist. Portage No. 1156, 1983 WL 6313 (March 15, 1982). Failure to provide proper notice to the park operator prevented a former resident from receiving damages under the security deposit law. McWhorter v. Carnein, Chillicothe Muni. Ct. No. 94 CVF 154 (October 17, 1995). See also May v. Metcalf, 5th Dist. Knox No. 11-CA-8, 2011-Ohio-5937.
440 R.C. 5321.19; R.C. 4781.52.
441 See Chapter 3 discussion on health codes.
443 R.C. 4782.43(D).
obtain attorney fees for violations of the R.C. 4781.49 anti-intimidation provisions, or the retaliation protections, and for park violations of provisions found in R.C. 4781.38 and R.C. 4781.40, as well as under the security deposit law. Often the threat of attorney fees will assist the party attempting to correct whatever problems exist between the residents and park operator.

The trend in recent cases is for awards of attorney fees of more than $5,000. It is unknown whether this reflects the courts’ increasing understanding of the complexity of manufactured home cases or the time involved, or whether it reflects higher damage awards which would justify higher fees.

Even though fees are claimed under these provisions of law, the courts have not always awarded them. In Pierce v. Derickson, there was no award because no actual damages were proven. Because the attorney for a resident did not clarify the basis of a jury award, fees were denied in MRD v. Erman. A reduction of fees as unjustified resulted in Fay Gardens Mobile Home Park because the jury award for the residents was

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445 R.C. 4781.49(C). See Shaw v. Mays Mobile Home Court, Chillicothe M.C. No. 87 CVE 233, 1987 WL 419803 (December 10, 1987), in which attorney fees were awarded for lockout and property seizure.
446 R.C. 4781.36(B).
451 Pierce v. Derickson, 5th Dist. Licking No. CA-3105 (June 10, 1985).
$1,000 and the fees which would normally have been charged to obtain the judgment could be recovered.453

B. Award of Damages to Residents

The following chart of manufactured home landlord/tenant cases shows the damages that have been recovered by residents and under what theory each award was made.

<table>
<thead>
<tr>
<th>Case</th>
<th>Issue</th>
<th>Award</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anderle v. Ideal Mobile Home Park</td>
<td>illegal transfer fees</td>
<td>$750.00</td>
</tr>
<tr>
<td></td>
<td>attorney fees</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>Apel v. Wolf</td>
<td>undisclosed fees</td>
<td>$510.00</td>
</tr>
<tr>
<td></td>
<td>conditions in rental home</td>
<td>$300.00</td>
</tr>
<tr>
<td>Bennett v. Croxford</td>
<td>undisclosed fees</td>
<td>$1,910.47</td>
</tr>
<tr>
<td>Bennington v. Austin Square I</td>
<td>sales interference and attorney fees</td>
<td>$6,782.49</td>
</tr>
<tr>
<td>Bennington v. Austin Square II</td>
<td>compensatory damages</td>
<td>$9,680.00</td>
</tr>
<tr>
<td>Benson v. Oaks Mobile Home Park</td>
<td>breach of contract/security deposit</td>
<td>$907.50</td>
</tr>
<tr>
<td>Callahan v. Croxford</td>
<td>self-help</td>
<td>compensatory: $100.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>punitive: $500.00</td>
</tr>
<tr>
<td>Childers v. Russell</td>
<td>self-help</td>
<td>compensatory: $6,000.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>attorney fees: $6,753.75</td>
</tr>
<tr>
<td>Conley v. Caudill</td>
<td>bailment/conversion</td>
<td>compensatory: $5,000.00</td>
</tr>
<tr>
<td>Cook v. Clark</td>
<td>breach of contract</td>
<td>$3,220.00</td>
</tr>
<tr>
<td></td>
<td>sexual harassment</td>
<td>$2,001.00</td>
</tr>
<tr>
<td>Country Club Village v. Gall</td>
<td>retaliatory eviction</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>Croxford v. Litchfield</td>
<td>retaliatory eviction</td>
<td>$371.29</td>
</tr>
<tr>
<td>Cundiff v. Stein</td>
<td>water termination</td>
<td>$40.00</td>
</tr>
<tr>
<td>Davis v. Hoover</td>
<td>conditions</td>
<td>$1,242.11</td>
</tr>
<tr>
<td></td>
<td>security deposit</td>
<td></td>
</tr>
<tr>
<td>Deer Lake Mobile Park v. Wendel</td>
<td>tortious interference with contract</td>
<td>actual: $5,000.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>punitive: $2,000.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>interest: $250.00</td>
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<tr>
<td></td>
<td></td>
<td>attorney fees: $5,000.00</td>
</tr>
<tr>
<td>Euclid Beach Ltd v. Brockett</td>
<td>self-help</td>
<td>compensatory: $30,000.00</td>
</tr>
<tr>
<td></td>
<td>sales interference</td>
<td>punitive: $7,500.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>attorney fees: $8,800.00</td>
</tr>
<tr>
<td>Gibson v. Suiter</td>
<td>conditions/4781.38</td>
<td>$355.00</td>
</tr>
<tr>
<td>Haas v. Johnson</td>
<td>conditions</td>
<td>$500.00</td>
</tr>
<tr>
<td></td>
<td>attorney fees</td>
<td>$500.00</td>
</tr>
</tbody>
</table>

453 14 Ohio App.3d 144 (12th Dist. 1983). Similar reasoning was overruled by the Ohio Supreme Court in consumer cases. See Bittner v. Tri-County Toyota, 58 Ohio St.3d 143, 569 N.E.2d 464 (1991).
<table>
<thead>
<tr>
<th>Case</th>
<th>Issue</th>
<th>Award</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Hopkins v. Haas</em></td>
<td>conditions/4781.38, attorney fees</td>
<td>$450.00, $397.50</td>
</tr>
<tr>
<td><em>Johnson v. Drum</em></td>
<td>Security deposit, rent</td>
<td>$1,613.00</td>
</tr>
<tr>
<td><em>LeMay v. Seckler</em></td>
<td>park rules, attorney fees</td>
<td>$6,144.00</td>
</tr>
<tr>
<td><em>Lester v. Swisher</em></td>
<td>self-help conditions</td>
<td>compensatory: $4,500.00, punitive: $5,000.00</td>
</tr>
<tr>
<td><em>May v. Metcalf</em></td>
<td>Security deposit, attorney fees</td>
<td>$1,485.88</td>
</tr>
<tr>
<td><em>Menges v. Superior Mobile Homes</em></td>
<td>conditions/4781.38, attorney fees</td>
<td>$2,000.00, $4,854.68</td>
</tr>
<tr>
<td><em>Miller Mobile Homes, Inc. v. Reeves</em></td>
<td>entrance fees, security deposit</td>
<td>$200.00, $150.00</td>
</tr>
<tr>
<td><em>Monaco v. Schultz</em></td>
<td>self-help</td>
<td>compensatory: $5,000.00, punitive: $5,000.00</td>
</tr>
<tr>
<td><em>MRD dba Hopewell Estates v. Erman</em></td>
<td>self-help/tort claim</td>
<td>actual: $493.00, punitive: $70.00</td>
</tr>
<tr>
<td><em>Nichols v. Malone</em></td>
<td>landlord obligations, intimidation</td>
<td>reimbursement: $885.90, compensatory: $100.00, punitive: $1,000.00</td>
</tr>
<tr>
<td><em>Non-Employees of Chateau Estates Residents Assoc. v. Chateau Estates Ltd.</em></td>
<td>conditions</td>
<td>injunctive relief, rent reduction: $13 per month per resident, attorney fees: $35,761.80</td>
</tr>
<tr>
<td><em>O.C.R.C. v. Gitler</em></td>
<td>retaliation</td>
<td>actual &amp; punitive: $5,495.00</td>
</tr>
<tr>
<td><em>Pollitt v. Bramel</em></td>
<td>fair housing</td>
<td>compensatory: $25,000.00, punitive: $25,000.00</td>
</tr>
<tr>
<td><em>Properties Ltd. v. Coffee</em></td>
<td>excess late charges</td>
<td>$247.50</td>
</tr>
<tr>
<td><em>Rex Hill v. Cherry</em></td>
<td>conditions/4781.38, attorney fees</td>
<td>$310.95, $300.00</td>
</tr>
<tr>
<td><em>Shaw v. Mays Mobile Home Court</em></td>
<td>self-help lockout/property seizure, attorney fees</td>
<td>actual: $493.00, punitive: $500.00, $500.00</td>
</tr>
<tr>
<td><em>Superior Mobile Homes Inc. v. Russell</em></td>
<td>improper rent increase</td>
<td>$60.00</td>
</tr>
<tr>
<td><em>Tackett v. Boltenhouse</em></td>
<td>conditions/4781.38</td>
<td>$300.00</td>
</tr>
<tr>
<td><em>Weaver v. Montgomery</em></td>
<td>conditions, attorney fees</td>
<td>$4,500.00, $7,500.00</td>
</tr>
<tr>
<td><em>Weddle v. Profitt</em></td>
<td>contract</td>
<td>moving expenses: $810.42</td>
</tr>
</tbody>
</table>

**Table 8**

**C. Manufactured Home Landlord/Tenant Cases Outside R.C. 4781**

Just because a manufactured home case does not fall within the bounds of Chapter 4781 does not mean that the home owner is left without recourse. Eviction law has been
altered to allow the owner of individual homes outside parks to have the same rights as those inside parks. Also, claims under common law, such as contract law, can result in damages for a homeowner even though there is no park involved. For example, in *Weddle v. Proffitt*, the homeowner was awarded damages for the breach of a rental agreement by a landlord which resulted in her having to move the home. In the final analysis, those homes which are outside the scope of both Chapter 4781 and 5321 still have rights under old common law landlord/tenant theories.

**D. Conclusion**

Mobile home residents are entitled to landlord/tenant rights whether they rent the home or the land in a manufactured home park. Under the provisions of R.C. Chapter 4781, residents of this type of housing are guaranteed rights similar to those who reside in apartments and site-built houses, and they receive more rights under the notice and right to cure provisions of R.C. 4781.45.

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454 Meigs Cty. Ct. No. 06 CVF 452 (November 19, 2007).
There is no single way to approach procedural questions in mobile home cases. Because the law covering such homes is procedurally the same as in other cases, there is no specific body of law to turn to for solutions. Mobile home cases are like other landlord/tenant cases or consumer cases involving warranties or defects, and the practitioner will turn to state or federal consumer laws in resolving the case. While there is a separate landlord/tenant law for manufactured home parks, much of the procedure remains the same as in other landlord/tenant cases. For example, when a manufactured home park eviction is brought by a non-attorney, the court may dismiss it because the case was filed in propria persona.1 Similarly, if a case is over a lower court’s monetary jurisdiction, it must be transferred to the common pleas court.2

The major purpose of this chapter will be to review discovery tactics and resources for mobile home cases and to present examples of pleadings and how they may be used. Beyond this, practitioners must return to the basics of substantive law to fit their mobile home case into specific subject areas.

I. DISCOVERY

Once a manufactured home case arises, there are a number of informal discovery methods that can be used before drafting the pleadings. Often, such as in the case of document location, the case will be strengthened or theories amended before it reaches the court.

A. Landlord/Tenant Cases

When the home is located in a manufactured home park, the first stop should always be the Ohio Manufactured Home Commission. Manufactured home parks are now regulated by the Ohio Manufactured Homes Commission. Information available at the

Commission includes the license of the park, inspection reports (every park must be inspected annually, as well as when specific complaints are made), installation information, and copies of correspondence and orders from other agencies such as the Environmental Protection Agency (EPA). The extent of the record keeping has yet to be established as the new law requires the Commission to have inspection records as public records, but the rules are not yet in place to govern these records or the records of their local subcontractors carrying out the work of the Commission.

For the person facing eviction, the ability to raise defenses under R.C. 1923.061(B) can be greatly strengthened by discovery of current and past violations of health codes in the public records. The park operator is required to comply with housing, health and safety codes and a separate violation occurs in each instance when he does not. For those seeking a remedy to conditions and considering rent escrow, this will allow a consolidation of individual claims about the home or lot with complaints about the park violations of regulations.

Additional records are located in various state offices. Manufactured park inspection records are available at the Ohio Manufactured Homes Commission as are the plat maps in the state. Sewer and water system documents are located in the EPA offices in the various regions. Flood plain documents are available, as well as fire safety inspections and approvals. All of these are designed to give an attorney a view of park compliance with construction standards and health conditions.

There is also a statewide residents’ organization that might have knowledge of or records of park issues that will relate to a case. The Association of Manufactured Home

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3 R.C. 4781.39(A)(1).
4 The office is located at 5100 Parkcenter Avenue, Suite 103, Dublin, Ohio 43017.
5 The regional offices of the EPA are located at:
   NE – 2110 East Aurora Road, Twinsburg, Ohio 44087
   Central – 1800 Watermark Drive, PO Box 1049, Columbus, Ohio 43266
   SE – 2195 South Front Street, Logan, Ohio 43138
   NW – 1035 Delvac Grove Drive, Bowling Green, Ohio 43402
   SW – 40 South Main Street, Dayton, Ohio 45402
The documents may also be located in the local authority office.
6 Ohio Adm. Code 4781-12-07 to -07.3.
7 These documents will usually be at the local fire department.
Residents of Ohio\(^8\) has members around the state and contacts with other resident organizations from local to national levels.

The value of photographs and witness statements in landlord/tenant cases cannot be underestimated. With the unique defense of a park's arbitrary application of a rule preventing eviction from a manufactured home park, \(^9\)these tools are crucial. Cases have been won on the arbitrary applications of rules, \(^10\) and in cases handled by the author, mere photographs and a motion to dismiss were enough to have some evictions withdrawn.

The lease and park rules themselves also should be obtained if the client has them. Home owners must be offered a rental agreement for at least a year and offered subsequent ones thereafter each time the previous one expires. \(^11\) If a park has not offered a rental agreement, this may be grounds to defend against an eviction, or even a money claim where rent has been raised without an annual lease. \(^12\) Park rules are also important because they may be found to be unreasonable, arbitrary or capricious. \(^13\)

**B. Consumer Cases**

Consumer issues for mobile home law rely more on documents and expert witnesses. Because of their regulation of manufacturers, HUD will have documents on manufacturing defects under the federal standards. \(^14\) The Center for Auto Safety also keeps records on manufacturing problems with mobile homes. \(^15\) Even the National Highway Traffic Safety and Transportation Agency (NHTSA) keeps documents on some manufactured homes. \(^16\)

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\(^8\) The current address for AMHRO is 8964 Wood Thrush Drive, Streetsboro, Ohio 44241; phone number (330) 626-5941.

\(^9\) R.C. 4781.45.


\(^11\) R.C. 4781.40(A).


\(^14\) See Chapter 2, supra. In reply to a request for documents, the manufacturer should also produce inspection reports on the home until the time it left the factory.

\(^15\) The center for Auto Safety is located at 2001 South Street, NW, Washington, DC 20009.

\(^16\) The NHTSA is located at 400 Seventh Street, SW, Washington, DC 20590, http://www.nhtsa.dot.gov.
Ohio’s Attorney General maintains a searchable public inspection file of past decisions that may be useful to show patterns and practices as well as to give ideas about other claims and defenses.

Now that the Ohio Manufactured Home Commission has the power to regulate all sales of manufactured homes in Ohio, they will have records of manufactured home brokers and sales persons. In addition, problems with new manufactured homes are filed with the Commission within the first year after the home sale, and their nonbinding mediation program will have records filed with the Commission. For individual cases, the title and the sales documents, including security interests, are important. The title is probably the most important piece of paper for identifying parties. In Ohio, the title is proof of ownership and all liens or security interests must be recorded on its face. Also, the title is proof of insurable interest for homeowners’ insurance purposes.

Violations of the consumer laws will often be found on the face of the sales agreements or the security interests. Once a case has been filed, discovery may include the franchising agreements between a manufacturer and dealer, especially if the dealer denies responsibility for repairs.

Expert witnesses will assist in cases involving manufacturing defects or condition problems once the home leaves the manufacturer. A person who has training in manufacturing or repair of homes can testify as an expert. Appraisers can offer facts about the value of a home with and without the defects. Realtors or others who rent mobile homes can offer market rent evidence.

C. Other Cases

Specific problems beyond consumer and landlord/tenant cases require more specialized documents. Zoning cases will require review of the zoning documents for date of enactment, authority to pass the regulations and zoning classifications. Tax and licensing documents will include past owner records. A title search may be done through the Bureau of Motor Vehicles for past ownership of homes and information on broker’s bonds is available from the Ohio Manufactured Homes Commission. The county treasurer

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17 The Ohio Manufactured Home Commission is located at 5100 Parkcenter Avenue, Suite 103, Dublin, OH 43017, (614)734-6010.

and auditor will have past licensing and tax records. In case of property damage, the Ohio Department of Transportation issues licenses to transport homes and information on the license and bond required to transport homes.

One practice is to review past court cases involving the other party, whether it is a government agency, dealer or mobile home park. Often, other litigants have raised some of the same issues and there may be an effect on the case before you. A declaratory judgment may have been issued against a sales practice, or there may be a permanent injunction in place and the other party will be in violation of that injunction.\footnote{\textit{Fizer v. Luckett}, Jackson C.P. No. 84-CIV-37 (April 30, 1984) (injunction against utility termination); \textit{Tackett v. Boltenhouse}, Chillicothe M.C. No. 86-CVG-420 (October 9, 1986) (injunction against renting substandard homes).}

II. **SAMPLE PLEADINGS**

Appendix 1 contains a number of sample pleadings which give a good overview of the issues that continue to be raised in manufactured home cases. They also serve as examples for practitioners new to manufactured housing litigation.
APPENDIX 1

SAMPLE PLEADINGS

The pleadings that follow are for landlord/tenant and consumer cases involving mobile homes. While some of the pleadings are older, from as much as 20 years ago, the chosen pleadings give a good overview of the issues that still are raised in manufactured home cases.

Consumer

The initial consumer pleading is a Complaint with multiple causes of action and a request for a temporary restraining order. In *Spradlin v. Equity Trust Co., et al.* (Document 1), the claims included a Civil Conspiracy Claim as well as CSPA and other contract issues involving the purchase of a manufactured home. The next pleading is the state court complaint in *Taylor v. Burton* (Document 2), based on violations of the CSPA, TILA, and the UCC by a dealer in the sale of a mobile home. An example of a federal complaint involving the Truth in Lending Act is found in *Haines v. Elsea, Inc.* (Document 3). In this case, allegations were made of violations of various federal and state consumer laws, but keying more on the Truth in Lending Act and Magnuson-Moss Warranty Act. The ultimate aim in this case was rescission of the home purchase, which was accomplished in the settlement of the case.

No discovery was included in the two prior cases because they settled quickly. Discovery from the *Smith v. Elsea, Inc.* sales case (Document 4) is included. The *Hilton*, supra, summary judgment motion (Document 5) is included because it covered the CSPA issues very well and because the attorney was awarded the summary judgment and all money requested along with fees.

The *Bank America Housing Services v. Ragland* Motion to Dismiss (Document 6) shows how to raise defenses in a replevin action when a consumer is faced with loss of the home. In this case the financial institution voluntarily dismissed its case.
Because of changes in title law, and the number of cases involving lost titles, and even cases in which the same home is sold multiple times, the Complaint in Spence v. Hicks, was included (Document 7). This is an example of a pleading designed to have the court order a new title in cases where the chain of title is broken by a lost or misdirected title.

Landlord/Tenant

The first landlord/tenant document (Document 8) is a sample rent escrow letter which either attorneys or pro se litigants can use to begin the rent escrow process.

Miller v. Hamm (Document 9) was a multi-issue case involving utility submetering and a utility monitoring and billing company. Claims were brought under the landlord/tenant law and contract law. There was also an issue of the government authority declaring the home unfit for habitation due to the utility issues. The Amended Complaint attached along with the Complaint includes a declaratory relief request as well.

One of the older pleadings is the complaint and request for temporary restraining order in Martin v. Young (Document 10). This case involved many of the issues that would later be developed in litigation including a park’s failure to obtain a license, failure to offer a rental agreement, park closure, retaliation, conditions and fees.

Document 11 is a Complaint in a utilities case from Montgomery County. The issue in Wilson v. Deerpark Mobile Home Park (Document 11) was the termination of utilities in a manufactured home park because of the park operator’s failure to pay the utility bills.

A manufactured home park that attempted to sell its land to a neighboring company and give only 30 days’ notice of closing and to move was the subject of a declaratory judgment action to obtain the notice period required by law. The Robinson v. Haas declaratory judgment complaint (Document 12) is included.

A verified complaint alleging conditions problems in a park is also included. The complaint in Callahan v. Croxford (Document 13) was filed against a park operator alleging not only conditions problems, but retaliatory and illegal self-help actions by the park operator.

The set of pleadings (Documents 14–18), are from the case Haas v. Johnson, Chillicothe M.C. No. 90 CVG 1024 (March 11, 1991). They were drafted in a case in
which a mobile home owner faced eviction from a park with numerous condition problems which the home owner has raised as a defense. Although dated the concepts raised remain the same. The following pleadings are included:

Answer and First Amended Counterclaims (Document 14)
Motion Under R.C. §1923.15 (Document 15)
Interrogatories and Requests for Production (Document 16)
Requests for Admissions (Document 17)
Motion for Court to Inspect the Premises (Document 18)

In addition to the pleadings, the health department records and copies of EPA letters found in a file search had already revealed a long-term pattern of water and sewer problems.

An eviction defense based on improper notice citing the incorrect section of the law was the basis of the Stites Enterprises v. Dixon (Document 19) motion to dismiss. The park operators in this case settled rather than have the case dismissed.

Two summary judgment motions are included for dismissal of eviction complaints. The motion in Forest Creek Mobile Home Park v. Stewart (Document 20) challenges the jurisdiction of the court to hear the case because of improper notice citing an invalid reason for termination. In Forest Creek Mobile Home Park v. Spradlin (Document 21) the issue was the improper notices that failed to comply with legal requirements.

The final landlord/tenant pleading is a partial summary judgment motion in Howard Companies, Inc. v. Liles (Document 22) challenging the legality of certain parts of a manufactured home park’s lease. Partial summary judgment was granted by the court striking down illegal and unconscionable parts of the lease.

Each of these pleadings is included because they address commonly seen issues raised regarding the manufactured home or the resident’s rights. You will have to craft pleadings for your individual cases, but these should give you a start. Good luck.
APPENDIX 1

**Consumer Cases**
- Document 1: Complaint
- Document 2: State Court Complaint
- Document 3: Federal Court Complaint
- Document 4: Interrogatories and Request for Production of Documents
- Document 5: Summary Judgment Motion (security deposit)
- Document 6: Motion to Dismiss (replevin)
- Document 7: Complaint for Declaratory Judgment (obtain title)

**Landlord/Tenant Cases**
- Document 8: Rent Escrow Letter
- Document 9: Complaint and Amended Complaint with Motion for Temporary Restraining Order
- Document 10: Complaint with Jury Demand (temporary restraining order)
- Document 11: Amended Complaint (utility issues)
- Document 12: Complaint for Declaratory Judgment (park closure)
- Document 13: Verified Complaint (conditions)
- Document 14: Answer and First Amended Counterclaims (conditions)
- Document 15: Motion under R.C. §1923.15 (conditions)
- Document 16: Interrogatories and Requests for Production of Documents (conditions)
- Document 17: Requests for Admissions (conditions)
- Document 18: Motion for Court to Inspect the Premises (conditions)
- Document 19: Motion to Dismiss for Lack of Jurisdiction (arbitrary application of rule)
- Document 20: Summary Judgment Motion (improper notice)
- Document 21: Summary Judgment Motion (improper notice)
- Document 22: Summary Judgment Motion