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# Re-Codification ... A Key Interpretation Missed By Nearly All

With MHARR continuing its sharp focus on HUD Code program and financial issues — the two key factors underlying the industry's sustained decline — a major problem that had either been missed or underestimated by the vast majority of observers for some five years, is gradually becoming better understood both outside and within the industry. This issue,

which undermines the value and status of manufactured housing and is poised to cause even greater harm in the future, involves a key legal interpretation by the industry's federal regulator.

By way of background, shortly after Congress passed the original Manufactured Housing Construction and Safety Standards Act in 1974, the question was raised whether HUD would regulate the installation of manufactured homes. In a written opinion, HUD concluded that because the law lacked specific authorization for such regulation, installation was not covered and it would not be part of the standards that HUD would enforce. It reached this conclusion despite the fact that proper installation is critical not only to the proper performance of manufactured homes, but to their value as well, to both consumers and the people who provide the financing for them. Similarly, it is universally recognized that properly built, properly performing and properly installed homes are the key to the acceptance of manufactured homes as "houses" by the public, by financial institutions and by all levels of government.

Faced with this interpretation of the 1974 law, the industry went back to Congress and worked for nearly 12 years with HUD and representatives of all other stakeholders in the HUD program, to develop and pass legislation that would, among other things, cure this important gap in the law which effectively controls the production, delivery, placement and consumer financing of manufactured homes. The end result was the Manufactured Housing Improvement Act of 2000, which finally directed HUD to regulate manufactured housing installation subject to an opt-out provision for state regulation under standards that meet or exceed federal baseline standards. Thus, it was thought, the gap would be closed and HUD Code homes could finally progress to the status of legitimate "housing."

When the 2000 Act was drafted, all participants involved in the process viewed it as requiring HUD to develop installation standards that would become part of the existing federal standards. The reason was simple — the federal program was (and is) a "construction" regulation program, and "installation" involves the final construction phase of a completed home, which was built in the factory. Further, that construction is vital both to the value of the home and its performance and safety — topics that are addressed by the existing standards. It never occurred to anyone involved in the process that installation would not be part of the construction and safety standards — the "HUD Code."

Unfortunately, HUD, by process of interpretation, has gone in a different direction, and the false distinction that it has drawn between "construction" on the one hand and "installation" (apparently not involving "construction") on the other, (including HUD's re-codification of the installation standards and installation enforcement regulation), is having a serious impact on the industry that will only get worse with time.

While much of the industry spends its energy and resources trying to understand and remedy the "image" of HUD Code housing, the reality is

that there is market demand for affordable HUD Code housing, just not the private financing capital to serve that demand. And a key reason underlying this unavailability of financing capital (and with it the industry's sustained decline and its inability, thus far, to recover) — as those who truly understand both the industry and the federal program realize — is this simple and inaccurate distinction. This distinction moreover, provides the groundwork for a myriad of other difficulties that face the industry and its homes.

By legally separating the construction of the home in a factory and the placement of that home where it can be used by a consumer, and by controlling each part separately (i.e., HUD control of production versus state and local control of installation — see below) HUD's interpretation of the 2000 Act prevents HUD Code homes from ever being viewed as "houses" — with the value of houses — by the finance community, by decision-makers at all levels of government and by much of the public. By treating the "box" that emerges from the factory as a completed structure, with a separate set of rules for how that structure is to be installed at a given location — rather than having both as part of an integrated "whole" — the HUD interpretation relegates HUD Code homes to the status of transient "trailers" with predictable results. And the full impact of this interpretation is not even being felt yet.

The full impact of this interpretation will begin to be felt when thousands of localities in default states (i.e., states that have chosen not to have a state-law installation program that complies with the 2000 Act and thus fall under the jurisdiction of HUD) realize that the federal installation standards — because they are not "construction" standards as interpreted by HUD — are not preemptive. This will open the door to the neutralization, in large segments of the country, of all three elements of the federal law that make HUD Code housing both affordable and marketable — a performance-based code, uniform standards and uniform enforcement. And once localities in default states begin to take advantage of this freedom, it will not be long before the same freedom is demanded — and exercised — by localities in compliant states (i.e., states with HUD-approved state law installation programs). This process will emerge slowly, but it will emerge, because there will be nothing to stop it unless the law (or HUD's interpretation of the existing law) is changed.

Just as importantly, this one key interpretation provides the basis and framework for other interpretations of the 2000 Act that have bedeviled the industry and have undermined that law's full and proper implementation. This, in turn, has blunted the intended positive impact of the 2000 Act (i.e., changing the treatment of HUD Code housing from "trailers" to houses) nearly eight years after its enactment. So far, though, only those with an extensive background in both the industry and its federal regulation have been able to fully appreciate the far reaching negative consequences for the industry that all of this is having and will ultimately have in the future, unless it is properly corrected.

In MHARR's view, the federal law must be amended to correct this key interpretation as well as all of the 13 implementation issues concerning the 2000 Act that MHARR has identified and published.



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