MANUFACTURED HOUSING
WHAT IT IS AND HOW IT IS TREATED UNDER NH LAW

By: Bernard H. Campbell, Esquire
State Counsel to NHTCA
BEAUMONT & CAMPBELL, PROF. ASS'N.
1 Stiles Road, Suite 107, Salem, NH 03079
Tel: 603-898-2635 Fax: 603-894-6678
Email: bcampbell@beaumontandcampbell.com

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NOTE: The following outline is prepared for the purposes of the N.H. Tax Collector's Association 2015 Spring Workshops:

Invariably, one of the most confusing areas of law with respect to real estate taxation and collection is the area of taxation of "manufactured housing" (a/k/a mobile homes). The purpose of this outline is to provide basic information to Tax Collectors to help them to discharge their statutory duties. Specific questions should always be addressed to local counsel, or to state counsel for specific response.

I. WHAT IS "MANUFACTURED HOUSING"

Most State laws "point to" (or cross reference) a definition that actually exists in the planning and zoning laws. Since at least 1983, "Manufactured Housing" has been defined as:

> *Any structure, transportable in one or more sections, which, in traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein.*
>
> RSA 674:31.

The definition in the State's law governing "Manufactured Housing Parks" (RSA Chapter 205-A) cross-references the Zoning statute in its definition of "manufactured housing" (See, RSA 205-A:1 (I)) but also includes any "prefabricated dwelling unit" which:

a) Is designed for long term and continuous residential occupancy;
b) Is designed to be moved on wheels, as a whole or in sections; and
c) On arrival on the site, is complete and ready for occupancy, except for incidental unpacking, assembly, connection with utilities, and placing on support or permanent structure.

Finally, the State's statute governing "Manufactured Housing Standards" (RSA Chapter 205-D) includes a definition which does not specifically reference RSA 674:31, but is a verbatim duplication of the same language.

In some cases, there may be older statutes which use the term "mobile home". Since 1983, New Hampshire law has been specific that the words "mobile home" shall mean manufactured housing as defined in RSA 674:31. See, RSA 21:46.

The key factors in all these definitions are:

- Minimum dimensions of 8' x 40'
- Transportable
- A permanent chassis for transportation
- Designed to be a dwelling unit

II WHAT IS NOT "MANUFACTURED HOUSING"

There are several related types of structures or vehicles which by statute are ***not*** to be considered "manufactured housing":

- Under RSA 673:31, "pre site built housing" is not considered manufactured housing. This type of housing is a structure primarily designed for residential occupancy which is fabricated or assembled "off-site" in a manufacturing facility, and then delivered set up and assembled on a building site. RSA 674:31-a. Such housing must meet Federal "minimum property standards" and local building codes. Id. [NOTE: New Hampshire has adopted a "State Building Coe" in RSA 165-A:1 (IV) which references the International Building Code of 2009 or IBC. Typically, manufactured homes do not have to meet IBC requirements.] They are not designed with a chassis for transportation. This type of housing is generally delivered to a homesite on a flatbed truck and is then lifted into place on a prepared foundation or slab by a crane or similar piece of equipment. "Pre site built housing" apparently is a category of a broader category of "modular building". The New Hampshire Legislature in 1990 enacted statutory standards for "Modular Buildings" which are defined in RSA 205-C: 1 (XI). This covers all buildings of closed construction which are assembled offsite for installation, or assembly and installation on the building site. The broader category exempts Manufactured Housing and Recreational vehicles, but could include such things as "modular classrooms".

- Campers or recreational vehicles are statutorily not considered "manufactured housing" for the purposes of the State law setting Manufactured Housing Installation Standards. See, RSA 205-D:1 (XI). State law contains a fairly specific description of Recreational Vehicles in RSA 216-I:1 (VIII):

  VIII. *"Recreational vehicle" means any of the following vehicles:*

  a) *Motorhome or van, which is a portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.*
  b) *Pickup camper, which is a structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation, and vacation.*
  c) *Recreational trailer, which is a vehicular, portable structure built on a single chassis, 400 square feet or less when measured at the largest exterior horizontal projections, calculated by taking the measurements of the exterior of the recreational trailer including all siding, corner trim, molding, storage space and area enclosed by windows but not the roof overhang. It has been designed primarily not for use as a permanent dwelling but as a temporary dwelling for recreational, camping, travel or seasonal use.*
  d) *Tent trailer, which is a canvas or synthetic fiber folding structure, mounted on wheels and designed for travel, recreational and vacation purposes.*

  In 2014, the Legislature adopted Chapter 288/Laws of 2014 which added specific language to RSA Chapter 72, which confirmed that "recreational vehicles" as defined above which have a valid registration and current number plate that are located at recreational campground(s) or camping park(s) are not taxable as real estate. RSA 72:7-d. There is some "gray area" as to whether "recreation vehicles" which do not meet the requirements of the law might be taxable in another fashion, but there is no question they would not be considered "manufactured housing".

- "Manufactured housing" is, by statute not "personal property on land of another" as discussed in RSA 73:16-a. As a result, by law manufactured housing can only be taxed to the owner of the manufactured housing unit and not the owner of the underlying land (unless they are one and the same). Id. If something can be characterized as a "building" under RSA 72:7 on the land of another, then it may be taxable to the landowner under the provisions of RSA 75:3 which permits taxation of a "building" on the land of another to be taxed together with land to the landowner. Whether something not a "recreational vehicle" and not "manufactured housing" can be taxed to the property owner may depend on whether it can be characterized as a "building". In In Re: Town of Pelham, 143 N.H. 536 (1999), the Supreme Court noted that "buildings" are taxable, and that certain "storage trailers" could be classified as "buildings" if they met certain

criteria, if the use was intended to be permanent, not temporary, fixed and not intended as movable, and used as a dwelling, storehouse or shelter. Id. at 539.

III WHERE MANUFACTURED HOUSING CAN EXIST

State law prohibits municipalities from excluding manufactured housing from their community by Zoning or Ordinance. RSA 674:32. In fact, reasonable opportunities for such housing must be permitted on any residentially zoned lot where stick-built housing is permitted. Id. Such housing can also be made available in manufactured housing parks or subdivisions created for the placement of manufactured housing. Id. It is the allowable choice of the municipality to determine whether it will fulfill its statutory obligation to accommodate manufactured housing on lots where "stick built" housing could go, or in parks, or a combination thereof. Pope vs. Town of Hinsdale Planning Board, 137 N.H. 233 (1993).

IV HOW MANUFACTURED HOUSING PARKS OPERATE

A "manufactured housing park" is defined in the State law which governs such parks as:

> *"Any parcel of land under single or common ownership or control which contains or is designed, laid out or adapted to accommodate 2 or more manufactured houses...(but not) premises used solely for storage or display of manufactured housing."*
>
> RSA 205-A:1 (II).

Typically, a park is owned by one party who holds title to the land, and the tenants are the parties who own the manufactured housing units who pay rent to place their manufactured housing unit in the park. RSA 205-A:1 (IV)

The operation of manufactured housing parks is regulated under the provisions of RSA Chapter 205-A. The Statute provides a whole series of "prohibited actions" (RSA 205-A: 2) which a park owner or operator may not engage in, such as forcing tenants to buy goods from a particular provider (RSA 205-A: 2(IV)) or charging an entry fee that exceeds the reasonable cost of services actually provided (RSA 205-A:2 (I)). The statute also requires "Rules" be established and copies provided at the time a Tenant moves into a manufactured home park. RSA 205-A:2 (VII) and (XI).

The statute also provides that a unit owner may go to Court against a park owner where a condition exists which may endanger or materially impair the health or safety of the unit owner or the general public. RSA 205-A:15. Remedies can include rent withholding or the possibility of placing the park in receivership RSA 205-A:17.

Additionally the statute provides that unit owners must receive certain notices in the event of a sale of a manufactured housing park, and a statutory requirement to negotiate in "good faith" with any group of tenants or tenants' association that may wish

to buy the park (RSA 205-A: 23), and significant penalties for failure to comply. RSA 205-A: 22.

Finally, the statue establishes a Board of Manufactured Housing, with power to hear and decide disputes relief to the challenged rules. See, RSA 205-A:25-27.

V PARK RENT AND "EVICTION"

Except when a manufactured housing unit is located on land owned by the unit owner, it is likely that the unit owner will be responsible to pay some type of "rent" to the landowner where the unit is located. In addition, there may well be "rules" promulgated by the manufactured housing park owner which may cover such things as pets, storage, lot maintenance standards and in some cases occupancy regulations (e.g. age restrictions for "housing for older persons").

Under RSA 205-A:4, a park owner may "terminate" the tenancy of a unit owner only for a limited series of reasons:

1) Failure to pay rent or properly assessed utility or services charges;
2) Failure to comply with local, state or federal laws or regulations applicable to manufactured home parks;
3) Damage to the rental property (e.g. destruction of utility service connections);
4) Conduct which disturbs the peace and quiet of other tenants;
5) Failure to abide by rules or other written agreements related to the occupancy;
6) The "change of use" (e.g. closure) of a manufactured housing park.

RSA 205-A:4 (I)-(VI).

The eviction process will be governed generally by the same process used to evict residents in other residential housing. RSA 205-A:9. There are some expanded notice requirements when it comes to the "Eviction Notice". See, RSA 205-A:3. For example, while 7 days' notice is generally adequate for eviction in non-payment cases, on manufactured housing units, service of 30 days' notice is required. RSA 205-A:3 (I). In the case of a change of use, a unit owner must receive 18 months advance notice. RSA 205-A:3 (III).

The actual Court process for an Eviction action is beyond the scope of this outline. If the landlord/manufactured housing park owner is successful in the Eviction action (either by default of the Defendant, or following a trial), the consequence is that the Plaintiff secures a "Judgment" from the Court that the Plaintiff should "recover possession of the demanded premises". RSA 540:14 (I). The Court Order results in the issuance of a Writ of Possession. A Writ of Possession authorizes the County Sheriff to physically remove the Defendant from the premises. Id.

In a typical residential eviction, if it is necessary to actually "serve" a Writ of Possession [NOTE: A high percentage of tenants do vacate once a Writ of Possession has been issued by the Court.], typically the Plaintiff arranges a time certain to meet the Sheriff at the premises. The Sheriff gives the occupants time to pack a few items, and then escorts them from the premises. Usually a locksmith is on hand to change the locks and to prevent re-entry by the former tenants (who can be charged with criminal trespass as well). A landlord is obligated to maintain a former tenant's personal property for 7 days, and allow that property to be recovered without charge. RSA 540-A:3 (VII).

In the case of a manufactured housing unit, the "physical eviction" typically takes the shape of a "tow away" where the unit is removed from the park and is placed in storage at the expense of the unit owner. RSA 205-A:4-a (VII). As is discussed in greater detail below, it is at this point that potential conflicts with the assessment and taxation process can occur.

By statute, a park owner is given a "lien" on a manufactured home unit for all unpaid rent, moving and storage charges, which has priority over any other liens except real estate taxes and the lien of certain eligible mortgage holders. RSA 205-A:4-a (VII). The park owner is permitted to "sell" the unit through a sale similar to a sale under the Uniform Commercial Code. Id. The statute specifically provides for the possible release of the tax lien if the sale proceeds are insufficient to satisfy the taxes due on said unit. Id. Just as in the case of sales under the UCC, if there are excess proceeds, they are paid to the former unit owner.

VI TRANSFER OF MANUFACTURED HOUSING UNITS AND LIENS THEREON

Prior to 1983, "mobile homes" were not treated as real estate for the purpose of transfer and sale. Units were transferred in the same general fashion as vehicles, through the execution and delivery of a "bill of sale". Lender liens and other attachments were typically done through the same process as UCC filings, with filings at the local Town Clerk or the New Hampshire Secretary of State.

In 1983 the Legislature added RSA 477:44(II) which specifies that "manufactured housing" should be deemed "real estate" for the purposes of the New Hampshire Conveyance law. This means that the units

> "...*shall be deemed real estate for purposes of transfer, whether voluntary or involuntary, and shall be conveyed, mortgaged or leased and shall be subject to attachment, other liens, foreclosure and execution in the same manner, and with the same formality as real estate.*"
>
> RSA 477:44 (I).

The immediate impact of this change (and some suggest the primary motivation) was to make conveyance of such units subject to the New Hampshire Real Estate

Transfer Tax (RSA 78-), since such units now must be conveyed by deeds recorded at the County Registry of Deeds.

There is a qualifier to this statute, and it is that a manufactured housing unit is "real estate" when it is "placed on a site and tied into required utilities." RSA 477:44 (II). This means that transfers between dealers of "inventory" or "salvage only" transactions may not be subject to the statute, but the initial dealer sale to the consumer does require a deed (RSA 477:44 (III)), but not transfer taxes. RSA 78-B:4 (IV).

Like other types of deeds, the statutes contain a "standard form" deed. See, Exhibit A. Because the legislature recognized the inherently "mobile" nature of this type of "real estate", the statute has provisions for duplicate recording when a unit is "relocated" from one place to another, and a separate recording when a unit is being relocated outside New Hampshire. RSA 477:44 (II) (c).

The one obvious difference between a "typical" conveyance deed of a traditional house and lot is that the deed requires the signature of the landowner where the unit is situated, reflecting his "consent" to the transaction. Such consent may not be unreasonably withheld. As of 1994, landowners must execute the deed within 15 days of approval for the new tenant, and may not charge more than $25.00 for the signature. RSA 477:44 (V). The requirement of park owner consent is important in the process because the park owner is entitled to determine the "suitability" of tenants, which can include their background and financial capability. In the case of age restricted housing, the landowner's consent is a key piece of assuring that the new purchasers comply with park occupancy requirements.

Because manufactured housing units are deemed real estate, in most cases, lenders obtain a mortgage on such units by having the unit owner execute a statutory form of mortgage (See, RSA 477:29) which is then recorded. However, the legislature has allowed lenders the option of creating a "security interest" under the provisions of Article 9 of the Uniform Commercial Code. See, RSA 477:44(IV). This is important in two (2) respects:

- The form of the document can be different and the place of recording could be at the Secretary of State.
- The "sale process" in the event of default may not need to follow the statutory foreclosure process.

The Tax Collection Statute (RSA 80:18-a) puts Collectors on notice that whenever the collection statutes reference "mortgage", this includes a "security interest" allowed by law.

Because manufactured housing is treated as real estate, the statutory "homestead right" applicable to traditional "homesteads" does apply. RSA 480:1. The homestead right does not apply to the underlying land on which the unit is located unless the land is also owned by the owner of the unit. Id. The "Homestead Right" is a

$100,000.00 equity exemption from attachment (RSA 480:1), whose purpose is to secure debtors and their families the shelter of a homestead roof. Walbridge vs. Estate of Beaudoin, 163 N.H. 804 (2012). [NOTE: Collection of taxes is an exemption from the homestead law. RSA 480:4 (I).]

VII ASSESSMENT AND TAXATION OF MANUFACTURED HOUSING

Under New Hampshire law, manufactured housing is taxable as real estate in the Town where it is located on April 1st, provided that it remains in place at least through June 15th, as long as the unit is not part of a dealer inventory, or is being held for storage by an agent or dealer. RSA 72:7-a (I). In addition there is a unique "pro-ration" provision for manufactured housing which is brought in after April 1st, and before the following January 1st, provided it remains at least 10 weeks and is not taxed elsewhere. RSA 72:7-a (I-a). The tax assessed is to be a portion of the tax year remaining when the unit is located in the community. Id.

As noted above, New Hampshire law explicitly provides that manufactured housing can only be assessed against unit owner and not the owner of the land where the unit is situated. RSA 73:16-a. This language was a response to an early Court case which had held that "mobile homes" could be taxed to the landowner. See, Bigwood vs. Town of Merrimack, 113 N.H. 538 (1973). Note that this was also before "manufactured homes" were classified as "real estate".

Although it would appear that manufactured housing would be treated as real estate for the purpose of the general tax lien under RSA 80:19 ("the real estate every person and corporation shall be holden for all taxes assessed against the owner thereof…), the legislature has provided separate language in RSA 72:7-a (II) that makes clear that manufactured housing units are subject to a tax lien which may be enforced and collected under the provisions of RSA Chapter 80. Additionally, this lien would follow a unit which is subsequently relocated. RSA 477:44(II) provides:

> *"An attachment, lien or other encumbrance on manufactured housing, when properly created and recorded as required by law, shall continue to be enforceable until relocated or discharged notwithstanding the relocation of the manufactured housing within or outside of this state."*

The process of billing, collecting and if necessary placing tax liens against manufactured housing units is essentially the same as for a conventional single family home. The obvious difference is that the "real estate" in which the community secures an interest does not ordinarily include the land on which it sits. If the community should "take" the unit through the tax deeding process, the community then becomes liable for the same lot rent as the former owner.

VIII NOTICE OF UNPAID TAXES

While a manufactured park owner cannot be "assessed" the taxes which are applicable to the unit, that does not mean that a park owner is unconcerned about a unit owner's failure to pay taxes. Such a delinquency can be a sign that the Tenant will not be able to pay other obligations as they become due (i.e. lot rent). In addition, the lien that the park owner acquires if it moves a unit out of a park due to unpaid lot rent is subject/subordinate to the lien for unpaid taxes. RSA 205-A:4(VII). Therefore, unpaid taxes can threaten the park owner's opportunity to recover in the event of a tenant default. Unlike a mortgage holder, the failure to pay taxes does not appear to be an "automatic" default by statute. It may be possible (legally unclear) to impose a "Park Rule" which requires a tenant to be current on taxes, and if so, the breach of the rule could be the basis for an eviction action. RSA 205-A:4(V).

The pertinent question asked by Tax Collectors is how and under what circumstances can the Tax Collector provide tax information about a unit owner to a park owner. There are actually two (2) competing principles at play:

Under both Federal and State laws governing "Debt Collection Practices" it is typically wrongful conduct to tell a third party about the existence of a debt. Under New Hampshire law, it is wrongful to:

> *"...communicate(s) or threaten(s) to communicate, except by proper Judicial process, the fact of such debt to a person other than the person who might reasonably expected to be liable therefore; ..."*
>
> RSA 358-C:3(IV)(a).

Now it should be clearly noted that it is very unclear whether a Tax Collector is, in fact, a "Debt Collector" as used in State and Federal law. However as a "risk management" strategy, a collector should not send an unsolicited notice to a park owner regarding the status of unpaid taxes (i.e. never send a note that states "I thought you'd like to know that Sally Smith failed to pay...).

Besides liability under debt collection practices statute, there is some old case law which may establish liability for the "malicious" publication of unpaid taxes. In Hutchins vs. Page, 75 N.H. 215 (1909), the Supreme Court held a tax collector could be liable for a "libel" claim for running "extra" newspaper advertisements of a tax sale not required by law, if the motive was malicious and not in good faith. Id. at 216.

On the other hand, you are not collecting money for the phone company or a credit card. As Tax Collectors, you have a statutory duty to:

> *"...keep in suitable books a fair and correct account in detail of the taxes due, collected and abated, and of all property sold for non-payment of taxes, which books shall be public record."*

RSA 41:35 (I).

As public records, the tax records are available for inspection and copying by any person under the provisions of RSA 91-A:4(I). Collectors are obligated to make available records for inspection and copying upon request when immediately available or within five (5) business days. RSA 91-A:4 (IV). The right to inspect does not depend on a need or demonstrated specific interest in any particular record. Mans vs. Lebanon School Board, 112 N.H. 160 (1972).

In balancing these two (2) competing principles, the following guidance is suggested:

- You should not send unsolicited/unrequested information about any taxpayer's tax default.
- If a park owner requests a copy of the tax record of a unit owner, you should treat that like any other request for public information. You should generally require such requests to be in writing, and you should consider retaining such written requests in a file/folder for a minimum of three (3) years (the general statute of limitations for Court actions).

While not always possible, the most prudent method would be to ask the park owner to obtain the written consent of the unit owner to permit the park owner to obtain the information. See, Exhibit B.

IX RELOCATION STATUTE

There are several unique taxation issues when dealing with manufactured housing.

Under RSA 80:2-a, no building or structure taxed as real estate may be relocated unless the owner of the structure delivers to the person moving the structure:

(i) A receipted tax bill for the taxes assessed as of April 1st of the then-current year;
(ii) A certificate signed by the tax collector (or Selectmen) that the taxes have been paid in full or;
(iii) A statement signed by the Board of Selectmen or Assessor that the structure may be moved without payment of the taxes.

Id.

It is incumbent on the mover to have this document in their possession throughout the move, failing which they are guilty of a misdemeanor. Id.

This statute will obviously preclude legitimate movers and towing companies from moving a unit with unpaid taxes, but we are aware of situations where owners move units themselves without complying. It is important to remember that the property

tax lien does remain whenever the unit is transported, and the community could institute an action to foreclose and sell the unit regardless of its new location.

One issue not resolved by this language is the question of the "involuntary relocation" i.e. Eviction of a unit from a park for non-payment. If a park owner has secured a "Writ of Possession" allowing him to remove a unit, I do not believe the Town can lawfully prevent its removal to storage, since that could create liability on the Town either to pay park rent for the park site or monetary damages. It would be advisable to have a policy which allows removal without payment in case where the "relocation" is a result of a Court Ordered Eviction by the park owner.

X DEED AND MORTGAGE SEARCHES

Under the language in RSA Chapter 80, the word "mortgage" includes a security interest in manufactured housing created and perfected under the Uniform Commercial Code. RSA 80:18-a. What this means is that when searching for "lienholders" on manufactured housing, you may have to expand your search to include documents other than mortgages, or to search the Secretary of State databases for any lienholders.

EXHIBIT B

(Date)

TO: Tax Collector
Town of _____
_____

Re: Authorization to Forward Tax Information

Dear Sir/Madam:

You may consider this letter as my consent to allow you to forward to the following Manufactured Park Owner, information on the status of my taxes on the manufactured housing unit owned by me and located at:

(address)
(address)

The park owner's name and address are:

(Name)
(Mailing address

Any costs/fees associated with any requests are the responsibility of the Park Owner.

Yours truly,

(Taxpayer Signature)

EXHIBIT A

Form for Manufactured Housing Warranty Deed

_____, of _____, _____ County, State of _____, for consideration paid, grant to _____, (complete mailing address) _____, of _____ Street, Town (City) of _____, _____ County, State of _____, with warranty covenants, the _____ (Description of manufactured housing being conveyed: name of manufacturer, model and serial number and incumbrances, exceptions, reservations, if any) which manufactured housing is situated, or is to be situated, at _____ (state name of park, if any, and street address), Town (City) of _____, _____ County, State of New Hampshire.

The tract or parcel of land upon which the manufactured housing is situated, or is to be situated, is owned by _____ by deed dated _____ and recorded at Book ___, Page in the _____ County Registry of Deeds. _____ (wife) (husband) of said grantor, release to said grantee all rights and other interests therein.

Signed this _____ day of _____, ___.

(Here add acknowledgment)

_____, owner of the tract or parcel of land upon which the aforesaid manufactured housing is situated, or is to be situated, hereby consents to the conveyance of the manufactured housing.

Signed this _____ day of _____, ___.

(Here add acknowledgment)

[ ] Check box if the manufactured housing has been relocated from one site to another within New Hampshire. The manufactured housing was previously located at _____ (state name of park, if any, and street address), Town (City) of _____, _____ County, State of New Hampshire and title, if any, to the same was recorded at Book ___, Page ___, in the _____ County Registry of Deeds. If the relocation is to a county of the State of New Hampshire other than the county in which the deed to the grantor was recorded, a duplicate original of the deed must be recorded in the registry of deeds of that county at the same time this deed is recorded.