Construction Lending News
Volume 12, Third Quarter 2005

Manufactured Homes — and Their Owners — Gain New Respect

Nonprofit groups experiment with financing options

By Sue Kirchhoff, USA TODAY[1]

BARRINGTON, N.H. — After 15 long years, Richard Doherty makes the final mortgage payment on his cheerfully cluttered manufactured home — don't call it a trailer — this month. But ownership may not bring longed-for security.

Doherty and 73 other families who rent lots in the Barrington Estates manufactured home community, with its tidy gardens and wooded avenues, received notice this spring that the owner plans to sell. That has bred distress among tenants, who fear they could be forced to move if a buyer redevelops the property.

"To know you have your own home, that's fine. But knowing that you don't own the land that it's on top of, it doesn't feel right," says Doherty, 53, as he prepares for the 6 P.M.–6 A.M. shift at a nearby factory while his wife, who works a different schedule, gets some sleep in a back bedroom.

Doherty's predicament illustrates the pitfalls and possibilities of manufactured housing — an oft-maligned, but important slice of the housing market that accounted for two-thirds of all affordable housing built in the nation from 1997–1999 and 20% of all new housing in the late 1990s, according to some studies. That figure has since dropped to less than 10%, after bad loans to stretched buyers produced a crash in the manufactured-home market.

Manufactured homes, which cost $58,000 on average, compared with $267,400 for new site-built houses (the conventional home price includes land), are a potential solution for millions of low- and moderate-income families who otherwise can't afford to buy in frenzied housing markets.

But the sector has been riddled with such problems as high-cost lending that can leave borrowers owing more

continued on page 2

Pennsylvania: A Breath of Fresh Air for the Construction Lender

By Carl G. Roberts[2]

General Concepts:

Many states have enacted statutes that provide unpaid contractors, subcontractors, and vendors with a security interest — referred to as a "mechanics' lien" — in an owner's property when the contractor, subcontractor, or vendor has not been paid. These statutes are significant because the mechanics' lien attaches before a judgment has been sought or entered, and because the mechanics' lien rights are available to parties not in privity with the owner. Since a mechanics' lien can take priority over a lender's security rights, these statutes command a great deal of attention from owners and lenders. To avoid mechanics' liens being filed during or after a construction project, a prudent construction lender generally must make sure that the contractor and subcontractors have received payment by requiring lien releases from the various parties or by paying them directly.

The Pennsylvania statute providing for mechanics' liens is known as the Mechanics' Lien Law of 1963 (49 PA.C.S. §§ 1101 *et seq.*). It provides that a lien may be perfected against the owner's property "for the payment of all debts due by the owner to the contractor or by the contractor to any of his subcontractors for labor or materials furnished in the erection or construction, or the alteration or repair of the improvement …." (49 PA.C.S. § 1301.) At first blush, then, the Pennsylvania statute appears comparable to the lien law in many other states, other than that the lien right is available only to contractors (which are defined to include material providers) in direct privity with owners and to subcontractors (also defined to include material providers) in direct privity with contractors. Third tier and lower subcontractors and material providers do not have mechanics' lien rights in Pennsylvania.

There is one significant difference, however, that makes Pennsylvania one of the easiest and most lender-friendly

continued on page 3

[1] From USA TODAY, a division of Gannett Co., Inc. Reprinted with Permission.

Carl G. Roberts is a partner in the Litigation Department of the Philadelphia office of Ballard Spahr Andrews & Ingersoll, LLP, a 420-lawyer firm with offices in Philadelphia, Baltimore, Washington, Denver, Salt Lake City, and Voorhees, NJ. His practice includes construction litigation and workout matters related to project finance and other lending transactions, principally as lenders' counsel, and he was also owner's counsel in construction and mechanics' lien litigation regarding a themed casino resort hotel in Nevada. Mr. Roberts is the author of the Pennsylvania chapter of the second edition of the *Fifty State Construction Lien and Bond Law* (Aspen L&B; Cushman and Butler, eds) and co-author of the Pennsylvania chapter of *LienLawOnline,* a Web publication on mechanics' lien laws. Mr. Roberts presently chairs the American Bar Association's Law Practice Management Section, where he has been active for many years. He is a graduate of Harvard College (B.A. 1970) and the University of Pennsylvania (J.D. 1974).

Manufactured Homes — and Their Owners — Gain New Respect

(cont'd)

than their home's value. Only about half those living in manufactured homes own their land, though ownership is rising. Residents who rent lots can be turned out if a park is sold — forcing some to lose their homes, especially older units that aren't in condition to be moved.

As lack of affordable housing becomes a problem for more Americans, groups that once ignored manufactured housing are giving it a fresh look, trying to soften the trailer-trash stigma and make it a stable option for working families.

"Nine million families in the U.S. are living in this housing stock. I've been working in the housing field for 20 years, and I'd never really even given it a half-a-second thought," says George McCarthy of the Ford Foundation, which plans to invest $10 million in the next several years on efforts to turn manufactured housing into a secure, appreciating asset.

McCarthy says the problem isn't quality of the housing — better- looking, larger units are becoming the norm — but how the market delivers and finances the product. "Those are correctible things," he says.

The nonprofit group HomeSight has developed two-story manufactured housing in Seattle with pitched roofs and front porches that blend with existing neighborhoods. More than 70 New Hampshire manufactured-home parks have been bought by tenants and turned into owner-run cooperatives, with rising values and years-long waiting lists.

Interest from Warren Buffett

Super-investor Warren Buffett's Berkshire Hathaway has been investing in manufactured housing, buying Tennessee-based Clayton Homes. Berkshire Hathaway officials hope to bring nonprofit housing groups to a shareholders meeting to discuss opportunities to work together on development.

"It has real potential for the industry.… There is wonderful financing available through those nonprofits who can help homeowners who would not have an opportunity to own," says Kevin Clayton, CEO of Clayton Homes.

Some states, such as Washington, are passing zoning laws to ease the way for manufactured housing. Mortgage giant Fannie Mae has tightened guidelines for the manufactured-housing loans it buys.

Still, change is uneven. A number of states remain cool to uniform zoning. The majority of manufactured housing is still deemed personal property rather than real estate, forcing buyers to take out higher-interest loans rather than home mortgages. Many existing, older structures are past their prime, posing problems, including abandoned homes.

Ronald Wirtz of the Federal Reserve Bank of Minneapolis, in a series of recent articles, says land-use rules and other pressures are making it more difficult to build manufactured home parks. A big part of the problem? Negative public perception.

"It has a lot of potential. It really meets the affordable segment of the market, but it's got to be done right," says Chuck Rumfola, vice president of manufactured housing for Fannie Mae. "We're trying to build a solid foundation, so you don't have the boom and bust."

The stakes are high, given that home equity makes up 80% of wealth for very-low-income Americans. Dave Buchholz of the Washington nonprofit CFED, which helps lower-income people build assets, is overseeing the Ford Foundation grant. He hoped for a dozen proposals, but got more than 100.

Tenants no more

While Doherty has his headaches, he's still luckier than many. New Hampshire law gives tenants in manufactured home parks the right to make a purchase offer if an owner plans to sell the land.

continued on page 5

Terms Help Define Homes

There is technical terminology to describe homes built in factories and trucked to building lots. These definitions are from the Manufactured Housing Institute:

Manufactured homes. What many think of as trailers or mobile homes. Built entirely in factories to 1976 Department of Housing and Urban Development (HUD) standards which regulate things such as design, durability, transportability, fire standards and operating systems such as plumbing and heating. Called single- or double-wide, depending on size, homes are usually "mobile" only when moved to the lot. Once installed, owners might add decks, porches or other structures that meet state or local building codes.

Modular homes. Factory-built homes that meet building codes in states or local area where they will be located. Moved to a site and installed.

Panelized homes. Factory-built homes in which panels, such as a wall with windows, doors, wiring and outside siding, is transported to a site and assembled. Built to state or local codes.

Pre-cut homes. Homes with building materials factory-cut to design specifications, moved to a site and assembled. Examples include kit, log and dome homes. Must meet state or local codes.

Pennsylvania: A Breath of Fresh Air for the Construction Lender

(cont'd)

states in which to make construction loans. It is referred to as the "Waiver of Liens."

Waiver of Liens:

Pennsylvania's mechanics' lien law provides that the protection afforded by it may be waived by the contractor or subcontractor "by a written instrument signed by [the contractor or subcontractor] or by any conduct which operates equitably to estop [the contractor or subcontractor] from filing a claim." (49 PA.C.S. § 1401.) The prime contractor may also waive its subcontractor's mechanics' lien rights, but not without the subcontractor's actual or constructive knowledge. (49 PA.C.S. § 1402.) Most states' mechanics' lien statutes expressly prohibit lien waivers. Even where they appear to be permitted, local courts have generally made lien waivers unenforceable or recast them as a form of release, limited to amounts already paid. But Pennsylvania's statute explicitly creates, supports, and enforces effective mechanics' lien waivers.

A valid waiver of liens means that the general contractor or its subcontractor cannot establish a mechanics' lien against a construction lender's collateral, regardless of whether the contractor or subcontractor was paid. For a lender, who may have only indirect contractual tools to ensure that invoices are paid, the waiver of liens means that its security interest will not be trumped and that the contractors and subcontractors cannot use a mechanics' lien as leverage to get paid from another pocket.

Given the significance of an effective waiver of liens, lenders on projects in Pennsylvania should be acutely aware of the steps required to create it. A contractor may waive its own rights in the contract with the owner or at any time in a separate written instrument. (40 Pa. C.S. § 1401.) A lender may therefore readily ensure that the prime contractors' mechanics' lien rights are waived.

A subcontractor may also waive its own rights in writing at any time. Id.

> *Of greater importance to a lender, however, is the ability of a contractor to waive mechanics' lien rights on behalf of its subcontractors. The only admissible evidence of a contractor's waiver of its subcontractor's mechanics' lien rights is:*
>
> *(a) proof that the subcontractor had actual notice of the waiver before any labor or materials were furnished by such subcontractor; or*
>
> *(b) proof that the waiver was filed in the office of the prothonotary [the Pennsylvania name for the clerk of court] of the court of common pleas of the county in which the improvement is located*
>
> *(i) prior to the commencement of work,*
>
> *(ii) within 10 days after the execution of the principal contract, or*
>
> *(iii) not less than 10 days prior to the date of the subcontractor's contract.*
>
> (49 PA.C.S. § 1402.).

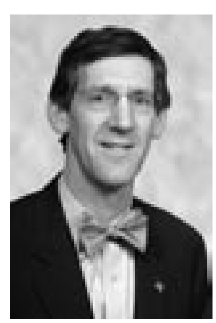
It should be noted that a waiver of liens is not effective in the case of an owner acting as a general contractor. Owner-builders cannot utilize a waiver of liens to shield themselves from mechanics' liens if they do not pay their subcontractors and suppliers. The waiver of liens also does not preclude a contractor from obtaining a judgment by pursuing a traditional lawsuit, nor does it preclude a subcontractor from claiming some sort of privity with the owner in order to pursue a quantum meruit claim the same way.

Practical Application:

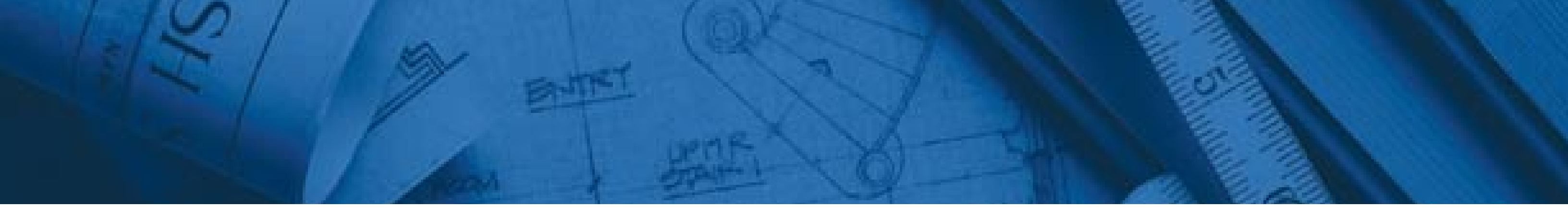
Given the importance of a properly-created waiver of liens, lenders should be attentive to practical ways of making sure a valid waiver of liens is recorded. The lender should make sure that it has evidence that a legally adequate mechanics' lien waiver has been filed and properly indexed before (or simultaneously with) closing on the loan and before commencement of any work (including demolition) and disbursement of any funds. The title company or a loan servicing company can take care of this as part of its closing responsibilities. In some counties, it may also be possible for the lender itself to verify proper filing and indexing online. Verification that construction has not started may involve a physical inspection or reliance on the representations of the borrower. There are also title endorsements available in Pennsylvania that provide lenders with additional protections against mechanics' liens.

Conclusion:

It is rare that a construction lender does not have the worry that unpaid contractors, subcontractors and suppliers may record a mechanics' lien against the collateral securing a construction loan. The disbursement process is difficult enough without this worry. Pennsylvania is unique in transferring this responsibility back onto the contractual relationship between the general contractor and subcontractors. By utilizing the waiver of liens, a lender is shielded from having its security interest held hostage for duplicative disbursements to cover the work it thought was already paid for.



Carl G. Roberts



Manufactured Homes — and Their Owners — Gain New Respect

(cont'd)

For the past several weeks, Doherty has been meeting with other tenants to organize a cooperative to buy and manage Barrington Estates, including figuring out the cost of repairs or improvements, and a fair purchase offer. He'll know whether he's a co-owner, or still an uncertain tenant, in a few weeks.

"All of us are pretty skittish, but we're pretty well set that we need to do this," Doherty says.

Doherty's efforts reflect more than two decades of work by the nonprofit New Hampshire Community Loan Fund, which borrows money from individuals, churches and financial institutions, then relends it. The fund has been a leader on the issue since 1984, when tenants of the Meredith Trailer Park were faced with the possible loss of their community. They worked with the fund to form the state's first tenant cooperative.

To date, the fund has helped organize 71 cooperatives, representing 15% of manufactured housing in parks in the state. The co-ops generally own the land jointly, form a board that sets monthly rents, votes on improvements and signs off on home sales.

Paul Bradley, vice president of the fund, is a lanky bundle of enthusiasm who appears to know the history, and residents, of every manufactured housing park. He says anecdotal evidence suggests homes in the co-ops are appreciating well, and monthly rents are rising less rapidly.

Bradley sees other gains, as co-op members learn about financing and management. There is determination to instill

continued on page 5

Where Manufactured Homes Are Going

	Avg. placements per year 2001–2004	Placements so far in 2005
Alabama	4,367	1.435
Alaska	34	5
Arizona	5,076	1,806
Arkansas	3,080	797
California	8,400	3,754
Colorado	2,374	232
Connecticut	215	154
Delaware	1,163	467
D.C.	1	2
Florida	12,277	6,401
Georgia	6,036	1,325
Hawaii	3	0
Idaho	898	268
Illinois	2,448	593
Indiana	3,696	590
Iowa	859	170
Kansas	1,133	207
Kentucky	5,445	1,228
Louisiana	5,368	1,530
Maine	1,102	264
Maryland	746	231
Massachusetts	313	88
Michigan	5,838	766
Minnesota	2,362	407
Mississippi	3,418	994
Missouri	3,951	1,032
Montana	855	199
Nebraska	426	40
Nevada	965	440
New Hampshire	762	210
New Jersey	728	169
New Mexico	2,056	506
New York	3,103	686
North Carolina	9,408	1,670
North Dakota	294	87
Ohio	4,100	764
Oklahoma	2,971	782
Oregon	2,454	766
Pennsylvania	4,190	1,081
Rhode Island	75	21
South Carolina	4,858	1,082
South Dakota	742	187
Tennessee	6,136	1,598
Texas	14,581	3,068
Utah	694	198
Vermont	383	100
Virginia	3,673	879
Washington	2,869	864
West Virginia	2,887	678
Wisconsin	2,232	348
Wyoming	558	109
Canada	2	1
Puerto Rico	4	0

Sources: Foremost Insurance Group's The Market Facts 2002 Report; Census Bureau

Manufactured Homes — and Their Owners — Gain New Respect

(cont'd)

pride of ownership, so much so that the state organization of manufactured-home owners used to make people pay a quarter every time they used the "T" word — trailer.

Lowering interest rates

Many owners bought their homes with high-interest loans. A fifth of co-op members were paying 14% interest, with an average 11.8% rate. The situation got worse in the late 1990s after the sector went bust and lenders went bankrupt or fled the market.

The fund initially made loans. As the co-ops got bigger, the New Hampshire Housing Finance Authority, a quasi-public agency, stepped in, followed by commercial banks. Starting in 2002, the loan fund introduced fixed-rate mortgages, refinancing and home-equity loans in tenant-owned communities, aided by New Hampshire banks. Manufactured-home buyers in co-ops can now get conventional mortgages at market, or even below-market rates.

Florence Quast, 68, a retired nurse and part-time Wal-Mart worker, helped organize the second co-op in the state, which celebrates its 20th anniversary this year. She got a 16% interest rate on her first loan in 1978, above the average 9.64% for site- built mortgages. Quast bought her current home, a double-wide unit with a fireplace, big kitchen and wall full of family photos, with a conventional mortgage.

"We're not looked on really as the best in society until I say it's a co-op and we all own it. There's a little more respect because you're a homeowner," Quast says.

While New Hampshire residents now must get 18 months' notice before they can be forced to move, some states still allow parks to be closed in 30 days. In regions where the housing market is hot, and land scarce, a number of manufactured-housing parks are being sold.

Officials at the Manufactured Housing Institute, which represents owners and manufacturers, says owners, typically mom-and-pop operations, are getting large offers to sell to private developers.

Higher-quality homes

Which brings Bradley and other nonprofits to the next frontier — development. Fannie Mae is also interested in backing projects that showcase the higher quality of new manufactured homes, which can be fitted with front porches, garages, higher roofs and other amenities to blend in to a community.

Bradley bounds around Pepperidge Woods, a 44-site cooperative development (plus a community center) that's not your stereotypical trailer park. The three-bedroom homes have concrete foundations, energy-efficient appliances, drywall rather than vinyl walls and granite stoops with cast-iron railings. Some have pitched roofs with attic storage or full basements.

Prices run from $147,900 for a 1,344-sq-ft. home to $174,900 for a house with a walkout basement. The homes — sold without subsidies — are targeted at households making $35,000–$65,000.

"Traditional single-family starter homes aren't being developed," Bradley said. "It's $350,000 for a starter home, and families of moderate means can't get in."

Clayton, of Clayton Homes, adds that because manufactured housing is built in a factory, it can be put in place faster with potentially fewer cost overruns. In New Hampshire, zoning laws allow higher density for manufactured homes, cutting down land costs.

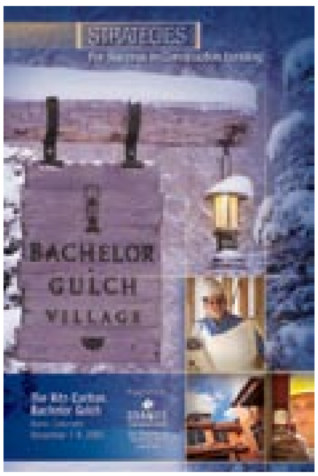
Bruce Ouellette, 36, and his wife, Rebecca, 31, were at Pepperidge Woods watching workers pour the foundation for their new house. The couple — she does accounting and he is disabled after working in construction — read about the development in a local paper. They call their new home a vast improvement over what they saw during a year of hunting.

"Every time we tried to get a house, it's like a shut door," Bruce Ouellette says. "I've always been renting. I want to own. I want to have responsibility."

MARK YOUR CALENDAR:

"Strategies for Success in Construction Lending"

The Ritz-Carlton, Bachelor Gulch • Avon, Colorado
December 7 – 8, 2005



REGISTER NOW
at
www.graniteloan.com

Sponsorship Opportunities Available

In This Issue:

- *Manufactured Homes — and Their Owners — Gain New Respect*
- *Pennsylvania: A Breath of Fresh Air for the Construction Lender*
- *Be a Part of the National Association of Residential Construction Lenders (NARCL)!*

Construction-at-a-Glance

	July 04	July 05
Total Monthly Housing Starts*	1,986	2,042
YTD Permits-Single Family*	980.0	990.9
Monthly New Home Sales*	1,104	1,410
Unemployment Rate	5.5%	5.0%

**Thousands of Units*

VISIT US AT BOOTH #510 at the MBA'S CREF Convention & Expo

GRANITE
LOAN MANAGEMENT
10770 E. Briarwood Ave.
Suite 280
Centennial, CO 80112