



## Warehouse Liens and the Manufactured Housing Industry (Part 1)

BY JONATHAN C. BOND

### What is a warehouse lien? And who cares?

Thousands of them occur every year, and yet very few people have a grasp on what the value or purpose of a warehouse lien sale is. Every state has its own statutory scheme due to the mixed nature of "real and personal" property that is inherent in the manufactured housing industry. Most states' laws operate to provide a powerful remedy to the landlord in light of a default on the payment of rent or utilities, and often times the statutes provide some measure of superiority to the lien a manufactured housing landlord can obtain by virtue of a tenant being in default. There is also a great deal of misunderstanding as to why the procedural requirements for warehouse lien sales being so strictly enforced.

By way of example, in Texas, an unlawful detainer landlord is permitted to prohibit a tenant from entering the lot and may cause a lock-out of a tenant after obtaining a writ of possession. (Texas Property Code, Title 8, § 94.203(a).) This can ultimately lead to the landlord obtaining the right to re-rent the mobilehome. California law provides that the lien on a "mobilehome for the costs of dismantling and moving, if appropriate, as well as storage, that shall be superior to all other liens, except the lien provided for in Section 18116.1 of the Health and Safety Code, and may enforce the lien pursuant to Section 7210 of the Commercial Code either after the date of judgment in an unlawful detainer action or after the date the mobilehome is physically vacated by the resident, whichever occurs earlier." (California Civil Code § 798.56a(e).) Other states have statutes that are not as powerful, but still provide a great deal of leverage to a landlord. As a further example, Florida provides for storage charges that are subordinate to a mortgage holder on a mobilehome, but operate to make

that mortgage holder liable for any unpaid amount. (FL Statutes Title XL Title 723 § 084.) While not as powerful as Texas' or California's provisions, the Florida provisions still operate to grant a landlord with substantial leverage, and create an additional source of satisfaction of monies owed which would be unavailable in a similar setting (such as an apartment rental). The statutes can provide a potential upside should the mobilehome ultimately become titled to, and the property of, the landlord.

As a situational case study (and because many states model their laws similarly), California provides for two types of liens commonly seen in the manufactured housing industry - the warehouse lien and the warehouseman's lien. Many other states have similar schemes, if only different names and terminology.

The first type of lien - a warehouse lien - is one for rent, utilities, and other approved charges. A warehouse lien is enforced under Section 7210 of the California Commercial Code. The warehouse lien attaches in favor of a park when notice of termination of tenancy is served, but the notice is not adhered to (the tenant does not pay or move the mobilehome out of the park in the requisite time period). Under California law, a park may enforce its warehouse lien when the (former) tenant has an eviction judgment entered against them or vacates the premises - whichever occurs first. For many tenant advocates, this process comes across as harsh or even punitive. However, that understanding fails to take into account that, unlike an apartment or single family residence eviction setting, a manufactured housing community cannot simply re-rent the space because the former tenants property is still theirs because the former tenant's mobile home remains there, the space forces a consistent loss

on the community's balance sheet. The warehouse lien, therefore, serves the purpose of providing the community an adequate remedy to make itself whole.

The second type of line - a warehouseman's lien, is a lien attached to a mobilehome for the cost of 'storing' that mobile home at the site. A warehouseman's lien is enforced under California Commercial Code Section 7209. The warehouseman's lien attaches in favor of the park when all tenancy rights have expired (most commonly meaning the former tenant has passed away) and no one has a right to possession. In this situation, again like the warehouse lien context, the community is taking an ongoing loss on a space because it cannot rent the space and the park has no legal right to relocate the mobilehome. Accordingly, the park obtains a warehouseman's lien in its favor so that an adequate remedy exists to offset the lost collection of rent.

Stay tuned for part two of this article. We will address how a lien is enforced. For now, we know about when a lien is created and attaches to a mobile home.

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