March 10, 2021

Dear Chairman Lefor and Members of the Industry, Business & Labor Committee:

Please accept this as my testimony in strong opposition to Senate Bill 2159.

My name is Jodie McDougal. I am a partner at the Davis Brown Law Firm in Des Moines, Iowa. I am Chair of the firm's Landlord Practice Department, and my team and I represent 100+ landlords, including dozens of manufactured housing community owner-operators, ranging from numerous smaller manufactured housing communities with just 10-50 home sites to larger ones. I am also legal counsel for the Iowa Manufactured Housing Association. I have spoken at the Iowa State Capital over a dozen times as a landlord/real estate subject matter expert. Several of my manufactured housing community owner-operators operate on a national basis. I have multiple clients with communities in North Dakota and am generally familiar with North Dakota law as it pertains to manufactured housing companies. As part of my work, I review pending legislation in several states.

I have thoroughly reviewed Senate Bill 2159 and have significant concerns in numerous regards, including the unequal treatment of certain manufactured housing communities under the bill, the costly ramifications particularly to smaller manufactured housing community owner-operators, and the negative results that this bill will have on this source of affordable housing. My concerns are detailed below.

Furthermore, I was shocked and disappointed to learn how this bill came about, its true intent, the position of the supposed statewide industry association, and also the lack of awareness of the unintended consequences should the bill pass as written. In particular, while the bill may be labeled as a "tenants' rights" bill, what it does is mandate unnecessary costs onto certain manufactured housing community owners, who as a matter of business, will pass those costs onto residents of their communities. Finally, I can say that I have never seen a situation like this in my entire career where a supposed statewide industry association (1) excludes members and (2) proposes and supports legislation that pits one portion of its industry/association against the other, under the guise of "tenants' rights."

Below are my specific concerns and comments regarding various sections of Senate 2159. Thank you for your consideration of my comments. Please note that I have abbreviated the phrase manufactured housing communities/mobile home parks with "MHCs."

<u>Section 1(a) regarding the licensing requirements:</u>

- Section 23-10-03 of the North Dakota Century Code already requires all people who "establish, maintain, or enlarge" a Manufactured Home Community to obtain the annual license (see N.D. Cent. Code § 23-10-03 ("A person may not establish, maintain, or enlarge a mobile home park, trailer park, or campground in this state without first obtaining a license from the department.")), so what is the purpose of this section?
- If there is any ambiguity in the existing section, then we can simply add the word "own" or "purchase" to the existing section 23-10-03.
- **Thus, this section is not needed.**

<u>Section 1(b) mandating that all newly purchased communities must have a local office and meet other requirements.</u>

- Even though many MHCs will likely be able to comply with most or all of this section from a practical sense, smaller MHCs will not be able to do so without significant costs. In addition, I have various other questions and concerns.
- First, Chapter 23-10 of the North Dakota Code does not impose these local office/local property manager

requirements upon *existing* MHCs. **Thus, this new section would treat newly purchased MHCs in a different manner than existing MHCs**, and there is no rational justification for this unequal treatment under the law.

- Likewise, are landlords of apartment complexes required to meet these requirements? If not, what is the reason for MHCs being treated differently under the law than apartment landlords?
- Importantly, some mom-and-pop landlords who own very small MHCs (e.g., 10-50 lots) do not have an official "local office." They work out of their homes. **Thus, compliance with these new requirements would be the most burdensome for the smaller MHC owners.**
- **Finally, the definition of a "official local office," is vague.** For example, many times, there is one office location for multiple MHCs owned by same company in the city or geographic area, and this requirement would not permit this arrangement. In addition, some MHCs (smaller ones) have property managers who are residents of the community and thus, there is no official local office in that scenario as well. That is yet another scenario where the community owner would have to spend tens of thousands of dollars to construct a local office to comply with the law.

Section (b)(3) regarding local offices "employ[ing] people."

- A local office cannot "employ" people. Businesses employ people, not offices.
- Also, some community managers are independent contractors, not employees, so that is an additional problem with the current language of the law.
- Further, some companies with multiple MHCs in a city have one community manager covering all MHCs, so this new requirement would be unduly burdensome for those MHC owners.

To be clear, every tenant/resident of a MHC, apartment complex, or other leased premises should definitely know who the owner and property manager are of their leased premises and should be provided with their contact information; presumably, North Dakota law already requires that a new landlord disclose this basic information to their tenants. If it does not, then that type of requirement should be added to the North Dakota code for **all landlords**, but Section 1(b) does much more than simply require residents to be notified of this information and then only imposes that requirement on one portion of the MHC industry..

Section 1(c) regarding written notice prior to the transfer of ownership

- Of course, residents should be provided written notification of any new owner or property manager within a MHC or other leased premises, **but the timing of this requirement in the bill is extremely atypical, goes against common business practice, would result in a breach of the typical confidentiality provisions within a purchase agreement, and would have the net effect of driving down the marketability of North Dakota manufactured housing communities.**
- Importantly, many times there is due diligence going on within the last 30 days of closing, and sometimes deals do fall through in the last 30 days of the *estimated* closing date, which is one reason why this provision is not reasonable. A more appropriate clause would be: "promptly after change of ownership of the mobile home park" or "within thirty days of change of ownership of the mobile home park."
- Finally, to reiterate, a standard purchase agreement has a confidentiality clause throughout the due diligence period, meaning that this law would be forcing the prospective buyer to breach those duties.

Section 1(d) mandating that the new owner must provide a tenant with a copy of the rules and regulations of the mobile home park, pursuant to section 23-10-10, on the first day after acquiring ownership.

- There are substantive problems with this section, as noted below, but setting aside the substantive problems, requiring an action be taken the first day after acquisition is not reasonable.
- This section **completely ignores** the basics of what happens when a MHC is purchased. The new owner steps into the shoes of the former owner and has all the same rights and obligations of the former owner under the existing lease agreements. Among other things, the new owner cannot just implement new rules and regulations or implement a new lease on day one, day ten, or otherwise. Instead, the existing lease and existing rules and regulations continue to apply unless and until the new owner *lawfully* amends the lease and/or rules and regulations according to North Dakota law and provides whatever prior notice is required to amend these documents under North Dakota law. **Thus, this provision is not necessary**.

Section 1(e) regarding responding to to tenant inquiries or complaints regarding the park, pursuant to section within forty-eight hours of receiving the inquiry or complaint.

- If a change is needed to section 23-10-10.1 (entitled "Requirement of response procedures in mobile home parks), then the change should be made to that section, instead of adding a new provision requiring a response within 48 hours, *which only applies to newly purchased MHCs.* **There is no valid justification for the unequal treatment of newly purchased MHCs versus existing MHCs.**
- The referenced section currently read as follows: "The owner of a mobile home park that contains at least ten mobile homes shall establish a procedure for responding to emergencies and complaints by tenants with respect to the mobile home park. The procedure must include the ability to reach a person who has the authority to perform, or direct the performance of, duties imposed on the owner under this chapter. The procedure must be in writing and a copy must be provided to the tenants." Again, if a change is desired in this section, it should be made within that section.
- Also, section 47-16-13.1 of the North Dakota Code already addresses landlord obligations (in subpart (1)) and expressly provides (in subpart (2)) that a landlord has a "reasonable amount of time" to remedy any noncompliance.
- Finally, turning to the substance of this section, the 48-hour response deadline is completely **unreasonable, particularly as it does not take into account weekends and holidays.**

Section 2 (A person that purchases an existing mobile home park may not require a tenant who owns a mobile home located on the property to sell or transfer ownership of the home to the owner of the mobile home park)

- Here, the underlying intent of this section of the bill is good. However, this is another section that highlights that the bill does not seem to take into account the basics of what happens when a MHC is purchased. The new owner steps into the shoes of the former owner and has all the same rights and obligations of the former owner under the existing lease agreements. Among other things, the new owner cannot just force an existing resident to sell or transfer their home to the owner, as they have no contractual or other right to do so. Thus, this provision is not necessary.
- In addition, under the law, there may in fact be times where a court transfers ownership of an *abandoned* home to the community owner. Accordingly, if this section is passed, it should be revised to add the below noted last phrase at the end of the sentence "…. *except as otherwise permitted under the law*."

Section 3 regarding advance notice of new rules and mandating that tenants have six months to remedy a breach of the rules.

- Preliminary, it should be noted that the North Dakota Code already addresses how a landlord may lawfully amend lease terms. Per section 47-16-07, in a month-to-month lease, a park may change the terms of the lease and may do so by giving the tenant notice in writing at least 30 days before the change takes effect at

the end of the month. The notice, when served on the tenant, becomes a part of the lease. A tenant may reject the proposed changes by terminating the lease. In a term lease, a MHC may not change the terms of the lease unless the tenant agrees.

- Alternatively, if there is a lack of certainty regarding how a landlord may lawfully amend the rules, then a legislative amendment should be made in section 47-16-07 or elsewhere in section 47-16 such that the legislative provision would apply to **all** MHCs/landlords, as opposed to the above section. Instead, this section imposes a 6-month prior notice requirement for amending rules and regulations on just newly purchased MHCs, and **there is no valid justification for the unequal treatment of newly purchased MHCs versus existing MHCs**.

Sections 4-6: I have no concerns with any of these sections.

Section 7 (regarding entering a "dwelling unit"):

- The section is ambiguous and, at a minimum, needs revision. **The phrase "dwelling unit" needs to be defined**. Normally, the leased premises in the community is merely the home site, assuming the resident owns their mobile home, but it is unclear whether the phrase "dwelling unit" as used in this section means the home site or the home.
- Also, note that section 47-16-07-03 already sets forth the standard as to when a landlord may enter a leased premises like a home. Though, again, there may be a legitimate need to set forth the standard of access by a landlord *on the homesite,* and in that regard, this provision is not a reasonable restriction of the landlord's right to access the homesite. By way of example, a landlord has to access the home site (but not the home) every month to read submeters or to address utility issues.

Section 8 (rent control for newly purchased communities):

- This section only applies to newly purchased MHCs, and **there is no valid justification for the unequal treatment of newly purchased MHCs versus existing MHCs**. If rental restrictions are desired in this state, they should apply across the board for all landlords.

Section 9 (regarding utility charges):

- Generally, this section is fine, but it only applies to newly purchased MHCs, and not also existing MHCs (or other rentals like apartments). If tenant rights is the focus with this law, then this type of law should apply to all landlords through a revision within the existing sections.

Section 10 (one-sided attorney fee/penalty provision):

- Generally, this section is fine, but of course, it is generally preferably to not add any statutory section that contains a one-sided attorney fee provision where a tenant is entitled to attorney fees against the landlord if the landlord violates the law.

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