Right of First Refusal

Background

Nineteen states have implemented "right of first refusal" provisions for manufactured home community residents. This requires an owner selling a property to provide notice and time to residents to organize and determine if they wish to purchase the property themselves. In some states, this is limited only to when the property is being sold to be used for a different purpose (development of a shopping mall, public facility, etc.). But more and more states are proposing overall "right of first refusal" laws.

Talking Points

- "Right of first refusal" laws can discourage investment and reduce the quality of communities, rather than encouraging new investment to improve communities.
- The waiting periods that are required under right of first refusal are often lengthy (90 days or more) and can result in changes to the underlying assumptions relating to the purchase, including:
    - Increases in interest rates,
    - Changes in market values,
    - Casualty losses in the community, or
    - Purchasers may simply find better opportunities for investment.
- Lengthy "right of first refusal" laws can take away the private property rights of the owner by interfering with the right to sell.
- Resident-owned communities can and do succeed, but there are also cases where the community declines rapidly once it becomes resident-owned as communities face many challenges that they might have never imagined.
    - Costly capital improvement projects, frequent board turnover, disagreements over community management providers and vendors, tight cash reserves, unfilled vacancies and disagreements over the long-term vision for the park, can make the situation untenable for the resident-owners.
    - The ability to sell new homes on vacant sites is a particular challenge for underfunded resident-owned communities.
    - It is not uncommon for those living in a resident-owned community to determine that the best course of action for the future is to sell the community to an outside buyer with the resources and experience to effectively manage the community.
    - A recent Freddie Mac study found that one of the most common forms of ownership in a resident-owned community is called the limited equity model, whereby appreciation in the community is not passed onto residents. Instead, if the community is sold to a third-party investor and reverts to a rental regime, any profits made from the sale must be donated to an affordable housing nonprofit.

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