

## MEMORANDUM

TO: Legislation File

FROM: Ben Bellus (Iowa Attorney General's Office) and Alex Konya (Iowa Legal Aid)

DATE: November 5, 2019

RE: Suggestions for amendments to Iowa Code Chapter 562B

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1. Lease Termination: Amend Iowa Code § 562B.10 to add a “cause” requirement for termination of mobile home park lease. (Landlord may only terminate tenancy if there is a: a) material noncompliance with the rental agreement, b) material violation of the park rules or regulations, c) other violation of Chapter 562B for which termination is a remedy, d) legitimate and material business reason the impact of which is not specific to only one tenant, or e) change in the use of the mobile home park land, but only if the tenant’s initial lease warned that a possible change in the use of the land could be grounds for termination or nonrenewal.)
2. Retaliation: Amend Iowa Code § 562B.32:
  - a. Change presumption of retaliation from six months back to one year like a residential tenant has under Iowa Code § 562A.36. (Or make it even longer since this is a mobile home.)
  - b. Add new Iowa Code § 562B.32(1)(d) to protect tenant from violation of civil rights act or fair housing. *Newell v. Rolling Hills Apartments*, 134 F.Supp.2d 1026, 1037 (N.D. Iowa 2001).
3. Consumer Protection: Amend Iowa Code § 562B.4 to make a violation of Iowa Code Chapter 562B a per se violation of § 714.16 (the Consumer Fraud Act). (Consider also amending Iowa Code § 562A.4 for residential tenancies.)
4. Rent Increase:
  - a. Limit rent increase to only once each year;
  - b. Cap percentage increase in annual rent (Maybe limit to the greater of either the actual increase in operating costs to the landlord or consumer price index?); and
  - c. Increase notice period for rent increase to 180 days.
5. Tenant Group Right of First Refusal: Require landlord to give the tenant group the option for purchasing the mobile park before selling it to another landlord.
6. Manufactured Housing Fund Program: Amend Iowa Code § 16.45 to:
  - a. Provide funds for the tenants to purchase the park from the landlord, and
  - b. Strike the last sentence of Iowa Code § 16.45(1) so that the funds can be used for mobile homes placed on the separate land of the mobile home owner even if not in a mobile home park. (Strike: “The manufactured housing program fund is designed exclusively for manufactured homes sited on leased land.”)
7. Landlord’s Noncompliance as Defense in Action for Possession or Rent: Amend Chapter 562B to give mobile home park tenants the same right of set-off with rent that resident tenants have in Iowa Code § 562A.24. (If landlord files F.E.D. for nonpayment of rent, the tenant may counterclaim for any amount due to the tenant under the lease or Chapter 562B. The court may direct tenant to pay rent money to court to be held until trial. After ruling on the merits, the court directs the money to the prevailing party with any balance to go to the other party. The case is

dismissed if no money is owed to the landlord.)

8. Master Metering: Amend Chapter 562B so that landlord may not charge a tenant more than the actual cost of any utility service being provide through the landlord. Provide that failure to pay any fee for utilities in excess of actual cost cannot be grounds for eviction. Amend chapter 714H.3 to include violations of this section as a per se UDAP violation.
9. Unlawful Ouster: Amend Iowa Code § 562B.24 so that mobile home tenant has the same remedies as a residential tenant under Iowa code § 562A.26 if the landlord unlawfully removes tenant from park by barring access, illegally shutting off utilities, removing without court process, etc. (Add back attorney fees as well as automatic refund of prepaid rent and deposit if tenant prevails.)
10. Wrongful Failure to Supply Water or Other Essential Services: Give mobile home tenant the same remedies when the landlord fails to deliver essential services, such as water or electricity, as the residential tenant has under Iowa Code § 562A.23. (Example: Tenant gives notice to landlord and then obtains the services from other source and deducts the cost from rent or reduces rent payment by amount of diminished value for the lot.)
11. Repair and Deduct: Give mobile home tenant the same ability to fix an issue when the landlord fails to maintain the property as the residential tenant has under Iowa Code § 562A.27(4). Consider allowing a group of mobile home park tenants to join together so that they can address larger issues in the park, such as roads, water delivery, etc. (If landlord fails to properly maintain the property the tenant may deduct the cost of making the repairs from rent if the tenant a) gives the landlord a written notice of plan to repair and deduct at least seven days before rent is due, b) the reasonable cost of the repair is no more than one month's rent, and c) the tenant acts in good faith by giving the notice before receiving any notice for nonpayment of rent from landlord.)
12. Rent and Obligation to Maintain the Property: Amend Iowa Code § 562B.12 so that rent cannot be claimed by a landlord who is not in compliance with Iowa Code § 562B.16 (Landlord's duty to maintain.), rather than just require the landlord to agree in the lease to comply with § 562B.16.
13. Mobile Home Purchased from Tenant: Amend Iowa Code § 562B.19(3) so that landlord must provide legitimate business reason for rejecting potential buyer of tenant's mobile home. (Under Iowa Code § 562B.19(3)(a), the landlord is already supposed to accept any potential tenant that is buying a home from an existing tenant and can conform to the park's rules and regulations. This proposed amendment only makes the landlord enunciate the basis for any applicant's rejection and would also provide transparency when an evicted tenant is trying to find a buyer under Iowa Code §648.22A(4).)
14. Mobile Home Mobility: Amend Iowa Code § 562B.11 so that the landlord cannot require the tenant to physically alter the mobile home in a manner that will decrease the home's mobility. (Example: The landlord cannot make tenants remove axels or cut off towing hitch tongue.)
15. Real Party in Interest: Amend Iowa Code § 631.14(2) so that a landlord must bring any action against the tenant in the landlord's real name. (This section was amended several years ago so that landlord may bring or defend an action in the landlord's name, the name of the property management company, or in the name of the physical property. This means that the landlord can lose an action and just file the same claim against the tenant under one of the other

names/entities. It also means that a tenant who counterclaims against the named plaintiff may win and yet not have a collectable judgment.)

16. Routine termination of lease: Amend Iowa Code § 562B.10(5) so that a mobile home park tenant has the same right as a residential tenant under Iowa Code § 562A.34 to receive a routine lease termination (i.e. not a termination for lease violation) from the landlord that coincides with the rental period. (A residential landlord must give a tenant notice of termination on or before the first day of the periodic rental period, such as on the 1<sup>st</sup> day of the month, so that the tenant is in sync with rental periods. Currently, a mobile home park landlord can give a termination notice at any point in the month and the mobile home park tenant must find a landlord who will let her move in the middle of a month.)
17. Execution time frame after an F.E.D.: (eviction) ruling: Amend Iowa Code § 648.22 so that the judge in an F.E.D. action has the discretion to give the landlord immediate possession of the park space or give the tenant up to ten days to move the mobile home. (The law presently only gives the judge the discretion to give the tenant up to three days to move the mobile home. The law originally gave the judge the discretion to review the situation before her and give the tenant up to ten days to move, but the mobile home park industry got it reduced to just three days. This code section applies to both residential tenancies and mobile home park tenancies, so we could allow it to remain three days for residential tenancies and just increase the discretion for mobile home evictions to ten days.)
18. Changes in Title after eviction:
  - a. In actions under Chapter 555B:
    - i. Change term “mobile home” to “manufactured or modular home,” or clearly make the chapter inapplicable to a home that is no more.
    - ii. Provide that hearings on abandoned manufactured homes be set no earlier than **30 days** from **service** on the owner and any lienholders. 555B.3.
    - iii. If personal service cannot be had on the owner, the court **shall** set a new hearing date. 555B.4(1).
    - iv. In an action for abandonment, the manufactured home owner tenant shall be allowed to bring any counterclaims, notwithstanding any joinder with an action for possession under Chapter 648.
    - v. Notice of post-judgment sale shall be sent by both certified mail and regular mail not more than 20 days before the sale. Failure to send proper notice or conduct a commercially reasonable sale will be a complete bar to a deficiency.
    - vi. If the real property owner chooses to retain the home in lieu of a sale or disposal, the real property owner will so elect in the petition in the action for abandonment. A failure to so elect is a waiver of the right to retain in lieu of sale or disposal, unless the manufactured home owner agrees in writing.
    - vii. Notwithstanding the election, the real property owner may only retain the home in

lieu of a sale or disposal upon a finding by the court that the value of the home is eighty percent or more of the judgment that the real property owner is entitled to.

- b. If a real property owner elects to follow the procedures under Iowa Code 648.22A, the proceeds of any sale of the home can only be applied to debts due and owing to the landlord that have been reduced to judgment.

19. Rental agreement terms:

- a. Bar use of confessions of judgment, just like 562A does.
- b. Prohibit the use of fines, penalties, or fees imposed solely to punish.
- c. Bans, extra deposits, and other restrictive policies must be based on reasonable wear and tear or community safety standards (e.g. requiring pet deposit or weight limit for indoor cat not reasonable).
- d. Bar requirements to carry insurance indemnifying landlords.
- e. Provide that inclusion of illegal terms in a rental agreement entitles tenant to the same punitive damages and attorney fee awards as in 562A.

20. Deposits. Change the 562B definition of “rental deposit” to mirror the broader definition in 562A, and do not exclude deposits that are “exclusively in advance payment of rent.” 562B tenants should be entitled to interest on deposits after five years, just like 562A tenants. Attorney fees should be available for an action to recover a deposit wrongly withheld just as they are for residential tenants under Iowa Code § 562A.12.

21. Landlord as seller: In order to avoid the common problem of sham sales, if a manufactured housing park landlord or a related entity is also the seller of the manufactured home, a purchase agreement shall be in writing. The agreement shall accurately state basic terms, including but not limited to the total cost of the home; financing charge; annual percentage rate; frequency and amount of installments. All such agreements shall also comply with the requirements of Iowa Code § 103A.58(1). Any agreement that does not meet these requirements can be set aside by the tenant, and the tenant can recover any money paid over and above two months’ rent as a rental deposit, plus reasonable attorney fees. Such a claim can be brought as a counterclaim in an action for possession under Iowa Code chapter 648, or an action for recovery of real estate under Iowa Code Chapter 646.

22. Disclosure of rent and utility charges. Amend Iowa Code § 562B.14 to require disclosure of rent and utility charges to new tenants covering the period five years prior to an application.

23. Affidavit of foreclosure. Abolish non-judicial foreclosure of manufactured homes.