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Your Home, Your Car, Your Money, Your Privacy, Our State

Norman Googel Esq.
Office of the West Virginia Attorney General

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Your Home, Your Car, Your Money, Your Privacy, Our State

Norman Googel, Esquire
Office of the WV Attorney General
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YOUR HOME, YOUR CAR, YOUR MONEY, YOUR PRIVACY,
OUR STATE
CONSUMER PROTECTION 2019

Prepared by: Norman Googel
Senior Assistant Attorney General
Office of the WV Attorney General
Charleston, WV 25326
(304) 558-8986
norman.a.googel@wvago.gov

I. Very Brief History of Consumer Protection Laws in US and WV

A. Federal Trade Commission Act enacted by Congress in 1913 to outlaw unfair or deceptive practices ("UDAPs") that "affect commerce"

1. Main mission of FTC – To protect consumers and businesses from UDAPs in purchases and transactions relating to goods and services

2. Only the FTC could enforce the Act; states could not

B. States were discontent with scope of Act and inability to enforce Act; states began enacting their own consumer protection acts in the 1960s. These acts were called "Mini-FTC Acts" or "Unfair Trade Practices Acts"

1. The state acts afforded broader protection than the FTC Act

2. States enforced their acts through the Attorney General ("AG")

II. Enactment of the West Virginia Consumer Credit and Protection Act ("WVCCPA" or "the Act"), W. Va. Code §§ 46A-1-101 et seq., in 1974

A. The Act affords special protections to natural persons from UDAPs in the purchase of goods or services from a merchant (someone in the business of selling goods or services).

B. The Act defines "consumer transaction" as a purchase of goods or services for a personal, family, household, or agricultural purpose.

C. Certain purchases are not covered by the Act: purchases by an individual from another individual (who is not a merchant); purchases for a business purpose; or business to business purchases are not "consumer transactions"
D. Typical transactions covered by the Act: purchases of cars, appliances, electronics, household goods, home improvement services (contractors). Also covered are telemarketing sales, loans, debt collection, and a wide variety of credit services

E. The Act covers new or used goods

III. Enforcement of the Act

A. The Act may be enforced by the AG through the Consumer Protection Division ("CPD") and by private actions brought by individuals (sometimes viewed as private attorneys general);

1. Enforcement through private actions: Consumer may seek actual damages; civil penalties of up to $1,000.00 per violation, up to an aggregate of $175,000.00; SOL of four years after violation occurred; attorney’s fees if consumer prevails.

2. Enforcement by the AG through the CPD: The AG is empowered to receive and act upon complaints, conduct investigations, and bring civil actions to enforce the Act

B. The AG enforces the Act through the four “shuns,” which consist of Education, Mediation, Investigation, and Litigation

1. Education: public speaking; preparation & dissemination of pamphlets; advise to consumers / businesses of their rights / obligations under consumer laws; and press releases to announce actions taken, warn of “scams”

2. Mediation: Receive written complaints; forward to businesses for response; a voluntary process that often leads to resolution; complaints also serve to alert us to unlawful practices and may lead to a formal investigation

3. Investigation: If response to complaint unsatisfactory, or info/documents provided by complainant indicate potential violations of Act and need for enforcement action, we may open formal investigation

   (i) Steps of investigation: gather, review all past complaints ; attempt informal contact with business by phone to discuss concerns; written request for documents or info;

   (ii) If no voluntary cooperation, issue investigative subpoena; AG empowered to compel witnesses to appear for questioning under oath (prior to lawsuit), answer interrogatories, and produce documents
At conclusion of investigation, make offer of resolution intended to secure voluntary resolution including: enforceable promise of future compliance through Assurance of Discontinuance; refunds, restitution to aggrieved consumers; civil penalty if warranted, amount depending on number and seriousness of violations, level of cooperation; other equitable relief, such as debt cancellation, deletion of accounts from credit records;

The terms of all settlement offers are subject to approval of AG

4. **Litigation:** If attempts at voluntary resolution unsuccessful, AG may file civil enforcement action

IV. **Relief Available to AG in Enforcement Action:**

A. Temporary and permanent Injunction to restrain unlawful conduct

B. The full array of equitable relief, which may include whatever is necessary to secure complete justice, i.e., refunds and restitution for aggrieved consumers; disgorgement of ill-gotten gains, cancellation of debts; and reimbursement of costs, including attorney’s fees (there is no SOL for equitable relief)

C. Civil penalties of up to $5,000 for each violation of the Act (SOL of four years from violation for civil penalty)

D. Three main objectives of enforcement actions brought by AG: to secure future compliance with the Act or shut down violator if warranted; obtain restitution for all aggrieved consumers, and penalize the violator through civil penalties

V. **Your Home, Your Car, Your Money, Your Privacy**

A. Complaints filed with AG that lead to enforcement action fall generally into four categories: protection of home, vehicles, money, and privacy

1. **Your Home**

   (i) Defense of mortgage foreclosures brought about by predatory home mortgage lenders and services

   (ii) UDAPs by mortgage servicers

   (iii) Home improvement contractors (unlicensed contractors; substandard work that threatens physical structure, diminishes value of home; threats of mechanics liens if consumers refuse to pay; difficulty to collect court judgments against contractors
(iv) Evictions (no longer under AG’s authority; service limited to guidance only)
(v) Mobile home parks: Private equity firms buying mobile home parks; imposing exorbitant rate increases on captive audience of consumers who own homes but not lots; can’t afford to move homes out of park; often end up abandoning homes

2. Your Cars

(i) Unsafe vehicles, threatening safety of passengers and others on highways;
(ii) Violation of implied warranty of merchantability; inability to pay for repairs; vehicles end up repo’d or junked
(iii) Deceptive sales practices
(iv) TILA violations in buy here / pay here deals
(v) Usury
(vi) Unlawful repos: no valid security interest; no notice of right to cure default; breach of peace

3. Your Money

(i) Wide range of predatory small dollar loans, i.e., Internet payday loans, storefront loans in border states; title loans in border states
(ii) Deceptive home mortgage loans
(iii) Debt collection abuse and harassment by classic third party collection agencies and debt buyers
(iv) Debt settlement and other unscrupulous “last dollar” debt relief schemes
(v) Scams: only defense is public education; money can never be recovered

4. Your Privacy

(i) Data breaches
(ii) Identify theft
(iii) Unauthorized sale, use of private data by Facebook, other social media

VI. Our State

A. Private lawyers owe obligation and loyalty to the private client; generally cannot obtain injunctive relief or reform future conduct

B. AG owes its duty to the State of WV and its people in general; we are law enforcement agency; while we endeavor to obtain monetary relief to aggrieved individuals, our main objective it to enforce the law so as to prevent future violations

C. My personal (romanticized) vision: We are the Sovereign Nation of West Virginia; the world is filled with hostile invaders who seek to take our homes, cars, money, and privacy through unfair or deceptive practices. We assistant AGs are tasked with the mission of standing guard on the wall to protect WV nation from invading armies. In the era of electronic communications, sometimes the invaders are at first invisible. But once we learn that our protective wall has been breached, we sally forth to try to catch the wrongdoers and make them return that which was wrongfully taken to its rightful owners, the people of West Virginia.
Private equity firms rapidly investing in mobile home parks

By ZACHARY OREN SMITH   April 20, 2019

IOWA CITY, Iowa (AP) — Mobile home owners who for years have enjoyed some immunity from rising housing costs are increasingly finding themselves subjected to massive rent increases, not just here in Iowa, but across the country.

Havenpark Capital, a Utah-based real estate investment firm, raised eyebrows — along with rents — after it purchased parks in the Iowa City
and Des Moines metro areas and immediately announced plans for rent spikes. In North Liberty, rents at Golfview Mobile Home Park will rise 58% and in Waukee, rents at Midwest Country Estates will rise 69%. Havenpark Capital recently purchased two more mobile communities: Iowa City’s Sunrise Village and West Branch’s West Branch Village. And as it turns out these are just the tip of the iceberg, the Iowa City Press-Citizen reported.

There is a growing trend among some of the largest private equity firms and institutional investors to acquire assets in the manufactured housing sector, according to a 2019 report put together by three housing advocates groups: Private Equity Stakeholder Project, Manufactured Housing Action and Americans for Financial Reform Education Fund.

The top 50 manufactured housing community owners together own 680,000 home sites — a 26% increase between 2016 and 2018, according to data from the National Manufactured Home Owners’s Manufactured Housing Institute. The authors of the report note that the need to produce greater profits is leading to cost increases for park residents nationwide.

“Manufactured home communities are interesting communities,” said Kevin Borden, co-director of Manufactured Housing Action, a Washington D.C.-based nonprofit that organizes residents of mobile home parks to pursue housing affordability and resident protections. “They are relatively affordable for low income workers immigrant workers and seniors on fixed incomes. They provide folks with a sense of a home community.”

In 2018, there were approximately 8.5 million manufactured homes in the United States, accounting for nearly 10% of the nation’s housing stock, according to the Manufactured Housing Institute. This has been a source of affordable housing, in particular for rural and low-income residents.
"These are affordable homes for low income folks," said Liz Voigt of Manufactured Housing Action and a co-author of the 2019 report. "That's what the market has been for a long time. It hasn't really occurred to people that they could gouge them for 80% of their Social Security check. That's the analysis that these companies have seen: they could make a very big increase in profits based on rent increases in nearly any conditions."

In a statement to the Press-Citizen in reference to their rent increase in North Liberty, Havenpark Capital said the previous owner's rent prices had not kept pace with the market. They wrote that if it were not for Havenpark stepping in, the property might have been taken over by commercial retail developers. But even if the land remained a park, seniors on fixed incomes, low-wage earners on limited incomes may not have much of an option in the end.

Part of the issue is residents commonly own their mobile home but not the land underneath it. If lot rents become unaffordable, residents may have no other option but to try and sell their home to the park or abandon it all together. Moving homes to another park can cost thousands of dollars and moving often means sustaining damage to the home, further depreciating its value.

The 2019 report quotes material from Mobile Home University, a project of RV Horizons aimed at educating aspiring mobile home park investors on the revenue model: "The fact that tenants can't afford the $5,000 it takes to move a mobile home makes it easy to raise rent without losing any occupancy."

Compared to larger private equity firms like YES! Communities, which own 54,000 home sites, Havenpark Capital is relatively small. But Voigt and Borden said the private real estate firm benefits from the same investment strategy.
To create protections for these communities, there are three “buckets” of policy solutions Voigt pointed to that she said localities and states should pursue to add protections for manufactured home owners in their communities.

“There is a regulatory environment in which (these firms) operate that has created an unscrupulously profitable business on the backs of poor people,” Voigt said.

The first strategy would be to find some consistent means of regulating rent. Voigt emphasized that these regulations look different in different places.

One example is in Humboldt County, California where voters passed an ordinance to regulate rent increases for spaces in mobile home parks with ten or more spaces in the unincorporated area of Humboldt County. Rents can only legally be increased to keep up with the consumer price index; to afford capital improvements with approval of a majority of tenants; or in the case of a new resident, at a maximum of 5%.

In Delaware, property owners can raise rent above the consumer price index provided they have not received any violations that threaten the health or safety or residents that persists for more than 15 days and the increase is directly related to operating, maintaining or improving the manufactured home community.

“There are different ways to get there,” Voigt said. “But the idea is (property owners) shouldn’t just have total control over setting these arbitrary rent increases.”

The second strategy is for residents to have a say in how the park they live in is improved, and an avenue for making complaints if it is not being taken care of properly.

“(Large firms) don’t seem to have a long term investment in the community’s ongoing infrastructure and communities sustained health,” Voigt said. “There are laws in most places about basic code standards, but
making those clear responsibilities for the community owner would incentivize investment.”

In addition, Voigt said it is important for residents to have a clear path to report problems with health and safety risks, management, lease provisions, invoices and other problems. When the owner is out of state, this might mean site managers and validated grievance procedures.

The third strategy is more complicated. Even if there are limits on the amount rent can be increased and residents have the ability to reliably file grievances, an investment firm is in business to generate revenue. While this doesn’t necessarily put them at odds with residents, a 58% tax increase does.

“There needs to be a clear path toward alternative forms of ownership,” Voigt said.

They ask states to enact laws that give mobile park tenants and associations a chance to buy their park if property owners are approached with an offer. Voigt said that if our goal is to keep these parks affordable in the long term, drastic changes in ownership might be one of the few ways to keep the needs of tenants at the heart of decision making.

“As this trend picks up and bigger and bigger private equity groups with huge access to capital buy more and more of these communities, it is going to put increasing pressures on mom and pop parks to sell out,” Voigt said.