

1 SB177
2 156302-2
3 By Senator Allen
4 RFD: Judiciary
5 First Read: 14-JAN-14

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8 SYNOPSIS: Under existing law, a manufactured dwelling
9 community owner may dispose of a manufactured
10 dwelling, including its contents, placed on
11 property owned or leased by the manufactured
12 dwelling community owner under certain conditions,
13 including notice to the tenant and all lienholders.

14 This bill would further provide for the sale
15 of an abandoned manufactured dwelling, storage for
16 the dwelling and personal property of the tenant,
17 and the required notice to tenants and lienholders.

18 This bill would specify that a manufactured
19 dwelling is deemed abandoned when the tenant has
20 been absent from the dwelling 30 days following
21 default, termination, or expiration of the lease
22 agreement or service of a court order requiring the
23 tenant to vacate the premises due to failure to
24 perform the obligations of the lease.

25 This bill would provide that notice of the
26 sale of the abandoned dwelling may be made by
27 affixing notice on the doors of the dwelling, would

1 require additional information to be included in
2 the notice, and would reduce the time frame in
3 which a tenant must contact the manufactured
4 dwelling community owner after receipt of notice
5 from 45 days to 30 days.

6 This bill would require a manufactured
7 dwelling community owner to provide a copy of the
8 notice to any lienholder by certified or registered
9 mail, return receipt requested, no later than 14
10 days prior to the sale.

11 This bill would specify the unpaid rental
12 fees that may be deducted from the proceeds of the
13 sale.

14 This bill would also allow a manufactured
15 dwelling community owner to condition approval for
16 occupancy of any purchaser of the manufactured
17 dwelling upon verification that the new tenant
18 qualifies for rental using rental criteria in
19 existence at the time of execution of the original
20 rental agreement.

21
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25
26 To amend Sections 35-12A-1, 35-12A-2, 35-12A-3,
27 35-12A-5, 35-12A-6, 35-12A-7, 35-12A-8, 35-12A-10, 35-12A-11,

1 35-12A-12, 35-12A-13, and 35-12A-14, Code of Alabama 1975,
2 relating to abandoned manufactured dwellings, to further
3 provide for the sale of an abandoned manufactured dwelling,
4 storage for the dwelling and personal property of the tenant,
5 and the required notice to tenants and lienholders; to specify
6 when a manufactured dwelling is deemed abandoned; to require
7 additional information to be included in the notice; to reduce
8 the time frame in which a tenant must contact the manufactured
9 dwelling community owner after receipt of notice; to require a
10 manufactured dwelling community owner to provide a copy of the
11 notice to any lienholder by certified or registered mail,
12 return receipt requested, within a specified time frame prior
13 to the sale; to specify the unpaid rental fees that may be
14 deducted from the proceeds of the sale; to allow a
15 manufactured dwelling community owner to condition approval
16 for occupancy of any purchaser of the manufactured dwelling
17 upon verification that the new tenant qualifies for the
18 rental; and to repeal Section 35-12A-9, Code of Alabama 1975,
19 relating to the sale or disposal of an abandoned manufactured
20 dwelling.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 35-12A-1, 35-12A-2, 35-12A-3,
23 35-12A-5, 35-12A-6, 35-12A-7, 35-12A-8, 35-12A-10, 35-12A-11,
24 35-12A-12, 35-12A-13, and 35-12A-14, Code of Alabama 1975, are
25 amended to read as follows:

26 "§35-12A-1.

1 "As used in this chapter, the following terms shall
2 have the following meanings:

3 "(1) ABANDONED MANUFACTURED DWELLING. A manufactured
4 dwelling that satisfies either of the following circumstances:

5 "a. A tenant is absent from the premises of the
6 manufactured dwelling following expiration of 30 days after
7 default, termination, or expiration of the lease agreement.

8 "b. A tenant is absent from the premises of the
9 manufactured dwelling continuously for 30 days after service
10 of a court order requiring the tenant to vacate the premises
11 due to failure of the tenant to perform obligations of the
12 lease.

13 "~~(1)~~ (2) MANUFACTURED DWELLING COMMUNITY OWNER. Any
14 individual or business entity that, for consideration, allows
15 another individual to place a residential trailer, mobile
16 home, or manufactured ~~home~~ dwelling on land owned or leased by
17 that individual or business entity.

18 "~~(2)~~ (3) MANUFACTURED DWELLING. A residential
19 trailer, mobile home, or manufactured home.

20 "(4) RENTAL FEE. The actual rent charged to the
21 tenant including utilities, maintenance charges, and any other
22 fee charged incidental to the rent as provided for by the
23 agreement between the manufactured dwelling community owner
24 and tenant.

25 "~~(3)~~ (5) TENANT. An individual or business entity
26 that enters into a rental agreement with a manufactured
27 dwelling community owner for placement of a manufactured home

1 on the property of the manufactured dwelling community owner
2 and that leases or owns the manufactured home.

3 "§35-12A-2.

4 "A manufactured dwelling community owner may ~~dispose~~
5 ~~of~~ sell a manufactured dwelling on ~~space~~ property owned or
6 leased by the manufactured dwelling community owner only in
7 the manner provided by this chapter. ~~and in the following~~
8 ~~circumstances:~~

9 "~~(1) Sixty days have elapsed since the tenancy ended~~
10 ~~by termination or expiration of a rental agreement.~~

11 "~~(2) The tenant has been absent from the premises~~
12 ~~continuously for 30 days after termination of a tenancy by a~~
13 ~~court order that has not been executed.~~

14 "§35-12A-3.

15 "Prior to ~~disposing of~~ selling the tenant's
16 manufactured dwelling pursuant to this chapter, the
17 manufactured dwelling community owner shall provide a written
18 notice to the tenant by one of the following methods:

19 "(1) ~~Personally delivered~~ Personal delivery to the
20 tenant of the manufactured dwelling.

21 "(2) ~~Certified mail addressed and mailed~~ Mailing to
22 the tenant at the last known mailing address known to the
23 manufactured dwelling community owner.

24 "(3) Affixing a notice on the doors of the dwelling.

25 "§35-12A-4.

26 "A manufactured dwelling community owner shall also
27 give a copy of the notice described in Section ~~35-12A-3~~

1 35-12A-5 by certified or registered mail verified by return
2 receipt to ~~the following:~~

3 ~~"(1) Any any lienholder of the manufactured~~
4 ~~dwelling. It is the obligation of the manufactured dwelling~~
5 ~~community owner to determine the name and address of all~~
6 ~~lienholders which have a lien on the manufactured dwelling~~
7 ~~properly filed with~~ as shown on the records of the office of
8 the judge of probate in the county in which the manufactured
9 dwelling is located, the Alabama Department of Revenue, or the
10 Secretary of State. For purposes of this chapter, "lienholder"
11 includes the holder of a security interest, mortgage, or other
12 lien on the manufactured dwelling and "lien" includes a
13 security interest, mortgage, or other lien.

14 ~~"(2) The tax collector of the county in which the~~
15 ~~manufactured dwelling is located.~~

16 "\$35-12A-5.

17 "The notice required by ~~Section~~ Sections 35-12A-3
18 and 35-12A-4 shall state all of the following:

19 "(1) The manufactured dwelling, with a reasonably
20 certain description of the dwelling, is left upon the premises
21 and is considered abandoned and the tenant is indebted to the
22 manufactured dwelling community owner for rental fees.

23 "(2) The tenant or lienholder shall contact the
24 manufactured dwelling community owner within ~~45~~ 30 days of
25 receipt of the notice, as provided in Section 35-12A-6, to
26 arrange for the removal of the abandoned manufactured
27 dwelling.

1 "(3) The manufactured dwelling is stored on the
2 rented space and applicable storage fees are being assessed.

3 "(4) The tenant or any lienholder may arrange for
4 removal of the manufactured dwelling by contacting the
5 manufactured dwelling community owner at a described telephone
6 number or address on or before the specified date provided in
7 the notice.

8 "(5) The manufactured dwelling community owner shall
9 make the manufactured dwelling available for removal by the
10 tenant or any lienholder by appointment at reasonable times.

11 "(6) If the tenant or owner fails to contact the
12 manufactured dwelling community owner in writing by the date
13 specified in the notice to remove the manufactured dwelling
14 and the dwelling is not subject to a lien that has priority
15 over any lien of the manufactured dwelling community owner,
16 then the manufactured dwelling community owner may ~~dispose of~~
17 sell the manufactured dwelling as provided for in Section
18 35-12A-9. If the manufactured dwelling is subject to a lien
19 that has priority over any lien of the manufactured dwelling
20 community owner, then the provisions contained in Section
21 35-12A-13 are the manufactured dwelling community owner's sole
22 remedy as to the lienholder.

23 "§35-12A-6.

24 "(a) After notifying the tenant and lienholder as
25 required by Sections 35-12A-3 and 35-12A-4, the manufactured
26 dwelling community owner shall do all of the following:

1 "(1) Store any abandoned manufactured dwelling on
2 the rented space ~~and exercise reasonable care for the~~
3 ~~manufactured dwelling.~~

4 "(2) Store all other abandoned personal property of
5 the tenant, including goods left inside a manufactured
6 dwelling or left upon the rented space outside a manufactured
7 dwelling, in a place of safekeeping and exercise reasonable
8 care for the personal property. For purposes of this chapter,
9 "personal property" does not include a manufactured dwelling.

10 "(b) The manufactured dwelling community owner shall
11 be entitled to reasonable or actual storage charges and costs
12 incidental to storage or disposal, including any cost of
13 removal to a place of storage occurring after the expiration
14 of the date by which a tenant, lienholder, or owner is to
15 contact the manufactured dwelling community owner as set forth
16 in Section 35-12A-5. ~~The storage charge shall be no greater~~
17 ~~than the monthly space rent last payable by the tenant.~~

18 "§35-12A-7.

19 "~~If a tenant, upon the receipt of the notice,~~
20 responds by written notice to the manufactured dwelling
21 community owner on or before the specified date in the
22 manufactured dwelling community owner's notice that the tenant
23 intends to remove the manufactured dwelling from the premises,
24 the manufactured dwelling community owner must make the
25 manufactured dwelling available for removal by appointment at
26 reasonable times during the next 45 days, provided that the
27 tenant has paid all applicable charges and costs as provided

1 herein. If the manufactured dwelling is not removed, the
2 manufactured community dwelling owner may proceed with the
3 sale of the manufactured dwelling pursuant to Section
4 35-12A-8.

5 "§35-12A-8.

6 "(a) If the tenant does not respond within the time
7 provided by the manufactured dwelling community owner's
8 notice, or the tenant does not remove the manufactured
9 dwelling or personal property within 45 days after responding
10 to the manufactured dwelling community owner or by any other
11 date agreed to with the manufactured dwelling community owner,
12 whichever is later, the manufactured dwelling ~~or personal~~
13 property, as applicable, shall be conclusively presumed to be
14 abandoned community owner may sell the abandoned manufactured
15 dwelling and personal property as provided in this section.

16 "(b) With regard to the manufactured dwelling, prior
17 to sale, the manufactured dwelling community owner shall do
18 all of the following:

19 "(1) Place a notice to be run once per week for two
20 consecutive weeks in a newspaper of general circulation in the
21 county in which the manufactured dwelling is located. The
22 notice shall state all of the following:

23 "a. That the manufactured dwelling is abandoned and
24 will be sold in the manner provided in the notice. The
25 manufactured dwelling shall be described with reasonable
26 certainty.

1 "b. The tenant's and owner's name if of record or
2 actually known to the manufactured dwelling community owner.

3 "c. The address and any space number where the
4 manufactured dwelling is located, and if actually known to the
5 manufactured dwelling community owner, the plate,
6 registration, or other identification number as noted on the
7 certificate of title.

8 "d. Whether the sale is by private bidding or public
9 auction and that the manufactured dwelling community owner is
10 authorized to purchase the manufactured dwelling pursuant to
11 the method of sale described in the notice. In the case of a
12 public auction, the date, place, and time of the auction shall
13 be included in the notice.

14 "e. Whether the manufactured dwelling community
15 owner is accepting sealed bids and, if so, the last date on
16 which bids will be accepted. The date, time, and place where
17 the winning bid will be awarded shall also be included in the
18 notice.

19 "f. The name and telephone number of the person to
20 contact to inspect the manufactured dwelling.

21 "(2) No later than 30 days prior to the sale date,
22 provide a copy of the notice required by subdivision (1) to
23 any lienholder by certified or registered mail, verified by
24 return receipt.

25 "(c) With regard to personal property, including the
26 contents of the manufactured dwelling and any personal
27 property left on the rented space outside a manufactured

1 dwelling, the manufactured dwelling community owner shall
2 store the abandoned personal property as provided for in
3 Section 35-12A-6. Prior to selling the personal property, the
4 manufactured dwelling community owner must hold the personal
5 property for 45 days after mailing notice to the tenant or the
6 tenant's designated agent at the last known address of the
7 tenant or the tenant's agent or by delivering a copy of the
8 notice to the last known address of the tenant or the tenant's
9 agent. The manufactured dwelling community owner is entitled
10 to reasonable storage charges as provided in Section 35-12A-6
11 prior to surrendering the property to the tenant or the
12 tenant's agent.

13 "§35-12A-10.

14 "A public or private sale authorized by this chapter
15 shall be conducted consistent with the terms listed in Section
16 ~~35-12A-9~~ 35-12A-8 and every aspect of the sale including the
17 method, manner, time, place, and terms must be commercially
18 reasonable.

19 "§35-12A-11.

20 "(a) The manufactured dwelling community owner may
21 deduct from the proceeds of the sale any of the following:

22 "(1) The reasonable or actual cost of notice,
23 storage, and sale as provided in this chapter.

24 "(2) Unpaid ~~rent only from the sale of the~~
25 ~~manufactured dwelling~~ rental fees, but only to the extent that
26 the manufactured dwelling community owner's lien has priority
27 over the lien of any applicable lienholder.

1 "(3) Reasonable attorneys' fees and costs.

2 "(b) After deducting the amounts listed in
3 subsection (a), the manufactured dwelling community owner
4 shall remit to the county tax collecting official any property
5 taxes and/or other fees due and shall then remit the remaining
6 proceeds, if any, to the lienholders, if any, to the extent of
7 any unpaid balance owed on any liens on the manufactured
8 dwelling.

9 "(c) After deducting the amounts listed in
10 subsections (a) and (b), as applicable, the manufactured
11 dwelling community owner shall remit to the tenant or owner
12 the remaining proceeds, if any, together with an itemized
13 accounting. If the tenant or owner cannot be found, after due
14 diligence, the remaining proceeds ~~shall be~~ may be interpleaded
15 in any court with jurisdiction or be held and deposited in
16 accordance with Section 35-12-29 35-12-70, et seq.

17 "§35-12A-12.

18 "Compliance in good faith with this chapter by the
19 manufactured dwelling community owner shall constitute a
20 complete defense in any action brought by a tenant or
21 lienholder against a manufactured dwelling community owner for
22 loss or damage to such manufactured dwelling or personal
23 property, as applicable, ~~disposed of~~ sold pursuant to this
24 chapter.

25 "§35-12A-13.

26 "If a lienholder makes a timely response to a notice
27 of abandoned manufactured dwelling, as provided for in Section

1 ~~35-12A-4~~, and so requests, a manufactured dwelling community
2 owner shall not sell ~~or dispose~~ of the manufactured dwelling
3 for a period of 12 months. During this period, or until the
4 manufactured dwelling is removed from the manufactured
5 dwelling community owner's premises, the lienholder must make
6 timely periodic payments of all reasonable and actual storage
7 or rental ~~charges~~ fees which accrue after the expiration of
8 the ~~45-day~~ 30-day notice period and which shall be no greater
9 than the monthly space rent last payable by the tenant. The
10 lienholder shall have the right to remove or sell the
11 manufactured dwelling, pursuant to the provisions of any
12 agreement with the owner of the dwelling or as otherwise
13 allowed by law. The manufactured dwelling community owner may
14 condition approval for occupancy of any purchaser of the
15 manufactured dwelling upon payment of all storage charges and
16 maintenance costs which accrued after the expiration of the
17 ~~45-day~~ 30-day notice period or verification that the new
18 tenant qualifies for rental consistent with the rental
19 criteria in existence at the time of execution of the
20 manufactured dwelling community owner's rental agreement. If
21 the lienholder fails to respond to the notice of abandoned
22 manufactured dwelling within 45 days of receipt, or after
23 making a response, fails after 10 days' written notice from
24 the manufactured dwelling community owner, to make timely
25 payments, the manufactured dwelling community owner may
26 proceed to sell the manufactured dwelling pursuant to Section
27 ~~35-12A-9~~ 35-12A-8. If the lienholder responds to the ~~45-day~~

1 30-day notice, and requests that the manufactured dwelling
2 community owner not sell or dispose of the manufactured
3 dwelling, the lienholder shall be obligated to pay the
4 manufactured dwelling community owner the storage or rental
5 ~~charges~~ fees which accrue beginning after the expiration of
6 the ~~45-day~~ 30-day notice period until the expiration of the
7 12-month period or the date the manufactured dwelling is
8 removed from the premises or sold pursuant to Section ~~35-12A-9~~
9 35-12A-8, whichever is earlier, plus the manufactured dwelling
10 community owner's reasonable attorneys' fees and costs
11 incurred in enforcing this obligation of the lienholder. The
12 provisions of this section may be changed by agreement signed
13 by the manufactured dwelling community owner and lienholder.

14 "§35-12A-14.

15 "If the manufactured dwelling or personal property
16 is considered abandoned as a result of the death of the only
17 tenant, Sections 35-12A-1 to 35-12A-13, inclusive, and this
18 section shall apply, except as follows:

19 "(1) The provisions of this chapter regarding the
20 rights and responsibilities of a tenant to the abandoned
21 manufactured dwelling and personal property shall apply to any
22 personal representative named in a will or appointed by a
23 court to act for the deceased tenant or any person designated
24 in writing by the tenant to be contacted by the manufactured
25 dwelling community owner in the event of the tenant's death.

26 "(2) The notice required by Section 35-12A-3 shall
27 be personally delivered or sent by first class mail to any

1 personal representative named in a will or appointed by a
2 court to act for the deceased tenant.

3 "(3) The notice described in Section 35-12A-5 shall
4 refer to any personal representative or designated person,
5 instead of the deceased tenant, and shall incorporate the
6 provisions of this section.

7 "(4) If a personal representative, designated
8 person, or other person entitled to possession of the
9 property, such as an heir or devisee, responds by actual
10 notice to a manufactured dwelling community owner within the
11 ~~45-day~~ 30-day period provided by Section 35-12A-5, and so
12 requests, the manufactured dwelling community owner shall
13 enter into a written agreement with the representative or
14 person providing that the manufactured dwelling shall not be
15 sold or disposed of by the manufactured dwelling community
16 owner until conclusion of any probate proceedings, so long as
17 the representative or person makes timely periodic payment of
18 all storage charges and maintains the property and the rented
19 space on which it is stored. During the agreement, the
20 representative or person shall have the right to remove or
21 sell the property, including a sale to a purchaser or a
22 transfer to an heir or devisee where the purchaser, heir, or
23 devisee wishes to leave the property on the rented space and
24 become a tenant. The manufactured dwelling community owner
25 also may condition approval for occupancy of any purchaser,
26 heir, or devisee of the property upon payment of all storage
27 charges and maintenance costs. If the representative or person

1 violates the agreement, the manufactured dwelling community
2 owner may terminate it upon 30 days' written notice stating
3 facts sufficient to notify the representative or person of the
4 reason for the termination. Unless the representative or
5 person corrects the violation within the notice period, the
6 agreement shall terminate as provided and the manufactured
7 dwelling community owner may sell ~~or dispose of~~ the property
8 as provided for in this chapter."

9 Section 2. Section 35-12A-9, Code of Alabama 1975,
10 relating to the sale or disposal of an abandoned manufactured
11 dwelling, is repealed.

12 Section 3. This act shall become effective on the
13 first day of the third month following its passage and
14 approval by the Governor, or its otherwise becoming law.