



NEW HAMPSHIRE AGENCY

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TITLE TALK with Katie Button

NEW HAMPSHIRE MANUFACTURED HOUSING PARK LIEN DEEDS

Manufactured housing park owners or operators (the "Park") have a statutory "lien" on manufactured housing units for unpaid rent, moving, and storage fees which may take priority over lien holders/mortgagees if the Park provides the required notices under the statute. After establishing priority, the Park may sell the unit free of the junior liens/mortgages pursuant to NH RSA 205-A and as permitted by NH RSA 382-A:9. Given the rarity of such sales, the following are a few points to consider when reviewing these transactions.

Writ of Possession.

The first step for the Park is to terminate the tenancy of the unit owner (the "Tenant") for one or more of the defaults enumerated in the statute. See NH RSA 205-A:4(l)-(vi). The eviction process, while similar to the eviction of tenants from residential real estate, may have different notice requirements. See NH RSA 205-A:9 and 205-A:3. The resulting deed, pursuant to NH RSA 205-A, must recite the Writ/Eviction was obtained with a reference to the docket number.

Establishing Priority in the Park Owner or Operator.

RSA 205-A:4-a (VII) establishes a lien in favor of the Park for unpaid rent and other charges which takes priority over all prior liens except for real estate taxes and liens of "eligible lienholders". The statute defines eligible lienholders and provides a structure for shifting the priority of the eligible lienholders to a junior position after notice is provided. The process to establish a lien as an eligible lienholder is an off-record event so for title purposes we assume every lien holder is an eligible lienholder with priority over the Park lien. The process to shift an eligible lienholder to a junior position is also an off-record event so we require recitations in the deed, or a separate affidavit, to document the priority shift process was completed properly.

The priority shift happens after the Park provides notice (registered or certified US mail) of the default to the lienholder, with a copy to the Tenant, and the lien holder fails to cure or remove the unit from the park within 60 days of receipt.

Once the liens are shifted to junior liens, the Park may sell the unit as permitted by RSA 382-A:9, subject to homestead rights of the Tenant, unless previously waived, or recitations to establish homestead has been abandoned.

Homestead.

Homestead is deemed waived if the Tenant has executed a written waiver or if the rent and other charges are more than 60 days in arrears and the Tenant has abandoned the premises evidenced by their absence and termination of all utilities serving the unit. The deed needs to contain recitations evidencing the waiver or abandonment of homestead. See NH RSA VII 205-A:4-a (VII).

Contents of Affidavit of Sale by Lienholder.

The following must be recited within the deed or in a separate recorded affidavit.

1. *A Writ of Possession has been issued by the court of appropriate jurisdiction with a citation to the related docket number.*
2. *The sale was made pursuant to provisions of RSA 205-A including a statement the Tenant was at least 30 days delinquent, the required notice of delinquency was provided to the Tenant and all lienholders (listing each), at least 60 days had passed since notice was received, and the default hasn't been cured or the unit removed from the Park.*
3. *The sale was made in accordance with the provisions of RSA 382-A:9.*
4. *A recitation to address homestead waiver, which is usually the 60 days in arrears combined with tenant absence and termination of utilities to the unit.*

Addressing Municipal Taxes.

What happens to the property taxes after a Park lien sale? While the taxes are still a super priority, according to the statute the Selectmen or assessors may issue a statement that the unit can be relocated without satisfying the unpaid taxes if the sale proceeds are not sufficient to pay them. There are numerous issues with manufactured housing units and taxes that are still a bit muddy and will likely take some time and legislation to work out. Prior to moving a unit, the taxes are supposed to be paid current or waived by the municipality. If you cannot document the taxes are paid current, an exception for unpaid taxes must be included in any title policy insuring the unit.

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