

# Consumer Concerns for Older Americans

## Home on Wheels: Helping Mobile Home Owners Stay Put

Mobile homes are an important source of housing for older Americans. As the cost of housing has increased, mobile homes present a seemingly affordable alternative to elders in need of housing. Approximately 41% of mobile homes occupied as a primary residence are owned or rented by persons age 50 or older. Compared to owners of conventional single-family housing, a much higher proportion of mobile home owners over age 50 are low-income.

Mobile homes are popular with older Americans because they are usually more affordable than conventional homes. The cost of a mobile home may be up to a third less than a similar home built on site. The homes are built in a factory, and then transported to the site where they will be installed. Once delivered, the home is anchored to the site. Despite their name, the homes are not very mobile as dismantling them and moving them can be difficult and expensive. Mobile homes are also known as manufactured homes. The term manufactured home is also sometimes used to describe modular homes. The regulation of the modular home industry differs significantly from the regulation of mobile homes.

### Challenges Faced by Mobile Home Owners

Despite the popularity of mobile homes, owners face a wide range of problems. Consumers can run into trouble with the financing, the set-up, and the quality of the construction of mobile homes. Many have problems obtaining service under warranty. Mobile home owners who rent the land on which the home is placed confront additional challenges.

The most common problems mobile home owners face generally fall into one of four categories.

- 1. Misrepresentations in the sales and financing of mobile homes.** High pressure sales tactics by mobile home dealers and salespeople lead to inflated prices and hidden costs. The loans may be packed with expensive extras such as unnecessary insurance. The terms or conditions of the loan may differ at closing – including higher interest rates and additional fees and charges. Salespeople may falsify the loan application to reflect a non-existent down payment. After the loan papers are signed, some dealers encourage consumers to verify to the financier that the home has been placed on the site even if it has not been installed. The home ultimately delivered may be different than originally ordered.<sup>1</sup>
- 2. Defects in the manufacture, delivery or installation of the home.** Manufactured homes are built in accordance with standards outlined in the National Manufactured Housing Construction and Safety Standards Act.<sup>2</sup> Under the Act, a manufacturer must correct defects that present an unreasonable risk of injury or death to the home's occupants, or defects in the design or assembly of the home. Though the Act preempts state statutes, it does not provide a private right of action. However, the Act does enable states to establish enforcement agencies. Thirty-six states have State Administrative Agencies that enforce the federal standards and handle consumer complaints. The federal Department of Housing and Urban Development (HUD) is responsible for the remaining states.

Despite federal construction and safety standards, consumers have experienced a number of problems with the quality of mobile homes. Common problems include leaking or sagging roofs

and ceilings; improperly installed windows and doors; defects in the heating, cooling, electrical or plumbing systems; improperly installed appliances; and damaged flooring. Many of these problems are difficult and expensive to repair. Home owners typically look to the dealer or manufacturer to make such repairs.

Serious problems can also derive from the improper delivery and installation of the home on its site. Even if manufactured without defects, the home may be damaged when it is transported from the factory to the dealership or from the dealer to the consumer's site. Inadequate preparation of the site, often by poorly trained and inexperienced persons, may lead to further damage. Poor preparation of the site on which the home will sit or improper installation can affect the durability of the home. In 2005 and 2006 HUD proposed rules that would regulate installation of mobile homes.

1. **Problems obtaining service under warranty.** Given that many low-income people are mobile home owners, securing dealer or manufacturer repair of a defect in the home is very important. Mobile home manufacturers typically provide a one-year express written warranty, although a substantial number of warranties are for longer periods. Unfortunately, many consumers have a hard time getting warranty service. If repairs are made, they are sometimes inadequate and the problem recurs or home owners are told the problem cannot be fixed.
2. **Displacement of residents in mobile home parks.** Nearly half of mobile home owners pay rent for the land on which the home sits, usually in a mobile home park. Individuals who rent the land on which the mobile home is placed may face challenges in addition to those described above. Mobile home park residents often complain about poor maintenance, arbitrary rent increases, unfair park rules, sudden imposition of fees or decrease in services and harassment by the park owners or operators if they complain about conditions in the park. Park spaces are scarce. Residents who wish to move from an undesirable park, or are forced to move if the park is converted to another use, may be unable to rent a new site. Park owners usually hold and exercise considerable leverage over residents. When a park resident wants to sell the home, the purchaser will typically want to rent the land on which the home presently sits. Park owners often impose charges and restrictions on such transfers, and it is difficult for mobile home owners to sell the home for more than a fraction of the purchase price.

## **Legal Tools to Assist Mobile Home Owners**

Mobile homeowners have many legal tools to challenge the various practices outlined above. Defects in mobile homes or irregularities in the financing usually give rise to a variety of claims under the Uniform Commercial Code, Magnuson-Moss Warranty Act, state consumer protection statutes, and state and federal credit statutes. Below is a brief summary of some legal options advocates can use to assist mobile home owners.

### **Express Warranties**

Mobile home manufacturers usually provide a one year written warranty. The manufacturer warranty may exclude defects that arise from the improper transportation or installation of the home. However, some states have mobile home warranty statutes that require a manufacturer or dealer to include transportation and installation in the warranty in some circumstances. These statutes generally do not protect buyers of used mobile homes, unless the home is sold within the original warranty period.

Express warranties may also be created by a salesperson's oral statements or promises about the particular features of the home. In addition, every mobile home must be sold with a certificate of compliance with HUD standards. That certificate should create an express

warranty that the mobile home is manufactured to HUD standards. State mobile home warranty statutes may also incorporate the federal standards by reference and give the buyer the right to sue.

## **Implied Warranties**

Implied warranties arise for the purchase of new and used mobile homes under the Uniform Commercial Code (UCC). An implied warranty of merchantability arises when a dealer sells a mobile home, as he is clearly a merchant with respect to goods of that kind.<sup>3</sup> That warranty is effective even if the defects do not render the home uninhabitable. An implied warranty of fitness for a particular purpose arises if the seller has reason to know of the particular purpose for which the goods are required.<sup>4</sup> For example, the warranty may arise where a seller sells a home with sparse insulation even though he knows that the buyer intends to use the home as a residence in an extremely cold climate. The warranty applies regardless of whether the seller is a merchant and so can be asserted in sales of used mobile homes by the previous owner. Manufacturers and Dealers often attempt to disclaim implied warranties. The Magnuson Moss Warranty Act prohibits disclaimers in some circumstances, and some states impose additional restrictions.

## **Magnuson-Moss Warranty Act**

Under the Magnuson-Moss Warranty Act,<sup>5</sup> anyone who provides a written warranty for a product within the Act's scope is prohibited from disclaiming or modifying the implied warranties of merchantability and fitness for a particular purpose. Breach of the Act and breach of a written or implied warranty entitles the consumer to damages, equitable relief and attorney's fees.

## **Revocation of Acceptance**

Under the UCC, a buyer has a right to revoke acceptance of a mobile home if the home's non-conformity substantially impairs its value.<sup>6</sup> Even if a single defect is not significant enough to give the buyer the right to revoke acceptance, multiple defects may be sufficient. Revocation of acceptance must occur within a reasonable time after the buyer discovers the grounds for revocation. Since some latent defects may not be detected immediately, buyers may be able to revoke acceptance years after the home is purchased, even if they continue to reside in the home. Promises and attempts to repair the home can also extend the time for revocation.<sup>7</sup>

## **Federal and State Credit Statutes**

Remedies under federal and state credit statutes should also be considered. Most state credit statutes will cover the financing of mobile homes under their retail installment sales act or motor vehicle retail installment sales act. Special attention should be paid to the scope of coverage of these statutes because it is often difficult to determine which statutes cover mobile homes. In addition to regulating the financing of mobile homes, these statutes contain important prohibitions against the waiver of consumer rights in the contract and protections against repossession, which is often the seller's response to the consumer's attempt to assert a breach of warranty claim.

Under the federal Truth in Lending Act<sup>8</sup> (TILA), a borrower is to receive certain disclosures in any consumer credit transaction. TILA applies to the sale of mobile homes whether or not they are sold with land. If the sale of a mobile home and land is structured as two different transactions, there may be TILA claims for violations in each transaction. Violations of TILA

result in statutory damages, actual damages, and attorneys fees.

In addition, mobile home owners who have home equity loans, home improvement loans, or other non-purchase money loans secured by their mobile home may have a right to rescind the loan up to three business days after the transaction. This right to rescind can last up to three years if the home owner was not given a proper notice of the right to cancel the loan, or all of the required material disclosures. The Home Ownership and Equity Protection Act (HOEPA), an amendment to TILA, covers certain high rate home equity loans.<sup>9</sup> It requires additional disclosures and prohibits the inclusion of certain terms in the loan contract and various practices.

## **State Unfair and Deceptive Acts and Practices Laws**

State unfair and deceptive acts and practices (UDAP) laws usually apply to mobile home sales.<sup>10</sup> However, some UDAP statutes do not apply to real estate transactions, and would not apply to the sale of land on which a mobile home is to be placed or to the sale of the mobile home itself if the state law classifies it as realty. A UDAP statute offers the advantage of providing a remedy for oral or written misrepresentations about the mobile home, even if the misrepresentations do not create warranties under the UCC. The statutes typically offer treble damages and attorneys fees.

## **Repossession and Foreclosure**

Mobile home owners facing foreclosure of their home or land may benefit from state foreclosure laws if their mobile home is considered realty. If the mobile home is considered personal property under state law, then the creditor may simply follow repossession procedures, although state law or practical considerations may require the creditor to obtain a court order in a replevin or similar action. For more information on assisting home owners facing the repossession or foreclosure of mobile homes, see National Consumer Law Center, *Repossessions* (6th ed. 2005) and National Consumer Law Center, *Foreclosures* (1st ed. 2005) and other resources listed at the end of this *Consumer Concerns*.

## **Other Laws Addressing Mobile Home Defects**

Neither the Magnuson-Moss Warranty Act nor the UCC applies to the sale of realty. A mobile home that is sold after it has been permanently attached to land may not be covered by either law. In such a case, courts have relied on implied warranties under common law or state UDAP statutes, where they apply to the sale of real estate. Other claims such as fraud, negligence, and strict liability in tort may also be useful.

## **For More Information**

### **Publications by the National Consumer Law Center**

National Consumer Law Center, *Guide to Mobile Homes* (2002)  
National Consumer Law Center, *Consumer Warranty Law* (2d ed. 2001 & Supp.)  
National Consumer Law Center, *Repossessions* (6th ed. 2005)  
National Consumer Law Center, *Foreclosures* (1st ed. 2005)  
National Consumer Law Center, *Truth in Lending* (5th ed. 2003 & Supp.)

For more information, see [www.nclc.org](http://www.nclc.org) or call NCLC Publications, (617) 542-9595.

## Websites & Other Publications

AARP, National Survey of Mobile Home Owners, (July 21, 1999) available at: <http://research.aarp.org>.

Jewell, Kevin, *Raising the Floor, Raising the Roof: Raising our Expectations for Manufactured Housing*, Consumers Union Southwest Regional Office, Public Policy Series, Vol. 6, No.5 (2003).

Jewell, Kevin, *Appreciation in Manufactured Housing*, in Proceedings of the Developing Community Assets with Manufactured Housing Symposium, Consumers Union, February 20, 2002.

Mitchell, Kathy, *In Over Our Heads, Predatory Lending in Manufactured Housing*, Consumers Union Southwest Regional Office, Public Policy Series, Vol. 5, No.1 (2002).

Jewell, Kevin, *Paper Tiger, Missing Dragon: Poor Warranty Service and Worse Enforcement Leave Manufactured Home Owners in the Lurch*, Consumers Union Southwest Regional Office, Public Policy Series, Vol. 5, No.4 (2002).

This publication was supported, in part, by a grant #90-AP-2647 from the Administration on Aging, Department of Health and Human Services, Washington, D.C. 20201. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Points of views or opinions do not, therefore, necessarily represent official Administration on Aging policy.

June 2006

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1 See Jewell, Kevin, *Raising the Floor, Raising the Roof: Raising our Expectations for Manufactured Housing*, Consumers Union Southwest Regional Office, Public Policy Series, Vol. 6, No.5 (2003).

2 42 U.S.C. §§ 5401-5426

3 U.C.C. § 2-314.

4 U.C.C. § 2-315.

5 15 U.S.C. §§ 2301-2312.

6 U.C.C. § 2-608.

7 For more information, see National Consumer Law Center, *Consumer Warranty Law* (2d ed. 2001 and Supp.).

8 15 U.S.C. §§ 1601 *et seq.* For more information, see National Consumer Law Center, *Truth in Lending* (5th ed. 2003 and Supp.).

9 15 U.S.C. § 1639. See National Consumer Law Center, *Truth in Lending* (5th ed. 2003 and Supp.).

10 See *generally* National Consumer Law Center, *Unfair and Deceptive Acts and Practices* (6th ed. 2004 and Supp.).