

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

1 SB177
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4 ENGROSSED
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7 A BILL
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9 AN ACT
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11 To amend Sections 35-12A-1, 35-12A-2, 35-12A-3,
12 35-12A-4, 35-12A-5, 35-12A-6, 35-12A-7, 35-12A-8, 35-12A-10,
13 35-12A-11, 35-12A-12, 35-12A-13, and 35-12A-14, Code of
14 Alabama 1975, relating to abandoned manufactured dwellings, to
15 further provide for the sale of an abandoned manufactured
16 dwelling, storage for the dwelling and personal property of
17 the tenant, and the required notice to tenants and
18 lienholders; to specify when a manufactured dwelling is deemed
19 abandoned; to require additional information to be included in
20 the notice; to reduce the time frame in which a tenant must
21 contact the manufactured dwelling community owner after
22 receipt of notice; to require a manufactured dwelling
23 community owner to provide a copy of the notice to any
24 lienholder by certified or registered mail, return receipt
25 requested, within a specified time frame prior to the sale; to
26 specify the unpaid rental fees that may be deducted from the
27 proceeds of the sale; to allow a manufactured dwelling

community owner to condition approval for occupancy of any purchaser of the manufactured dwelling upon verification that the new tenant qualifies for the rental; and to repeal Section 35-12A-9, Code of Alabama 1975, relating to the sale or disposal of an abandoned manufactured dwelling.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 35-12A-1, 35-12A-2, 35-12A-3, 35-12A-4, 35-12A-5, 35-12A-6, 35-12A-7, 35-12A-8, 35-12A-10, 35-12A-11, 35-12A-12, 35-12A-13, and 35-12A-14, Code of Alabama 1975, are amended to read as follows:

"§35-12A-1.

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

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

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

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

"(1) (2) MANUFACTURED DWELLING COMMUNITY OWNER. Any individual or business entity that, for consideration, allows another individual to place a residential trailer, mobile

1 home, or manufactured ~~home~~ dwelling on land owned or leased by
2 that individual or business entity.

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

5 "(4) RENTAL FEE. The actual rent charged to the
6 tenant including utilities, maintenance charges, and any other
7 fee charged incidental to the rent as provided for by the
8 agreement between the manufactured dwelling community owner
9 and tenant.

10 ~~"(3)~~ (5) TENANT. An individual or business entity
11 that enters into a rental agreement with a manufactured
12 dwelling community owner for placement of a manufactured home
13 on the property of the manufactured dwelling community owner
14 and that leases or owns the manufactured home.

15 "§35-12A-2.

16 ~~"A manufactured dwelling community owner may dispose~~
17 ~~of~~ sell a manufactured dwelling on ~~space~~ property owned or
18 leased by the manufactured dwelling community owner only in
19 the manner provided by this chapter. ~~and in the following~~
20 ~~circumstances:~~

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

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

26 "§35-12A-3.

1 "Prior to ~~disposing of~~ selling the tenant's
2 manufactured dwelling pursuant to this chapter, the
3 manufactured dwelling community owner shall provide a written
4 notice to the tenant by one of the following methods:

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

7 "(2) Certified mail addressed and mailed to the
8 tenant at the last known mailing address known to the
9 manufactured dwelling community owner.

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

11 "§35-12A-4.

12 "A manufactured dwelling community owner shall also
13 give a copy of the notice described in Section ~~35-12A-3~~
14 35-12A-5 by certified or registered mail verified by return
15 receipt to ~~the following:~~

16 "(1) ~~Any~~ any lienholder of the manufactured
17 dwelling. ~~It is the obligation of the manufactured dwelling~~
18 ~~community owner to determine the name and address of all~~
19 ~~lienholders which have a lien on the manufactured dwelling~~
20 ~~properly filed with~~ as shown on the records of the office of
21 the judge of probate in the county in which the manufactured
22 dwelling is located, the Alabama Department of Revenue, or the
23 Secretary of State. For purposes of this chapter, "lienholder"
24 includes the holder of a security interest, mortgage, or other
25 lien on the manufactured dwelling and "lien" includes a
26 security interest, mortgage, or other lien.

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

3 "§35-12A-5.

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

6 "(1) The manufactured dwelling, with a reasonably
7 certain description of the dwelling, is left upon the premises
8 and is considered abandoned and the tenant is indebted to the
9 manufactured dwelling community owner for rental fees.

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

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

17 "(4) The tenant or any lienholder may arrange for
18 removal of the manufactured dwelling by contacting the
19 manufactured dwelling community owner at a described telephone
20 number or address on or before the specified date provided in
21 the notice.

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

25 "(6) If the tenant or owner fails to contact the
26 manufactured dwelling community owner in writing by the date
27 specified in the notice to remove the manufactured dwelling

1 and the dwelling is not subject to a lien that has priority
2 over any lien of the manufactured dwelling community owner,
3 then the manufactured dwelling community owner may ~~dispose of~~
4 sell the manufactured dwelling as provided for in Section
5 35-12A-9. If the manufactured dwelling is subject to a lien
6 that has priority over any lien of the manufactured dwelling
7 community owner, then the provisions contained in Section
8 35-12A-13 are the manufactured dwelling community owner's sole
9 remedy as to the lienholder.

10 "§35-12A-6.

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

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

17 "(2) Store all other abandoned personal property of
18 the tenant, including goods left inside a manufactured
19 dwelling or left upon the rented space outside a manufactured
20 dwelling, in a place of safekeeping and exercise reasonable
21 care for the personal property. For purposes of this chapter,
22 "personal property" does not include a manufactured dwelling.

23 "(b) The manufactured dwelling community owner shall
24 be entitled to reasonable or actual storage charges and costs
25 incidental to storage or disposal, including any cost of
26 removal to a place of storage occurring after the expiration
27 of the date by which a tenant, lienholder, or owner is to

1 contact the manufactured dwelling community owner as set forth
2 in Section 35-12A-5. ~~The storage charge shall be no greater~~
3 ~~than the monthly space rent last payable by the tenant.~~

4 "§35-12A-7.

5 "If a tenant, ~~upon the receipt of the notice,~~
6 responds by written notice to the manufactured dwelling
7 community owner on or before the specified date in the
8 manufactured dwelling community owner's notice that the tenant
9 intends to remove the manufactured dwelling from the premises,
10 the manufactured dwelling community owner must make the
11 manufactured dwelling available for removal by appointment at
12 reasonable times during the next 45 days, provided that the
13 tenant has paid all applicable charges and costs as provided
14 herein. If the manufactured dwelling is not removed, the
15 manufactured community dwelling owner may proceed with the
16 sale of the manufactured dwelling pursuant to Section
17 35-12A-8.

18 "§35-12A-8.

19 " (a) If the tenant does not respond within the time
20 provided by the manufactured dwelling community owner's
21 notice, or the tenant does not remove the manufactured
22 dwelling or personal property within 45 days after responding
23 to the manufactured dwelling community owner or by any other
24 date agreed to with the manufactured dwelling community owner,
25 whichever is later, the manufactured dwelling ~~or personal~~
26 ~~property, as applicable, shall be conclusively presumed to be~~

1 abandoned community owner may sell the abandoned manufactured
2 dwelling and personal property as provided in this section.

3 "(b) With regard to the manufactured dwelling, prior
4 to sale, the manufactured dwelling community owner shall do
5 all of the following:

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

10 "a. That the manufactured dwelling is abandoned and
11 will be sold in the manner provided in the notice. The
12 manufactured dwelling shall be described with reasonable
13 certainty.

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

16 "c. The address and any space number where the
17 manufactured dwelling is located, and if actually known to the
18 manufactured dwelling community owner, the plate,
19 registration, or other identification number as noted on the
20 certificate of title.

21 "d. Whether the sale is by private bidding or public
22 auction and that the manufactured dwelling community owner is
23 authorized to purchase the manufactured dwelling pursuant to
24 the method of sale described in the notice. In the case of a
25 public auction, the date, place, and time of the auction shall
26 be included in the notice.

1 "e. Whether the manufactured dwelling community
2 owner is accepting sealed bids and, if so, the last date on
3 which bids will be accepted. The date, time, and place where
4 the winning bid will be awarded shall also be included in the
5 notice.

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

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

12 "(c) With regard to personal property, including the
13 contents of the manufactured dwelling and any personal
14 property left on the rented space outside a manufactured
15 dwelling, the manufactured dwelling community owner shall
16 store the abandoned personal property as provided for in
17 Section 35-12A-6. Prior to selling the personal property, the
18 manufactured dwelling community owner must hold the personal
19 property for 45 days after mailing notice to the tenant or the
20 tenant's designated agent at the last known address of the
21 tenant or the tenant's agent or by delivering a copy of the
22 notice to the last known address of the tenant or the tenant's
23 agent. The manufactured dwelling community owner is entitled
24 to reasonable storage charges as provided in Section 35-12A-6
25 prior to surrendering the property to the tenant or the
26 tenant's agent.

27 "§35-12A-10.

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

"§35-12A-11.

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

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

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

"(3) Reasonable attorneys' fees and costs.

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

"(c) After deducting the amounts listed in subsections (a) and (b), as applicable, the manufactured dwelling community owner shall remit to the tenant or owner the remaining proceeds, if any, together with an itemized accounting. If the tenant or owner cannot be found, after due

1 diligence, the remaining proceeds ~~shall be~~ may be interpleaded
2 in any court with jurisdiction or be held and deposited in
3 accordance with Section ~~35-12-29~~ 35-12-70, et seq.

4 "§35-12A-12.

5 "Compliance in good faith with this chapter by the
6 manufactured dwelling community owner shall constitute a
7 complete defense in any action brought by a tenant or
8 lienholder against a manufactured dwelling community owner for
9 loss or damage to such manufactured dwelling or personal
10 property, as applicable, ~~disposed of~~ sold pursuant to this
11 chapter.

12 "§35-12A-13.

13 "If a lienholder makes a timely response to a notice
14 of abandoned manufactured dwelling, as provided for in Section
15 35-12A-4, and so requests, a manufactured dwelling community
16 owner shall not sell ~~or dispose~~ of the manufactured dwelling
17 for a period of 12 months. During this period, or until the
18 manufactured dwelling is removed from the manufactured
19 dwelling community owner's premises, the lienholder must make
20 timely periodic payments of all reasonable and actual storage
21 or rental ~~charges~~ fees which accrue after the expiration of
22 the ~~45-day~~ 30-day notice period and which shall be no greater
23 than the monthly space rent last payable by the tenant. The
24 lienholder shall have the right to remove or sell the
25 manufactured dwelling, pursuant to the provisions of any
26 agreement with the owner of the dwelling or as otherwise
27 allowed by law. The manufactured dwelling community owner may

1 condition approval for occupancy of any purchaser of the
2 manufactured dwelling upon payment of all storage charges and
3 maintenance costs which accrued after the expiration of the
4 ~~45-day~~ 30-day notice period or verification that the new
5 tenant qualifies for rental consistent with the rental
6 criteria in existence at the time of execution of the
7 manufactured dwelling community owner's rental agreement. If
8 the lienholder fails to respond to the notice of abandoned
9 manufactured dwelling within 45 days of receipt, or after
10 making a response, fails after 10 days' written notice from
11 the manufactured dwelling community owner, to make timely
12 payments, the manufactured dwelling community owner may
13 proceed to sell the manufactured dwelling pursuant to Section
14 ~~35-12A-9~~ 35-12A-8. If the lienholder responds to the ~~45-day~~
15 30-day notice, and requests that the manufactured dwelling
16 community owner not sell or dispose of the manufactured
17 dwelling, the lienholder shall be obligated to pay the
18 manufactured dwelling community owner the storage or rental
19 charges fees which accrue beginning after the expiration of
20 the ~~45-day~~ 30-day notice period until the expiration of the
21 12-month period or the date the manufactured dwelling is
22 removed from the premises or sold pursuant to Section ~~35-12A-9~~
23 35-12A-8, whichever is earlier, plus the manufactured dwelling
24 community owner's reasonable attorneys' fees and costs
25 incurred in enforcing this obligation of the lienholder. The
26 provisions of this section may be changed by agreement signed
27 by the manufactured dwelling community owner and lienholder.

1 "§35-12A-14.

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

6 "(1) The provisions of this chapter regarding the
7 rights and responsibilities of a tenant to the abandoned
8 manufactured dwelling and personal property shall apply to any
9 personal representative named in a will or appointed by a
10 court to act for the deceased tenant or any person designated
11 in writing by the tenant to be contacted by the manufactured
12 dwelling community owner in the event of the tenant's death.

13 "(2) The notice required by Section 35-12A-3 shall
14 be personally delivered or sent by first class mail to any
15 personal representative named in a will or appointed by a
16 court to act for the deceased tenant.

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

21 "(4) If a personal representative, designated
22 person, or other person entitled to possession of the
23 property, such as an heir or devisee, responds by actual
24 notice to a manufactured dwelling community owner within the
25 45-day 30-day period provided by Section 35-12A-5, and so
26 requests, the manufactured dwelling community owner shall
27 enter into a written agreement with the representative or

person providing that the manufactured dwelling shall not be sold or disposed of by the manufactured dwelling community owner until conclusion of any probate proceedings, so long as the representative or person makes timely periodic payment of all storage charges and maintains the property and the rented space on which it is stored. During the agreement, the representative or person shall have the right to remove or sell the property, including a sale to a purchaser or a transfer to an heir or devisee where the purchaser, heir, or devisee wishes to leave the property on the rented space and become a tenant. The manufactured dwelling community owner also may condition approval for occupancy of any purchaser, heir, or devisee of the property upon payment of all storage charges and maintenance costs. If the representative or person violates the agreement, the manufactured dwelling community owner may terminate it upon 30 days' written notice stating facts sufficient to notify the representative or person of the reason for the termination. Unless the representative or person corrects the violation within the notice period, the agreement shall terminate as provided and the manufactured dwelling community owner may sell ~~or dispose of~~ the property as provided for in this chapter."

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

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

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2

3 Senate

4 Read for the first time and referred to the Senate
5 committee on Judiciary.....

14-JAN-14

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7 Read for the second time and placed on the calen-
8 dar 1 amendment.....

23-JAN-14

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10 Read for the third time and passed as amended 30-JAN-14

11 Yeas 22
12 Nays 0

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15 Patrick Harris
16 Secretary

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