

1997

Imperial Mobile Home Park, L.L.C. v. Michael Kelsch, personal representative to the estate of LaRue Griffin, deceased; Ruth Williamson; John Does 1 through 10 : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

IMPERIAL MOBILE HOME PARK,
L.L.C, a Utah Limited Liability
Company,

Plaintiff/Appellee,

vs.

MICHAEL KELSCH, Personal
Representative to the Estate of
LaRue Griffin, Deceased;
RUTH WILLIAMSON; and JOHN
DOES I through 10,

Defendants/Appellant.

Case No. 970591-CA

Priority No. 15

**UTAH COURT OF APPEALS
BRIEF**

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[CAPTION CONTINUED ON INSIDE FRONT COVER]

BRIEF OF APPELLANT

APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT, AMERICAN FORK
DEPARTMENT, UTAH COUNTY, ON SUMMARY JUDGMENT GRANTING
PLAINTIFF'S DECLARATORY JUDGMENT AND DISMISSING DEFENDANTS'
COUNTERCLAIMS, BEFORE THE HONORABLE JOHN C. BACKLUND

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FILED

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COURT OF APPEALS

MICHAEL KELSCH, Personal
Representative to the Estate of
LaRue Griffin, Deceased; RUTH
WILLIAMSON; and JOHN DOES
I through 10,

Counterclaimants/Appellant

vs.

IMPERIAL MOBILE HOME
PARK, L.C., PATTON KWAN and
JANET KWAN, doing business as
IMPERIAL MOBILE HOME PARK;
SCOTT A. MADSEN; RON CLARK;
and DOES 1 through X,

CounterDefendant and
Appellee, and Third-Party
Defendants.

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JURISDICTION OF THE UTAH COURT OF APPEALS

Inasmuch as the Utah Supreme Court has transferred the case, this Court has original jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2a-3(2)(j) (1996).

ISSUES PRESENTED AND STANDARDS OF REVIEW

1. Whether the trial court erred by declaring that the mobile home park has the legal right to require any mobile home that is not at least 12 feet in width and 65 feet in length be removed from the park upon sale. (R. 493). STANDARD: Inasmuch as summary judgment is granted as a matter of law, this issue is reviewed by the appellate court for correctness. White v. Deseelhorst, 879 P.2d 1371, 1374 (Utah 1994). Accordingly, the appellate court accords no deference to the trial court's conclusion that the facts are not in dispute nor the court's legal conclusions based on those facts. Travelers Ins. Co. v. Kearl, 896 P.2d 644, 646 (Utah App. 1995). In addition, the appellate court will view the properly submitted evidence, and the facts and inferences thereby supported, in a light most favorable to the party opposing summary judgment. Id. at 647.

2. Whether the trial court erred by concluding that the Estate of LaRue Griffin, by and through Mr. Kelsch, could not be the successor of Mrs. Griffin's interest under her written lease agreement with the Park. (R. 498). STANDARD: Inasmuch as summary judgment is granted as a matter of law, this issue is reviewed by the appellate court for correctness. Deseelhorst, 879 P.2d at 1374.

3. Whether the trial court erred by concluding that the Estate, by and through Mr. Kelsch, had no implied lease agreement with the mobile home park because Mr. Kelsch has paid the rent for the mobile home lot through an independent third party rather than out of personal or

estate funds, and because no one is actually occupying the Griffin mobile home. (R. 497).

STANDARD: This issue presents a question of law, reviewed by the appellate court for correctness. See State v. Pena, 869 P.2d 932, 935-36 (Utah 1994).

4. Whether the trial court erred by granting the Park summary judgment on Appellant's claim for violations of the Mobile Home Park Residency Act ("MHPRA"), holding that the Legislature has authorized mobile home parks to establish minimum size specifications for mobile homes; accordingly there can be no violation of the MHPRA, as a matter of law, resulting from a mobile home park's doing just that. (R. 494). STANDARD: Inasmuch as summary judgment is granted as a matter of law, this issue is reviewed by the appellate court for correctness.

Deseelhorst, 879 P.2d at 1374. Moreover, this issue depends on the construction of provisions of the MHPRA, presenting a question of law, which the appellate court reviews for correctness. See Durham v. Duchesne County, 893 P.2d 581, 584 (Utah 1995).

5. Whether the trial court erred by concluding that the Park's minimum size requirements are inherently reasonable as a matter of law and, therefore, the park rule regarding size specifications does not prevent or unreasonably limit the sale of a park resident's mobile home. (R. 490). STANDARD: Inasmuch as summary judgment is granted as a matter of law, this issue is reviewed by the appellate court for correctness. Deseelhorst, 879 P.2d at 1374; see also State v. Pena, 869 P.2d 932, 935-36 (Utah 1994).

6. Whether the trial court erred by concluding that the Park's rule change establishing minimum size requirements is not unconscionable. (R. 492). STANDARD: This issue presents a question of law, reviewed by the appellate court for correctness. See Pena, at 935-36.

7. Whether the trial court erred by granting the Park summary judgment on Appellant's claim for breach of the duty of good faith and fair dealing, concluding that, as a matter of law, there can be no violation of the covenant of good faith and fair dealing because the mobile home park was simply exercising express contractual rights left to its sole discretion. (R. 488).

STANDARD: This issue presents a question of law, dependent on the interpretation of binding case law, which issue the appellate court reviews for correctness. State v. Richardson, 843 P.2d 517, 518 (Utah App. 1992).

8. Whether the trial court erred by finding, either as a matter of undisputed fact or law, that it was reasonable for the mobile home park to absolutely refuse to allow any individual to sublet, lease, or occupy the Griffin mobile home on park premises even though the Park has allowed other tenants to do so. (R. 495). STANDARD: Inasmuch as summary judgment is granted as a matter of law, this issue is reviewed by the appellate court for correctness.

Deseelhorst, 879 P.2d at 1374.

9. Whether the trial court erred by granting the Park summary judgment on Appellant's claims for violations of the Utah Consumer Sales Practices Act ("UCSPA"), holding that the UCSPA does not apply to the leasing of lot spaces for mobile homes. (R. 478). STANDARD: Inasmuch as this issue depends on the construction of provisions of the UCSPA, it presents a question of law, which the appellate court reviews for correctness. See Durham, 893 P.2d at 584.

10. Whether the trial court erred by concluding that the Park has committed no unconscionable act or practice in connection with a consumer transaction within the meaning of the UCSPA. (R. 477). STANDARD: This issue presents a question of law, which the appellate court reviews for correctness. See Utah Code Ann. § 13-11-5(2); Durham, 893 P.2d at 584.

11. Whether the trial court erred by granting the Park summary judgment on Appellant's claim for intentional interference with economic relations because the Park had no duty of non-interference. (R. 484). STANDARD: Inasmuch as summary judgment is granted as a matter of law, this issue is reviewed by the appellate court for correctness. Deseelhorst, 879 P.2d at 1374.

12. Whether the trial court erred, by plain error or otherwise, in requiring the non-moving party in a motion for summary judgment to produce actual evidence to support all the elements of its claims when the moving party produced no evidence to controvert those claims and simply argued that the non-moving party's legal theories for recovery were inapplicable as a matter of law to this case. (R. 499). STANDARD: Inasmuch as summary judgment is granted as a matter of law, this issue is reviewed by the appellate court for correctness. Id.

13. Whether the trial court erred by concluding that Appellant has failed to reasonably mitigate his damages and that, as a matter of law, any claim for damages by Appellant is completely barred by a failure to reasonably mitigate damages. (R. 495). STANDARD: Inasmuch as summary judgment is granted as a matter of law, this issue is reviewed by the appellate court for correctness. Id.

CONTROLLING STATUTES, ORDINANCES, AND RULES

The following statutes are central to this appeal and their entire text is set forth verbatim in the addendum at Exhibit "I" (the MHPRA) and Exhibit "J" (the UCSPA), respectively.

Utah Code Ann. §§ 13-11-3(2), -3(5), -3(6), -5(1), -5(2) (1996).

Utah Code Ann. §§ 57-16-2, -3(3), -3(8), -4(4), -4(7), -5(5), -7 (1996).

STATEMENT OF THE CASE

I. Nature of the Case: This case on appeal involves the exercise of rights and obligations between a mobile home park, as landlord, and a resident mobile home owner, as tenant. It further involves the questionable conduct and methods of a mobile home park in exercising its rights to the detriment of the home owner and seeking to constructively evict the tenant by, among other claims, unreasonably limiting the sale of the tenant's mobile home and preventing the estate of a deceased tenant from residing in the mobile home.

II. Course of Proceedings and Disposition in Trial Court: Imperial Mobile Home Park ("Park") filed a complaint against Michael Kelsch, personal representative of the estate of LaRue Griffin ("Estate"), and Ruth Williamson, seeking declaratory judgment in the District Court that the MHPRA authorizes a mobile home park owner to require the removal of a mobile home from the park upon sale where the mobile home is less than 65 feet in length, as established by a newly adopted park rule. (R.1-4). The Park later amended its complaint, claiming the Estate's and Williamson's mobile homes were not exempted from the minimum size specifications established by the Park, even though, the Park acknowledged that other undersized mobile homes were excluded from the size rule. (R. 49-50).

The Estate and Williamson filed an answer to the amended complaint and asserted counter-claims and third-party claims against the Park, its owners and managers, for breach of contract; violation of the MHPRA; breach of the covenant of good faith and fair dealing; intentional interference with economic relations; violations of the Utah Fair Housing Act, the Federal Fair Housing Act, and the UCPSA; punitive damages; and injunctive relief. (R. 78). The Park, its owners, and managers, filed a reply and answer to the counterclaims and third party complaint. Prior to trial, the Park filed a motion for summary judgment and a supporting

memorandum on all issues. (R. 158, 293). The Estate and Williamson opposed the motion with memoranda, affidavits and deposition excerpts. (R. 506). At the close of oral arguments, the Court granted the Park's motion for summary judgment. (R. 758). The Court, on motion of the Park, subsequently entered Findings of Fact & Conclusions of Law and the Judgment. (R. 676-678); copies of which are attached as Exhibits "D" and "E" of the Addendum. The Estate now appeals from the Findings of Fact & Conclusions of Law and the Judgment granting the park's declaratory relief and dismissing some of the Estate's counterclaims.

STATEMENT OF RELEVANT FACTS

LaRue Griffin, entered into a written lease agreement with the Park in February 1972. (R. 248); a copy of which is attached at Exhibit "C" in the Addendum. In May 1996, LaRue Griffin died and Michael Kelsch was appointed personal representative of her estate. (R. 227). Mr. Kelsch subsequently received a letter from the Park dated June 10, 1996, requesting payment of rent and requiring removed of the mobile home when sold (R. 215-216), a copy of which is attached as Exhibit "A" of the Addendum. From Mrs. Griffin's death up to the present, Mr. Kelsch has been causing the rent to be paid to the Park for the mobile home lot (R. 311), but has not been allowed to have a caretaker or subtenant live in the mobile home (R. 310, 697-99) despite the park manager's acknowledgment that an unoccupied mobile home poses a safety hazard (R. 379) and that the Park has permitted other renters to have "housesitters" as an accommodation. (R. 376-377). The Park has further indicated that the Park will not allow a subtenant because the mobile home is undersized and must be moved out on sale. (R. 243-45). The mobile home is 13'10" in width and 63'4" in length. (R. 244, 546).

The Park has represented that the only reason Mrs. Griffin's mobile home must be removed upon sale has "nothing to do with its condition" (R. 379), but is because the home does not meet the minimum size specifications as set forth in the amended 1994 park rules. (R. 378), a copy of which Rules are attached as Exhibit "B" of the Addendum. Prior to 1994, no park rule existed setting forth any minimum size requirement. (R. 245). When the new rules were promulgated, the Park was aware that some lots were too small to fit a mobile home meeting the minimum sizes. (R. 243). In addition, the Park has made exceptions to the size rule after its implementation, allowing the park owner to sell an undersized mobile home and allow it to remain in the Park upon sale (R. 386, 242). The Park has also failed to measure each and every mobile home being sold, thus "mistakenly" allowing at least one undersized mobile home to remain in the park upon sale. (R. 239-243).

Mr. Kelsch has received an appraisal valuing the Griffin mobile home at \$15,450 (R. 313), and he has received offers to purchase the home for \$15,000 to \$16,000 (R. 311). The only offer he has received from someone who would move the home from the Park was for \$8,000 (R. 222-23).

SUMMARY OF THE ARGUMENT

Summary judgment was improvidently granted by the trial court in this case. When this Court views the facts and inferences in favor of the Estate, and construes and interprets the relevant statutory provisions and applicable case law, it will become clear that the Park is not entitled to judgment as a matter of law on its action for declaratory relief or on the Estate's claims raised for violations of the MHPRA, breach of the covenant of good faith and fair dealing, violations of the UCSPA, and intentional interference with economic relations.

The Estate is entitled to raise claims as a lessee and a resident of the Park. The evidence before the trial court supports a finding that the Estate was the successor in interest to Mrs. Griffin's written lease agreement with the Park. In any event because the mobile home is occupying lot #119 within the Park and rent is being paid to the Park, a lease should at least be implied by law. Moreover, the Estate qualifies as a resident of the Park under the MHPRA.

Sections 57-16-4(4), -4(7), and -7(1) of the Utah Code are not clear and unambiguous, but capable of more than one interpretation. Moreover, there is some uncertainty as to how these provisions should be construed together. In referring to minimum size specifications in the MHPRA, it seems likely that the legislature intended to adopt some uniform size specifications for mobile homes. Even if parks have some discretion to set and enforce size specifications, that statutory discretion is not absolute and unfettered. With every right the MHPRA gives to a mobile home park, it imposes a corresponding obligation on the park to protect its tenants. When properly considering the economic conditions, it becomes clear that the evidence supports a finding that the Park's rule in this case unreasonably limits the sale of the Griffin mobile home. In addition, the Park's rule change adopting the size requirements is both procedurally and substantively unconsonable, as defined by relevant case law.

Furthermore, even though the Park has the contractual right to withhold approval for a subtenant or housesitter to reside in the Griffin mobile home, it may not unreasonably or in bad faith withhold that approval. Accordingly, the evidence on the record could support a finding that the Park has unreasonably refused to permit anyone to reside in the mobile home, in violation of the covenant of good faith and fair dealing. Moreover, when considered in light of other facts, it

would appear that the Park is trying to constructively evict the mobile home, also a breach of good faith and fair dealing.

In addition, according to the plain language of the UCSPA, the leasing of lot spaces for mobile homes to mobile home owners is a consumer transaction, and the Park is accountable for unconscionable acts or practices committed in connection with that consumer transaction. Also, the Park has interfered with potential sales of the mobile home, unconditionally refusing to approve any purchaser who wants to remain in the Park. Because the Park has violated provisions of the MHPRA and the UCSPA in so interfering, the Park can be found liable for intentional interference with economic relations.

Finally, the trial court erred by requiring the Estate to produce sufficient actual evidence to support its claims when the Park produced no evidentiary challenge to the claims preserved on appeal, but instead argued that the Estate's legal theories must fail as a matter of law.

ARGUMENT

"Summary judgment is appropriate only when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law." Glover v. Boy Scouts of Am., 923 P.2d 1383, 1385 (Utah 1996) (emphasis added); see also Utah R. Civ. P. 56(c). Inasmuch as summary judgment is granted as a matter of law, the trial court's ruling is reviewed for correctness. White v. Deseelhorst, 879 P.2d 1371, 1374 (Utah 1994). Accordingly, the appellate court accords no deference to the trial court's conclusion that the facts are not in dispute, nor the court's legal conclusions based on those facts. Travelers Ins. Co. v. Kearl, 896 P.2d 644, 646 (Utah App. 1995). Finally, all

[d]oubts, uncertainties or inferences concerning issues of fact must be construed in a light most favorable to the party opposing summary judgment. Litigants must be able to present their cases fully to the court before judgment can be rendered against them unless it is obvious . . . that the party opposing judgment can establish no right to recovery.

Mountain States Tel. & Tel. Co. v. Atkin, Wright & Miles, 681 P.2d 1258, 1261 (Utah 1984)

(footnotes omitted).

The trial court's ruling in the present case contains several "findings" which are either not supported by any evidence in the record, are genuinely disputed, are not being viewed in favor of the Estate, or are not relevant and do not support a judgment in favor of the Park. Moreover, proper resolution of just the legal issues raised in this case, without even addressing the factual disputes, would not entitle the Park to judgment as a matter of law on the Park's declaratory action and on the Estate's claims for violations of the MHPRA, breach of the covenant of good faith and fair dealing, violations of the UCSPA, and intentional interference with economic relations. Accordingly, this Court should reverse the trial court and set aside the summary judgment with respect to these claims.

I. The Trial Court Erred by Concluding the Estate Has No Lease Agreement With the Park Because Mr. Kelsch Is Not the One Actually Paying the Rent and Because No One Is Actually Residing in the Griffin Mobile Home.

Several of the Estate's claims depend upon whether it, or Mr. Kelsch, as its personal representative, qualifies as a "resident" of the Park for purposes of the MHPRA, and whether it is able to enforce the provisions of LaRue Griffin's lease with the Park. If the trial court had properly interpreted and applied the applicable law---and not weighed the evidence but rather

viewed it in a light most favorable to the Estate--it should have concluded that Mr. Kelsch or the Estate was, and still is, a resident of the Park and a successor under Mrs. Griffin's lease.

While the trial court made no express ruling on this issue--neither at the hearing or in the written findings and conclusions--it did make findings: (1) that Mr. Kelsch does have certain rights under the Park's June 10, 1996 letter; but also (2) that Mr. Kelsch has never himself paid any rent to the Park; (3) that the rent has been paid by The Church of Jesus Christ of Latter-day Saints (LDS church); (4) that neither Mr. Kelsch or the Estate have no obligation to repay the LDS Church; (5) that Mr. Kelsch has never physically possessed or inhabited the Griffin mobile home; and (6) that the mobile home has remained vacant since Mrs. Griffin's death.¹

Moreover, the trial court expressly adopted all of the Park's reasoning as presented in its memoranda to the Court. Certainly, the Park has repeatedly asserted the position that neither Mr. Kelsch nor the Estate has an actual lease agreement with the Park and that neither can be considered a resident of the Park. Nevertheless, any such conclusion is in error, and the Park is not entitled to judgment as a matter of law on this point.

A. The Griffin lease agreement was assigned to the Estate.

It is undisputed that Mrs. Griffin had a valid, written lease agreement with the Park, a copy is attached as Exhibit "C" of the Addendum. Logically, when she died, either that lease was terminated, or else the lease was transferred to her estate. A review of the evidence before the trial court supports a finding that the lease was assigned to the Estate and not terminated.²

¹ The trial court may have correctly concluded that these last five facts are not disputed, but the Estate does dispute the relevance or legal effect of those facts.

² In fact, even the Park's legal counsel admitted at the summary judgment hearing: "I think I would have to concede the point that the June 10th letter does create some sort of lease with

First and foremost, it is undisputed the mobile home was allowed to remain on lot #119 in the Park and that the Park continued to accept monthly rent for the lot space. Those facts alone would tend to support a finding that Mrs. Griffin's lease was not terminated. In addition, the Park never sent a notice of termination of the lease or an eviction notice to Mr. Kelsch, nor the Estate; instead, the Park sent the June 10th letter indicating the Park's position that the mobile home will "have to be removed by the buyer upon sale" and notifying him of the amount of rent due for June and indicates that the \$20.00 late charge will not be assessed, and that no "further action" will be taken, if the rent is paid in full by June 15. (Emphasis added.)

The reasonable implications of the letter are that the Estate was being required to pay rent under the same terms and conditions that previously applied to Mrs. Griffin; that if the rent was timely paid, no action would be taken to evict the mobile home from the Park; and that the Estate was being considered bound by the same park rules (ie., those rules regarding size specifications) by which Mrs. Griffin had been bound under her lease agreement.

Viewing these unrefuted facts and evidence in favor of the Estate, the conclusion must be reached that the Park did not terminate Mrs. Griffin's lease agreement. Either the Griffin lease agreement simply continued with her Estate, or else the letter constituted implicit written consent of a transfer of the Griffin lease agreement to her Estate.³

B. The Estate at least has a lease implied by law.

the personal representative. I think I have to concede that." (R. 813) .

³ Paragraph 3 of the lease indicates that the *"Resident shall not assign, transfer or sublet the site or any part thereof, or this Rental Agreement, without Landlord's prior written consent,"* supporting the Park's implicit assignment of the lease to the Estate, or the Park's waiver of any right to withhold such approval.

In any event, by accepting rent and permitting the mobile home to remain in the park, the Park cannot legitimately assert that no lease agreement exists. As this Court recently recognized, "[w]here a party enters and occupies the land of another and pays rent under an invalid or unenforceable lease, a landlord-tenant relationship will be implied by law between the occupant and the owner of the land as a result of that occupancy and payment of rent." Consolidated Realty Group v. Sizzling Platter, Inc., 930 P.2d 268, 273 (Utah App. 1996) (quoting with approval 49 Am. Jur. 2d Landlord & Tenant § 112 (1995)). In addition, it is axiomatic that "a person who possesses property and pays rents, though there is no written lease, will be estopped from asserting that there is no lease. Likewise, the landlord who accepts rents and allows the tenant to remain in possession will be estopped from claiming that there is no binding lease." B.Y.U. Leg. Studs., 2 Summary of Utah Real Property Law § 13.4 (1978). In accordance with these legal principles, either a lease implied by law, or a lease by estoppel, is created by (1) occupancy of the premises and (2) the payment of rent.

Clearly, the Mobile Home Park is in the business of leasing lot spaces for mobile homes, and the Griffin mobile home is in fact occupying lot space #119 in the Park. It is also undisputed that the rent is being paid for the lot and is being accepted by the Park. More importantly, Mr. Kelsch's unrefuted testimony is that he has "caused" the rent to be paid, albeit out of fast offering funds of the Church of Jesus Christ of Latter-day Saints ("LDS church"). (R. 311). In other words, the rent is being paid in that manner at the behest of Mr. Kelsch. These facts do not somehow convert the LDS church into the tenant in place of Mr. Kelsch or the Estate. The source of rent payment should be of no consequence if it is being paid at the insistence of, or on behalf

of, the actual tenant.⁴ Since both factors are met in this case, at least an implied lease arrangement should be presumed to exist between the parties.

The facts and inferences drawn from the evidence supports a finding that Mrs. Griffin's lease agreement was allowed to continue with her Estate. In the alternative, a lease can and should be implied by law, and the Estate should be accorded the same rights of other Park tenants. Clearly, the Estate has certain rights and expectations under some agreement, which should have been fully considered and addressed before any judgment could be appropriately rendered.

C. The Estate, by and through Mr. Kelsch, is a "resident" pursuant to the MHPRA.

In addition to having a lease agreement, the Estate also qualifies as a "resident" of the Park for purposes of the MHPRA. Indeed, that Act imposes no requirement that the "resident" actually reside within the Park or live in the mobile home. A "resident" is simply defined as one "who leases or rents space in a mobile home park." Utah Code Ann. § 57-16-3(3) (1996).

As argued above, the facts and inferences can support a finding that the Estate, by and through Mr. Kelsch, is in fact leasing or renting space in the Park. Accordingly, the Estate qualifies as a resident in accordance with the express terms of the MHPRA, and is thus entitled to assert claims under the Act as a park resident.

II. The Trial Court Erred by Concluding the Park had the Express Authority and Discretion to Set and Enforce Its Minimum Size Requirements and that by So Doing, the Park Could Not Violate Any Provisions of the Mobile Home Park Residency Act.

⁴ Undoubtedly other tenants of the Park have received assistance from a church, or a friend, or a relative, in paying their rent obligations. The tenant obviously does not cease to be the tenant in such a situation.

The Estate has raised the claim that the Park's rule requiring the mobile home to leave the Park upon sale, under the circumstances of this case violates the MHPRA, namely section 57-16-4(4) of the Utah Code, which provides in part that "[a]ny rule or condition of a lease purporting to prevent or unreasonably limit the sale of a mobile home belonging to a resident is void and unenforceable." The Estate also contends that the manner in which the Park's rule was adopted, combined with the unfairness of the rule itself, violates another provision of the MHPRA, which establishes that "[n]o change in rule that is unconscionable is valid." Utah Code Ann. § 57-16-7(1) (1996). Accordingly, the Estate contends that the Park's rule establishing a minimum size of 12 feet by 65 feet, and requiring that any undersized homes be removed from the Park upon sale, should be held invalid, void, and unenforceable.

The Park, on the other hand, maintains that the Utah Legislature has given mobile home parks the express authority and discretion to set and enforce minimum sizes within the Parks and to require that the now-undersized mobile homes be removed upon sale, in accordance with the provisions of section 57-16-4(7) of the Utah Code. The Park argues that because of this express grant of authority, the Park cannot, as a matter of law, violate other provisions of the Mobile Home Park Residency Act by setting and enforcing size specifications.

The argument does have some logical appeal, and the trial court apparently agreed with the Park, granting its request for declaratory relief and dismissing the Estate's claims under the Act.

Nevertheless, the Estate asserts that any implied authority that the Park may have to establish and enforce minimum size requirements does not give a mobile home park absolute and unfettered discretion to set any size specifications, in any manner and by any means it chooses, and to enforce the size specifications in any way it chooses. The Estate asserts that the Park has

exceeded the permitted bounds of any authority and discretion that the Legislature may have granted it, and that the Park has violated express provisions of the MHPRA.

These are issues of first impression in Utah, requiring this Court will decide what the Legislature intended in these various provisions of the Act, and how to construe them. The interpretation, construction, and applicability of a statute present questions of law for this Court alone to decide. Durham v. Duchesne County, 893 P.2d 581, 584 (Utah 1995). Indeed, it is the role of "an appellate court to define what the law is, and [the appellate court will] never defer to any degree to a trial court on that count." State v. Pena, 869 P.2d 932, 937 (Utah 1994).

A. The interpretation and construction of section 57-16-4(7) in light of the MHPRA's comprehensive purposes and provisions.

Section 57-16-4(7) of the Utah Code reads in full:

(7) In order to upgrade the quality of a mobile home park, it may require that a mobile home be removed from the park upon sale if:

- (a) the mobile home does not meet minimum size specifications; or
- (b) the mobile home is in rundown condition or in disrepair.

This particular provision of the MHPRA, as well as the others relevant to the consideration of this case, were part of the original Act passed by the Legislature in March 1981. See 1981 Laws of Utah, Ch. 178, a copy of which is attached as Exhibit "F" of the Addendum.

While this provision clearly affords mobile home parks authority to upgrade and to require the removal of some mobile homes upon sale, nowhere in the Act, itself, does the Legislature express what the "minimum size specifications" are to be, or how and by whom they are to be established. Accordingly, some ambiguity, some uncertainty, is found in the statute.

In construing the MHPRA, this Court should apply the traditional rules of statutory construction. For example,

the terms of a statute should be interpreted in accord with their usual and accepted meanings. Another rule is that a statute should not be construed in a piecemeal fashion but as a comprehensive whole. Furthermore, "[i]f there is doubt or uncertainty as to the meaning or application of the provisions of an act, it is appropriate to analyze the act in its entirety, in light of its objective, and to harmonize its provisions in accordance with its intent and purpose." In cases such as this, where a statement of the statute's purpose is codified in the statute, this method of construction is particularly appropriate.

Clover v. Snowbird Ski Resort, 808 P.2d 1037, 1045 (Utah 1991) (footnotes omitted). Each of these rules of construction should prove helpful to the Court.

In expressing the purposes of the MHPRA, the Legislature enacted section 57-16-2 of the Utah Code. In this provision, the Legislature recognized that park owners, in accordance with their fundamental property rights, should have "adequate remedies against those who abuse the terms of a tenancy." Utah Code Ann. § 57-16-2 (1996). The Legislature further recognized that because of the high costs associated with relocating a mobile home, the owners of the mobile homes need "protection from actual or constructive eviction." Id. Accordingly, "[i]t is the purpose of this chapter to provide protection for both the owners of mobile homes located in mobile home parks and for the owners of mobile home parks." Id.

This balancing of rights between two property owners has entailed unique policy considerations for the Legislature and likely represents the reason for enacting a statute that differs from others typically applicable to the traditional landlord/tenant relationship.

In light of Legislature's expressed concern over the "high cost of moving mobile homes, the requirements of mobile home parks relating to their installation, and the cost of landscaping

and lot preparation," id. § 57-16-2, it seems logical that the Legislature intended to establish some objective minimum size specifications for mobile homes. Otherwise, a mobile home park could abuse the procedure by raising or lowering its minimum sizes to fit a particular situation, to make a particular lot space suddenly available to the Park because the owner wants to sell it.

Indeed, the second basis established for authorizing the removal of a mobile home upon sale is that "the mobile home is in rundown condition or in disrepair." Id. § 57-16-4(7)(b). This standard is clearly an objective one, one which could be enforced by either party in a court of law, and one which would not be left to the mobile home park's subjective determination.⁵

Keeping this in mind, one possible interpretation of what was intended by the term "minimum size specifications" could be gleaned from a companion statute passed by the same Legislature, and in fact discussed and voted upon by the Utah Senate immediately preceding the Senate's discussion and vote upon the MHPRA. See Audio Tape Recordings of Utah Senate, March 5, 1981 (discussing S.B. No. 209 and S.B. No. 237).

The Legislature enacted a statute entitled "Manufactured Housing and Recreational Vehicles Standards," which was codified in the Utah Code at sections 41-20-1 et seq. This statute has been subsequently amended and dramatically changed. Even so, the statute, as it was passed contemporaneously with the Mobile Home Park Residency Act, applied to mobile homes and manufacture homes.

Specifically, the Legislature adopted the standards published by the American National Standards Institute and the National Fire Protection Association for mobile homes built prior to

⁵ If this were not the case, a mobile home park could subjectively determine that a mobile home is in "rundown condition" merely because it is painted beige and thus require its removal.

June 15, 1976, and the standards adopted pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 for mobile homes built after June 16, 1976. See Utah Code Ann. § 41-20-1(1) (1981); See also 1981 Laws of Utah, Ch. 177, § 1.

Perhaps most interestingly, the Legislature chose to define a "mobile home," in part, as "a structure built prior to June 15, 1976, transportable in one or more sections, which is eight body feet or more in width and 32 body feet or more in length." Utah Code Ann. § 41-20-1 (2) (1981) (emphasis added); see also 1981 Laws of Utah, Ch. 177, § 1. Moreover, the federal act that applies to mobile homes (now also referred to as "manufactured homes"), and whose standards were adopted by the Utah Legislature for mobile homes built after June 16, 1976, defined "manufactured home," in part, as "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." 42 U.S.C. § 5402(6) (emphasis added), a copy of which is attached as Exhibit "G" of the Addendum.

It is certainly conceivable that the Utah Legislature intended these size specifications, which were adopted virtually the same time as was the MHPRA, to be the objective "minimum size specifications" referred to in section 57-16-4(7)(a) of the Utah Code. Indeed, the very term "specification" would seem to apply more to some uniform, technical standard rather than to some subjective "requirement" imposed by individual mobile home parks. Cf. Black's Law Dictionary 973 (abr. 6th ed. 1991) (defining "specification" "[a]s used in the law relating to . . . manufacturing, . . . [as] a particular or detailed statement, account, description, or listing of the various elements, materials, dimensions, etc. involved").

B. Balancing section 57-16-4(7) and section 57-16-4(4).

However, even if the Court determines that mobile home parks have the implied authority and discretion to establish and enforce their size specifications, that exercise of that authority cannot be absolute and unfettered when the MHPRA, and its expressed purposes, are considered as a comprehensive whole.

Again, the purpose of the entire act is to balance the respective property rights of two property owners--the owner of the mobile home park and the owner of the mobile home located within the park. In that light, the Legislature has accorded park owners various rights, including the following: (1) the right to change the use of the land, or any part of it, for a purpose other than the rental of mobile home spaces, Utah Code Ann. §§ 57-16-5(5) & -3(8) (1996); (2) the right to evict park tenants for cause (ie., the failure to abide by a park rule, the failure to pay rent, and any behavior that endangers park residents or property), Id. §§ 57-16-5(1) to (4); (3) the right to raise rent under certain circumstances, Id. § 57-16-4(3); (4) the right to require standards for the maintenance and upkeep of the mobile homes and lots, Id. §§ 57-16-7(1) to (3); (5) the right to change the park rules, Id. § 57-16-7(1); and (6) the right to upgrade the quality of the park under certain circumstances, Id. § 57-16-4(7).

On the other hand, the Legislature has provided substantial protections for the owners of the mobile homes located within the mobile home parks: (1) in effect, the home owners are granted perpetual leases to remain in the park as long as the park owner continues to rent out lot spaces for mobile homes, and as long as the home owner does not give the park a reason to evict them for cause, see Id. § 57-16-5 (indicating that the lease may be terminated only by

mutual agreement or for the listed causes); (2) various procedural steps must be followed by the park before a lease can be terminated, even for cause, see Id. § 57-16-6; (3) the park owners are prohibited from seeking to prevent or unreasonably limit the sale of a mobile home belonging to a park resident, id. § 57-16-4(4); and (4) any rule changes promulgated by a mobile home park are invalid if the change is unconscionable, Id. § 57-16-7(1).

A careful review of the MHPRA will reveal that with every right granted to the mobile home parks, a corresponding protection has been granted to the mobile home owners. Clearly the Legislature has recognized the vulnerable situation mobile home owners can find themselves in when the park can change, at a whim, the rules and requirements for park residency; thus, the Legislature has attempted to compensate for this natural imbalance of power.

Accordingly, this same balancing of rights between park owner and home owner must be considered when construing section 57-16-4(7), giving parks the right to upgrade by requiring the removal of certain mobile homes upon their sale, in connection with section 57-16-4(4), giving the home owners the right to sell their mobile homes free any unreasonable limitations imposed by the parks.

Because both of these provisions apply to situations involving the "sale" of a mobile home located within the park, the statutes should not be construed in piecemeal fashion, but should be read together in an attempt to harmonize the provisions in view of the purposes of the MHPRA. See Clover v. Snowbird Ski Resort, 808 P.2d 1037, 1045 (Utah 1991).

Our Legislature has given the mobile home parks the right "to upgrade the quality" of the parks by requiring that mobile homes failing to meet minimum size specifications "be removed

from the park upon sale." See Utah Code Ann. § 57-16-4(7) (1996). While the statute is unclear over who establishes the size specifications, even if the mobile home parks have the discretion to do so, this right to upgrade can only be exercised when the undersized mobile is sold--when ownership of the mobile home has been transferred for a price.

Nevertheless, the parks cannot enforce any rules or conditions which "prevent or unreasonably limit the sale of a mobile home belonging to a resident." Id. § 57-16-4(4). Undoubtedly, when granting the parks the authority to require that undersized mobile homes be removed upon sale, the Legislature was aware that the mobile home owner (either the seller or the purchaser) would then incur the sizeable costs of relocation and installation. These costs would clearly have some impact on the sales price of the mobile home and on the number of potential purchasers.

Even so, the Legislature must have reached the conclusion that the ordinary costs of relocation and installation would not impose an undue burden on a mobile home owner trying to sell his or her home. Accordingly, if the circumstances were limited to this type of situation, the Legislature made the decision that this requirement would not "unreasonably" limit the home's sale.⁶

However, one of the Estate's key contentions on appeal is that if enforcement of this "removal" requirement has a profound adverse impact on the number of potential purchasers, or otherwise reduces the marketability of the mobile home, such that the mobile home either

⁶ One of the trial court's concerns expressed at the hearing was that it will always be less costly and more convenient for the mobile home to be sold and remain in the park, and not removed. (R. 775). The trial court need not have had this concern.

cannot be sold or else the value of the home will be reduced by an amount substantially greater than the ordinary costs of relocation, then that park rule unreasonably limits the home's sale and cannot be enforced, pursuant to section 57-16-4(4). This conclusion must be reached if the statutory provisions are to be read and harmonized together.

The Park raised only a legal challenge in its motion for summary judgment, rather than a factual one, to our claims that enforcement of the Park's rule violates the MHPRA. Even so, evidence was put on the record concerning the profound reduction in value that the Griffin mobile home had experienced because it would have to be relocated upon its sale. The testimony of Mr. Kelsch in his affidavit reveals that he had received an appraisal of the mobile home, placing the value of the home at or about \$15,450.00. (R. 313). Mr. Kelsch's testimony further reveals that he had received offers to purchase the mobile home at or above the appraised value. On the other hand, the best evidence that the Park could produce was to show that the Griffin home could have been sold to someone who would remove it from the park for \$8,000.00. Certainly a reduction of fifty percent, at least, is substantial enough to conclude that the Estate may have a valid claim, entitled to be tried, that the Park's rule is unreasonably limiting the mobile home's sale.

The trial court rejected the Estate's argument after erroneously refusing to consider any impact caused by the current economic conditions, choosing to do so after concluding that the Park had no control over the economic conditions. (R. 757). While the Park may not be able to control the market conditions affecting mobile homes, the Park does not adopt or enforce its rules and conditions in a vacuum, free from economic or other environmental concerns.

Accordingly, a park can be prevented from enforcing rules or conditions because of the unreasonably adverse impact they have, in light of the economic circumstances involved.

The MHPRA prohibits the enforcement of a rule or condition that prevents or unreasonably limits the "sale" of a resident's mobile home. Id. § 57-16-4(4). The term "sale" is typically defined as "the transfer of ownership of and title to property from one person to another for a price." Webster's Ninth New Collegiate Dictionary 1037 (1990). In other words, a "sale" is an economic transaction; therefore, it is inappropriate to disregard the impact of economic conditions when trying to determine if a particular park rule or condition unreasonably limits a "sale."

The trial court was most concerned with whether a minimum size specification of 12 feet by 65 feet was somehow inherently unreasonable, regardless of whether the rule limits the sale or not.⁷ While the Estate believes that the Park's size requirements were unreasonable in and of themselves, a rule or lease condition violates section 57-16-4(4) only if it prevents or unreasonably limits "the sale." The impact of the rule upon the potential sale is the critical factor to consider, and the prevailing market conditions must be considered to properly determine this impact.

⁷ At the hearing, the dialogue on this point went as follows:

THE COURT: . . . So what you need to tell me is why you think that --

MR. HASLAM: Why this unreasonably limits the sale.

THE COURT: No, that's not the question. The question is why the size is unreasonable. Why imposing a minimum size of 12-by-65, why that particular requirement is in[h]erently unreasonable, whether it inhibits the sale or not. (R. 772).

The trial court later in the hearing indicated that a minimum size requirement of 200 feet by 30 feet would be unreasonable as a matter of law. (R. 763).

For example, a park rule requiring that residents can only sell their mobile homes to white males between the ages of 25 and 35 would be unlawful, discriminatory, and inherently unreasonable. However, that rule may have little economic impact and, thus, only minimally limit the actual sale if the highest offer to purchase the mobile home came from a white male age 25. In this hypothetical situation, the park's rule did not actually "prevent or unreasonably limit the sale," which is what the MHPRA prohibits. See Id. § 57-16-4(4). Moreover, Congress and the Utah Legislature have already provided other remedies to prevent such practices, such as the Federal and Utah Fair Housing Acts, and even the MHPRA (which also provides that approval of potential purchasers of mobile homes "may not be unreasonably withheld" by the park), see id.

Similarly, if a park established an inherently unreasonable size requirement, such an action could probably be considered a violation of any implied authority and discretion to set size specifications under section 57-16-4(7), regardless of any actual impact upon the sale.

It makes absolutely no sense from an economic standpoint to say that only if the rule itself is unlawful or inherently unreasonable does it "unreasonably limit the sale." Again, this seems especially true in view of the fact that a sale is, itself, an entirely economic transaction. The question then becomes whether the rule so limits the marketability of the mobile home as to cause a substantial economic injury to the home owner.

Certainly, if market conditions were such that the mobile home could be sold to individuals who would move the home for roughly the same price that the home could be sold to individuals who would want to remain in the park (taking into consideration the ordinary costs

associated with a reasonable relocation) then the seller has not really suffered a disadvantage. In such an economic climate, the rule would only "reasonably" limit the sale of the mobile home.

This interpretation makes further sense because "preventing" the sale altogether is absolutely barred by the statute. In addition to prevention of the sale, the statute provides that the sale cannot be "unreasonably limited."⁸ Economic conditions have to be taken into consideration to determine if a particular rule pertaining to a sale is or is not reasonable, and the trial court should be required to consider and take evidence of the same.

If the mobile home park promulgates a rule that, in and of itself, violates no laws and causes no substantial economic hardship to the seller, then such a rule would not "unreasonably" limit the sale of the mobile home. But that is not what has occurred in this case, and the Estate's claim that the Park's rule violates § 57-16-4(4) is a valid, recognizable claim as a matter of law.

Moreover, as previously mentioned, the Park's minimum size requirement of 12 feet by 65 feet for single-wide mobile homes is inherently unreasonable because not all of the Park's lots provided for single-wide mobile homes can even fit a mobile home of 12 feet by 65 feet, or larger. This fact is undisputed and is part of the reason that the Park has had to make some unwritten exceptions to this otherwise mandatory rule. The trial court considered these "exceptions" to be of little consequence. Nevertheless, it stands to reason that if the Park will have to permit some "undersized" mobile homes to remain in the Park, even upon sale, to

⁸ Indeed, because of prevailing economic conditions involving mobile home parks, the rule in question in our case borders on actual prevention of a sale.

prevent certain lots from becoming permanently vacant, then the minimum sizes established are unreasonable and exclusionary, regardless of whether they impact the marketability of the mobile homes currently in the Park.

In any event, the question of "reasonableness," or "unreasonableness," as the case may be is typically a factual one, or else one so fact dependent that summary judgment is generally inappropriate when only a legal challenge is raised. Somehow the trial court concluded, as a matter of law, and without any evidence to support it, that a requirement of 12 feet by 65 feet is reasonable. (R. 673).

Accordingly, the Park was not entitled to judgment as a matter of law on its declaratory action or on the Estate's claim that the Park's rule violated section 57-16-4(4) of the Utah Code.

C. The Trial Court erred by concluding that, because the Park was simply exercising its statutory authority to establish size requirements, the Park's amendment of the rules accomplishing this purpose was not unconscionable.

The Estate further contends that the manner in which the minimum size requirements were established by the Park by amending the park rules, when combined with the overall unfairness of the requirements established in the rule, was unconscionable and that the rule change is invalid. Indeed, the MHPRA expressly provides that "[n]o change in rule that is unconscionable is valid." Utah Code Ann. § 57-16-7(1) (1996).

The Park contended below that because it can change the park rules "in its sole discretion," pursuant to the Griffin lease and the MHPRA--and because it can set size

requirements and require that undersized mobile homes be removed from the Park upon sale-- then it cannot violate section 57-16-7(1) of the Utah Code by establishing the rules it did.

As previously mentioned, the statutory provision regarding minimum size specifications is silent on how such size specifications are to be established and how they are to be implemented and enforced by the mobile home parks. Even if the parks are somehow invested with the authority to establish size specifications, it does not necessarily follow that they can do so by unilaterally amending the park rules, especially in view of the circumstances surrounding this case.

While the Park conceded below that the MHPRA does not mandate that minimum size requirements be set and enforced by means of a park rule, that does not change the fact that they did set and seek to enforce the size requirements via a change to the park rules. Certainly the Park had other options.⁹ The fact remains that the Park amended the rules to set minimum sizes for the mobile homes and to require that undersized homes be removed from the Park upon sale.

Mobile home parks have the right to set new park rules and change existing ones, and they can do so without the necessity of obtaining approval from the park residents. See id. §

⁹ For example, if the Legislature has already provided some objective size specifications to reference, then the ability to require the removal of undersized mobile homes may exist as a matter of law, pursuant to the statute. In any event, the Park could simply impose the size requirements in the new lease agreements with new tenants or in lease renewal agreements with already existing tenants. This would certainly be the most equitable means of enforcing the size requirement because the tenants would at least be put on notice of the requirement-- and of the fact that if they want to sell their home, they will have to move it out--and have the chance to voluntarily agree to such a condition of tenancy.

57-16-7. Nevertheless, with the grant of this right, the Legislature correspondingly imposed some restrictions in order to protect park residents from the abuse of this right. For example,

No new or amended rule shall take effect, nor provide the basis for an eviction notice, until the expiration of at least 60 days after its promulgation. Each resident, as a condition precedent to such rule being in effect, shall be provided with a copy of each new or amended rule that does not appear in their lease agreement.

Id. § 57-16-7(1).¹⁰ More importantly, the Legislature enacted a provision to prevent the parks from making an unconscionable rule change. See id.

The MHPRA does not define the term "unconscionable." Nevertheless, we can look to the meanings applied in contract law and in the Uniform Commercial Code by analogy. In this context, Utah courts have chosen to analyze unconscionability in terms of "substantive" and "procedural" unconscionability. See Resource Management Co. v. Weston Ranch & Livestock Co., 706 P.2d 1028, 1041-42 (Utah 1985). The "substantive" test of unconscionability is met when terms or provisions are "'so one-sided as to oppress or unfairly surprise an innocent party,' [or when] the terms 'are so extreme as to appear unconscionable according to the mores and business practices of the time and place.'" Id. (citations omitted). This type of unconscionability is often indicated by "'an overall imbalance in the obligations and rights imposed . . . ' or significant cost-price disparity, . . . [or] 'terms which are unreasonably favorable to the other party.'" Id. at 1041-42, 1043 (citations omitted).

¹⁰ In addition, although not in effect at the time of the Park's rule change in this case, a new provision was recently added to the MHPRA that requires parks, for the 30 days following a proposed rule change, to give residents "the opportunity to meet with the mobile home park management about the proposed amendments." Utah Code Ann. § 57-16-7(1)(c) (1997).

On the other hand, "procedural" unconscionability has been described simply as the "absence of meaningful choice" by the oppressed or surprised party. Id. at 1042 (quoting Williams v. Walker-Thomas Furniture Co., 350 F.2d 445, 449 (D.C. Cir. 1965)). It is clear from the case law that when both procedural and substantive unconscionability are present, then this overall unconscionability would prevent enforcement of the term or contract, although it is unclear as to what degree of substantive unconscionability is required. See id. at 1042-43. By analogy, if a rule change is both procedurally and substantively unconscionable, then the rule change must be considered unconscionable and, therefore, invalid. See Utah Code Ann. § 57-16-7(1) (1996).

In our case, the park residents had absolutely no choice but to accept the rule change, let alone a "meaningful" choice. Indeed, in all likelihood, most mobile home park rule changes are going to be at least "procedurally" unconscionable because the residents are rarely, if ever, given the chance to vote upon or voluntarily accept a proposed rule change. Admittedly, some element of substantive unconscionability must also be present.

The evidence before the trial court could support the conclusion that the Park's rule change establishing 12' x 65' as a minimum size requirement is substantively unconscionable. It is undisputed that at the times the mobile home was moved into the Park and the lease agreement was entered, no rule existed which set any minimum size specifications. Clearly, the residents living in the park before the rule change had no reason to believe that a future rule would be adopted making some of their mobile homes too small to remain in the park upon sale. This rule change has had the practical effect of rendering the mobile home worthless, or

at least substantially reducing the home's value. When viewed in the light most favorable to the Estate, the facts and circumstances surrounding the aforementioned rule change can lead to the conclusion that the new rule would have unfairly surprised the affected Park residents.

Moreover, the rule change is oppressive. It has the practical effect of forcing a few selected mobile homes to either remain in the park without tenants in them or to be sold for a grossly inadequate price when compared to the appraised market value of the mobile homes. This adverse economic impact upon the value of the Griffin mobile home is certainly severe enough to "shock the conscience," much as has been recognized in some land sale cases involving forfeiture provisions. See, e.g., Morris v. Sykes, 624 P.2d 681, 684 (Utah 1981) (refusing to enforce forfeiture provision where sum awarded to party is entirely disproportionate to actual damages); Johnson v. Carman, 572 P.2d 371, 373 (Utah 1977) (concluding that allowing seller to retain from purchaser sum 34% greater than seller's actual damages would shock the conscience and be unconscionable). Thus, a harsh economic result may be enough to shock the conscience of the court without other elements of unconscionability even present. See also Resource Management, 706 P.2d at 1041-42 (mentioning "cost-price disparity" as indicative of substantive unconscionability).

Even so, it is clear that the Park's rules also creates an "overall imbalance in the obligations and the rights imposed," giving virtually all the rights to the Park, while imposing a sizeable burden upon the Park's residents who suddenly discover their home must be removed from the Park if they sell it, even if the home is in otherwise good condition. When viewed in the Estate's favor, the facts and inferences drawn from the evidence and the terms of the rules

themselves can support the conclusion that the rules so unreasonably favor the Park as to be unconscionable.

The trial court again seemed most concerned with whether the actual dimensions established by the rules were "unconscionable." As previously asserted, the Estate believes the minimum size requirements of 12 feet by 65 feet is inherently unreasonable, unfair, and unconscionable. Nevertheless, the trial court again erroneously focused on the physical dimensions established in the Park's rules rather than upon the procedural unfairness surrounding the rule changes and the oppressive nature rule and overall imbalance of the rights and obligations thereby imposed upon the affected park residents, such as the Estate.

Clearly, the Park raised only a legal challenge in its motion for summary judgment, rather than a factual one, to the Estate's claims that the rule change was unconscionable. In that light, the Estate believes it has asserted a valid and legally recognizable claim in light of the interpretation of the various provisions of the MHPRA. Moreover, the determination of unconscionability should either be a question of fact or one of application of law to a given set of facts. Certainly, whether or not a particular rule change is unconscionable is an extremely fact-sensitive question, generally inappropriate for a summary judgment determination.

In any event, because elements of both "procedural" and "substantive" unconscionability are involved in the relevant rule changes, the Court erroneously dismissed the Estate's claim that these particular rule changes are invalid under the MHPRA, granting summary judgment in favor of the Park.

D. The Park is not entitled to judgment as a matter of law on its claim for declaratory relief nor on the Estate's claims that the relevant Park rules are invalid, void, and unenforceable.

The Estate has presented valid legal claims that the Park rules imposing size requirements and requiring that undersized mobile homes be removed from the Park upon sale are invalid, due to the unconscionability of the rule change, and void and unenforceable, because the rules unreasonably limit the sale of the Griffin mobile home. The Park is not entitled to judgment as a matter of law for these claims asserted under the MHPRA. Moreover, because these claims, if proven at trial, would prevent the Park from enforcing its size requirements against the Griffin mobile home, then the Park is also not entitled to its requested declaratory relief as a matter of law.¹¹

III. The Trial Court Erred by Concluding that the Park Could Not Breach the Covenant of Good Faith and Fair Dealing Because the Park Was Simply Exercising Its Express Contractual Rights and Because It Was Reasonable, as a Matter of Law, for the Park to Unconditionally Refuse to Allow any Individual to Sublet, Lease, or Occupy the Griffin Mobile Home.

The Estate claims that the Park has breached the covenant of good faith and fair dealing by absolutely and unconditionally refusing to allow the Estate to have a subtenant or even a caretaker reside within the Griffin home and by thus trying to constructively evict the Griffin home from the Park. On the other hand, the Park asserts that because it is simply exercising its express rights under the lease, the Estate's claim for breach of the covenant of good faith and

¹¹ The Park sought a declaration by the Trial Court "that Utah Code Ann. § 57-16-4(7) legally allows Plaintiff to have the Defendants' mobile homes removed from the park upon sale and that said statute is applicable to the facts of this case." (See the Park's Complaint, at R. 2.)

fair dealing must fail as a matter of law. The Park, however, misunderstands the concept of good faith and fair dealing.

"It is fundamental that every contract includes a covenant of good faith and fair dealing with respect to dealings between the parties." Olympus Hills Center, Ltd. v. Smith's Food & Drug Centers, Inc., 889 P.2d 445, 450 n.4 (Utah App. 1994), cert. denied, 899 P.2d 1231 (Utah 1995). As part of this covenant imposed by law, "the parties constructively promised that they would not intentionally do anything to impair the other party's right to receive the fruits of the contract." Cook v. Zions First Nat'l Bank, 919 P.2d 56, 60 (Utah App. 1996). The fruits to which a party is entitled under a contract depend significantly upon the "justified expectations of the parties." Id. (quoting Republic Group, Inc. v. Won-Door Corp., 883 P.2d 285, 291 (Utah App. 1994)).

As has been previously asserted in this brief, the evidence, and the inferences drawn therefrom, support the finding that the Estate, by and through Mr. Kelsch, does in fact have a valid lease agreement with the Park and that the agreement is merely the continuation of Mrs. Griffin's written lease. Therefore, the covenant of good faith and fair dealing constructively applies to the parties' agreement.

The Griffin lease agreement provides in part that the "Resident shall not assign, transfer or sublet the site or any part thereof, or this Rental Agreement, without Landlord's prior written consent." (Emphasis added.) Accordingly, the Park claims that it has the express right to refuse to permit any subletting or any occupation of the mobile home while it is located within the Park.

Nevertheless, contrary to Park's argument, "[w]hen one party to a contract retains power or sole discretion in an express contract, it must exercise that discretion reasonably and in good faith." Cook, 919 P.2d at 60; Olympus Hills, 889 P.2d at 450 ("Our courts have determined that a party must exercise express rights awarded under a contract reasonably and in good faith."). Indeed, when one party to a contract is given the sole right of approval of a matter, that party "must act fairly and in good faith in exercising that right. He has no right to withhold arbitrarily his approval; there must be a reasonable justification for doing so." Prince v. Elm Lyn. Co., 649 P.2d 820, 825 (Utah 1982) (quoting William G. Vandever & Co. v. Black, 645 P.2d 637 (1982)).

Even so, Mr. Kelsch has been told by the Park management that the Park would not allow anyone to reside in the Griffin home. Mr. Kelsch justifiably expects to be accorded the same rights and privileges as other tenants with the Park. It is undisputed that the Park has allowed other tenants to have a caretaker or subtenant residing in mobile homes within the Park. Moreover, the Park has admitted that a vacant mobile home presents a safety hazard that would not otherwise exist if someone were residing within the mobile home. Nevertheless, the Park appears willing to assume this risk.

Amazingly, the trial court concluded as a matter of law that the Park acted reasonably in not allowing the Estate to sublet or assign its lease or interest. In addition, the trial court concluded that Park "had no legal obligation" to allow a sublet or an assignment "during the course of this litigation," and that "it was not unreasonable for the [Park] to withhold any consent while the mobile home[] [was] in the process of being sold and while this case was in

litigation." (R. 667) Nevertheless, when properly viewing all the facts and inferences in favor of the Estate, the evidence before the trial court could easily support a finding that the Park's absolute refusal to allow a subtenant, or even a caretaker, to reside in the mobile home was unreasonable under the circumstances, and that the Park was simply withholding its approval arbitrarily. Such a finding is clearly sufficient to support a claim for the Park's breach of the duty of good faith and fair dealing.

Furthermore, on the basis of the June 10, 1996 letter to Mr. Kelsch, the Estate justifiably expected that the Park would take no "further action" with respect to the mobile home as long as the rent was paid and the park rules followed. The letter further leads to a conclusion that the Griffin home would be allowed to remain on lot space #119, at least until such time as it was sold or the Estate voluntarily removed it from the Park.

Indeed, it is a fundamental expectation inherent to every lease agreement, that the tenant will be free from any wrongful or constructive eviction during the term of the lease. Even one of the express purposes of the MHPRA is to protect mobile home owners from "actual or constructive eviction." Utah Code Ann. § 57-16-2 (1996). Possession and use of the leased premises are the tenant's "fruits" of his or her contract with the landlord.

However, the facts and circumstances of this case could support a finding that the Park is trying to deny the Estate the "fruits" of the lease agreement and is acting in a manner inconsistent with the Estate's expectations of being free from eviction. Such actions are clearly violations of the covenant of good faith and fair dealing. See Cook, 919 P.2d at 60. The Estate is being forced to pay rent--or to have the rent paid--for the right to occupy lot #119. The Park

unconditionally refuses to permit the Estate to have anyone reside in its mobile home and that the Park is requiring the mobile home to be removed upon sale. As has been previously argued, if the mobile home must be removed from the Park upon sale, the home will lose most of its marketability. The evidence would support a finding that the home would not be sold as quickly or easily, and then only for a drastically reduced sales price.

In other words, the Park is trying (1) to force the immediate sale of the Griffin home for a much lower price than the Estate should normally be able to get, upon which sale the home will leave the Park, or else (2) the Park is trying to force the Estate to voluntarily remove the home in order to avoid having to pay rent without being able to have a subtenant residing, who could assume the rent obligation, or without even being able to have a caretaker residing on the premises to maintain the mobile home and to reduce the potential safety hazards. In any event, the facts and inferences reasonably drawn in the Estate's favor could support a finding that the Park simply wants the mobile home moved out and is doing all it can to expedite that process. These actions amount to a constructive eviction of the home--and a breach of the Park's contractual duty of good faith and fair dealing.

Finally, as Utah courts have repeatedly held, "`good faith and fair dealing are fact sensitive concepts, and whether there has been a breach of good faith and fair dealing is a factual issue, generally inappropriate for decision as a matter of law.'" Cook, 919 P.2d at 60-61 (quoting Republic Group, 883 P.2d at 291). Accordingly, the Trial Court erred in granting the Park's motion for summary judgment on the Estate's claim for breach of the covenant of good faith and fair dealing.

IV. The Trial Court Erred to the Extent It Concluded that the UCSPA Does Not Apply to the Leasing of Lot Spaces for Mobile Homes.

The Estate has asserted claims that the Park has engaged in unconscionable acts or practices in violation of the UCSPA. Utah Code Ann. §§ 13-11-1 *et seq.* (1997). The trial court has made no express indication of why the Park was granted summary judgment on the Estate's claims brought under section 13-11-5(1) of the Utah Code. Nevertheless, the Park argued below that the UCSPA simply did not apply to the landlord/tenant relationship and that it had no relevance to the proceedings. We assume this argument provided the basis for the court's ruling, inasmuch as the court did hold that the Park was entitled to summary judgment on each of the Estate's claims "for all the reasons set forth in the Memorandum in Support of Plaintiff's Motion for Summary Judgment and in Plaintiff's Reply Memorandum." (R. 671)

The Park's contention that the UCSPA does not apply to a landlord/tenant transaction is a disingenuous attempt to stretch the holding in Carlie v. Morgan, 922 P.2d 1 (Utah 1996), and to disregard the statute's plain language. The reasoning applied by the plurality opinion in Wade v. Jobe, 818 P.2d 1006 (Utah 1991), has not been completely abrogated by Carlie. In Wade, Justices Durham and Zimmerman concluded that the UCSPA does apply to residential leases. Id. at 1015. Such a conclusion was based on the expressed purposes of the Act and on the plain language of the UCSPA.

Recently, the Utah Supreme Court modified its prior opinion in Wade. See Carlie, 922 P.2d at 6. However, contrary to the Plaintiff's assertions, the Court merely concluded that "the UCSPA does not provide a remedy in the instant case where plaintiffs are seeking damages caused by the uninhabitable condition of their apartments." Id. (emphasis added). The Court's

decision was based on the reasoning that while the legislature did not expressly include or exclude residential leases under the UCSPA, the legislature has now expressly provided a remedy for tenants of uninhabitable property under the Utah Fit Premises Act. Id. at 5-6. Specifically, however, the Court did "not decide whether the UCSPA applies to landlord/tenant transactions under circumstances not covered by the Utah Fit Premises Act." Id. at 6 n.3. The circumstances surrounding the unconscionable acts and practices committed by the Park in our case are certainly not remedied by the Utah Fit Premises Act.

In any event, "when faced with a question of statutory construction, [the courts] first look to the plain language of the statute." CIG Exploration, Inc. v. Utah State Tax Comm'n, 897 P.2d 1214, 1216 (Utah 1995). "In reviewing legislative enactments, the reviewer assumes that each term was used advisedly; thus the statutory words are read literally" Savage Indus., Inc. v. Utah State Tax Comm'n, 811 P.2d 664, 670 (Utah 1991); see also Chris & Dick's Lumber v. Utah State Tax Comm'n, 791 P.2d 511, 514 (Utah 1990) (courts will "look to the plain meaning of the [statutory] language at issue to discern the legislative intent").

The Legislature declared that the UCSPA "shall be construed liberally to promote the following policies: . . . to protect consumers from suppliers who commit deceptive and unconscionable sales practices." Utah Code Ann. § 13-11-2 (1997). More specifically, the Act provides that "[a]n unconscionable act or practice by a supplier in connection with a consumer transaction violates this act whether it occurs before, during, or after the transaction." Id. § 13-11-5(1). A "consumer transaction" is defined in the UCSPA as "a sale, lease, . . . or other . . . disposition of goods, services, or other property, both tangible and intangible (except

securities and insurance), to a person for primarily personal, family, or household purposes."

Id. § 13-11-3(2) (emphasis added).

According to their usual and accepted meanings, the terms "property" and "tangible property" refer to real property as well as personal property. See Iadanza v. Mather, 820 F. Supp. 1371, 1377 (D. Utah 1993) (construing UCSPA and concluding that "the phrase 'property, both tangible and intangible' is not ambiguous, and its 'usual and accepted' meaning includes residential real property"); see also Black's Law Dictionary 1218 (6th ed. 1990) (defining "tangible property" as "[a]ll property which is touchable and has real existence (physical) whether it is real or personal" (emphasis added)). Moreover, although the Legislature did not specifically define "property" in the UCSPA,¹² the Legislature has elsewhere provided that

[i]n the construction of these statutes [the Utah Code], the following definitions shall be observed, unless the definition would be inconsistent with the manifest intent of the Legislature, or repugnant to the context of the statute: . . .

(t) 'Property' includes both real and personal property.

Utah Code Ann. § 68-3-12(2)(t) (1997) (emphasis added).

According to the plain and unambiguous language of the Act, a lease of real property for residential purposes is a consumer transaction. Similarly, a "supplier" is defined in part as a "lessor . . . who regularly engages in, or enforces consumer transactions." Id. § 13-11-3(6). It

¹² The Legislature has provided that the UCSPA "shall be construed liberally to promote" its policies. Id. § 13-11-2. Following this reasoning, the Wade plurality opinion determined the fact "that the UCSPA does not expressly mention the leasing of real property argues in favor of, rather than against, its application; the legislature has mandated a liberal construction of the Act, and it was explicit in excepting other transactions from its jurisdiction." Wade, 818 P.2d at 1015 (emphasis in original).

is difficult to imagine someone who more regularly engages in the leasing of residential real property than a mobile home park. Therefore, to the extent that the Legislature has not provided a more specific remedy for the acts complained of, the UCSPA does apply to the landlord/tenant situation in our case.

The Estate's claims are based in part upon the unconscionable act committed by the Park in unilaterally changing and adopting new rules which oppress and unfairly surprise innocent tenants (as has been previously argued in this brief). Moreover, absolutely refusing to permit someone to reside in the mobile home, and in a very real sense seeking to constructively evict the it from the Park (as has also been previously asserted), would certainly be considered an unconscionable act or practice within the meaning of the Act. Finally, the Park's method of selectively enforcing the rules concerning size requirements, whether considered alone or in concert with the other acts complained of, should also constitute an unconscionable practice.

The Park's rules are mandatory in nature and fail to establish any basis for making exceptions from the new size requirements. The rules clearly require that

mobile homes purchased from current residents, located in the Park must be approved by the management prior to sale. . . . If Resident sells his or her mobile home, it shall be upon compliance with conditions set forth in the rules.

Minimum requirements are as follows[:]

a. Mobile home size must be at least 12' x 65' for a single-wide, 24' x 50' for a double-wide.

(Emphasis added.) (R. 207). Nevertheless, the evidence clearly supports findings that the Park has (1) made exceptions for some residents based on lot size; (2) moved an undersized mobile home into the park itself after the adoption of the new rules and sold it, allowing it to remain in the Park upon sale; (3) approved the sale of another undersized mobile home and allowed that

mobile home to remain in the Park subsequent to the sale; and (4) has selectively chosen to enforce the new rules against a few unfortunate residents, for whom the Park will make no exception. The Park's selective and arbitrary enforcement of the new size requirements is further probative evidence of the Park's unwillingness or inability to uniformly apply the same mandatory rules.

The Park argued below that it had some discretion regarding whether or not to enforce the minimum size requirements because § 57-16-4(7) of the Utah Code is merely permissive in nature, indicating that mobile home parks "may" require undersized mobile homes to move from the park upon sale. See Utah Code Ann. § 57-16-4(7) (1996). Nevertheless, the more logical interpretation of the statute is that mobile home parks have the discretion of whether to allow the undersized mobile homes, as a whole, to remain upon sale or to require their removal, not that the parks have the discretion to pick which undersized homes can stay and which must go. In any event, the Park's own rule is phrased in mandatory language. No exceptions were written into the rules, although the Park admittedly knew, at the time the rules were amended, that some lots would not fit a home meeting the "minimum" size requirements. Furthermore, while the Park has explained that either reasonable necessity or mere oversight on its part have resulted in some undersized homes remaining in the Park upon sale, the fact remains that the Park apparently has not bothered to measure each and every mobile home approved for sale, unilaterally deciding which to measure. The inferences drawn from these facts could support a finding that the Park either does not have the intent or else the ability to

uniformly apply the rules, and it is unconscionable for the Park to impose such a severe burden on a select few, but not all who own undersized mobile homes.¹³

In any event, when properly viewing the facts and inferences drawn from the evidence in favor of the Estate, the Park's rule change, its attempt to constructively evict the Griffin home, and its attempt to enforce the size requirements against the Estate, when the Park has failed to enforce the same mandatory rules against other tenants, could all rise to the level of "unconscionable" acts and practices in connection with a lease of residential real property. Clearly their combined effect upon the Estate could constitute an unconscionable practice under the UCSPA.

Finally, while the determination of unconscionability is a question of law, Wade, 818 P.2d at 1016, that legal determination depends upon the resolution of several underlying factual issues. Until those material fact issues have been litigated, this Court cannot resolve the legal question of unconscionability. Accordingly, the Trial Court erred in granting summary judgment on the Estate's claims for violation of the UCSPA.

V. The Trial Court Erred by Granting Summary Judgment on the Estate's Claim that the Park Has Intentionally Interfered with the Estate's Economic Relations.

The Estate has asserted that the Park's refusal to approve any potential purchasers of the mobile home constitutes the tort of intentional interference with existing or prospective economic relations. To sustain a claim for intentional interference with economic relations, the

¹³ It should be noted that under the UCSPA, "unconscionability does not require proof of specific intent [on the part of the Park] but can be found by considering circumstances which the supplier 'knew or had reason to know.'" Wade v. Jobe, 818 P.2d 1006, 1016 (Utah 1991).

claimant must prove: "(1) that the [alleged tortfeasor] intentionally interfered with the [claimant's] existing or potential economic relations (2) for an improper purpose or by improper means, (3) causing injury to the [claimant]." St. Benedict's Dev. Co. v. St. Benedict's Hosp., 811 P.2d 194, 201 (Utah 1991) (citing Leigh Furniture & Carpet Co. v. Isom, 657 P.2d 293, 304 (Utah 1982)).

The Park admits that it has refused and continues to refuse to approve potential purchasers of the Griffin home who might hope to apply for residency in the Park. Instead, the Park simply asserted that it has the authority to deny approval for potential purchasers who want the mobile home to remain in the Park; therefore, it has not improperly interfered. In other words, the Park has no duty of "non-interference." The Park is simply exercising its legal rights, which justifies its actions and causes the Estate's tort claim to fail.

Nevertheless, the evidence and the law as discussed previously clearly supports the claim for intentional interference with economic relations. To prove its claim, the Estate must show that the Park's interference was for an improper purpose or by improper means. The "requirement of improper means is satisfied where the means used to interfere with a party's economic relations are contrary to law, such as violations of statutes, regulations, or recognized common-law rules. Such acts are illegal or tortious in themselves and hence are clearly 'improper' means of interference." Leigh Furniture, 657 P.2d at 308. As is discussed in other sections of this brief, the Park's conduct in requiring the Griffin mobile home to move out upon sale and refusing to approve potential buyers of the mobile home has in fact violated provisions of the MHPRA and the UCSPA .

In fact, the MHPRA specifically provides the approval of prospective purchasers of a mobile home "may not be unreasonably withheld." Utah Code Ann. § 57-16-4(4) (1996). Indeed, the Park is merely relying on a park rule that is invalid, void and unenforceable pursuant to the MHPRA, in order to justify withholding approval of any purchasers. As addressed previously, the rule change that requires undersized mobile homes to be removed from the Park upon sale is unconscionable and therefore invalid. See id. § 57-16-7(1). Because the same rule also prevents or unreasonably limits the sale of the mobile home, the rule is void and unenforceable under the MHPRA. See id. § 57-16-4(4). Accordingly, reliance upon, and enforcement of, this rule violates the MHPRA.

Moreover, the Park has interfered with the Estate's prospective mobile home sales by engaging in the unconscionable acts and practices which violate the express provisions of the UCSPA. See id. § 13-11-5(1).

Because the methods used by the Park to interfere in the prospective sales transactions of the Estate violates essential statutory laws, then the "means" employed by the Plaintiff are improper. See Leigh Furniture, 657 P.2d at 308. Accordingly, the Park is not privileged nor justified in its conduct, and the Griffin Estate has a legally recognizable claim for the Park's intentional interference with economic relations. The Trial Court erred in granting the Park summary judgement on this claim.

VI. The Trial Court Erred to the Extent It Required the Estate to Produce Sufficient Actual Evidence to Support Its Claims When the Park Produced No Actual Evidence to Refute Those Claims, But Merely Argued that the Estate's Legal Theories for Relief Were Not Recognizable or Applicable.

The only evidence put before the trial court by the Park, as presented in the "Statement of Undisputed Fact" contained in the Park's memorandum in support of its motion for summary judgment. The trial court, in its ruling, adopted those facts as undisputed.¹⁴ (R. 671). Even if accepted as true, none of those facts operates to defeat the Estate's claims raised on appeal.

With respect to the Park's request for declaratory relief and to the Estate's claims that the Park has violated provisions of the MHPRA, the Park simply argued that the Legislature has provided mobile home parks with the statutory authority and discretion to set and enforce minimum size requirements; thus, the Park could not possibly violate other provisions of the MHPRA for doing just that.

With respect to the Estate's claim for violation of the covenant of good faith and fair dealing, the Park asserted that because it was simply exercising its contractual rights, there could be no violation of the duty of good faith, as a matter of law. Again, with respect to the Estate's claim that the Park's actions have violated the UCSPA, the Park moved for summary judgment on the basis that the UCSPA does not apply to leases of residential real property, that the Park is not a "supplier" as defined in the Act, and that the Park's actions are not connected to a "consumer transaction." Finally, the Park sought summary judgment against the Estate's claim for intentional interference with economic relations on the simple theory that the Park had no "duty of non-interference" and was merely exercising its legal rights.

¹⁴ The Griffin Estate still disputes the Park's statement of "undisputed fact" that the June 10, 1996 letter to Mr. Kelsch is his "only claim to a 'lease' with the Park." The June 10 letter certainly evidences the claim to a lease, but is not the "only" claim. In addition, the assertion is more of a legal conclusion than a statement of fact.

The Park, with respect to the claims raised on appeal, presented only legal challenges, claiming that the Estate's claims must fail as a matter of law. The Park never produced any evidence as to the "reasonableness" of its size specifications or of its decision to absolutely refuse to allow a subtenant reside in the Griffin mobile home. It never provided evidence to the Court to support its claim to declaratory relief or to defeat the Estate's claims preserved on appeal.

Nevertheless, the trial court's written findings reveal that the court concluded that there was "no genuine issue of material fact with respect to any of the causes of action" brought by the Griffin Estate. The court proceeded to find that the Estate "presented no evidence whatsoever to back their theory of the case." While the Estate does believe that evidence on the record does in fact support its theory of the case and has attempted to demonstrate that to this Court, the Estate was not legally required to produce "evidence" to rebut purely legal challenges to its claims.

The Estate may or may not have clearly raised this point with the trial court below. The Estate did argue in its memorandum opposing summary judgment that "resolution of just the legal issues involved in this case, without even addressing the factual disputes, would not support the [Park's] motion for summary judgment." (R. 499) Even so, to the extent that the trial court required actual evidence to support each element of the Estate's claims, the court committed "plain error."

Whether plain error occurred is a matter for the appellate court to decide. As recently articulated in Davis v. Grand County Serv. Area, 905 P.2d 888 (Utah App. 1995):

The first requirement for a finding of plain error is that the error be "plain," i.e., from our examination of the record, we must be able to say that it should have been obvious to a trial court that it was committing error. . . . The second and somewhat interrelated requirement for a finding of plain error is that the error affect the substantial rights of [a party], i.e., that the error be harmful.

Id. at 892.

It is a matter of plain law that when a motion for summary judgment is made to the court, any

[s]upporting and opposing affidavits shall be made on personal knowledge [and] shall set forth such facts as would be admissible in evidence . . . The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion is made and supported as provided in this rule, an adverse party may not rest upon his pleading, but his response, by affidavits or as otherwise provided . . . , must set forth specific facts showing that there is a genuine issue for trial.

Utah R. Civ. P. 56(e) (emphasis added). According to Rule 56's plain language, the adverse party may rest on his pleadings and articulated legal theories when a motion for summary judgment is made on entirely legal challenges.

Indeed, Utah courts have repeatedly declared that "it is not always required that the party opposing summary judgment proffer affidavits in order to avoid judgment against him." Mountain States Tel. & Tel., 681 P.2d at 1261; see also Gadd v. Olson, 685 P.2d 1041 (Utah 1984); Olwell v. Clark, 658 P.2d 585, 586-87 (Utah 1982); Parrish v. Layton City Corp., 542 P.2d 1086, 1087 (Utah 1975). Obviously, this is such a case: where only legal challenges to the Estate's claims have been raised. The trial court's error should have been "plain."

Moreover, the trial court's error did affect the Estate's substantial rights because the trial court apparently relied on the fact that "no evidence" was presented to support the Estate's

legal theories. Again, the Estate's position and assertion is that sufficient evidence was presented to the court. Nevertheless, to the extent that the trial court considered a lack of evidentiary support to be a dispositive or critical factor entitling the Park to judgment as a matter of law, the court's error has substantially harmed and prejudiced the rights of the Estate. Accordingly, this Court should reverse the trial court to the extent that the lack of evidence provided a basis for granting the Park's motion for summary judgment on the claims asserted on appeal.

VII. The Trial Court Erred as a Matter of Law in Concluding that the Estate Failed to Mitigate Its Damages and that It Is Therefore Barred From Recovering Any Damages from the Park.

Despite the extremely limited evidence before it, the trial court specifically found that Mr. Kelsch, as the personal representative of the Estate, has not "made a reasonable attempt to mitigate" damages. Even more disconcerting, the trial court found "that based upon the [Estate's] failure to mitigate [its] damages, even if the [Estate] could have prevailed in this action on other legal issues that [the Estate] is barred from seeking any damages from [the Park] due to [the Estate's] absolute failure and refusal to mitigate [its] damages." (Emphasis added). (R. 666-667).

While the Estate may have some duty to mitigate damages in a breach of contract action, it is only required to take reasonable measures to do so. Reasonableness is almost always a question of fact, and, moreover, the Park bears the burden of proving that damages could have been minimized. See Pratt v. Board of Educ., 564 P.2d 294, 298 (Utah 1977) ("Although the plaintiff is obligated to minimize his damages, the burden is upon the party whose wrongful act

caused the damages to prove anything in diminution thereof."). The Park's attempt to show that the Estate might have been able to sell the mobile home and move it out for any conceivable price certainly does not meet its burden of proof. See also John Call Eng., Inc. v. Manti City Corp., 795 P.2d 678, 680 (Utah App. 1990).

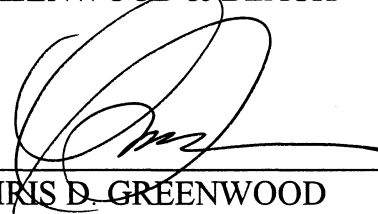
Moreover, the Estate's claims based upon the MHPRA are not claims for damages, but are claims that the pertinent park rules are invalid, void and unenforceable. Normally, the doctrine of mitigation applies to breach of contract cases; however, even if the failure to mitigate damages could apply to any of the claims raised by the Estate below and on appeal, "the amount of damages otherwise recoverable by [a] plaintiff can be reduced [not completely barred] . . . if it failed to properly mitigate its damages. Id. (emphasis added). Again, "the burden of proving [a] plaintiff has not mitigated his damages and that its award should by correspondingly reduced is on [a] defendant." Id. (emphasis added). As a matter of law, failure to mitigate does not bar a wronged party from seeking any damages, but may only operate to reduce the damages recoverable to the extent they could have been mitigated. The trial court erred concluding otherwise.

CONCLUSION AND PRECISE RELIEF SOUGHT

Appellant respectfully requests that the Court of Appeals set aside the Findings of Fact and Conclusions of Law and the Judgment of the trial court summarily granting Appellee's request for a declaratory relief and dismissing Appellant's counterclaims for violations of the MHPRA, and the UCSPA, for breach of the duty of good faith and fair dealing, and for intentional interference with economic relations. Appellant further requests that the case be remanded for trial or other proceedings in the district court.

Dated this 4th day of February, 1998.

GREENWOOD & BLACK

A handwritten signature in black ink, appearing to read "Chris D. Greenwood", is written over a horizontal line.

CHRIS D. GREENWOOD
JAMES K. HASLAM

CERTIFICATE OF SERVICE

I certify that on the 4th day of February, 1998, I personally served a true and correct copy of the foregoing, BRIEF OF APPELLANT upon James R. Boud, the counsel for the appellee in this matter, by hand-delivered two copies thereof at the following address:

JAMES R. BOUD
Ashton, Braunberger & Boud, P.C.
302 West 5400 South, Suite 103
Murray, Utah 84107

A handwritten signature, likely of the person serving the documents, is written over a horizontal line. The signature is stylized and cursive, appearing to start with a large 'B'.

ADDENDA

- A. June 10th 1996 letter of Michael Kelsch**
- B. Amended Park Rules**
- C. LaRue Griffin Lease Agreement**
- D. Findings of Fact and Conclusions of Law**
- E. Judgment**
- F. Mobile Homes and Parks, Laws of Utah 1981, Ch. 177-78**
- G. Federal Manufactured Home Construction and Safety Standards, 42 U.S.C. § 5402(6)**
- H. Brief History of Manufactured Home Industry, excerpt from Congressional Hearings**
- I. Mobile Home Park Residency Act**
- J. Utah Consumer Sales Practices Act**

Tab A

copy

June 10, 1996

Mr. Mike Kelsch
460 North 1020 West
Provo, Utah 84601

Dear Mr. Kelsch:

From our conversation in early May, I understand that you are charged with selling the mobile home formerly owned by La Rue Griffin, a 1972 Fleetwood located in Imperial Park at space 119.

Since subject home does not meet the minimum size specification of 65 feet for single wide homes as written in our Park Rules (see attached), the home can not remain in the Imperial Park, but would have to be removed by the buyer upon sale. We ask that when you consummate a sale that you notify us who will transport the home and on which day so that we may clear any charges for electricity owing and assist the transporter in the movement of the home out of the Park.

The space rent for June in the amount of \$224.76, due by June 5 has not been paid. If you pay this amount in full by June 15, I will not assess the late charge of \$20.00 or take any further action.

Thank you for your cooperation.

Yours Truly,

Scott A. Madsen, Manager
Phone: 225-2212 or 374-5191

1 encl.

copy

copy

Park Rule # 3 reads in part:

Mobile Home size must be at least 12' x 65' for a single-wide, 24' X 50' for a double-wide.

Park Rule # 27 reads:

" The Park may require that the mobile home be removed from the Park upon sale if:

(a) The mobile home does not meet minimum size specifications as outlined in the Rules, if any.

(b) The mobile home is in a rundown condition or in disrepair.

(c) The mobile home does not meet the minimum standards of the current rules and regulations. (See Rules #3 & #4)"

copy

Tab B

IMPERIAL MOBILE HOME PARK
1375 West 500 North
Provo, Utah 84601
(801) 374-5191

PARK RULES

The following Park Rules have been prepared to protect the Mobile Home Park and the Mobile Home Owner. These Rules are a part of the Lease Agreement and are binding upon the Park and the Resident. It is anticipated that these Rules will create a compatible community in which all Residents can take pride.

1. Rent is due on the first day of the month and payable by the fifth day. After the fifth day, a late charge of \$20.00 is added. Thereafter, a THREE DAY NOTICE TO PAY OR QUIT may be served and eviction proceedings started. Returned check charge is \$15.00.

2. No rent will be refunded and the Resident is required to give thirty (30) days' written notice before vacating the premises.

3. Mobile Homes moving into the Park, or existing Mobile Homes purchased from current resident, located in the Park must be approved by the management prior to sale. Consult the Park Manager for details. The installation of awnings and carports is subject to governmental regulations and permits. Consult the Park Manager for details. Additions, remodeling, installations to any coach, Mobile Home or trailer pad must have prior approval of the management. Minimum requirements are as follows and must be installed within thirty (30) days of purchase or move in date:

a. Mobile Home size must be at least 12' X 65' for a single-wide, 24' X 50' for a double-wide.

b. All Mobile Homes must have complete, factory type vented skirting which is to be attractive and in conformance with the general appearance in the Park.

c. All Mobile Homes must have a porch at the front entrance minimum size 6' X 10' complete with railings, and a factory type metal awning, minimum size 8' X 16' covering the porch.

d. Chain link fence not exceeding four (4) feet may be allowed if first approved in writing by the management. Existing fences not conforming to management requirements may have to be removed upon sale of an existing Mobile Home.

4. Mobile Homes moving into the Park must be approved by the management prior to being moved in. Mobile home sites and setup installations are under the direct control of the management. Water lines must have heat tapes and insulation, and sewer lines must have a continuous slant from the mobile home to the outlet.

5. Garbage cans must be kept inside a storage shed or out of view from the street. On the regular trash pickup day (check with management for the correct day), roll the can to the curb and be sure that the hinge faces away from the street. For larger items, use the dumpster which is near the clubhouse.

6. Laundry room hours will be as posted. Laundry should not be left unattended in laundry room. Management is not responsible for articles left unattended in laundry room. No laundry is to be hung outside the mobile home to dry.

7. Tools, laundry boxes, etc., must be inside the home or storage shed.

8. The recreation room is available to residents only on a reservation basis. All rents must be current before a resident is allowed to reserve the recreation room. The resident who reserves the area is solely responsible to see that it is left clean and in an orderly condition. There will be a cleaning fee charged if the area is not left in satisfactory condition. There is a checklist of things to be done before leaving the area posted in the clubhouse. The checklist is part of the Park rules. Residents who leave the recreation room in a less than satisfactory condition will forfeit their privileges to use the facility.

9. The swimming pool will be open during the summer months to Residents and their guests. The Resident agrees not to hold management or ownership responsible for any accidents or injuries which occur on or about the premises. More detailed rules for the pool are attached and are part of these Park Rules.

10. Quiet hours shall be from 10:00 p.m. to 8:00 a.m. Radios and televisions shall be turned down so as not to disturb anyone. Needless noise, interference with other residents, disturbance of the peace and quiet, destruction of property, injury to Residents or guests at any time on these premises, will result in the immediate eviction of the perpetrators as provided by law.

11. No violation of the law or ordinance of city, county, state or federal government shall be allowed, nor will lewd or immoral conduct be permitted.

12. The management shall have the right to enter the rental space and make all reasonable repairs, alterations or additions to any space which the Resident may have.

13. Management must have reasonable access to electric meters. Meters that cannot be easily read, will be estimated on monthly statements.

14. Each mobile home site has facilities for parking two vehicles. No parking on street or lawns is allowed, and visitors must park in designated areas. After the second warning the vehicle will be towed at the owner's expense. No boats, travel trailers, RV's or campers may be parked at the mobile home site. On request, the manager may make storage available for a reasonable charge.

15. All Residents must maintain their lot in a clean and orderly fashion and care for all the landscaping thereon. Digging shall not be allowed unless there is a prior park management approval due to underground utilities. If, for some reason, maintenance is not performed in a satisfactory way to the manager, the manager can cause the same to be performed by another party and the Resident will be charged costs for the same, to be due upon the next rental payment. Failure to pay said costs shall be treated the same as failure to pay rent and eviction proceedings shall be commenced upon service of a THREE DAY NOTICE TO PAY OR QUIT.

16. Any additional landscaping must have approval of the park management. Upon termination of the tenancy, the premises are to be surrendered in as good a condition as when received, ordinary wear and tear excepted.

17. No car repairs shall be allowed in the mobile home park.

18. For the safety and well being of the Residents, the speed limit shall be 10 miles per hour unless otherwise posted in the Park and all Residents must cooperate in its enforcement. Eviction proceedings may be commenced immediately against violators of the speed limit, since speeding constitutes behavior which substantially endangers the well being of persons or property in the Park.

19. No unusable or unsightly vehicles will be allowed in the Park unless the Park has specially designated area for such storage and such storage must be by written permission of the Park. No such unsightly or inoperative vehicle may be parked or stored anywhere within the Resident's space or in the streets of the Park.

20. Tampering with Park electric service connections or other park utility connections is strictly forbidden. Please contact the management in case of trouble.

21. All rents and charges must be paid in full before removing a mobile home. Trees and/or shrubs placed upon the site may not be removed without management's prior written approval.

22. Mobile home spaces are not transferable without the manager's written approval.

23. Solicitors, vendors, peddlers, or other persons whose presence and business activities may be considered an intrusion on the mobile home park or the occupants thereof, is not permitted. Delivery men or repairmen who are authorized may have access to the Park.

24. All prospective purchasers must register with the Park prior to the time of the purchase. The Park reserves the right to approve any prospective purchaser who intends to become a Resident, but such approval may not be unreasonably withheld.

25. The Park may unconditionally refuse to approve as a Resident any purchaser of a mobile home who does not register prior to purchase. Registration shall include the signing of a Lease Agreement.

26. Resident may place not more than one "for sale" sign upon his mobile home provided that the sign cannot exceed 144 square inches.

27. The Park may require that a mobile home be removed from the Park upon sale if:

(a) The mobile home does not meet minimum size specifications as outlined in the Rules, if any.

(b) The mobile home is in a run down condition or in disrepair.

(c) The mobile home does not meet the minimum standards of the current rules and regulations. (See Rules #3 and #4)

28. If, at any time, a Resident believes the Park has not fulfilled any legal obligations the Park may have to Resident or other homeowners, Resident agrees to immediately give the Park written notice specifying what Resident believes the Park has failed to do and indicating what Resident believes the Park has to do in order to fulfill these obligations. This notice shall be as detailed as possible so that the Park may fully understand the Resident's concerns. The Resident agrees that the Park will have at least ninety (90) days or such longer period as is reasonably necessary, after receipt of Resident's notice to remedy the problem(s) Resident has identified in Resident's notice. If Park does remedy the problem(s) within the time period allotted,

Resident agrees that the Park will have no liability whatsoever to Resident for any expense, costs, injury or damages Resident may

have sustained. If Resident fails to give the Park a reasonable opportunity to remedy the problem(s), the Park will have no liability to Resident for any expense, costs, damage or injury which Resident may sustain as a result of the problem(s).

29. The Park reserves the right to restrict both the number or types of pets allowed. No farm animals or exotic pets are allowed. Pets of Residents already in the Park or new Residents just entering the Park may be prohibited solely at the reasonable discretion of the Park.

30. All pets must be immediately registered with the Park. Such registration shall be kept current and any animal found in the Park which is not registered will be removed or eviction proceedings may be commenced for violation of these Rules. Such registration shall be on forms provided by the Park and it shall include a photograph of the pet.

If pets are allowed, only those Residents who comply with the following Rules on a continuing basis shall be allowed to retain pets in the Park:

- a. Each pet must be licensed and inoculated in accordance with local laws.
- b. Pets are to be restrained within the Resident's space except when Resident has pet on leash and is walking the pet.
- c. Any pet running loose in the Park will be impounded at the owner's expense and the Resident may be notified to vacate his space or give up his pet.
- d. Pets will not be allowed in the clubhouse or any recreational areas at any time.
- e. Any excrement left by a pet outside or under the mobile home must be picked up immediately and disposed of by Resident.
- f. Pets will not be allowed to cause any disturbance which might annoy neighbors. If pet causes any disturbance, annoyance or harm such as barking, growling, howling, biting or any other unusual noises or damage which will annoy or cause harm to a neighbor, permission to keep the pet will be revoked.
- g. Guests of Residents may not bring pets into the Park.

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If any violation of the pet rules is observed or a valid complaint is made by another Resident, the pet owner will receive an official warning in writing to either correct the problem, dispose of the pet, or vacate the space. If a second violation is noted, or a second valid complaint received, the pet owner will receive a notice to quit for behavior which substantially endangers the well being of persons or property.

It is our sincere hope that the above Rules will never have to be referred to on the basis of being violated. We will do all we can to make this a pleasant and enjoyable place to live for all our Residents. We solicit your cooperation and support in making it just that. Suggestions are desired and welcome at any time.

If we can be of any further service to you, please let us know and we shall do our best to serve your needs.

Imperial Mobile Home Park

rev 0494jk

Tab C

RENTAL AGREEMENT

IMPERIAL MOBILE HOME PARK

1375 West 500 North, Provo, Utah 84601 (801) 374 - 5191

THIS AGREEMENT, executed in duplicate on Feb 10, 1972

by and between Imperial Mobile Home Park ("Landlord")
and Layton Griffin and La Rue Griffin ("Resident").

1. Period and Rental. Landlord does hereby demise and let unto Resident, and Resident hires from Landlord, site number 119 located within the area of the Imperial Mobile Home Park for a tenancy from month to month commencing Feb 10, 1972 at a monthly rental of Winter \$3.80 Sept thru April \$57.55 May thru Aug.
payable in advance on the first day of each and every month. Either party may terminate this Rental Agreement by giving to the other party 30 days' notice in writing.

2. Occupancy and Use. Said site shall be used only as a mobile home residence occupied by no more than 2 adults, _____ children and _____ pets. The Landlord has the right to approve said mobile home before it is set, installed and connected. Resident acknowledges that he has inspected the premises and hereby accepts them in their present condition, and Resident agrees to hold Landlord harmless from any and all expense or liability arising directly from Resident's use of said site or from use of the common areas.

3. Assignment or Sublet. Resident shall not assign, transfer or sublet the site or any part thereof, or this Rental Agreement, without Landlord's prior written consent.

4. Park Rules, Regulations and Conventants. This Rental Agreement is subject to the current Park Rules, Regulations and Covenants, a copy of which has been furnished to Resident, and to all future Park Rules, Regulations and Covenants as adopted from time to time by Landlord in its sole discretion. Each and every provision of the Rules, Regulations and Covenants which now or hereafter exist is hereby made part of this Rental Agreement, and any failure by Resident to observe each and every provision thereof shall be deemed a noncurable default which may result in the immediate termination of this Rental Agreement.

Layton Griffin La Rue Griffin Feb 10 - 72
(date)

Wendy Starnes Sec Feb 10 - 72
(date)

Feb 10 - 72

EXHIBIT

Tab D

FILED
CLERK OF DISTRICT COURT OF
UTAH
JUL 22 10 19 AM '91

James R. Boud, USB #A0388
ASHTON, BRAUNBERGER & BOUD, P.C.
Attorneys for Third-Party Defendants
302 West 5400 South, Suite 103
Murray, Utah 84107
Telephone: (801) 263-0300

IN THE FOURTH DISTRICT COURT, AMERICAN FORK DEPARTMENT
IN AND FOR UTAH COUNTY, STATE OF UTAH

IMPERIAL MOBILE HOME PARK,)
L.L.C., a Utah Limited)
Liability Company,)

Plaintiff,)

vs.)

MICHAEL KELSCH, Personal)
Representative to the)
Estate of LaRue Griffin,)
Deceased, RUTH WILLIAMSON and)
JOHN DOES 1 through 10,)

Defendants.)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

MICHAEL KELSCH, Personal)
Representative to the)
Estate of LaRue Griffin,)
Deceased, RUTH WILLIAMSON,)
and JOHN DOES 1 through 10,)

Counterclaimants,)

vs.)

IMPERIAL MOBILE HOME PARK,)
L.C., PATTON KWAN and JANET)
KWAN, doing business as)
IMPERIAL MOBILE HOME PARK,)
SCOTT A. MADSEN, RON CLARK,)
and DOES 1 THROUGH X,)

CounterDefendant and)
Third Party Defendants.)

Civil No. 960001388

Judge John C. Backlund

On the 25th day of June, 1997, Plaintiff's Motion for Summary Judgment on Defendants' Counterclaim and for Summary Judgment on Plaintiff's Declaratory Action came on for hearing. Plaintiff was represented by attorney James R. Boud. Defendants were represented by attorney Chris Greenwood and Mr. Greenwood's associate, _____. After thoroughly reviewing the pleadings, exhibits, and affidavits filed in support of and in opposition to the motion for summary judgment, and listening to the arguments of counsel, and fully considering the matter, the Court now makes its Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Court finds that considering all the evidence that has been produced, that there is no genuine issue of material fact with respect to any of the causes of action filed by the Defendants in their counterclaim. The Court further finds that summary judgment should be granted in favor of Plaintiff on Plaintiff's Complaint for Declaratory Relief.

2. The Court specifically finds that this action is not an action to terminate a tenancy of a resident in a mobile home park. The action brought by the Plaintiff is a suit for declaratory judgment to have the Court find that Utah Code Ann. Section 57-16-4(7), which provides that "In order to upgrade the quality of a mobile home park, it [the mobile home park] may require that a mobile home be removed from the park upon the sale

if: (a) the mobile home does not meet minimum size specifications...." The Court specifically finds that said statute is constitutional and enforceable.

3. The Court specifically finds that the Utah State Legislature, pursuant to the Mobile Home Park Residency Act found at 57-16-1 et. seq., specifically authorizes mobile home parks to set minimum size specifications relating to the lengths and widths of mobile homes. The Court finds that the above statute is very restrictive and does not give mobile home parks the authority to evict mobile home park residents from the park based upon minimum size specifications. The Court finds that the Legislature was very careful in drafting the statute and only allowed mobile home parks to "upgrade the quality of the mobile home park" upon the "sale" of a mobile home if the mobile does not meet minimum size specifications. The Court finds that the key factor that triggers the right to enforce minimum size specifications is that the resident voluntarily makes a choice to sell his or her mobile home.

4. The Court finds that the size specifications set by the Imperial Mobile Home Park of twelve feet wide by sixty-five feet in length for single-wide mobile homes is reasonable. The Court further finds that Plaintiff's minimum size specifications are not unreasonable or unconscionable. The Court finds, as acknowledged by counsel for Defendants during the argument, that a twelve foot wide by sixty-five foot long mobile home is a standard size mobile home in the mobile home industry. The Court further finds that almost all of the single wide lots in the Imperial

Mobile Home Park were constructed to accommodate twelve feet by sixty-five feet single-wide mobile homes with a few minor exceptions.

5. The Court specifically finds that if there is an economic hardship placed upon the Defendants in not being allowed to sell their mobile homes in Plaintiff's Park and having to move the homes from the Park, that the economic hardship is not the fault of the Plaintiff nor was it caused by any act of the Plaintiff. Defendants have argued that mobile home spaces are not readily available along the Wasatch Front at the present time. Defendants have put no evidence on with respect to this issue but even if this is a fact that can be accepted as true, the economic circumstances along the Wasatch Front at the present time are not in the control of Plaintiff. The Court further finds that the market for mobile homes and the spaces available in mobile home parks is dictated by economic conditions over which the Plaintiff has no control.

6. The Defendants have set forth eight separate causes of action in their Counterclaim which causes of action include (1) breach of contract, (1) violation of the Utah Mobile Home Park Residency Act, (3) breach of the covenant of good faith and fair dealing, (4) intentional interference with economic relations, (5) violation of the Utah Fair Housing Act, (6) violation of the Federal Fair Housing Act, (7) violation of the Utah Consumer Sales Practice Act, and (8) punitive damages. The Court finds that summary judgment is appropriate in favor of Plaintiff and against

Defendants on each of the eight causes of action in Defendants' Counterclaim. The Court finds that there is no issue of fact with respect to any of the causes set forth in the Counterclaim and that for all of the reasons set forth in the Memorandum in Support of Plaintiff's Motion for Summary Judgment and in Plaintiff's Reply Memorandum, all of which are incorporated herein by reference; that the Plaintiff is entitled to judgment on Defendants' Counterclaim and upon Plaintiff's Complaint as a matter of law.

7. The Court adopts the Statement of Facts as set forth on pages 3 through 7 of Plaintiff's Memorandum in Support of its Motion for Summary Judgment and incorporates such statement of undisputed facts herein by reference. The Court finds that Defendants were not able to controvert any of the statement of undisputed facts by the Plaintiff by any credible or competent evidence. The Court finds that this action is a clear cut case and that a Counterclaim should never have been filed. The Court therefore finds that it is appropriate to reserve the issue of attorney fees for future hearing pursuant to the provisions of Utah Code Ann. § 78-27-56 and pursuant to Rule 11 of the Rules of Civil Procedure. The Court finds that in the event attorney fees are granted, this judgment shall be augmented to include a provision for said attorney fees.

8. The Court finds that based upon the lease agreement entered into between Imperial Mobile Home Park and Defendant Ruth Williamson dated February 15, 1972, that the reasonable expectations of the parties at the time said lease agreement was

entered into was that the lease could be terminated at any time by either party "by giving to the other party thirty days' notice in writing." The Court specifically finds that Mrs. Williamson never had a reasonable expectation of keeping her mobile home in the Park indefinitely nor of keeping the mobile home in the Park after she moved from the Park or sold her mobile home.

9. The Court further finds that Mrs. LaRue Griffin, who is now deceased, had an identical lease to that of Mrs. Ruth Williamson and that LaRue Griffin's lease was dated February 10, 1972 and that Mrs. LaRue Griffin's reasonable expectations were the same as Mrs. Ruth Williamson's.

10. The Court finds that LaRue Griffin has died and that her personal representative, Michael Kelsch, has asserted in this action that he has certain rights pursuant to a June 10, 1996 letter issued to him by Scott Madsen, the manager of Imperial Mobile Home Park. Mr. Kelsch's position is that he has an enforceable lease agreement pursuant to said letter. The Court finds that Mr. Kelsch does have certain rights as the personal representative of the estate of LaRue Griffin pursuant to the letter of June 10, 1996. The Court, however, finds that the letter of June 10, 1996 states specifically that, "Since subject home does not meet the minimum size specifications of sixty-five feet for single-wide homes as written in our Park rules (see attached), the home cannot remain in the Imperial Mobile Home Park, but would have to be removed by the buyer upon sale. We ask that when you consummate a sale that you notify us who will transport the home

and on which day so that we may clear any charges for electricity owing and assist the transporter in the moving of the home out of the Park."

11. The Court finds that Mr. Michael Kelsch uses the last paragraph of said letter in an unsuccessful attempt to convince the Court that he has a right to resell the mobile home in the Park. The Court finds that there is absolutely no inference whatsoever in the June 10, 1996 letter which would give Mr. Michael Kelsch any expectation whatsoever that he has a right to resell the mobile home of LaRue Griffin to a buyer who would keep it in the Imperial Mobile Home Park. To the contrary, the Court finds that the June 10, 1996 letter is perfectly clear that the mobile home must be removed from the Park upon sale and Mr. Michael Kelsch could have no reasonable expectation to the contrary.

12. The Court finds that in July of 1994 the Imperial Mobile Home Park implemented new rules which addressed minimum size specifications for mobile homes in the Park. The Court specifically finds that both Mrs. Ruth Williamson and Mrs. LaRue Griffin received copies of the new rules and that the Park Manager, Scott Madsen, mailed copies of said rules to both of said ladies. The Court further finds that Mrs. Williamson admitted in her deposition that she received a copy of the new Park rules in 1994 and the Court believes Mrs. Williamson as to this point.

13. The Court finds based upon un rebutted evidence that neither Ruth Williamson's mobile home nor the LaRue Griffin mobile home meets minimum size specifications even if the tongues were

counted. The Court further finds that it is not reasonable to count the tongue as part of the measurement of the mobile home as it is not part of the living space. The Court finds that it is reasonable to only count the box of the mobile home or the living area of the mobile home in determining whether the mobile home meets the minimum size specifications of the Park.

14. The Court further finds that counsel for the Defendants in this action did not willingly inform the Court of the actual measurements of the Williamson and Griffin mobile homes, even counting the length of the tongues, and that at the hearing counsel for Defendants continued to evade the Court's questioning as to the actual lengths of the mobile home because said mobile homes did not, under any scenario of facts, meet the minimum size specifications of the Park.

15. The Court finds that Defendant Michael Kelsch, as personal representative of the estate of LaRue Griffin, has never paid any rent to Imperial Mobile Home Park. The Court finds that the Church of Jesus Christ of Latter-day Saints has made fast offering donations to pay for rent for the LaRue Griffin mobile home but there is no obligation on the part of the estate of LaRue Griffin to repay the fast offering fund and there was no expectation of repayment. The Court further finds that Defendant Michael Kelsch, as personal representative of the estate of LaRue Griffin, has never physically possessed or inhabited the mobile home of LaRue Griffin and that the mobile home has been empty since the death of LaRue Griffin in May of 1996.

16. The Court finds that the Plaintiff, Imperial Mobile Home Park, acted reasonably in not allowing the Defendants, while they were trying to sell their mobile homes, to sublet or assign their lease or interest in the mobile homes to a third party renter. The subletting or assignment of said leasehold interest would require the written consent of the Plaintiff and the Court finds that it was not unreasonable for the Plaintiff to withhold any consent while the mobile homes were in the process of being sold and while this case was in litigation.

17. The Court finds that the square footage argument propounded by the Defendants in their Memorandum in Opposition to Plaintiff's Motion for Summary Judgment is nonsensical, not plausible, and is contrary to the rules and regulations of the Park.

18. The Court specifically finds that neither Defendant Ruth Williamson nor Defendant Michael Kelsch, as personal representative of the estate of LaRue Griffin, has made a reasonable attempt to mitigate their damages. The Court specifically finds with respect to Ruth Williamson that she has failed and refused to adequately market her mobile home for resale. The Court finds that Defendant Ruth Williamson moved to St. George prior to the filing of this law suit and that she comes back to stay in her mobile home on occasion for short periods of time. Although she has a "For Sale" sign in the window of her mobile home, she has made no real attempt to market her mobile home because any prospective buyer of the mobile home would have no way

of contacting her due to the fact that the telephone number on the "For Sale" sign was the telephone number to her mobile home which was, for the most part, not being lived in. The Court further finds that the telephone in Mrs. Williamson's mobile home did not have a recording device on it.

With respect to Defendant Michael Kelsch, the Court finds that Michael Kelsch has not made an adequate attempt to market or sell the mobile home of LaRue Griffin. The Court specifically finds that Mr. Kelsch did have an offer to sell the mobile home of LaRue Griffin to an independent third party, who would have moved the mobile home from the Park for approximately \$8,000.00, which sum would have liquidated all of the debts of the estate of LaRue Griffin. The Court further finds that Mr. Kelsch refused to sell the mobile home hoping that he could win this lawsuit and make more money if it could be sold to a buyer who would keep the home in the Park. The Court finds that this conduct was inappropriate and that he should have been looking out for the best interests of the estate rather than concerning himself with this lawsuit.

19. The Court specifically finds that Defendant Ruth Williamson and Defendant Michael Kelsch, as personal representative of the estate of LaRue Griffin, has failed to adequately look into other mobile home parks where the mobile homes could be moved to and resold.

20. The Court finds that the case law cited by Plaintiff in its Memorandum establishes that the Defendants' failure to mitigate their damages are grounds for the Court denying damages in

this action if damages could be awarded. The Court finds that based upon the Defendants' failure to mitigate their damages, even if the Defendants could have prevailed in this action on other legal issues that Defendants are barred from seeking any damages from Plaintiff due to their absolute failure and refusal to mitigate their damages. The Court further finds that both Defendants Williamson and Kelsch have taken the position that they would not try to market their mobile homes to people who would purchase the homes and move them from the park because they took the position that they had a right, pursuant to the causes of action set forth in their counterclaim, to resell their mobile homes to purchasers who would keep said homes in the Park. Even if they had such a right, the Court finds that this was an unreasonable position to take due to the fact that they are under an obligation to mitigate their damages.

21. The Court finds that the Statement of Facts contained in the Affidavit of Scott Madsen has been unrefuted by the Defendants and that in particular, paragraphs 13 through 22 of the Affidavit of Scott Madsen establishes that the rules of the Park relating to minimum size specification have been uniformly enforced with a few reasonable exceptions made for irregular shaped lots in the Park. The affidavit does establish that many months after the 1994 rules relating to minimum size specifications were implemented, the Plaintiff's manager, Scott Madsen, realized that there were a few lots in the Park that could be reconfigured from non-conforming single-wide lots to double-wide lots which would

allow homes to be placed upon them that would conform to the rules of the Park.

22. The Court finds that the sale of a mobile home by the Imperial Mobile Home Park to a family named Ellis, of which the Defendant takes exception to, was reasonable under all circumstances and that the post 1994 rule change conversion of the lot upon which the Ellis home sat from a non-conforming single-wide lot (a lot that could not fit a sixty-five foot long single-wide mobile home) to a conforming double-wide lot was a reasonable action for the Plaintiff to take. The Court finds no impropriety whatsoever with the transaction.

23. The Court does note that the Plaintiff allowed one sixty foot mobile home to be resold in the Park during the 1994 December holiday season as a result of an error. The Court specifically finds that an error was committed and that the Utah Mobile Home Park Residency Act gives the Plaintiff some discretion in enforcing minimum size specifications by the use of the word "may" which is contained in Utah Code Ann. § 57-16-4(7). The Court finds that this error does not give the Defendants any right to resell their mobile homes to purchasers who have the intention of keeping the homes in the Park. The Court further finds that Utah Code Ann. § 57-16-4(7) gives a mobile home park the right to upgrade the quality of a mobile home park by setting minimum size specifications for mobile homes irrespective of any other right granted in the Utah Mobile Home Park Residency Act to amend or change a rule of the park.

24. The Court finds that Plaintiff did not do anything which would have prevented the Defendants from selling their mobile homes. The Defendants had every right to sell their mobile homes to any independent third party purchaser as long as the purchaser moved the mobile home from the Park.

25. The Court specifically finds that the Plaintiff did nothing whatsoever to discriminate against Defendant Ruth Williamson or any other Defendant or LaRue Griffin and that the Fair Housing Act violations alleged by the Defendants had no basis in fact or law.

26. The Court finds that the Defendants presented no evidence whatsoever to back their theory of the case that the minimum size specification set by the Plaintiff was unreasonable and unconscionable. This allegation was nothing more than a bald assertion made by the Defendants and was not supported by any credible evidence whatsoever.

27. The Court finds that the Plaintiff has incurred Court costs in this matter in the sum of \$ 1204.33.

CONCLUSIONS OF LAW

1. The Court concludes as a matter of law that the Plaintiff should be granted summary judgment on its complaint for declaratory relief and against the Defendants on their eight separate causes of action which have been set forth in their Counterclaim.

2. The Court concludes that a further hearing should be held to determine whether the Defendants and their attorney should be required to pay to Plaintiff reasonable attorney fees for having to defend this action due to the fact that the Court concludes that there was absolutely no basis in law or fact for any of the eight separate causes of action which the Defendants have filed against the Plaintiff. The Court concludes that the Plaintiff may bring a motion based upon Utah Code Ann. § 78-27-56 and based upon Rule 11 of the Utah Rules of Civil Procedures seeking attorney fees against the Defendants and their attorney.

3. The Court concludes that Utah Code Ann. § 57-16-4(7) is constitutional and enforceable and that the Plaintiff mobile home park had a right to set minimum size specifications for the mobile homes in its park.

4. The Court concludes that Plaintiff's minimum size specification as it relates to single-wide mobile homes of twelve feet wide by sixty-five feet in length is a reasonable minimum size specification to set.

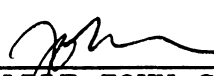
5. The Court concludes that the Plaintiff had no legal obligation to allow the Defendants to sublet or assign their leasehold interest in their mobile homes to third parties during the course of this litigation.

6. The Court concludes that the Defendants failed to mitigate their damages, if any.

7. The Court concludes that the Plaintiff should be granted costs in the amount of \$ 1204.33.

DATED this 22 day of July, 1997.

BY THE COURT:


HONORABLE JOHN C. OSACKER
Fourth District Court Judge



CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing proposed Findings of Fact and Conclusions of Law was mailed postage prepaid on the 17th day of July, 1997, to the following:

Chris D. Greenwood
GREENWOOD & BLACK
Attorneys for Defendants
1840 North State Street
Provo, Utah 84604


Brenda Butterfield

Tab E

FILED
CIRCUIT COURT OF
THE STATE OF UTAH
JUL 22 10 19 AM '97

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COURT CLERK
JUL 22 10 19 AM '97

James R. Boud, USB #A0388
ASHTON, BRAUNBERGER & BOUD, P.C.
Attorneys for Third-Party Defendants
302 West 5400 South, Suite 103
Murray, Utah 84107
Telephone: (801) 263-0300

IN THE FOURTH DISTRICT COURT, AMERICAN FORK DEPARTMENT
IN AND FOR UTAH COUNTY, STATE OF UTAH

IMPERIAL MOBILE HOME PARK,)
L.L.C., a Utah Limited)
Liability Company,)
)
Plaintiff,)
)
vs.)
)
MICHAEL KELSCH, Personal)
Representative to the)
Estate of LaRue Griffin,)
Deceased, RUTH WILLIAMSON and)
JOHN DOES 1 through 10,)
)
Defendants.)

JUDGMENT

MICHAEL KELSCH, Personal)
Representative to the)
Estate of LaRue Griffin,)
Deceased, RUTH WILLIAMSON,)
and JOHN DOES 1 through 10,)

Counterclaimants,)

vs.)

IMPERIAL MOBILE HOME PARK,)
L.C., PATTON KWAN and JANET)
KWAN, doing business as)
IMPERIAL MOBILE HOME PARK,)
SCOTT A. MADSEN, RON CLARK,)
and DOES 1 THROUGH X,)

CounterDefendant and)
Third Party Defendants.)

Civil No. 960001388

Judge John C. Backlund

On the 25th day of June, 1997, Plaintiff's Motion for Summary Judgment was heard before the above court. The Honorable Judge John C. Backlund, presiding. James R. Boud appeared on behalf of Plaintiff, and Chris Greenwood and _____ appeared on behalf of Defendants. After carefully reviewing the pleadings on file, listening to the arguments of counsel, and fully considering the matter, the Court granted summary judgment in favor of Plaintiff and against Defendants on both the complaint and the counterclaim in this action.

The Court having now entered its Findings of Fact and Conclusions of Law filed herewith, now hereby ORDERS, ADJUDGES AND DECREES, and enters Judgment as follows:

1. Plaintiff's Action for Declaratory Relief is hereby granted and the court rules as a matter of law that Plaintiff has the legal right pursuant to Utah Code Ann. § 57-16-4(7) to upgrade the quality of its mobile home park by requiring that mobile homes be removed from the park upon sale if the mobile homes do not meet Imperial Mobile Home Park's minimum size specifications which are twelve feet wide by sixty-five feet in length for single-wide mobile homes.

2. Utah Code Ann. § 57-16-417 is constitutional and enforceable.

3. The Defendants' counterclaim and each cause of action stated therein is hereby dismissed with prejudice and upon the merits.

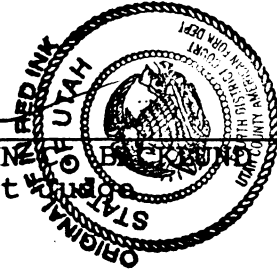
4. Plaintiff is awarded its costs of court in the amount of \$ 1204.33.

5. Plaintiff may bring a motion for attorney fees and, if granted, this Judgment will be augmented by the amount of attorney fees so granted.

DATED this 22 day of July, 1997.

BY THE COURT:


HONORABLE JOHN C. BECK
District Court Judge



CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Judgment was mailed postage prepaid on the 17th day of July, 1997, to the following:

Chris D. Greenwood
GREENWOOD & BLACK
Attorneys for Defendants
1840 North State Street
Provo, Utah 84604



Tab F

MOBILE HOMES AND PARKS

CHAPTER 177

S. B. No. 209

(Passed March 12, 1981. In effect May 12, 1981.)

MANUFACTURED HOUSING AND RECREATIONAL VEHICLES STANDARDS

AN ACT RELATING TO MANUFACTURED HOUSING AND RECREATIONAL VEHICLES; PROVIDING DEFINITIONS; PROVIDING STANDARDS FOR MOBILE HOMES AND RECREATIONAL VEHICLES; AND PROVIDING MAXIMUM FEES TO BE CHARGED BY THE DEPARTMENT OF BUSINESS REGULATION.

THIS ACT AMENDS SECTIONS 41-20-1, 41-20-3, AND 41-20-4.5, UTAH CODE ANNOTATED 1953, AS LAST AMENDED BY CHAPTER 15, LAWS OF UTAH 1974.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section amended.

Section 41-20-1, Utah Code Annotated 1953, as last amended by Chapter 15, Laws of Utah 1974, is amended to read:

41-20-1. Definitions.

As used in this act:

(1) ~~[The words "American Standard" mean]~~ "Standard" means a standard adopted and published by the American National Standards Institute or the National Fire Protection Association, for recreational vehicles, and for mobile homes manufactured prior to June 15, 1976. For manufactured homes built after June 16, 1976, "standard" means the standard adopted pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974.

(2) ~~[The words "mobile home" mean a vehicular, portable]~~ "Mobile home" means a structure built ~~[on a]~~ prior to June 15, 1976, transportable in one or more sections, which is eight body feet or more in width and 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation ~~[as a dwelling]~~ when connected to ~~[indicated]~~ required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

(3) "Manufactured home" means a structure built after June 16, 1976, transportable in one or more sections, which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. Modular or pre-built homes conforming to the Uniform Building Code and presently regulated by the Department of Housing and Urban Development which are not constructed on a chassis are exempt from this act.

~~[(3)]~~ (4) ~~[The words "travel trailer" mean]~~ Travel trailer means a vehicular, portable unit, mounted on wheels, not requiring special highway movement permits when drawn by a motorized vehicle:

(a) Designed as a temporary dwelling for travel, recreational and vacation use; and

(b) When factory-equipped for the road, having a body width of not more than eight feet and a body length of not more than forty feet.

~~[(4) The words "motor home" mean]~~ (5) "Motor home" means a self-propelled vehicular unit, primarily designed as a temporary dwelling for travel, recreational and vacation use.

~~[(5) The words "recreational vehicle" mean]~~ (6) "Recreational vehicle" means a vehicular unit, other than a mobile home, primarily designed as a temporary dwelling for travel, recreational and vacation use, which is either self-propelled or is mounted on or pulled by another vehicle, including but not limited to: a travel trailer, a camping trailer, a truck camper, ~~[and]~~ a motor home, a fifth wheel trailer, and a van.

~~[(6) The word "person"]~~ (7) "Person" includes any individual, firm, partnership, corporation, or other legal entity.

(8) "Salvage vehicle" means a mobile home, manufactured home, or recreational vehicle which is unfit for human habitation, to the extent that it is no longer feasible or desirable to bring it into conformity with the standards.

Section 2. Section amended.

Section 41-20-3, Utah Code Annotated 1953, as last amended by Chapter 15, Laws of Utah 1974, is amended to read:

41-20-3. Rental, sale or lease of mobile home, recreational vehicle, manufactured home, salvage vehicle—Seals or labels required.

(1) Every mobile home or recreational vehicle manufactured after July 1, 1970 which is rented, leased, sold, or offered for sale in this state after the effective date of this act, shall bear a seal issued by the ~~[state of Utah]~~ department of business regulation certifying that the plumbing, heating, non-electrical illumination ~~[and]~~, electrical systems, and fire life safety of each mobile home or recreational vehicle are installed in compliance with the ~~[American Standard]~~ standards for mobile homes or recreational vehicles applicable at the time of manufacture.

(2) Every mobile home manufactured after April 1, 1974, which is rented, leased, sold or offered for sale in this state shall bear a seal issued by the state of Utah certifying that the body and frame is designed and constructed, and that the plumbing, heating, and electrical system is installed in compliance with the ~~[American Standard]~~ standards applicable at the time of manufacture.

(3) All manufactured homes built after June 15, 1976, shall have labels affixed to them required by the Department of Housing and Urban Development to certify compliance.

(4) A salvage vehicle sold or offered for sale in this state shall bear a seal issued by the department of business regulation certifying that it does not comply with the standards for recreational vehicles, mobile homes, or manufactured homes and may not be used for human habitation without complying with those standards.

~~[(3)] (5) The department of business regulation, or a person duly authorized by the department, may issue a seal either on inspection of the plans for, or on actual inspection of, the mobile home, manufactured home, or recreational vehicle.~~

Section 3. Section amended.

Section 41-20-4.5, Utah Code Annotated 1953, as last amended by Chapter 15, Laws of Utah 1974, is amended to read:

41-20-4.5. Fees.

The department of business regulation shall collect in advance ~~[the following] fees [in carrying out the purposes of this act] not exceeding:~~

~~(1) [For each seal issued in accordance with section 41-20-3, a fee of \$2 for each mobile home or recreational vehicle containing only one, and \$6 for each mobile home or recreational vehicle containing two or more, of the following systems: plumbing, heating, nonelectrical illumination, or electrical;] For multiple system seals, \$15; for single system seals, \$6;~~

~~(2) [(a) For filing each set of plans and specifications with the department and for each filing of additions, deletions, or alterations to the plans or specifications, \$5] For filing each set of plans and specifications, \$35;~~

~~[(b) For filing body and frame design requirements with the department, \$5;]~~

~~(3) For each [plumbing fixture and each electrical system described in the plans and specifications, \$3.00] model included in an application for plan approval, \$10;~~

~~(4) For each [fuel burning heat producing appliance described in the plans and specifications, \$4.00] plumbing, fuel burning heat producing, and electrical system included in a recreational vehicle, \$20;~~

~~[(5) For each nonelectrical illuminating appliance described in the plans and specifications, \$1.00;]~~

~~[(6)] (5) For renewing the certification of each set of plans or specifications [which may be] required by the department [of business regulation, \$10], \$20;~~

~~[(7)] (6) For field inspection or field technical service when required by the department of business regulation or when requested by a manufacturer or seller of mobile homes, manufactured homes, or recreational vehicles and with the approval of the department [of business regulation, \$11 for the first hour and \$5.50 for each additional thirty minutes or fraction thereof], \$20 per inspection and \$10 for re-inspection;~~

~~[(8) For filing a change of name, address, or ownership of a mobile home or recreational vehicle manufacturer, \$10;]~~

~~(7) For filing a change of name, address, or ownership of a manufacturer, \$20;~~

~~[(9)] (8) Filing of in-plant quality control manual, \$4] \$10;~~

~~[(10) For out of state inspection or field technical service performed in accordance with this act or the rules and regulations of the department of business regulation, \$40 for each mobile home or recreational vehicle model inspected or serviced plus;]~~

~~[(a) Total travel cost between Salt Lake City, Utah, and the point of inspection, based on air fare rates or their equivalent;]~~

~~[(b) Necessary supplemental surface transportation; and]~~

~~[(e) Reimbursement for food and lodging consistent with allowances established by the finance department for the state of Utah;]~~

~~(9) For in-state in-plant inspections, the frequency of which shall be determined by the department based on production rate, \$20 per hour for recreational vehicle manufacturers and \$25 per hour for manufactured housing manufacturers;~~

~~(10) For out-of-state in-plant inspections, the frequency of which shall be determined by the department based on production rate or field technical service, \$20 per hour for recreational vehicle manufacturers for time actually spent in the manufacturing facility plus air fare, current per diem, and necessary ground transportation; and~~

~~(11) For salvage seals, \$15.~~

Approved March 28, 1981.

CHAPTER 178

S. B. No. 237

(Passed March 11, 1981. In effect May 12, 1981.)

MOBILE HOME PARK RESIDENCY ACT

AN ACT RELATING TO MOBILE HOME PARKS; PROVIDING FOR THE REGULATION OF RELATIONSHIPS BETWEEN MOBILE HOME PARKS AND MOBILE HOME PARK RESIDENTS; PROVIDING RIGHTS, DUTIES, AND REMEDIES FOR MOBILE HOME PARKS AND MOBILE HOME PARK RESIDENTS.

Be it enacted by the Legislature of the State of Utah:

Section 1. Short title.

This act shall be known and may be cited as the "Mobile Home Park Residency Act."

Section 2. Purpose.

The fundamental right to own and protect land and to establish conditions for its use by others necessitate that the owner of a mobile home park be provided with speedy and adequate remedies against those who abuse the terms of a tenancy. The high cost of moving mobile homes, the requirements of mobile home parks relating to their installation, and the cost of landscaping

and lot preparation necessitate that the owners of mobile homes occupied within mobile home parks be provided with protection from actual or constructive eviction. It is the purpose of this chapter to provide protection for both the owners of mobile homes located in mobile home parks and for the owners of mobile home parks.

Section 3. Definitions.

As used in this chapter:

(1) "Mobile home" means a transportable structure in one or more sections with the plumbing, heating, and electrical systems contained within the unit, which when erected on a site, may be used with or without a permanent foundation as a family dwelling.

(2) "Mobile home park" means any tract of land on which two or more mobile home spaces are leased, or offered for lease or rent, to accommodate mobile homes for residential purposes.

(3) "Resident" means an individual who leases or rents space in a mobile home park.

(4) "Mobile home space" means a specific area of land within a mobile home park designed to accommodate one mobile home.

(5) "Rent" means charges paid for the privilege of occupying a mobile home space, and may include service charges and fees.

(6) "Service charges" means separate charges paid for the use of electrical and gas service improvements which exit at a mobile home space, or for trash removal, sewage and water, or any combination of the above.

(7) "Fees" means other charges incidental to a resident's tenancy including, but not limited to, late fees, charges for pets, charges for storage of recreational vehicles, charges for the use of park facilities, and security deposits.

(8) "Change of use" means a change of the use of a mobile home park, or any part of it, for a purpose other than the rental of mobile home spaces.

Section 4. Termination of lease by park owner—Requirement for lease agreement.

(1) No mobile home park or its agents shall terminate a lease or rental agreement upon any ground other than as specified in this chapter.

(2) Each agreement for the lease of mobile home space shall be written, signed by the parties, and contain at least the following information:

(a) Name and address of the mobile home park owner, or a person authorized to act for the owner, upon whom notice and service of process may be served;

(b) Type of the leasehold, and whether it be term or periodic;

(c) Full disclosure of all rent, service charges, and other fees presently being charged on a periodic basis;

(d) Date or dates on which the payment of rent, fees, and service charges are due; and

(e) All rules that pertain to the mobile home park which, if broken, may constitute grounds for eviction.

(3) Increases in rent or fees for periodic tenancies shall be unenforceable until 60 days after notice of the increase is mailed to the resident. If service charges are not included in the rent, service charges may be increased during the leasehold period after notice to such resident is given, and decreases in utility rates shall be passed through to the resident.

The mobile home park may not alter the date or dates on which rent, fees, and service charges are due unless a 60-day written notice precedes the alteration.

(4) Any rule or condition of a lease purporting to prevent or unreasonably limit the sale of a mobile home belonging to a resident is void and unenforceable. The mobile home park may, however, reserve the right to approve the prospective purchaser of a mobile home who intends to become a resident, but such approval may not be unreasonably withheld. The mobile home park may require proof of ownership as a condition of approval. The mobile home park may unconditionally refuse to approve any purchaser of a mobile home who does not register prior to purchase.

(5) A mobile home park may not restrict a resident's right to advertise for sale or sell such resident's mobile home; provided, that it may limit the size of a "for sale" sign affixed to the mobile home to not more than 144 square inches.

(6) No mobile home park may compel a resident who desires to sell such resident's mobile home, either directly or indirectly, to sell it through an agent designated by the mobile home park.

(7) In order to upgrade the quality of a mobile home park, it may require that a mobile home be removed from the park upon sale if:

(a) The mobile home does not meet minimum size specifications; or

(b) The mobile home is in rundown condition or in disrepair.

Section 5. Grounds for terminating lease.

An agreement for the lease of mobile home space in a mobile home park may be terminated during its term by mutual agreement or for any one or more of the following causes:

(1) Failure of a resident to comply with a mobile home park rule for a period of 15 days after receipt of notice of noncompliance from the mobile home park;

(2) Repeated failure of a resident to abide by a mobile home park rule, if the original notice of noncompliance states that another violation of the same or a different rule might result in forfeiture without any further period of cure;

(3) Behavior by a resident which substantially endangers the security and health of the other residents or threatens the property in the park;

(4) Nonpayment of rent, fees, or service charges;

(5) A change in the land use or condemnation of the mobile home park or any part of it.

Section 6. Action for lease termination—Prerequisite procedure.

(1) No legal action based upon a cause set forth in section 5, as grounds for termination of a lease, shall be commenced; except, in accordance with the following procedure:

(a) Before issuance of any summons and complaint, the mobile home park shall send written notice as outlined in section 78-36-6 to the resident effected which sets forth the cause for the notice and, if the cause is one which can be cured, the time within which the resident has to cure, and also sets forth the time after which the mobile home park may commence legal action against the resident if cure is not effected, as follows:

(i) In the event of failure to abide by a mobile home park rule, the notice shall provide for a 15-day cure period except in the case of repeated violations and, further, that if cure is not timely effected, or a written agreement made between the mobile home park and the resident allowing for a variation in the rule or cure period, eviction proceedings may be initiated immediately;

(ii) In the event of repeated violations or behavior by a resident that endangers the well-being of persons or property, summons and complaint may be issued three days after a notice is served;

(iii) In the event of behavior by a resident that substantially endangers the well-being or property of other residents, eviction proceedings may commence immediately;

(iv) In the event of nonpayment of rent, fees, or service charges, the notice shall provide a three-day cure period and further, that if cure is not timely effected, or a written agreement made between the mobile home park and the resident allowing for a variation in the rule or cure period, eviction proceedings may be initiated immediately; and

(v) In the event of a planned change in land use or condemnation of the park, the notice shall provide that the resident has 90 days after receipt of the notice to vacate the mobile home park if no governmental approval or permits incident to the planned change are required, and if governmental approval and permits are required, that the resident has 90 days to vacate the mobile home park after all permits or approvals incident to the planned change are obtained.

(b) If the planned change in land use or condemnation requires the approval of a governmental agency, the mobile home park, in addition to the notice required by subsection (1) (a) (iii) of this section, shall send written notice of the date set for the initial hearing to each resident at least seven days before the date scheduled for the initial hearing.

(c) Regardless of whether the change of use requires the approval of any governmental agency, if the resident was not a resident of the mobile home park at the time the initial change of use notice was issued to residents, written notice of the change of use must have been given to the resident prior to the inception of residency.

Section 7. Rules of parks.

(1) A mobile home park may promulgate rules related to the health, safety, and appropriate conduct of residents and to the maintenance and upkeep of such park. No change in rule that is unconscionable is valid. No new or amended rule shall take effect, nor provide the basis for an eviction notice, until the expiration of at least 60 days after its promulgation. Each resident, as a condition precedent to such rule being in effect, shall be provided with a copy of each new or amended rule that does not appear in their lease agreement.

(2) A mobile home park may specify the type of material used, and the methods used in the installation of, underskirting, awnings, porches, fences, or other additions or alterations to the exterior of a mobile home, and may also specify the tie-down equipment used in a mobile home space, in order to insure the safety and good appearance of the park; but under no circumstances may it require a resident to purchase such material or equipment from a supplier designated by the mobile home park.

(3) No mobile home park may charge an entrance fee, exit fee, nor installation fee, but reasonable landscaping and maintenance requirements may be included in the mobile home park rules. The resident is responsible for all costs incident to connection of the mobile home to existing mobile home park facilities and for the installation and maintenance of the mobile home on the mobile home space.

(4) Nothing in this section shall be construed to prohibit a mobile home park from requiring a reasonable initial security deposit.

Section 8. Payment of rent and fees during pendency of eviction proceeding.

If a resident elects to contest an eviction proceeding, all rents, fees, and service charges due and incurred during the pendency of the action shall be paid into court according to the current mobile home park payment schedule. Failure of the resident to pay such amounts may, in the discretion of the court, constitute grounds for granting summary judgment in favor of the mobile home park. Upon final termination of the issues between the parties, the court shall order all amounts paid into court paid to the mobile home park. The prevailing party is also entitled to court costs and reasonable attorney's fees.

Section 9. Lienholder's liability for rent and fees.

Notwithstanding the provisions of section 38-3-2 and section 70A-9-317, the lienholder of record of a mobile home is primarily liable to the mobile home park owner or operator for rent and service charges if a mobile home is not removed within 10 days after receipt of written notice that a mobile home has been abandoned or that a writ of restitution has been issued. The lienholder, however, is only liable for rent that accrues after receipt of such notice.

Section 10. Utility service to mobile home parks—Limitation on providers' charges.

Local water, sewer, and sanitation entities, including those administered by municipalities and counties which provide water, sewer, or garbage collection services shall not receive a greater percentage net return from supplying a mobile home park than said entity receives from other residential customers. The net return is determined by taking into consideration the costs of maintenance and depreciation of the mobile home park facilities and all savings on administrative costs, including cost of billing residents.

Section 11. Rights and remedies not exclusive.

The rights and remedies granted by this chapter are cumulative and not exclusive.

Section 12. Waiver of rights and duties prohibited.

No park or resident may agree to waive any right, duty, or privilege conferred by this chapter.

Approved March 26, 1981.

MOTOR VEHICLES

CHAPTER 179

H. B. No. 57

(Passed March 12, 1981. In effect May 12, 1981.)

MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

AN ACT RELATING TO THE MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT PROPOSED FOR ADOPTION BY THE VARIOUS STATES OF THE UNITED STATES; RATIFYING THAT AGREEMENT AND ENACTING IT INTO LAW; SPECIFYING THE FINDINGS AND PURPOSES OF THAT AGREEMENT; DEFINING CERTAIN TERMS AS USED THEREIN; PROVIDING FOR GENERAL PROVISIONS OF THE AGREEMENT; CREATING AND SPECIFYING THE DUTIES OF A COOPERATING COMMITTEE; SPECIFYING THE OBJECTIVES OF THE PARTICIPATING JURISDICTIONS; PROVIDING FOR ENTRY INTO FORCE AND WITHDRAWAL; PROVIDING FOR CONSTRUCTION AND SEVERABILITY; PROVIDING FOR THE FILING OF DOCUMENTS; PROVIDING FOR THE RETENTION OF EXISTING LAWS RELATING TO WEIGHT AND SIZE STANDARDS AND SPECIAL PERMITS UNTIL CHANGED BY LAW; AND AUTHORIZING STATE OFFICIALS AND AGENCIES TO COOPERATE WITH THAT COOPERATING COMMITTEE.

THIS ACT ENACTS SECTIONS 41-23-1 AND 41-23-2, UTAH CODE ANNOTATED 1953.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section enacted.

Section 41-23-1, Utah Code Annotated 1953, is enacted to read:

41-23-1. Enactment.

The Multistate Highway Transportation Agreement is hereby enacted into law and entered into with all other jurisdictions legally joining therein.

Section 2. Section enacted.

Section 41-23-2, Utah Code Annotated 1953, is enacted to read:

41-23-2. Text.

The text of this agreement is as follows:

MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

Pursuant to and in conformity with the laws of their respective jurisdictions, the participating jurisdictions, acting by and through their officials lawfully authorized to execute this agreement, do mutually agree as follows:

ARTICLE I

Findings and Purposes

Section 1. Findings. The participating jurisdictions find that:

(a) The expanding regional economy depends on expanding transportation capacity;

(b) Highway transportation is the major mode for movement of people and goods in the western states;

(c) Uniform application in the West of more adequate vehicle size and weight standards will result in a reduction of pollution, congestion, fuel consumption, and related transportation costs, which are necessary to permit increased productivity;

(d) A number of western states, already having adopted substantially the 1964 Bureau of Public Roads recommended vehicle size and weight standards, still find current federal limits more restrictive;

(e) The 1974 revision of federal law (23 U.S.C. 127) did not contain any substantial improvements for vehicle size and weight standards in the western states and deprives states of interstate matching money if vehicle weights and widths are increased, even though the interstate system is nearly 92% complete; and

(f) The participating jurisdictions are most capable of developing vehicle size and weight standards most appropriate for their economy and transportation requirements, consistent with and in recognition of principles of highway safety.

Section 2. Purposes. The purposes of this agreement are to:

(a) Adhere to the principle that each participating jurisdiction should have the freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system.

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CROSS REFERENCES

Standards prescribed pursuant to this chapter determining qualifications for—
Insurance availability for financial institutions for housing renovation and modernization, see 12 USCA § 1703.

Loan qualifications for housing and buildings on adequate farms, see 42 USCA § 1472.

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§ 5401. Congressional declaration of purposes

The Congress declares that the purposes of this chapter are to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured home accidents and to improve the quality and durability of manufactured homes. Therefore, the Congress determines that it is necessary to establish Federal construction and safety standards for manufactured homes and to authorize manufactured home safety research and development.

(Pub.L. 93-383, Title VI, § 602, Aug. 22, 1974, 88 Stat. 700; Pub.L. 96-399, Title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub.L. 97-35, Title III, § 339B(c), Aug. 13, 1981, 95 Stat. 417.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1974 Acts. Senate Report No. 93-693 and House Conference Report No. 93-1279, see 1974 U.S. Code Cong. and Adm. News, p. 4273.

1980 Acts. Senate Report Nos. 96-736, 96-724, and 96-716, and House Conference Report No. 96-1420, see 1980 U.S. Code Cong. and Adm. News, p. 3506.

1981 Acts. Senate Report No. 97-139 and House Conference Report No. 97-208, see 1981 U.S. Code Cong. and Adm. News, p. 396.

Codifications

References to "mobile homes", wherever appearing in text, were changed to "manufactured homes" in view of the amendment of Title VI of the Housing and Community Development Act of 1974 (this chapter) by section 308(c)(4) of Pub.L. 96-399 requiring the substitution

of "manufactured home" for "mobile home" wherever appearing in Title VI of the Housing and Community Development Act of 1974, and section 339B(c) of Pub.L. 97-35 (set out as a note under section 1703 of Title 12, Banks and Banking) providing that the terms "mobile home" and "manufactured home" shall be deemed to include the terms "mobile homes" and "manufactured homes", respectively.

Amendments

1980 Amendments. Pub.L. 96-399 substituted "manufactured home" for "mobile home" wherever appearing.

Effective Dates

1974 Acts. Section 628 of Pub.L. 93-383 provided that: "The provisions of this title [enacting this chapter and provisions set out as a note under this section] shall take effect upon the expiration of

180 days following the date of enactment of this title [Aug. 22, 1974]."

Short Title

1974 Acts. Section 601 of Pub.L. 93-383, as amended by Pub.L. 96-399, Title III, § 308(c)(5), Oct. 8, 1980, 94

Stat. 1641, provided that: "This title [which enacted this chapter and provisions set out as a note under this section] may be cited as the 'National Manufactured Housing Construction and Safety Standards Act of 1974'."

LIBRARY REFERENCES

Administrative Law

Mobile homes, construction and safety standards, see 24 C.F.R. § 3280.1 et seq., 3282.1 et seq.

American Digest System

Building health and safety laws in general; motor homes included as dwellings, see Health and Environment §32.

Products liability action against manufacturers of buildings or building components or materials, see Products Liability §42.

Encyclopedias

Building health and safety laws in general; motor homes included as dwellings, see C.J.S. Health and Environment §§ 28 et seq., 31.

Products liability action against manufacturers of buildings or building components or materials, see C.J.S. Products Liability § 50.

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Health and environment cases: 199k[add key number].

Products liability cases: 313ak[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Private right of action 1 Sales contracts 2

1. Private right of action

The National Manufactured Housing Construction and Safety Standards Act of 1974 creates no private right of action in favor of purchasers of allegedly defective manufactured or mobile homes against the manufacturers or sellers of such. *Heuer v. Forest Hill State Bank*, D.Md. 1989, 728 F.Supp. 1197, affirmed 894 F.2d 402.

2. Sales contracts

Promissory note given for purchase of mobile home was enforceable even

though electrical and plumbing modifications to mobile home had not been approved as allegedly required by Mobile Home Act, West's RCWA 43:22.340-.433, in that neither this chapter nor Mobile Home Act contained provision rendering sales contract in violation of Mobile Home Act void, and only statutory penalty in Mobile Home Act provided that any person who violated provision of the Act was guilty of a gross misdemeanor. *Stegall v. Kynaston*, 1980, 613 P.2d 1214, 26 Wash.App. 731.

§ 5402. Definitions

As used in this chapter, the term—

(1) "manufactured home construction" means all activities relating to the assembly and manufacture of a manufactured home including but not limited to those relating to durability, quality, and safety;

(2) "dealer" means any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale;

(3) "defect" includes any defect in the performance, construction, components, or material of a manufactured home that renders the home or any part thereof not fit for the ordinary use for which it was intended;

(4) "distributor" means any person engaged in the sale and distribution of manufactured homes for resale;

(5) "manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes for resale;

(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;

(7) "Federal manufactured home construction and safety standard" means a reasonable standard for the construction, design, and performance of a manufactured home which meets the needs of the public including the need for quality, durability, and safety;

(8) "manufactured home safety" means the performance of a manufactured home in such a manner that the public is protected against any unreasonable risk of the occurrence of accidents due to the design or construction of such manufactured home, or any unreasonable risk of death or injury to the user or to the public if such accidents do occur;

(9) "imminent safety hazard" means an imminent and unreasonable risk of death or severe personal injury;

(10) "purchaser" means the first person purchasing a manufactured home in good faith for purposes other than resale;

(11) "Secretary" means the Secretary of Housing and Urban Development;

(12) "State" includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa; and

(13) "United States district courts" means the Federal district courts of the United States and the United States courts of the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

(Pub.L. 93-383, Title VI, § 603, Aug. 22, 1974, 88 Stat. 700; Pub.L. 96-399, Title III, § 308(c)(4), (d), Oct. 8, 1980, 94 Stat. 1641; Pub.L. 97-35, Title III, § 339B(c), Aug. 13, 1981, 95 Stat. 417.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1974 Acts. Senate Report No. 93-693 and House Conference Report No. 93-1279, see 1974 U.S. Code Cong. and Adm. News, p. 4273.

1980 Acts. Senate Report Nos. 96-736, 96-724, and 96-716, and House Conference Report No. 96-1420, see 1980 U.S. Code Cong. and Adm. News, p. 3506.

1981 Acts. Senate Report No. 97-139 and House Conference Report No. 97-208, see 1981 U.S. Code Cong. and Adm. News, p. 396.

References in Text

For definition of Canal Zone, referred to in pars. (12) and (13), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

Codifications

References to "mobile homes", wherever appearing in text, were changed to "manufactured homes" in view of the amendment of Title VI of the Housing and Community Development Act of 1974 (this chapter) by section 308(c)(4) of Pub.L. 96-399 requiring the substitution of "manufactured home" for "mobile home" wherever appearing in Title VI of the Housing and Community Development Act of 1974, and section 339B(c) of Pub.L. 97-35 (set out as a note under section 1703 of Title 12, Banks and Banking) providing that the terms "mobile

home" and "manufactured home" shall be deemed to include the terms "mobile homes" and "manufactured homes", respectively.

Amendments

1980 Amendments. Pars. (1) to (3). Pub.L. 96-399, § 308(c)(4), substituted "manufactured home" for "mobile home" wherever appearing.

Par. (6). Pub.L. 96-399, § 308(c)(4), (d), substituted "manufactured home" for "mobile home", substituted "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" for "is eight body feet or more in width and is thirty-two body feet or more in length" and added exception relating to inclusion of any structure meeting all requirements of this paragraph except size and with respect to which a certification is voluntarily filed and standards complied with.

Pars. (7), (8), (10). Pub.L. 96-399, § 308(c)(4), substituted "manufactured home" for "mobile home" wherever appearing.

Effective Dates

1974 Acts. Section effective upon the expiration of 180 days following Aug. 22, 1974, see section 628 of Pub.L. 93-383, set out as a note under section 5401 of this title.

CROSS REFERENCES

"Residential manufactured home" having same meaning as under this section for purposes of—

Alternative mortgage transactions, see 12 USCA § 3802.

Mortgage related security definition, see 15 USCA § 78c.

Preemption of due-on-sale prohibitions of National Housing provisions, see 12 USCA § 1701j-3.

"Residential manufactured home" having same meaning as under this section for purposes of—Cont'd

State laws limiting mortgage interest or related charges, see 12 USCA § 1735f-7a.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Rules and regulations 1

1. Rules and regulations

Standard letter mailed by Housing and Urban Development official to manufactured housing design inspectors, in which official merely rearticulated statutory language in advising inspectors that no de-

sign could be approved which permitted removal of structure's chassis, was mere restatement of law which did not have to be formally issued as "interpretative bulletin" pursuant to HUD's procedural regulations. *Association for Regulatory Reform v. Pierce*, 1988, 849 F.2d 649, 270 U.S.App.D.C. 318.

§ 5403. Construction and safety standards

(a) Establishment pursuant to orders of Secretary; consultation with Consumer Product Safety Commission; reasonableness; consideration of State and local laws

The Secretary, after consultation with the Consumer Product Safety Commission, shall establish by order appropriate Federal manufactured home construction and safety standards. Each such Federal manufactured home standard shall be reasonable and shall meet the highest standards of protection, taking into account existing State and local laws relating to manufactured home safety and construction.

(b) Notice and hearing

All orders issued under this section shall be issued after notice and an opportunity for interested persons to participate are provided in accordance with the provisions of section 553 of Title 5.

(c) Effective date of orders establishing standards

Each order establishing a Federal manufactured home construction and safety standard shall specify the date such standard is to take effect, which shall not be sooner than one hundred and eighty days or later than one year after the date such order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding.

(d) Supremacy of Federal standards

Whenever a Federal manufactured home construction and safety standard established under this chapter is in effect, no State or

Tab H

Y 4.B 22/1:101-127

MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS

HEARING BEFORE THE SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT OF THE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS HOUSE OF REPRESENTATIVES ONE HUNDRED FIRST CONGRESS SECOND SESSION

MAY 24, 1990

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FEDERAL MANUFACTURED HOUSING PROGRAM

FINAL REPORT

" FULFILLING THE PUBLIC TRUST "

MARCH 12, 1987

Chapter 1Brief History of the Manufactured Home Industry

We can only shake our heads in amazement when we see a present day manufactured home. We realize just how far industry has progressed since the early "trailers" of the forties. It was only after the end of World War II that the trailers pulled by automobiles began to be used for permanent housing. Most of those "house trailers" were units eight feet wide and 25 to 30 feet long. As the public demand for these small mobile housing units increased, they were made more livable by enlarging them to ten and 12 foot widths. In the middle sixties, units of 12 feet and 14 feet widths were introduced and became quite popular. At the same time, the lengths of the homes also increased from an average of 50 feet in the late fifties to 70 feet by the late sixties. During that same time, the industry saw a sharp increase in the popularity of double wide homes (two units joined together) and moved the units toward a more "site-built" appearance.

One of the major problems for the industry during these periods was a lack of uniformity in the state approved manufacturing standards of these homes. The manufactured housing industry, in conjunction with the National Fire Protection Association (NFPA), and the American National Standards Institute (ANSI), developed and promoted the use of ANSI Standard A119.1 for mobile home body and frame designed construction. Not all states and local jurisdictions were willing to adopt this or any standard; by 1972 only 36 states had laws covering manufactured home construction. This lack of uniformity in the regulation and inspection of the homes made it difficult for the manufacturers to ship interstate.

In the late 1960's and early 1970's, the state governments, working through the National Conference of States on Building Codes and Standards, Inc. (NCSBCS), and in conjunction with the industry, identified the need to establish a program of interstate reciprocity for the regulation of manufactured (mobile) housing. Over several years, NCSBCS held meetings and drafted model reciprocity procedures in an attempt to establish a workable voluntary interstate reciprocity program aimed at improving the health and life safety features of manufactured housing.

By 1974, several well publicized health, durability and life safety problems in manufactured homes made it apparent that a voluntary program would not work, and federal legislation to preempt (under the interstate commerce clause) the states' regulatory authority over manufactured housing was written.

In early 1974, Congress passed Title VI of the Housing and Community Development Act of 1974, "The National Mobile Home Construction and Safety Standards Act."* That law became enforceable on June 15, 1976. In assuming this regulatory authority, Congress recognized the importance of involving the states to the fullest extent possible** in the federal program.

The federal law, standards, and rules and regulations provided relief for the manufacturer in that they mandated a single preemptive Federal Standard for homes to be constructed and established the mechanism for uniformity in the inspection procedures. The creation of the federal law was a leap forward for the industry as it now could ship freely into any other state without repercussions. At the same time, the introduction of the federal program moved the industry upward in quality, durability, and safety.

In the initial years of the federal program there was a shake out where some manufacturers stopped producing manufactured housing rather than meet a minimum Federal Standard. This coincided with a financial downturn in the nation's economy and a decline in the sales of manufactured housing.

* See Appendix C. The Federal Act was amended in 1977, 1978, 1979, 1980, and 1982.

** That legislative intent is clearly shown in Sections 609 and 614(b)(2) of Title VI of the Housing and Community Development Act of 1974, and the Senate Report which accompanied the Act which "contemplated that to the maximum extent, the enforcement of standards would be taken on by the states under plans approved by the Secretary." Section 1974 U.S. Code Cong. and Ad News 4340 and HUD's own regulatory requirements note that the Secretary is to "involve state agencies in the enforcement of the Federal Manufactured Home Standards to the maximum extent possible consistent with the capabilities of such agencies and public interest." (Paragraph [b], Section 3282.1 Scope and Purpose, Subpart [A] - General of the May 13, 1976 Manufactured Home Procedural and Enforcement Regulations).

In the late 1970's and early 1980's, however, the changes in the market-ability* of manufactured homes coupled with an increase in the quality, durability, and safety of homes due to the U.S. Department of Housing and Urban Development (HUD) program, helped stimulate the growth of the manufactured housing industry.

By 1985 approximately 12 million Americans lived in manufactured homes.** In 1984-85 manufactured housing accounted for over 50% of the total new single-family residences constructed or sited in the states of Oregon and South Carolina. During this same time period, HUD's Federal Housing Administration (FHA) began to provide permanently-sited manufactured homes with 30 year mortgage loans at the same interest rates as site-built structures. The Veterans Administration (VA) followed that practice in 1984. The secondary mortgage market for manufactured home loans was picked up by the Government National Mortgage Association, Federal National Mortgage Association, and Federal Home Loan Mortgage Corporation, and a secondary market program for manufactured housing personal property loans also was established.***

As this program reached its tenth year, the participating states began to see several problem areas that needed resolution. The mechanisms for handling consumer complaints were not functioning adequately. There appeared to be a decline among some manufacturers in product durability. The Federal Standards needed to be updated to reflect changes in technology and the needs of industry and consumers. In addition, the states were very concerned that attempts to keep the Federal Standards updated had failed. Noting on one hand that industry had supported meaningful change in the regulation of formaldehyde within the Federal Standards as a means of counteracting the negative press they had received on this issue, the states expressed concern that similar industry support was not forthcoming on the other equally important aspects of the outdated Federal Standards such as condensation and energy conservation.

* The sales of manufactured housing increased proportionately with the dramatic increase in mortgage rates for single-family, site-built housing.

** For an analysis of the demographics of manufactured home residents, see 1980 Census of Housing, Series HC80-3-2; Mobile Homes, U.S. Census Department. Also see Appendix B.

*** See Appendix D.

State regulatory officials in particular noted that the referenced standards used under the HUD program were similar to the uniform model building codes used throughout the country in site-built housing at the time the federal program began. This being the case, the states as partners in the federal program expressed concern that the older Federal Standards were further eroding the arguments they put forth on behalf of the industry in zoning hearings throughout the country that manufactured housing and site-built housing are relatively comparable.

In the Spring of 1985, therefore, the governor-appointed delegates of NCSBCS passed a resolution calling upon HUD to enter into a dialogue with the states on ways of improving this important federal program. Subsequently, during the NCSBCS 18th Annual Conference in Portland, Maine in September 1985, a symposium was held on the "Role of the States in the Federal Manufactured Housing Program." During that symposium, HUD Deputy Assistant Secretary for Single Family Housing James Nistler urged the states to establish within their national organization a forum through which the states could collectively review the strengths and weaknesses of the federal program.

The NCSBCS State Task Force on the Federal Manufactured Housing Program was created in September 1985 as a forum for the states to collectively assess problem areas and bring them to the appropriate parties for resolution. In establishing the task force, the NCSBCS Board of Directors approved funding for the project from state government and membership services accounts and prohibited the task force from commenting on the NCSBCS manufactured housing program monitoring contract with HUD.* Further background on the composition and work of the task force are contained in Chapter 7, "Overview of Task Force's Activities."

* See Appendix E.

Tab I

57-15-6. Exempt lenders.

This chapter is not applicable to security interests in real estate originated by, or for purchase by any entity established pursuant to Title 9, Chapter 4, Part 9, or by public agencies making noninterest and/or low interest loans and noninterest and/or low interest loans made by private nonprofit corporations for the rehabilitation of existing residential structures.

This chapter is not applicable to a person with a security interest in real estate who is not regularly engaged in the business of making real estate loans. 1995

57-15-7. Calling entire balance on impairment of security.

If the lender's security interest is substantially impaired, according to the standard of Section 57-15-3, the lender may call the entire loan balance due, if that option is provided for in the original loan agreement, though the lender may not charge any penalty or increased interest for prepayment of the indebtedness made as a result of the call. 1981

57-15-8. Procedure for assumption — Request to lender — Effect of failure to request — Approval or refusal by lender — Information furnished by lender.

(1) In order to effect an assumption under this chapter the original borrower, or, if the secured party has previously approved, and pursuant to that approval there has been effected, an assumption of the indebtedness secured by an instrument representing a security interest in real estate, the person last approved as an assumer and who has assumed the indebtedness shall give to the lender a written notice and request for assumption. The lender shall either approve or reject a prospective assumer within 30 days after the written notice and request for assumption is received from the original borrower or the party last approved as an assumer. The lender may refuse to release the original borrower or the party last approved as an assumer and who has assumed if the secured party has previously approved the assumption of the indebtedness, from liability for the payment of the indebtedness to be assumed. With respect to any transfer involving an assumption effected after the effective date of this act, if the written notice and request for an assumption is not timely made before a transfer or within 90 days after transfer, the lender may call the entire loan balance due without a determination that the security interest is substantially impaired, if that option is provided for in the original loan agreement.

(2) The lender shall provide the original borrower or, if the indebtedness has been assumed with the previous approval of the lender, the person last approved with a statement of loan condition within 14 days after receipt of written notice and request. The statement shall include the following information: (a) the amount of the unpaid balance on the secured loan; (b) the interest rate; (c) the amount of the monthly loan installment; (d) the date or dates any real estate taxes and special assessments were last paid; (e) the amount of hazard insurance in effect if that information is contained in the records of the lender; and (f) the amount of any impound balance reserve for payments of taxes, special assessments, and insurance. 1981

57-15-8.5. Acceleration — Conditions authorizing — Exemption of loans sold to federal agencies.

Notwithstanding the provisions of Sections 57-15-2 and 57-15-4, a lender or secured party may accelerate or mature an indebtedness upon assumption of that indebtedness if:

(1) A written agreement with, or a written instrument executed by, the obligor on the indebtedness allows the secured party or lender to accelerate or mature the indebtedness and/or increase the interest rate thereon upon assumption of the indebtedness; and

(2) The secured party or lender has offered to accept the assumption without acceleration and without maturing the indebtedness provided the assumer agree to pay the secured party or lender not more than a 1% assumption fee, a not more than 1% interest rate increase effective as of the date of assumption, whichever is earlier, and a further not more than 1% interest rate increase effective a date five years after the date of assumption, whichever is earlier. Neither of said interest rate increases may cause the total interest rate on the indebtedness to exceed 1% below the weighted average yield of the Federal Home Loan Mortgage Corporation weekly auction for purchases of mortgages secured by residential 1 to 4 family dwellings in effect on the date of the increase, and

(3) The assumer has refused to consent to such assumption fee and interest rate increases.

As used in this section, the term "obligor" shall mean the original borrower or, if the secured party or lender has previously approved, and pursuant to that approval there has been effected, an assumption of the indebtedness, the person last approved as an assumer and who has assumed the indebtedness.

If a determination is made by the Federal National Insurance Corporation or by the Federal Home Loan Mortgage Corporation that it will not purchase Utah mortgage loans because of the effects of this act, and such determination is communicated in writing to the Legislature or governor of this state, then this act will not apply, after receipt of such communication, to any mortgages originated after the effective date of this act and sold to the entity making such determination. 1981

57-15-9. Liability for damages caused by violation.

A lender violating any provision of this act, in addition to any other penalties provided by law, shall be liable to an injured party for actual damages plus all reasonable attorney's fees and costs incurred by the injured party because of the violation. 1981

57-15-10. Severability of provisions.

If any provision of this chapter, or the application of any provision to any person or circumstance, is held invalid, the remainder of the chapter shall not be impaired thereby. 1981

57-15-11. Limitation on enforcement of due-on-sale clauses.

After October 15, 1985, this chapter applies to any instrument described in Section 57-15-2 that:

(1) was originated in this state by a financial institution other than a national bank, a federal savings and loan association, a federal thrift institution, or a federal credit union; and

(2) was made or assumed during the period beginning on May 12, 1981, and ending on October 15, 1982. 1985

CHAPTER 16**MOBILE HOME PARK RESIDENCY**

Section	
57-16-1.	Short title.
57-16-2.	Purpose of chapter.
57-16-3.	Definitions.
57-16-4.	Termination of lease or rental agreement — Required contents of lease — Increases in rents or fees — Sale of homes.
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57-16-11.	Rights and remedies not exclusive.
57-16-12.	Waiver of rights and duties prohibited.
57-16-15.1.	Eviction proceeding.

57-16-1. Short title.

This act shall be known and may be cited as the "Mobile Home Park Residency Act." 1981

57-16-2. Purpose of chapter.

The fundamental right to own and protect land and to establish conditions for its use by others necessitate that the owner of a mobile home park be provided with speedy and adequate remedies against those who abuse the terms of a tenancy. The high cost of moving mobile homes, the requirements of mobile home parks relating to their installation, and the cost of landscaping and lot preparation necessitate that the owners of mobile homes occupied within mobile home parks be provided with protection from actual or constructive eviction. It is the purpose of this chapter to provide protection for both the owners of mobile homes located in mobile home parks and for the owners of mobile home parks. 1981

57-16-3. Definitions.

As used in this chapter:

(1) "Mobile home" means a transportable structure in one or more sections with the plumbing, heating, and electrical systems contained within the unit, which when erected on a site, may be used with or without a permanent foundation as a family dwelling.

(2) "Mobile home park" means any tract of land on which two or more mobile home spaces are leased, or offered for lease or rent, to accommodate mobile homes for residential purposes.

(3) "Resident" means an individual who leases or rents space in a mobile home park.

(4) "Mobile home space" means a specific area of land within a mobile home park designed to accommodate one mobile home.

(5) "Rent" means charges paid for the privilege of occupying a mobile home space, and may include service charges and fees.

(6) "Service charges" means separate charges paid for the use of electrical and gas service improvements which exist at a mobile home space, or for trash removal, sewage and water, or any combination of the above.

(7) "Fees" means other charges incidental to a resident's tenancy including, but not limited to, late fees, charges for pets, charges for storage of recreational vehicles, charges for the use of park facilities, and security deposits.

(8) "Change of use" means a change of the use of a mobile home park, or any part of it, for a purpose other than the rental of mobile home spaces. 1981

57-16-4. Termination of lease or rental agreement — Required contents of lease — Increases in rents or fees — Sale of homes.

(1) A mobile home park or its agents may not terminate a lease or rental agreement upon any ground other than as specified in this chapter.

(2) Each agreement for the lease of mobile home space shall be written and signed by the parties. Each lease shall contain at least the following information:

(a) the name and address of the mobile home park owner and any persons authorized to act for the owner, upon whom notice and service of process may be served;

(b) the type of the leasehold, and whether it be term or periodic;

(c) a full disclosure of all rent, service charges, and other fees presently being charged on a periodic basis;

(d) the date or dates on which the payment of rent, fees, and service charges are due; and

(e) all rules that pertain to the mobile home park which, if broken, may constitute grounds for eviction.

(3) (a) Increases in rent or fees for periodic tenancies shall be unenforceable until 60 days after notice of the increase is mailed to the resident. If service charges are not included in the rent, service charges may be increased during the leasehold period after notice to the resident is given, and increases or decreases in electricity rates shall be passed through to the resident. Increases or decreases in the total cost of other service charges shall be passed through to the resident.

(b) The mobile home park may not alter the date or dates on which rent, fees, and service charges are due unless a 60-day written notice precedes the alteration.

(4) Any rule or condition of a lease purporting to prevent or unreasonably limit the sale of a mobile home belonging to a resident is void and unenforceable. The mobile home park may, however, reserve the right to approve the prospective purchaser of a mobile home who intends to become a resident, but the approval may not be unreasonably withheld. The mobile home park may require proof of ownership as a condition of approval. The mobile home park may unconditionally refuse to approve any purchaser of a mobile home who does not register prior to purchase.

(5) A mobile home park may not restrict a resident's right to advertise for sale or to sell his mobile home. However, the park may limit the size of a "for sale" sign affixed to the mobile home to not more than 144 square inches.

(6) A mobile home park may not compel a resident who desires to sell his mobile home, either directly or indirectly, to sell it through an agent designated by the mobile home park.

(7) In order to upgrade the quality of a mobile home park, it may require that a mobile home be removed from the park upon sale if:

(a) the mobile home does not meet minimum size specifications; or

(b) the mobile home is in rundown condition or in disrepair. 1997 (1st S.S.)

57-16-5. Cause required for terminating lease — Causes — Cure periods — Notice.

(1) An agreement for the lease of mobile home space in a mobile home park may be terminated by mutual agreement or for any one or more of the following causes:

(a) failure of a resident to comply with a mobile home park rule:

(i) relating to repair, maintenance, or construction of awnings, skirting, decks, or sheds for a period of 60 days after receipt of a notice of noncompliance from the mobile home park; or

(ii) relating to any other park rule for a period of seven days after receipt of notice of noncompliance from the mobile home park, except relating to maintenance of a resident's yard and space, the mobile home park may elect not to proceed with the seven-day cure period and may provide the resident with written notice as provided in Subsection (2);

(b) repeated failure of a resident to abide by a mobile home park rule, if the original notice of noncompliance states that another violation of the same or a different rule might result in forfeiture without any further period of cure;

(c) behavior by a resident which substantially endangers the security and health of the other residents or threatens the property in the park;

(d) nonpayment of rent, fees, or service charges;

(e) a change in the land use or condemnation of the mobile home park or any part of it.

(2) If the mobile home park elects not to proceed with the seven-day cure period in Subsection (1)(a)(ii), a 15-day notice shall:

(a) state that if the resident does not perform his duties or obligations under the lease agreement or rules of the mobile home park within 15 days, the mobile home park may enter onto the resident's space and cure any default;

(b) state the expected reasonable cost of curing the default;

(c) require the resident to pay all costs incurred by the mobile home park to cure the default by the first day of the month following receipt of a billing statement from the mobile home park;

(d) state that the payment required under Subsection (2)(b) shall be considered additional rent; and

(e) state that the resident's failure to make the payment required by Subsection (2)(b) in a timely manner shall be a default of the resident's lease and shall subject the resident to all other remedies available to the mobile home park for a default, including remedies available for failure to pay rent.

1997 (1st S.S.)

57-16-6. Action for lease termination — Prerequisite procedure.

A legal action to terminate a lease based upon a cause set forth in Section 57-16-5 may not be commenced except in accordance with the following procedure:

(1) Before issuance of any summons and complaint, the mobile home park shall send or serve written notice to the resident or subtenant:

(a) by delivering a copy of the notice personally;

(b) by sending a copy of the notice through registered or certified mail addressed to the resident or subtenant at his place of residence;

(c) if the resident or subtenant is absent from his place of residence, by leaving a copy of the notice with some person of suitable age and discretion at his residence and sending a copy through the mail addressed to the resident or subtenant at his place of residence; or

(d) if a person of suitable age or discretion cannot be found, by affixing a copy of the notice in a conspicuous place on the resident's or subtenant's mobile home and also sending a copy through the mail addressed to the resident or subtenant at his place of residence.

(2) The notice shall set forth the cause for the notice and, if the cause is one which can be cured, the time within which the resident has to cure. The notice shall also set forth the time after which the mobile home park may commence legal action against the resident if cure is not effected, as follows:

(a) In the event of failure to abide by a mobile home park rule, the notice shall provide for a cure period as provided in Subsections 57-16-5(1)(a) and (2), except in the case of repeated violations and, shall state that if a cure is not timely effected, or a written agreement made between the mobile home park and the resident allowing for a variation in the rule or

cure period, eviction proceedings may be initiated immediately.

(b) If the resident commits repeated violations of a rule, a summons and complaint may be issued three days after a notice is served.

(c) If a resident behaves in a manner that substantially endangers the well-being or property of other residents, eviction proceedings may commence immediately.

(d) If a resident does not pay rent, fees, or service charges, the notice shall provide a five-day cure period and, that if cure is not timely effected, or a written agreement made between the mobile home park and the resident allowing for a variation in the rule or cure period, eviction proceedings may be initiated immediately.

(e) If there is a planned change in land use or condemnation of the park, the notice shall provide that the resident has 90 days after receipt of the notice to vacate the mobile home park if no governmental approval or permits incident to the planned change are required, and if governmental approval and permits are required, that the resident has 90 days to vacate the mobile home park after all permits or approvals incident to the planned change are obtained.

(3) If the planned change in land use or condemnation requires the approval of a governmental agency, the mobile home park, in addition to the notice required by Subsection (2)(e), shall send written notice of the date set for the initial hearing to each resident at least seven days before the date scheduled for the initial hearing.

(4) Regardless of whether the change of use requires the approval of any governmental agency, if the resident was not a resident of the mobile home park at the time the initial change of use notice was issued to residents the owner shall give notice of the change of use to the resident before he occupies the mobile home space.

(5) (a) Eviction proceedings commenced under this chapter and based on causes set forth in Subsections 57-16-5(1)(a), (b), and (e) shall be brought in accordance with the Utah Rules of Civil Procedure and shall not be treated as unlawful detainer actions under Title 78, Chapter 36, Forcible Entry and Detainer. Eviction proceedings commenced under this chapter and based on causes of action set forth in Subsections 57-16-5(1)(c) and (d) may, at the election of the mobile home park, be treated as actions brought under this chapter and the unlawful detainer provisions of Title 78, Chapter 36, Forcible Entry and Detainer.

(b) If unlawful detainer is charged, the court shall endorse on the summons the number of days within which the defendant is required to appear and defend the action, which shall not be less than five days or more than 20 days from the date of service.

1997 (1st S.S.)

57-16-7. Rules of parks.

(1) (a) A mobile home park may promulgate rules related to the health, safety, and appropriate conduct of residents and to the maintenance and upkeep of such park. No change in rule that is unconscionable is valid.

(b) No new or amended rule shall take effect, nor provide the basis for an eviction notice, until the expiration of at least 60 days after its promulgation. Each resident, as a condition precedent to such rule being in effect, shall be provided with a copy of each new or amended rule that does not appear in their lease agreement.

(c) For 30 days after the mobile home park proposes amendments to the mobile home park rules, the mobile home park shall allow residents, individually or through a representative of a group of residents, the opportunity to meet with the mobile home park management about the proposed amendments. The meetings shall be held within 15 days after receipt of written request for the meeting by the residents or the representative.

(2) A mobile home park may specify the type of material used, and the methods used in the installation of, underskirting, awnings, porches, fences, or other additions or alterations to the exterior of a mobile home, and may also specify the tie-down equipment used in a mobile home space, in order to insure the safety and good appearance of the park; but under no circumstances may it require a resident to purchase such material or equipment from a supplier designated by the mobile home park.

(3) No mobile home park may charge an entrance fee, exit fee, nor installation fee, but reasonable landscaping and maintenance requirements may be included in the mobile home park rules. The resident is responsible for all costs incident to connection of the mobile home to existing mobile home park facilities and for the installation and maintenance of the mobile home on the mobile home space.

(4) Nothing in this section shall be construed to prohibit a mobile home park from requiring a reasonable initial security deposit. 1997

57-16-7.5. Payment of rent required after notice — Summary judgment.

(1) (a) Any resident shall continue to pay the mobile home park all rent required by the lease after having been served with any notice pursuant to this chapter, except a notice for nonpayment of rent.

(b) In cases not involving payment of rent, the mobile home park may accept rent without waiving any rights under this chapter.

(2) If the resident fails to pay rent, the mobile home park shall be entitled to summary judgment for:

- (a) the rent owed;
- (b) termination of the lease; and
- (c) restitution of the premises.

(3) The summary judgment as provided in Subsection (2) shall be granted even if a five-day notice to pay or quit was not served, so long as another appropriate notice under this chapter has been served. 1997

57-16-8. Payment of rent and fees during pendency of eviction proceeding.

If a resident elects to contest an eviction proceeding, all rents, fees, and service charges due and incurred during the pendency of the action shall be paid into court according to the current mobile home park payment schedule. Failure of the resident to pay such amounts may, in the discretion of the court, constitute grounds for granting summary judgment in favor of the mobile home park. Upon final termination of the issues between the parties, the court shall order all amounts paid into court paid to the mobile home park. The prevailing party is also entitled to court costs and reasonable attorney's fees. 1981

57-16-9. Lienholder's liability for rent and fees.

Notwithstanding the provisions of Section 38-3-2 and Section 70A-9-317, the lienholder of record of a mobile home is primarily liable to the mobile home park owner or operator for rent and service charges if a mobile home is not removed within 10 days after receipt of written notice that a mobile home has been abandoned or that a writ of restitution has been issued. The lienholder, however, is only liable for rent that accrues after receipt of such notice. 1981

57-16-10. Utility service to mobile home parks — Limitation on providers' charges.

Local water, sewer, and sanitation entities, including those administered by municipalities and counties which provide water, sewer, or garbage collection services shall not receive a greater percentage net return from supplying a mobile home park than said entity receives from other residential customers. The net return is determined by taking into consideration the costs of maintenance and depreciation of the mobile home park facilities and all savings on administrative costs, including cost of billing residents. 1981

57-16-11. Rights and remedies not exclusive.

The rights and remedies granted by this chapter are cumulative and not exclusive. 1981

57-16-12. Waiver of rights and duties prohibited.

No park or resident may agree to waive any right, duty, or privilege conferred by this chapter. 1981

57-16-15.1. Eviction proceeding.

(1) Eviction proceedings commenced under this chapter and based on causes of action set forth in Subsections 57-16-5(1), (2), and (5), and eviction proceedings commenced under this chapter based on causes of action set forth in Subsections 57-16-5(3) and (4), where a landlord elects to bring an action under this chapter and not under the unlawful detainer provisions of Title 78, Chapter 36, Forcible Entry and Detainer, shall comply with the following:

(a) A judgment may be entered upon the merits or upon default. A judgment entered in favor of the plaintiff may:

- (i) include an order of restitution of the premises; and
- (ii) declare the forfeiture of the lease or agreement.

(b) The jury, or the court if the proceedings are tried without a jury or upon the defendant's default, shall assess the damages resulting to the plaintiff from any of the following:

- (i) waste of the premises during the resident's tenancy, if waste is alleged in the complaint and proved; and
- (ii) the amount of rent due.

(c) If the lease or agreement provides for reasonable attorneys' fees, the court shall order reasonable attorneys' fees to the prevailing party.

(d) Whether or not the lease or agreement provides for court costs and attorneys' fees, if the proceeding is contested, the court shall order court costs and attorneys' fees to the prevailing party.

(e) Except as provided in Subsection (1)(f), after judgment has been entered under this section, judgment and restitution may be enforced no sooner than 15 days from the date the judgment is entered. The person who commences the action shall mail the judgment to the lease premises by registered mail within five days of the date the judgment is entered.

(f) If a resident tenders to the mobile home park postjudgment rent, in the form of cash, cashier's check, or certified funds, then restitution may be delayed for the period of time covered by the postjudgment rent, which time period shall not exceed 15 days from the date of the judgment unless a longer period is agreed to in writing by the mobile home park.

(2) Eviction proceedings commenced under this chapter and based on causes of action set forth in Subsections 57-16-5(3) and (4), in which the mobile home park has elected to treat as actions also brought under the unlawful detainer provisions of Title 78, Chapter 36, Forcible Entry and Detainer, shall be governed by Sections 78-36-10 and 78-36-10.5

with respect to judgment for restitution, damages, rent, enforcement of the judgment and restitution.

(3) The provisions in Section 78-36-10.5 shall apply to this section except the enforcement time limits in Subsections (1)(e) and (f) shall govern. 1994

CHAPTER 17

RESIDENTIAL RENTERS' DEPOSITS

Section	
57-17-1.	Return or explanation of retainage upon termination of tenancy.
57-17-2.	Non-refundable deposit — Written notice required.
57-17-3.	Deductions from deposit — Written itemization — Time for return.
57-17-4.	Holder of owner's or designated agent's interest bound by provisions.
57-17-5.	Failure to give renter required notice — Recovery of deposit, penalty and costs.

57-17-1. Return or explanation of retainage upon termination of tenancy.

Owners or designated agents requiring deposits however denominated from renters leasing or renting residential dwelling units shall either return those deposits at the termination of the tenancy or provide the renter with written notice explaining why any deposit refundable under the terms of the lease or rental agreement is being retained. 1981

57-17-2. Non-refundable deposit — Written notice required.

If there is a written agreement and if any part of the deposit is to be made non-refundable, it must be so stated in writing to the renter at the time the deposit is taken by the owner or designated agent. 1981

57-17-3. Deductions from deposit — Written itemization — Time for return.

Upon termination of the tenancy, property or money held as a deposit may be applied, at the owner's or designated agent's option, to the payment of accrued rent, damages to the premises beyond reasonable wear and tear, other costs provided for in the contract and cleaning of the unit. The balance of any deposit and prepaid rent, if any, and a written itemization of any deductions from the deposit, and reasons therefor, shall be delivered or mailed to the renter within 30 days after termination of the tenancy or within 15 days after receipt of the renter's new mailing address, whichever is later. The renter shall notify the owner or designated agent of the location where payment and notice may be made or mailed. If there is damage to the rented premises, this period shall be extended to 30 days. 1981

57-17-4. Holder of owner's or designated agent's interest bound by provisions.

The holder of the owner's or designated agent's interest in the premises at the time of termination of the tenancy shall be bound by the provisions of this act. 1981

57-17-5. Failure to give renter required notice — Recovery of deposit, penalty and costs.

If the owner of a residential unit or his agent in bad faith fails within 30 days after termination of the tenancy or within 15 days after receipt of the renter's new mailing address, whichever is later, to provide the renter the notice required in Section 57-17-3, the renter may recover the full deposit, a civil penalty of \$100, and court costs. Receipt of new address must occur within 30 days of termination of tenancy. 1983

CHAPTER 18

LAND CONSERVATION EASEMENT ACT

Section	Short title.
57-18-1.	Definition and characteristics of conservation easement.
57-18-2.	Acquisition of conservation easement.
57-18-3.	Requirements for creation.
57-18-4.	Termination.
57-18-5.	Enforcement.
57-18-6.	Conservation easement not obtained through eminent domain.

57-18-1. Short title.

This chapter is known as the "Land Conservation Easement Act." 1985

57-18-2. Definition and characteristics of conservation easement.

(1) As used in this chapter, "conservation easement" means an easement, covenant, restriction, or condition in a deed, will, or other instrument signed by or on behalf of the record owner of the underlying real property for the purpose of preserving and maintaining land or water areas predominantly in a natural, scenic, or open condition, or for recreational, agricultural, cultural, wildlife habitat or other use or condition consistent with the protection of open land.

(2) A conservation easement is an interest in land and runs with the land benefited or burdened by the easement.

(3) A conservation easement is valid whether it is appurtenant or in gross.

(4) A conservation easement is enforceable by the holder to the easement and its successors and assigns. A conservation easement is enforceable against the grantor and its successors and assigns. 1985

57-18-3. Acquisition of conservation easement.

A charitable organization which qualifies as being tax exempt under Section 501(c)(3) of the Internal Revenue Code or a governmental entity may acquire a conservation easement by purchase, gift, devise, grant, lease, or bequest. 1985

57-18-4. Requirements for creation.

(1) Any property owner may grant a conservation easement to any other qualified person as defined in Section 57-18-3 in the same manner and with the same effect as any other conveyance of an interest in real property.

(2) A conservation easement shall be in writing and shall be recorded in the office of the recorder of the county in which the easement is granted.

(3) The instrument that creates a conservation easement shall identify and describe the land subject to the conservation easement by legal description, specify the purpose for which the easement is created, and include a termination date or a statement that the easement continue in perpetuity.

(4) Any qualified person, as defined in Section 57-18-3, that receives a conservation easement shall disclose to the easement's grantor, at least three days prior to the granting of the easement, the types of conservation easements available, the legal effect of each easement, and that the grantor should contact an attorney concerning any possible legal and tax implications of granting a conservation easement. 1985

57-18-5. Termination.

A conservation easement may be terminated, in whole or in part, by release, abandonment, merger, nonrenewal, conditions set forth in the instrument creating the conservation easement, or in any other lawful manner in which easements may be terminated. 1985

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transferred, any of the sounds referred to in Sections 13-10-3 and 13-10-4 (other than from the sound track of a motion picture) intended for, or in connection with, broadcast transmission or for archival purposes; or

(b) any person transferring any such sounds without any compensation being derived by this person or any other person from the transfer.

(2) This chapter shall neither enlarge nor diminish the rights of parties in civil litigation. 1995

13-10-6. Violation a misdemeanor.

Each violation of Section 13-10-4 is a misdemeanor. 1995

13-10-7. Application of provisions.

Sections 13-10-1 through 13-10-6 apply only to recorded sounds that were initially fixed before February 15, 1972. 1995

13-10-8. Failure to disclose the origin of a recording — Penalty.

(1) For purposes of this section "recording" means:

(a) a tangible medium on which sounds or images are recorded or otherwise stored, including an original phonograph record, disc, tape, audio or video cassette, wire, film, or other similar medium; or

(b) a copy or reproduction that duplicates the original in whole or in part.

(2) A person is guilty of failure to disclose the origin of a recording if:

(a) the person commits any of the following acts for commercial advantage or private financial gain:

(i) offers a recording for sale, resale, or rent;

(ii) sells, resells, rents, leases, or lends a recording; or

(iii) possesses a recording for any of the purposes described in Subsection (2)(a)(i) or (ii); and

(b) the person knows that the recording does not contain the true name and address of the manufacturer in a prominent place on its cover, jacket, or label.

(3) A person who fails to disclose the origin of a recording under Subsection (2) is guilty of:

(a) a felony of the third degree if the offense involves 100 or more recordings during a 180-day period or if the person has previously been convicted of a violation of this section;

(b) a class A misdemeanor if the offense involves at least ten recordings but less than 100 recordings during a 180-day period; or

(c) a class B misdemeanor if the offense involves less than ten recordings.

(4) In addition to the penalties provided in Subsection (3), a court may order a person who commits a violation of Subsection (2) to forfeit any recordings in the person's possession that served as the basis for the violation of Subsection (2). 1995

Section

13-11-9. Rule-making requirements.

13-11-10 to 13-11-15. Repealed.

13-11-16. Investigatory powers of enforcing authority.

13-11-17. Actions by enforcing authority.

13-11-17.5. Costs and attorney's fees.

13-11-18. Noncompliance by supplier subject to other state supervision — Cooperation of enforcing authority and other official or agency.

13-11-19. Actions by consumer.

13-11-20. Class actions.

13-11-21. Settlement of class action — Complaint in class action delivered to enforcing authority.

13-11-22. Exemptions from application of act.

13-11-23. Other remedies available — Class action only as prescribed by act.

13-11-1. Citation of act.

This act shall be known and may be cited as the "Utah Consumer Sales Practices Act." 1973

13-11-2. Construction and purposes of act.

This act shall be construed liberally to promote the following policies:

(1) to simplify, clarify, and modernize the law governing consumer sales practices;

(2) to protect consumers from suppliers who commit deceptive and unconscionable sales practices;

(3) to encourage the development of fair consumer sales practices;

(4) to make state regulation of consumer sales practices not inconsistent with the policies of the Federal Trade Commission Act relating to consumer protection;

(5) to make uniform the law, including the administrative rules, with respect to the subject of this act among those states which enact similar laws; and

(6) to recognize and protect suppliers who in good faith comply with the provisions of this act. 1973

13-11-3. Definitions.

As used in this chapter:

(1) "Charitable solicitation" means any request directly or indirectly for money, credit, property, financial assistance, or any other thing of value on the plea or representation that it will be used for a charitable purpose. A charitable solicitation may be made in any manner, including:

(a) any oral or written request, including a telephone request;

(b) the distribution, circulation, or posting of any handbill, written advertisement, or publication;

(c) the sale of, offer or attempt to sell, or request of donations for any book, card, chance, coupon, device, magazine, membership, merchandise, subscription, ticket, flower, flag, button, sticker, ribbon, token, trinket, tag, souvenir, candy, or any other article in connection with which any appeal is made for any charitable purpose, or where the name of any charitable organization or movement is used or referred to as an inducement or reason for making any purchase donation, or where, in connection with any sale or donation, any statement is made that the whole or any part of the proceeds of any sale or donation will go to or be donated to any charitable purpose. A charitable solicitation is considered complete when made, whether or not the organization or person making the solicitation receives any contribution or makes any sale.

(2) "Consumer transaction" means a sale, lease, assignment, award by chance, or other written or oral transfer

CHAPTER 11

CONSUMER SALES PRACTICES

Section

13-11-1. Citation of act.

13-11-2. Construction and purposes of act.

13-11-3. Definitions.

13-11-4. Deceptive act or practice by supplier.

13-11-5. Unconscionable act or practice by supplier.

13-11-6. Service of process.

13-11-7. Duties of enforcing authority — Confidentiality of identity of persons investigated — Civil penalty for violation of restraining or injunctive orders.

13-11-8. Powers of enforcing authority.

or disposition of goods, services, or other property, both tangible and intangible (except securities and insurance), to a person for primarily personal, family, or household purposes, or for purposes that relate to a business opportunity that requires both his expenditure of money or property and his personal services on a continuing basis and in which he has not been previously engaged, or a solicitation or offer by a supplier with respect to any of these transfers or dispositions. It includes any offer or solicitation, any agreement, any performance of an agreement with respect to any of these transfers or dispositions, and any charitable solicitation as defined in this section.

(3) "Enforcing authority" means the Division of Consumer Protection.

(4) "Final judgment" means a judgment, including any supporting opinion, that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired.

(5) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

(6) "Supplier" means a seller, lessor, assignor, offeror, broker, or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly with the consumer.

1987

13-11-4. Deceptive act or practice by supplier.

(1) A deceptive act or practice by a supplier in connection with a consumer transaction violates this chapter whether it occurs before, during, or after the transaction.

(2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally:

(a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not;

(b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not;

(c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or has been used to an extent that is materially different from the fact;

(d) indicates that the subject of a consumer transaction is available to the consumer for a reason that does not exist;

(e) indicates that the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not;

(f) indicates that the subject of a consumer transaction will be supplied in greater quantity than the supplier intends;

(g) indicates that replacement or repair is needed, if it is not;

(h) indicates that a specific price advantage exists, if it does not;

(i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier does not have;

(j) indicates that a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if the representation is false;

(k) indicates that the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if receipt of the benefit is contingent on an event occurring after the consumer enters into the transaction;

(l) after receipt of payment for goods or services, fails to ship the goods or furnish the services within the time advertised or otherwise represented or, if no specific time is advertised or represented, fails to ship the goods or furnish the services within 30 days, unless within the applicable time period the supplier provides the buyer with the option to either cancel the sales agreement and receive a refund of all previous payments to the supplier or to extend the shipping date to a specific date proposed by the supplier, but any refund shall be mailed or delivered to the buyer within ten business days after the seller receives written notification from the buyer of the buyer's right to cancel the sales agreement and receive the refund;

(m) fails to furnish a notice of the purchaser's right to cancel a direct solicitation sale within three business days of the time of purchase if the sale is made other than at the supplier's established place of business pursuant to the supplier's mail, telephone, or personal contact and if the sale price exceeds \$25, unless the supplier's cancellation policy is communicated to the buyer and the policy offers greater rights to the buyer than Subsection (2)(m), which notice shall be a conspicuous statement written in dark bold at least 12 point type, on the first page of the purchase documentation, and shall read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period reflecting the supplier's cancellation policy but not less than three business days) AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS LATER.";

(n) promotes, offers, or grants participation in a pyramid scheme as defined under Title 76, Chapter 6a, Pyramid Scheme Act; or

(o) represents that the funds or property conveyed in response to a charitable solicitation will be donated or used for a particular purpose or will be donated to or used by a particular organization, if the representation is false.

1995

13-11-5. Unconscionable act or practice by supplier.

(1) An unconscionable act or practice by a supplier in connection with a consumer transaction violates this act whether it occurs before, during, or after the transaction.

(2) The unconscionability of an act or practice is a question of law for the court. If it is claimed or appears to the court that an act or practice may be unconscionable, the parties shall be given a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making its determination.

(3) In determining whether an act or practice is unconscionable, the court shall consider circumstances which the supplier knew or had reason to know.

1973

13-11-6. Service of process.

In addition to any other method provided by rule or statute, personal jurisdiction over a supplier may be acquired in a civil action or proceeding instituted in the district court by the service of process in the following manner. If a supplier engages in any act or practice in this state governed by this act, or engages in a consumer transaction subject to this act, he may designate an agent upon whom service of process may be made in this state. The agent must be a resident of or a corporation authorized to do business in this state. The designation must be in writing and filed with the Division of Corporations and Commercial Code. If no designation is made and filed, or if process cannot be served in this state upon the designated agent, whether or not the supplier is a resident of this state or is authorized to do business in this state, process may be served upon the director of the Division of Corpora-

and Commercial Code, but service upon him is not effective unless the plaintiff promptly mails a copy of the process and pleadings by registered or certified mail to the defendant at his last reasonably ascertainable address. An affidavit of compliance with this section must be filed with the clerk of the court on or before the return day of the process, if on or within any future time the court allows. 1991

13-11-7. Duties of enforcing authority — Confidentiality of identity of persons investigated — Civil penalty for violation of restraining or injunctive orders.

- (1) The enforcing authority shall:
- (a) enforce this chapter throughout the state;
 - (b) cooperate with state and local officials, officials of other states, and officials of the federal government in the administration of comparable statutes;
 - (c) inform consumers and suppliers on a continuing basis of the provisions of this chapter and of acts or practices that violate this chapter including mailing information concerning final judgments to persons who request it, for which he may charge a reasonable fee to cover the expense;
 - (d) receive and act on complaints; and
 - (e) maintain a public file of final judgments rendered under this chapter that have been either reported officially or made available for public dissemination under Subsection (1)(c), final consent judgments, and to the extent the enforcing authority considers appropriate, assurances of voluntary compliance.

(2) In carrying out his duties, the enforcing authority may not publicly disclose the identity of a person investigated unless his identity has become a matter of public record in an enforcement proceeding or he has consented to public disclosure.

(3) On motion of the enforcing authority, or on its own motion, the court may impose a civil penalty of not more than \$5,000 for each day a temporary restraining order, preliminary injunction, or permanent injunction issued under this chapter is violated, if the supplier received notice of the restraining or injunctive order. Civil penalties imposed under this section shall be paid to the General Fund. 1987

13-11-8. Powers of enforcing authority.

- (1) The enforcing authority may conduct research, hold public hearings, make inquiries, and publish studies relating to consumer sales acts or practices.
- (2) The enforcing authority shall adopt substantive rules that prohibit with specificity acts or practices that violate Section 13-11-4 and appropriate procedural rules. 1973

13-11-9. Rule-making requirements.

- (1) In addition to complying with other rule-making requirements imposed by this act, the enforcing authority shall:
- (a) adopt as a rule a description of the organization of his office, stating the general course and method of operation of his office and method whereby the public may obtain information or make submissions or requests;
 - (b) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of the forms and instructions used by the enforcing authority of his office; and
 - (c) make available for public inspection all rules, written statements of policy, and interpretations formulated, adopted, or used by the enforcing authority in discharging his functions.
- (2) A rule of the enforcing authority is invalid, and may not be invoked by the enforcing authority for any purpose, until it has been made available for public inspection under Subsec-

tion (1). This provision does not apply to a person who has knowledge of a rule before engaging in an act or practice that violates this act. 1973

13-11-10 to 13-11-15. Repealed.

1983, 1988

13-11-16. Investigatory powers of enforcing authority.

(1) If, by his own inquiries or as a result of complaints, the enforcing authority has reason to believe that a person has engaged in, is engaging in, or is about to engage in an act or practice that violates this act, he may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence.

(2) If matter that the enforcing authority subpoenas is located outside this state, the person subpoenaed may either make it available to the enforcing authority at a convenient location within the state or pay the reasonable and necessary expenses for the enforcing authority or his representative to examine the matter at the place where it is located. The enforcing authority may designate representatives, including officials of the state in which the matter is located, to inspect the matter on his behalf, and he may respond to similar requests from officials of other states.

(3) Upon failure of a person without lawful excuse to obey a subpoena and upon reasonable notice to all persons affected, the enforcing authority may apply to the court for an order compelling compliance.

(4) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity. 1997

13-11-17. Actions by enforcing authority.

(1) The enforcing authority may bring an action:

- (a) to obtain a declaratory judgment that an act or practice violates this chapter;
- (b) to enjoin, in accordance with the principles of equity, a supplier who has violated, is violating, or is otherwise likely to violate this chapter; and
- (c) to recover, for each violation, actual damages, or obtain relief under Subsection (2)(b), on behalf of consumers who complained to the enforcing authority within a reasonable time after it instituted proceedings under this chapter.

(2) (a) The enforcing authority may bring a class action on behalf of consumers for the actual damages caused by an act or practice specified as violating this chapter in a rule adopted by the enforcing authority under Subsection 13-11-8(2) before the consumer transactions on which the action is based, or declared to violate Section 13-11-4 or 13-11-5 by final judgment of courts of general jurisdiction and appellate courts of this state that was either reported officially or made available for public dissemination under Subsection 13-11-7(1)(c) by the enforcing authority ten days before the consumer transactions on which the action is based, or, with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent judgment that became final before the consumer transactions on which the action is based.

(b) (i) On motion of the enforcing authority and without bond in an action under this subsection, the court may make appropriate orders, including appointment of a master or receiver or sequestration of assets, but only if it appears that the defendant is threatening or is about to remove, conceal, or dispose of the defendant's property to the damage of persons for whom relief is requested. An appropriate order may include an order:

- (A) to reimburse consumers found to have been damaged;

(B) to carry out a transaction in accordance with consumers' reasonable expectations;

(C) to strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result; or

(D) to grant other appropriate relief.

(ii) The court may assess the expenses of a master or receiver against a supplier.

(c) If an act or practice that violates this chapter unjustly enriches a supplier and damages can be computed with reasonable certainty, damages recoverable on behalf of consumers who cannot be located with due diligence shall be transferred to the state treasurer pursuant to Title 67, Chapter 4a, Unclaimed Property Act.

(d) If a supplier shows by a preponderance of the evidence that a violation of this chapter resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, recovery under Subsection (2) is limited to the amount, if any, by which the supplier was unjustly enriched by the violation.

(e) An action may not be brought by the enforcing authority under Subsection (2) more than two years after the occurrence of a violation of this chapter.

(3) (a) The enforcing authority may terminate an investigation or an action other than a class action upon acceptance of the supplier's written assurance of voluntary compliance with this chapter. Acceptance of an assurance may be conditioned on a commitment to reimburse consumers or take other appropriate corrective action.

(b) An assurance is not evidence of a prior violation of this chapter. Unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation.

(4) (a) In addition to other penalties and remedies set out under this chapter, and in addition to its other enforcement powers under Title 13, Chapter 2, Division of Consumer Protection, the division director may issue a cease and desist order and impose an administrative fine of up to \$1,000 for each violation of this chapter.

(b) All money received through administrative fines imposed under this section shall be deposited in the Consumer Protection Education and Training Fund created by Section 13-2-8.

1995

13-11-17.5. Costs and attorney's fees.

Any judgment granted in favor of the enforcing authority in connection with the enforcement of this chapter shall include, in addition to any other monetary award or injunctive relief, an award of reasonable attorney's fees, court costs, and costs of investigation.

1987

13-11-18. Noncompliance by supplier subject to other state supervision — Cooperation of enforcing authority and other official or agency.

(1) If the enforcing authority receives a complaint or other information relating to noncompliance with this act by a supplier who is subject to other supervision in this state, the enforcing authority shall inform the official or agency having that supervision. The enforcing authority may request information about suppliers from the official or agency.

(2) The enforcing authority and any other official or agency in this state having supervisory authority over a supplier shall consult and assist each other in maintaining compliance with this act. Within the scope of their authority, they may jointly or separately make investigations, prosecute suits, and take other official action they consider appropriate.

1973

13-11-19. Actions by consumer.

(1) Whether he seeks or is entitled to damages or otherwise has an adequate remedy at law, a consumer may bring an action to:

(a) obtain a declaratory judgment that an act or practice violates this chapter; and

(b) enjoin, in accordance with the principles of equity, a supplier who has violated, is violating, or is likely to violate this chapter.

(2) A consumer who suffers loss as a result of a violation of this chapter may recover, but not in a class action, actual damages or \$2,000, whichever is greater, plus court costs.

(3) Whether a consumer seeks or is entitled to recover damages or has an adequate remedy at law, he may bring a class action for declaratory judgment, an injunction, and appropriate ancillary relief against an act or practice that violates this chapter.

(4) (a) A consumer who suffers loss as a result of a violation of this chapter may bring a class action for the actual damages caused by an act or practice specified as violating this chapter by a rule adopted by the enforcing authority under Subsection 13-11-8(2) before the consumer transactions on which the action is based, or declared to violate Section 13-11-4 or 13-11-5 by a final judgment of the appropriate court or courts of general jurisdiction and appellate courts of this state that was either officially reported or made available for public dissemination under Subsection 13-11-7(1)(c) by the enforcing authority ten days before the consumer transactions on which the action is based, or with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent judgment which became final before the consumer transactions on which the action is based.

(b) If an act or practice that violates this chapter unjustly enriches a supplier and the damages can be computed with reasonable certainty, damages recoverable on behalf of consumers who cannot be located with due diligence shall be transferred to the state treasurer pursuant to Title 67, Chapter 4a, Unclaimed Property Act.

(c) If a supplier shows by a preponderance of the evidence that a violation of this chapter resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, recovery under this section is limited to the amount, if any, in which the supplier was unjustly enriched by the violation.

(5) Except for services performed by the enforcing authority, the court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed if:

(a) the consumer complaining of the act or practice that violates this chapter has brought or maintained an action he knew to be groundless; or a supplier has committed an act or practice that violates this chapter; and

(b) an action under this section has been terminated by a judgment or required by the court to be settled under Subsection 13-11-21(1)(a).

(6) Except for consent judgment entered before testimony is taken, a final judgment in favor of the enforcing authority under Section 13-11-17 is admissible as prima facie evidence of the facts on which it is based in later proceedings under this section against the same person or a person in privity with him.

(7) When a judgment under this section becomes final, the prevailing party shall mail a copy to the enforcing authority for inclusion in the public file maintained under Subsection 13-11-7(1)(e).

(8) An action under this section must be brought within two years after occurrence of a violation of this chapter, or within one year after the termination of proceedings by the enforcing authority with respect to a violation of this chapter, whichever is later. When a supplier sues a consumer, he may assert as a counterclaim any claim under this chapter arising out of the transaction on which suit is brought.

1995

13-11-20. Class actions.

(1) An action may be maintained as a class action under this act only if:

- (a) the class is so numerous that joinder of all members is impracticable;
- (b) there are questions of law or fact common to the class;
- (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
- (d) the representative parties will fairly and adequately protect the interests of the class; and
- (e) either:
 - (i) the prosecution of separate actions by or against individual members of the class would create a risk of:

- (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

- (B) adjudications with respect to individual members of the class that would as a practical matter dispose of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

- (ii) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

- (iii) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

(2) The matters pertinent to the findings under Subsection (1)(e)(iii) include:

- (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
- (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
- (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (d) the difficulties likely to be encountered in the management of a class action.

(3) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subsection may be conditional, and it may be amended before decision on the merits.

(4) In a class action maintained under Subsection (1)(e) the court may direct to the members of the class the best notice practicable under the circumstances, including individual notice to each member who can be identified through reasonable effort. The notice shall advise each member that:

- (a) the court will exclude him from the class, unless he requests inclusion, by a specified date;
- (b) the judgment, whether favorable or not, will include all members who request inclusion; and
- (c) a member who requests inclusion may, if he desires, enter an appearance through his counsel.

(5) When appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class.

(6) In the conduct of a class action the court may make appropriate orders:

- (a) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

- (b) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in the manner the court directs to some or all of the members or to the enforcing authority of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

- (c) imposing conditions on the representative parties or on intervenors;

- (d) requiring that the pleadings be amended to eliminate allegations as to representation of absent persons, and that the action proceed accordingly; or

- (e) dealing with similar procedural matters.

(7) A class action shall not be dismissed or compromised without approval of the court. Notice of the proposed dismissal or compromise shall be given to all members of the class as the court directs.

(8) The judgment in an action maintained as a class action under Subsection (1)(e)(i) or (ii), whether or not favorable to the class, shall describe those whom the court finds to be members of the class. The judgment in a class action under Subsection (1)(e)(iii), whether or not favorable to the class, shall specify or describe those to whom the notice provided in Subsection (4) was directed, and who have requested inclusion, and whom the court finds to be members of the class.

1992

13-11-21. Settlement of class action — Complaint in class action delivered to enforcing authority.

(1) (a) A defendant in a class action may file a written offer of settlement. If it is not accepted within a reasonable time by a plaintiff class representative, the defendant may file an affidavit reciting the rejection. The court may determine that the offer has enough merit to present to the members of the class. If it so determines, it shall order a hearing to determine whether the offer should be approved. It shall give the best notice of the hearing that is practicable under the circumstances, including notice to each member who can be identified through reasonable effort. The notice shall specify the terms of the offer and a reasonable period within which members of the class who request it are entitled to be included in the class. The statute of limitations for those who are excluded pursuant to this subsection is tolled for the period the class action has been pending, plus an additional year.

(b) If a member who has previously lost an opportunity to be excluded from the class is excluded at his request in response to notice of the offer of settlement during the period specified under Subsection (a), he may not thereafter participate in a class action for damages respecting the same consumer transaction, unless the court later disapproves the offer of settlement or approves a settlement materially different from that proposed in the original offer of settlement. After the expiration of the period of limitations, a member of the class is not entitled to be excluded from it.

(c) If the court later approves the offer of settlement, including changes, if any, required by the court in the interest of a just settlement of the action, it shall enter judgment, which is binding on all persons who are then members of the class. If the court disapproves the offer or approves a settlement materially different from that proposed in the original offer, notice shall be given to a person who was excluded from the action at his request in response to notice of the offer under Subsection (a), and he

is entitled to rejoin the class and, in the case of the approval, participate in the settlement.

(2) On the commencement of a class action under Section 13-11-19, the class representative shall mail by certified mail with return receipt requested or personally serve a copy of the complaint on the enforcing authority. Within thirty days after the receipt of a copy of the complaint, but not thereafter, the enforcing authority may intervene in the class action. 1973

13-11-22. Exemptions from application of act.

(1) This act does not apply to:

(a) an act or practice required or specifically permitted by or under federal law, or by or under state law;

(b) a publisher, broadcaster, printer, or other person engaged in the dissemination of information or the reproduction of printed or pictorial matter so far as the information or matter has been disseminated or reproduced on behalf of others without actual knowledge that it violated this act;

(c) claim for personal injury or death or claim for damage to property other than the property that is the subject of the consumer transaction;

(d) credit terms of a transaction otherwise subject to this act; or

(e) any public utility subject to the regulating jurisdiction of the Public Service Commission of the state of Utah.

(2) A person alleged to have violated this act has the burden of showing the applicability of this section. 1973

13-11-23. Other remedies available — Class action only as prescribed by act.

The remedies of this act are in addition to remedies otherwise available for the same conduct under state or local law, except that a class action relating to a transaction governed by this act may be brought only as prescribed by this act. 1973

CHAPTER 11a

TRUTH IN ADVERTISING

Section

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| 13-11a-1. | Purpose. |
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| 13-11a-3. | Deceptive trade practices enumerated — Records to be kept — Defenses. |
| 13-11a-4. | Jurisdiction of district courts — Injunctive relief — Damages — Attorneys' fees — Corrective advertising — Notification required. |
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13-11a-1. Purpose.

The purpose of this chapter is to prevent deceptive, misleading, and false advertising practices and forms in Utah. This chapter is to be construed to accomplish that purpose and not to prohibit any particular form of advertising so long as it is truthful and not otherwise misleading or deceptive. 1989

13-11a-2. Definitions.

As used in this chapter:

(1) "Advertisement" means any written, oral, or graphic statement or representation made by a supplier in connection with the solicitation of business. It includes, but is not limited to, communication by noncable television systems, radio, printed brochures, newspapers, leaflets, flyers, circulars, billboards, banners, or signs. It does not include any oral, in person, representation made by a sales representative to a prospective purchaser.

(2) To "clearly and conspicuously disclose" means:

(a) in the print media:

(i) to state in typeface that is sufficiently bold to be obviously seen;

(ii) to state in type size of at least 10 point type for a 14" x 23" document, and, in larger documents, of a type size of proportionately the same size; and

(iii) to place in the text so as to be obviously seen;

(b) in radio advertising, to verbally state in the same volume as that used in the advertisement;

(c) in television advertising, the method for print media or radio advertising is acceptable unless contrary to other governing laws.

(3) "Generic good" means a product which is offered for sale under its common descriptive name rather than under a trademark, trade name, brand name, house brand, or other distinguishing appellation.

(4) "Goods and services" means all items which may be the subject of a sales transaction.

(5) "Nondiscounted price" means a price at which the goods or services are offered at the time of the price assessment without a temporary store reduction in price.

(6) "Person" means an individual, including a consumer, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(7) "Price assessment" means the determination of the prices underlying a price comparison.

(8) "Price assessor" means a firm or individual that determines the prices, including the reference prices, underlying the price comparison, or who makes the price comparison.

(9) "Price comparison" means any express representation that a specific savings, reduction, or discount exists or will exist between the supplier's advertised price and another specific price. A representation which does not reasonably imply a comparison to identifiable prices or items does not express a price comparison. Language constituting mere sales "puffing" is not prohibited by this chapter.

(10) "Product area" means the geographical area in which the prospective purchasers to whom the advertisement is aimed could reasonably be expected to seek the goods or services in question.

(11) "Reference price" means a higher price to which a supplier compares a lower price to indicate that a reduction in price exists or will exist.

(12) "Regular price" means the price at which a supplier has recently offered the goods or services for sale in good faith in the regular course of business. Every price represented in an advertisement is considered a regular price unless it is specifically represented as a price other than a regular price, such as a discount price or a manufacturer's suggested price. It is prima facie evidence that a price is other than a regular price when it was not offered as the nondiscount price of the goods or services for the 15 days immediately preceding an advertisement of the price, and the price change during the 15 day period was not due to price changes inherent in the pricing of seasonal or perishable goods, due to changes in cost of the goods or services to the supplier, or due to pricing changes made to match a competitor's price.

(13) "Sales transaction" means a sale, lease, assignment, award by chance, or other written or oral transfer or disposition of goods, services, or other property, both tangible and intangible (except securities and insurance), to a person or business, or a solicitation or offer by a