

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE BILL 346

Short Title: Miscellaneous Changes/Mfg. Home Laws. (Public)

Sponsors: Senators Holloman, Dannelly; Apodaca, Atwater, Berger of Franklin, Bingham, Cowell, Dorsett, Graham, Hartsell, Hoyle, Jenkins, Kinnaird, Lucas, Malone, Purcell, Shaw, Snow, and Weinstein.

Referred to: Commerce.

March 3, 2005

A BILL TO BE ENTITLED

1
2 AN ACT TO CHANGE THE MEMBERSHIP OF THE NORTH CAROLINA
3 MANUFACTURED HOUSING BOARD; TO CREATE THE MANUFACTURED
4 HOUSING RECOVERY FUND; TO PROVIDE BUYERS WITH INFORMATION
5 REGARDING THE PRICE, FAIR MARKET VALUE AND SPECIFICATIONS
6 OF MANUFACTURED HOMES; TO CLARIFY THE CONTRACT
7 NEGOTIATION PROCESS AND EXTEND THE CANCELLATION PERIOD; TO
8 REQUIRE MANUFACTURED HOME DEALERS TO ESTABLISH AND
9 MAINTAIN ESCROW OR TRUST ACCOUNTS FOR BUYER DEPOSITS; AND
10 TO INCREASE CERTAIN PENALTIES AND STANDARDS APPLICABLE TO
11 THE MANUFACTURED HOME INDUSTRY.

12 The General Assembly of North Carolina enacts:

13 **SECTION 1.(a)** G.S. 143-143.8 through G.S. 143-143.25 of Article 9A of
14 Chapter 143 of the General Statutes are redesignated as Part 1 of Article 9A of Chapter
15 143 of the General Statutes. The Revisor of Statutes is authorized to make changes in
16 the newly designated Part 1 that will reflect the results of the recodification.

17 **SECTION 1.(b)** Part 1 of Article 9A of Chapter 143 of the General Statutes
18 is amended by adding a subtitle:

"Article 9A.

"North Carolina Manufactured Housing Board – Manufactured Home Warranties.

"Part 1. Duties, Warranties, Purchase Transaction."

22 **SECTION 2.** G.S. 143-143.9 reads as rewritten:

23 **"§ 143-143.9. Definitions.**

24 The following definitions apply in this Article:

25 (1) Bank. – A federally insured financial institution including institutions
26 defined under G.S. 53-1(1), savings and loan associations, credit

- 1 unions, savings banks and other financial institutions chartered under
2 this or any other state law or chartered under federal law.
- 3 ~~(1)~~(1a) Board. – The North Carolina Manufactured Housing Board.
- 4 (2) Buyer. – A person ~~who purchases at retail from a dealer or~~
5 ~~manufacturer a~~ for whom a dealer performs, or is engaged to perform,
6 any services or provides any products including the purchase and setup
7 of a manufactured home for personal use as a residence or other
8 related use.
- 9 (3) Code. – Engineering standards adopted by the Commissioner.
- 10 (4) Commissioner. – The Commissioner of Insurance of the State of North
11 Carolina.
- 12 (5) Department. – The Department of Insurance of the State of North
13 Carolina.
- 14 ~~(5a)~~ Deposit. – Any and all funds received by a dealer from a buyer or
15 someone on behalf of a buyer for the performance of services or the
16 provision of goods.
- 17 ~~(5b)~~ Escrow or trust account. – An account with a bank that is designated as
18 an escrow account or as a trust account and that is maintained by a
19 dealer for the deposit of buyers' funds.
- 20 ~~(5c)~~ Escrow or trust account funds. – Funds belonging to a person other
21 than the dealer that are received by or placed under the control of the
22 dealer in connection with the performance of services or the provision
23 of products by a dealer for a buyer.
- 24 ~~(5d)~~ Funds. – Any form of money, including cash, payment instruments
25 such as checks, money orders, or sales drafts, and receipts from
26 electronic fund transfers. The term does not include letter of credit or
27 promissory notes.
- 28 ~~(5a)~~~~(5e)~~ License. – A license issued under this Article.
- 29 ~~(5b)~~~~(5f)~~ Licensee. – A person who has been issued a license under this Article
30 by the North Carolina Manufactured Housing Board.
- 31 (6) Manufactured home. – A structure, transportable in one or more
32 sections, which, in the travelling mode, is eight feet or more in width
33 or is 40 feet or more in length, or when erected on site, is 320 or more
34 square feet, and which is built on a permanent chassis and designed to
35 be used as a dwelling with or without a permanent foundation when
36 connected to the required utilities, and includes the plumbing, heating,
37 air conditioning and electrical systems contained therein.
- 38 (7) Manufactured home dealer or dealer. – Any person engaged in the
39 business of buying or selling manufactured homes or offering or
40 displaying manufactured homes for sale in North Carolina. Any person
41 who buys or sells three or more manufactured homes in any 12-month
42 period, or who offers or displays for sale three or more manufactured
43 homes in any 12-month period shall be presumed to be a manufactured
44 home dealer. The terms "selling" and "sale" include lease-purchase

1 transactions. The term "manufactured home dealer" does not include
 2 banks and finance companies that acquire manufactured homes as an
 3 incident to their regular business.

4 (8) Manufactured home manufacturer or manufacturer. – Any person,
 5 resident or nonresident, who manufactures or assembles manufactured
 6 homes for sale to dealers in North Carolina.

7 (9) Manufactured home salesperson or salesperson. – Any person
 8 employed by a manufactured home dealer to sell manufactured homes
 9 to buyers. Manufactured home salesperson or salesperson also includes
 10 sales managers, lot managers, general managers, or others who
 11 manage or supervise salespersons.

12 (10) Person. – Any individual, natural persons, firm, partnership,
 13 association, corporation, legal representative or other recognized legal
 14 entity.

15 (11) Responsible party. – A manufacturer, dealer, supplier, or set-up
 16 contractor.

17 (12) Setup. – The operations performed at the occupancy site which render
 18 a manufactured home fit for habitation.

19 (13) Set-up contractor. – A person who engages in the business of
 20 performing setups for compensation in North Carolina.

21 (14) Substantial defect. – Any substantial deficiency in or damage to
 22 materials or workmanship occurring in a manufactured home which
 23 has been reasonably maintained and cared for in normal use. The term
 24 also means any structural element, utility system or component part of
 25 the manufactured home which fails to comply with the Code.

26 (15) Supplier. – The original producer of completed components, including
 27 refrigerators, stoves, hot water heaters, dishwashers, cabinets, air
 28 conditioners, heating units, and similar components, and materials
 29 such as floor coverings, panelling, siding, trusses, and similar
 30 materials, which are furnished to a manufacturer or dealer for
 31 installation in the manufactured home prior to sale to a buyer."

32 **SECTION 3.** G.S. 143-143.10 reads as rewritten:

33 **"§ 143-143.10. Manufactured Housing Board created; membership; terms;
 34 meetings.**

35 (a) There is created the North Carolina Manufactured Housing Board within the
 36 Department. The Board shall be composed of nine members as follows:

37 (1) The Commissioner of Insurance or ~~his~~ the Commissioner's designee.

38 (2) A manufactured home ~~manufacturer~~ manufacturer or a manufactured
 39 home supplier.

40 (3) A manufactured home ~~dealer~~ dealer or a set-up contractor.

41 (4) A representative of the banking and finance business.

42 (5) ~~A representative of the insurance industry.~~ A person who is approved
 43 by the North Carolina Housing Finance Agency as a home-ownership
 44 counselor.

- 1 (6) ~~A manufactured home supplier.~~An attorney whose primary practice
2 involves the representation of individuals in consumer protection
3 actions.
4 (7) ~~A set-up contractor.~~An accountant.
5 (8) Two representatives of the general public.

6 The Commissioner or ~~his~~the Commissioner's designee shall chair the Board. The
7 Governor shall appoint to the Board the ~~manufactured home manufacturer and the~~
8 ~~manufactured home dealer,~~member designated under subdivision (a)(2) of this section
9 and a member of the general public. The General Assembly upon the recommendation
10 of the Speaker of the House of Representatives in accordance with G.S. 120-121 shall
11 appoint the representative of the banking and finance industry and the ~~representative of~~
12 ~~the insurance industry,~~member designated under subdivision (a)(5) of this section. The
13 General Assembly upon the recommendation of the President Pro Tempore of the
14 Senate in accordance with G.S. 120-121 shall appoint ~~the manufactured home supplier~~
15 ~~and set-up contractor~~the member designated under subdivision (a)(3) of this section and
16 an attorney whose primary practice involves the representation of individuals in
17 consumer protection actions. The Commissioner shall appoint ~~two representatives one~~
18 ~~representative~~ of the general public. ~~public and an accountant.~~ ~~Except for the~~
19 ~~representatives from the general public and the persons appointed by the General~~
20 ~~Assembly, each member of the Board shall be appointed by the appropriate appointing~~
21 ~~authority from a list of nominees submitted to the appropriate appointing authority by~~
22 ~~the Board of Directors of the North Carolina Manufactured Housing Institute. At least~~
23 ~~three nominations shall be submitted for each position on the Board.~~ The members of
24 the Board shall be residents of the State.

25 The members of the Board shall serve for terms of three years. In the event of any
26 vacancy of a position appointed by the Governor or Commissioner, the appropriate
27 appointing authority shall appoint a replacement in the same manner as provided for the
28 original appointment to serve the remainder of the unexpired term. Vacancies in
29 appointments made by the General Assembly shall be filled in accordance with
30 G.S. 120-122. In the event of any vacancy, the appropriate appointing authority shall
31 appoint a replacement to serve the remainder of the unexpired term. Such appointment
32 shall be made in the same manner as provided for the original appointment. No member
33 of the Board shall serve more than two consecutive, three-year terms.

34 The ~~member~~members of the Board ~~representing the general public~~designated in
35 subdivisions (a)(5), (a)(6), (a)(7) and (a)(8) of this section shall have no financial
36 interest connected with the manufactured housing industry. No member of the Board
37 shall participate in any proceeding before the Board involving that member's own
38 business.

39 Each member of the Board, except the Commissioner and any other State employee,
40 shall receive per diem and allowances as provided with respect to occupational licensing
41 boards by G.S. 93B-5. All per diem and travel expenses shall be paid exclusively out of
42 the fees received by the Board as authorized by this Article. In no case shall any salary,
43 expense, or other obligation of the Board be charged against the General Fund of the
44 State of North Carolina. All moneys and receipts shall be kept in a special fund by and

1 for the use of the Board for the exclusive purpose of carrying out the provisions of this
2 Article. At the end of the fiscal year, the Board shall retain fifteen percent (15%) of the
3 unexpended funds collected and received during that year. The remaining eighty-five
4 percent (85%) of these funds shall be credited to the General Fund.

5 (b) In accordance with the provisions of this Article, the Board shall have the
6 following powers and duties:

- 7 (1) To issue licenses to manufacturers, dealers, salespersons, and set-up
8 contractors.
- 9 (2) To require that an adequate bond or other security be posted by all
10 licensees, except manufactured housing salespersons.
- 11 (3) To receive and resolve complaints from buyers of manufactured homes
12 and from persons in the manufactured housing industry, in connection
13 with the warranty, warranty service, licensing requirements or any
14 other provision under this Article.
- 15 (4) To adopt rules in accordance with Chapter 150B of the General
16 Statutes as are necessary to carry out the provisions of this Article.
- 17 (5) To file against the bond posted by a licensee for warranty repairs and
18 service on behalf of a buyer.
- 19 (6) To request that the Department of Justice conduct criminal history
20 checks of applicants for licensure pursuant to G.S. 114-19.13.
- 21 (7) To administer the Manufactured Housing Recovery Fund.
- 22 (8) To conduct random audits of dealer escrow or trust accounts."

23 **SECTION 4.** G.S. 143-143.13 reads as rewritten:

24 "**§ 143-143.13. Grounds for denying, suspending, or revoking licenses; civil**
25 **penalties.**

26 (a) A license may be denied, suspended or revoked by the Board on any one or
27 more of the following grounds:

- 28 (1) Making a material misstatement in application for license.
- 29 (2) Failing to post an adequate corporate surety bond, cash bond or fixed
30 value equivalent.
- 31 (3) Engaging in the business of manufactured home manufacturer, dealer,
32 salesperson, or set-up contractor without first obtaining a license from
33 the Board.
- 34 (4) Failing to comply with the warranty service obligations and claims
35 procedure established by this Article.
- 36 (5) Failing to comply with the set-up requirements established by this
37 Article.
- 38 (6) Failing or refusing to account for or to pay over moneys or other
39 valuables belonging to others that have come into licensee's possession
40 arising out of the sale of manufactured homes.
- 41 (6a) Failing to comply with the escrow or trust account provisions under
42 Part 2 of this Article.
- 43 (7) Using unfair methods of competition or committing unfair or deceptive
44 acts or practices.

- 1 (8) Failing to comply with any provision of this Article.
2 (9) Failing to appear for a hearing before the Board or for a prehearing
3 conference with a person or persons designated by the Board after
4 proper notice or failing to comply with orders of the Board issued
5 pursuant to this Article.
6 (10) Employing unlicensed salespersons.
7 (11) Offering for sale manufactured homes manufactured or assembled by
8 unlicensed manufacturers or selling manufactured homes to unlicensed
9 dealers for sale to buyers in this State.
10 (12) Conviction of any crime listed in G.S. 143-143.10A.
11 (13) Having had a license revoked, suspended or denied by the Board; or
12 having had a license revoked, suspended or denied by a similar entity
13 in another state; or engaging in conduct in another state which
14 conduct, if committed in this State, would have been a violation under
15 this Article.
16 (14) Employing or contracting with any person to perform setups who is
17 not licensed by the Board as a set-up contractor.

18 (b) Repealed by Session Laws 1985, c. 666, s. 38.

19 (c) In addition to the authority to deny, suspend, or revoke a license under this
20 Article, the Board may impose a civil penalty upon any person violating the provisions
21 of this Article. Upon a finding by the Board of a violation of this Article, the Board
22 shall order the payment of a penalty of not less than ~~one two~~ two hundred fifty dollars
23 ~~(\$100.00)~~ (\$250.00) nor more than ~~five hundred one thousand~~ one thousand dollars
24 ~~(\$500.00)~~ (\$1,000). In determining the amount of the penalty, the Board shall consider
25 the degree and extent of harm caused by the violation, the amount of money that inured
26 to the benefit of the violator as a result of the violation, whether the violation was
27 committed willfully, and the prior record of the violator in complying or failing to
28 comply with laws, rules, or orders applicable to the violator. Each day during which a
29 violation occurs shall constitute a separate offense. The penalty shall be payable to the
30 Board. The Board shall remit the clear proceeds of penalties provided for in this
31 subsection to the Civil Penalty and Forfeiture Fund in accordance with
32 G.S. 115C-457.2.

33 Payment of the civil penalty under this section shall be in addition to payment of any
34 other penalty for a violation of the criminal laws of this State. Nothing in this subsection
35 shall prevent the Board from negotiating a mutually acceptable agreement with any
36 person as to the status of the person's license or certificate or as to any civil penalty."

37 **SECTION 5.** Part 1 of Article 9 of Chapter 143 of the General Statutes is
38 amended by adding a new section to read:

39 **"§ 143-143.18A. Manufactured Housing Recovery Fund.**

40 (a) There is created the Manufactured Housing Recovery Fund ('Fund'). The
41 purpose of the Fund is to reimburse actual losses for any person who purchased a
42 manufactured home for personal or family residential use, who has suffered a loss due
43 to a licensee's acts described in subdivision (c)(1) of this section, and where the bond
44 required under G.S. 143-143.12 has been exhausted. Any balance remaining in the Fund

1 at the end of any fiscal year shall be carried forward in the Fund for the next succeeding
2 fiscal year.

3 (b) In order to qualify to file a claim against the Fund, an applicant must have
4 obtained a final civil judgment against the licensee or the licensee has filed for
5 bankruptcy.

6 (c) If the applicant has obtained a civil judgment against a licensee, the applicant
7 may file a claim with the Board within one year of obtaining the judgment provided the
8 following conditions apply:

9 (1) The judgment is for failure of a licensee to honor its warranty
10 obligations, fraud, willful misrepresentation, or conversion; and

11 (2) The claimant has executed on the judgment and found the defendant to
12 lack the financial resources necessary to satisfy the judgment.

13 (d) If the licensee has filed for bankruptcy, the following conditions apply:

14 (1) The applicant must file a claim under this section within one year of
15 the termination of bankruptcy proceedings or within one year of the
16 date of sale, whichever occurs later; and

17 (2) The claim must be based on one or more of the wrongful acts listed in
18 subdivision (c)(1) of this section.

19 (e) An applicant may recover up to up to seventy-five thousand dollars (\$75,000)
20 from the Fund.

21 (f) The Board shall adopt rules for the administration of the Fund."

22 **SECTION 6.** G.S. 143-143.20A reads as rewritten:

23 "**§ 143-143.20A. Display of pricing on manufactured ~~homes~~homes; notice of**
24 **warranties; material comparison checklist.**

25 (a) ~~If the manufacturer of a manufactured home publishes a manufacturer's~~
26 ~~suggested retail price, that price shall be displayed near the front entrance of the~~
27 ~~manufactured home.~~The dealer shall prominently display the following information at
28 the front entrance of each manufactured home:

29 (1) The price of the home.

30 (2) The individual cost of the specifications and options included in or
31 available for the home.

32 (3) A statement of estimated set-up costs not included in the price of the
33 home.

34 (b) Each manufactured home dealer shall prominently display a sign and provide
35 to each buyer a notice, developed by the North Carolina Manufactured Housing Board,
36 containing information about the Board, including how to file a consumer complaint
37 with the Board and the warranties and protections provided for each new manufactured
38 home under federal and State law.

39 (c) Each manufactured home dealer shall provide to each buyer a material
40 comparison checklist required under G.S. 143-146A for each manufactured home the
41 dealer sells."

42 **SECTION 7.** G.S. 143-143.21A reads as rewritten:

1 "§ 143-143.21A. Purchase agreements; Conditional sales contract; final
2 manufactured home retail installment sales contract; buyer
3 cancellations.

4 (a) A purchase agreement conditional sales contract for a manufactured home
5 shall include all of the following:

- 6 (1) A description of the manufactured home and all accessories included
7 in the purchase.
- 8 (2) The purchase price for the home and all accessories.
- 9 (3) The estimated amount of deposit or other payment toward or payment
10 of to be paid by the buyer towards the purchase price of the
11 manufactured home and accessories that is made by the
12 buyer.accessories.
- 13 (4) The date the retail purchase agreement is signed.
- 14 (5) The estimated terms of financing of the purchase, if any, including the
15 estimated interest rate, number of years financed, and the amount of
16 the monthly payment.
- 17 (6) The buyer's signature.
- 18 (7) The dealer's signature.

19 (a1) The conditional sales contract shall also contain in at least ten point, all
20 uppercase Gothic type the following statement in immediate proximity to the space
21 reserved for the signature of the buyer:

22 I UNDERSTAND THIS IS NOT A BINDING AGREEMENT AND THAT I DO
23 NOT HAVE TO PAY ANY MONEY TOWARDS THE PURCHASE OF A
24 MANUFACTURED HOME UNTIL I RECEIVE AN INDEPENDENT APPRAISAL
25 OF THE HOME AND SIGN A FINAL MANUFACTURED HOME RETAIL
26 INSTALLMENT SALES CONTRACT.'

27 (a2) At the time the buyer and the dealer execute the conditional sales contract, the
28 dealer shall provide to the buyer an executed copy of the document and a list of
29 appraisers approved by the Board. If the buyer intends to obtain financing to purchase
30 the home, the buyer shall have the option of obtaining financing independently of the
31 dealer or to have the dealer arrange for the financing. If the dealer arranges the
32 financing through referral or otherwise, the provisions of Chapter 25A of the General
33 Statutes shall apply. The dealer shall also disclose in writing to the buyer any business
34 relationship the dealer has with any of the financial entities or appraisers.

35 (a3) In situations where the buyer intends to borrow money to finance the
36 purchase of the manufactured home, the buyer and the dealer may not execute a final
37 manufactured home retail installment sales contract unless the buyer has obtained an
38 independent appraisal of the home that will be the subject of the contract. A buyer who
39 intends to pay cash for a manufactured home may request an independent appraisal, but
40 is not required to obtain one prior to executing a final manufactured home retail
41 installment sales contract. The dealer shall not request, demand or accept any funds
42 from a buyer prior to the execution of a final manufactured home retail installment sales
43 contract. The dealer shall not commence set-up procedures until after the buyer and the
44 dealer execute a final sales contract.

1 (a4) In addition to any other provisions required by law, the final sales contract
2 shall include all of the following:

- 3 (1) A description of the manufactured home and all accessories included
4 in the purchase.
5 (2) The purchase price for the home and all accessories.
6 (3) The amount of deposit to be paid by the buyer towards the purchase
7 price of the manufactured home and any accessories.
8 (4) The date the final manufactured home retail installment sales contract
9 is signed.
10 (5) The final terms of financing the purchase, if any, including the interest
11 rate, number of years financed, and monthly payment.
12 (6) The buyer's signature.
13 (7) The dealer's signature.
14 (8) The date of the fifth business day after the date the buyer executes the
15 final manufactured home retail installment sales contract.

16 (b) ~~The purchase agreement~~ final manufactured home retail installment sales
17 contract shall contain, in immediate proximity to the space reserved for the signature of
18 the buyer and in at least ten point, all upper-case Gothic type, the following statement:

19 "I UNDERSTAND THAT I HAVE THE RIGHT TO CANCEL THIS PURCHASE
20 BEFORE MIDNIGHT OF THE ~~THIRD-FIFTH~~ BUSINESS DAY AFTER THE DATE
21 THAT I HAVE SIGNED THIS ~~AGREEMENT~~. ~~CONTRACT~~. I UNDERSTAND
22 THAT THIS CANCELLATION MUST BE IN WRITING. IF I CANCEL THE
23 PURCHASE AFTER THE ~~THREE-DAY~~ FIVE-DAY PERIOD, I UNDERSTAND
24 THAT THE DEALER MAY NOT HAVE ANY OBLIGATION TO GIVE ME BACK
25 ALL OF THE MONEY THAT I PAID THE DEALER. ~~I UNDERSTAND ANY~~
26 ~~CHANGE TO THE TERMS OF THE PURCHASE AGREEMENT BY THE DEALER~~
27 ~~WILL CANCEL THIS AGREEMENT"~~

28 (c) At the time the ~~deposit or other payment toward or payment for the purchase~~
29 ~~price is received by the dealer,~~ dealer receives the buyer's deposit, the dealer shall give
30 the buyer a an executed copy of the purchase agreement ~~final manufactured home retail~~
31 installment sales contract and a completed form in duplicate, captioned "Notice of
32 Cancellation," ~~which~~ Cancellation". The Notice shall be attached to the ~~purchase~~
33 ~~agreement,~~ executed copy of the final sales contract, be easily detachable, and explain
34 the buyer's right to cancel the purchase and how that right can be exercised.

35 (d) The dealer shall return the deposit ~~or other payment toward or payment for~~
36 ~~the purchase price~~ to the buyer if the buyer cancels the purchase before midnight of the
37 ~~third-fifth~~ business day after the date the buyer signed the ~~purchase agreement~~ or if any
38 of the material terms of the purchase agreement are changed by the dealer. final
39 manufactured home retail installment sales contract. To make the cancellation effective,
40 the buyer shall give the dealer written notice of the buyer's cancellation of the purchase.
41 The dealer shall return the deposit ~~or other payment toward or payment for the purchase~~
42 ~~price~~ to the buyer within ~~15~~ three business days after receipt of the notice of ~~cancellation~~
43 ~~or within three business days of any change by the dealer of the purchase agreement.~~
44 cancellation. For purposes of this section, "business day" means any day except Sunday

1 and legal holidays. ~~Each time the dealer gives the buyer a new set of financing terms,~~
2 ~~unless the financing terms are more favorable to the buyer, the buyer shall be given~~
3 ~~another three-day cancellation period. The dealer shall not commence setup procedures~~
4 ~~until after the final three-day cancellation period has expired.~~

5 (e) If the buyer cancels the purchase after the ~~three-day~~ five-day cancellation
6 ~~period, but before the sale is completed,~~ period, and if:

7 (1) ~~The~~ the manufactured home ~~is~~ had been in the dealer's inventory, the
8 dealer may retain from the deposit ~~or other payment received from the~~
9 ~~buyer~~ actual damages up to a maximum of ten percent (10%) of the
10 purchase ~~price;~~ or price.

11 (2) ~~The~~ If the buyer cancels the purchase after the five-day cancellation
12 ~~period and the manufactured home is~~ was specially ordered from the
13 manufacturer for the buyer, the dealer may retain actual damages up to
14 the full amount of the buyer's ~~deposit or other payment received from~~
15 ~~the buyer.~~ deposit.

16 (f) ~~The Board shall adopt rules concerning the terms of any deposit paid by a~~
17 ~~buyer to a dealer. The rules may exempt deposits of less than two thousand dollars~~
18 ~~(\$2,000). To the extent practicable, the rules shall protect the deposits from the claims~~
19 ~~of the creditors of a dealer that may thereafter be in bankruptcy. The rules shall further~~
20 ~~provide for the prompt return of a buyer's deposit if the buyer is entitled to its return.~~

21 **SECTION 8.** Part 1 of Article 9 of Chapter 143 of the General Statutes is
22 amended by adding a new section to read:

23 **"§ 143-143.21B. Independent appraisals.**

24 The Board, in consultation with the North Carolina Appraisers Board, shall develop
25 a list of approved appraisers and adopt a uniform appraisal form to be provided to
26 buyers under G.S. 143-143.21A. The appraisal shall utilize the material comparison
27 checklist required under G.S. 143-146A."

28 **SECTION 9.** Article 9A of Chapter 143 of the General Statutes is amended
29 by adding a new Part to read:

30 "Part 2. Buyer Deposit, Escrow or Trust Accounts.

31 **"§ 143-143.50. Escrow or trust account required.**

32 (a) Dealers shall maintain buyer's deposits in an interest-bearing escrow or trust
33 account with a bank. A dealer shall not commingle any other funds with buyer deposits
34 in the escrow or trust account.

35 (b) Dealers shall notify the Board in writing when the escrow or trust account is
36 established. The notification shall include the name and number of the account and the
37 name and location of the bank holding the account.

38 (c) All buyer funds shall be placed in the escrow or trust account no later than the
39 close of the second banking business day after receipt.

40 (d) Dealers shall provide buyers with a receipt for all buyer deposits received by
41 the dealer. The receipt shall include the amount of the buyer deposit, the date the
42 deposit was provided to the dealer, and the name and address of the bank where the
43 buyer's funds will be deposited.

44 **"§ 143-143.51. Use of escrow or trust funds; penalty for violations.**

1 (a) Buyer funds in the dealer's escrow or trust account may only be used for
2 purposes authorized under the contractual obligations of the dealer to the buyer for the
3 direct benefit of the buyer for whom the funds are held.

4 (b) Notwithstanding any other provision of law and in addition to any other
5 sanction the Board may impose under this Article, if the Board finds that a dealer has
6 used a buyer's funds for a purpose that is not authorized under subsection (a) of this
7 section or if the Board finds that a dealer has failed to place deposits in the dealer
8 escrow or trust account, the Board shall fine the dealer an amount that is equal to the
9 amount that the dealer misappropriated or failed to place in the account.

10 **"§ 143-143.52. Minimum requirements for dealer records for escrow or trust**
11 **accounts at banks.**

12 The minimum records required for escrow or trust accounts maintained at a bank
13 shall consist of the following:

14 (a) All bank receipts or deposit slips listing the source and date of receipt of all
15 funds deposited in the account and the name of the buyer to whom the funds belong.

16 (b) All cancelled checks or other instruments drawn on the account, or printed
17 digital images thereof furnished by the bank, showing the amount, date, and recipient of
18 the disbursement.

19 (c) All instructions or authorizations to transfer, disburse, or withdraw funds
20 from the escrow or trust account.

21 (d) All bank statements and other documents received from the bank with respect
22 to the escrow or trust account, including notices of return or dishonor of any instrument
23 drawn on the account against insufficient funds.

24 (e) A ledger containing a record of receipts and disbursements for each buyer
25 from whom and for whom funds are received and showing the current balance of funds
26 held in the escrow or trust account for each buyer.

27 (f) Any other records required by law to be maintained for the escrow or trust
28 account.

29 **"§ 143-143.53. Quarterly reconciliation of escrow or trust accounts.**

30 At least quarterly, individual buyer balances shown on the ledger of an escrow or
31 trust account shall be totaled and reconciled with the current bank balance for the trust
32 account as a whole.

33 **"§ 143-143.54. Accountings for escrow or trust funds.**

34 The dealer shall provide to the buyer a written accounting of the receipts and
35 disbursements of all escrow or trust funds upon the complete disbursement of the
36 escrow or trust accounts, upon the request of the buyer, and at least quarterly if the
37 funds are retained for a period of more than three months.

38 **"§ 143-143.55. Audits and record inspection.**

39 All financial records required by this Part shall be subject to audit for cause and to
40 random audit at the discretion of and by the Board, the Commissioner, or the Attorney
41 General. The Board may inspect these records periodically, without prior notice and
42 may also inspect these records whenever the Board determines that the records are
43 pertinent to an investigation of any complaint against a licensee. The dealer shall
44 provide written authorization to the bank that holds the escrow or trust account to

1 release any and all information relative to the account to the parties authorized under
2 this section to inspect those records.

3 **"§ 143-143.56. Interest on dealer's escrow or trust accounts.**

4 (a) Interest earned on a dealer's escrow or trust account shall not be the property
5 of the dealer and may not be used by the dealer.

6 (b) The dealer shall direct the bank where the account is located as follows:

7 (1) To remit interest or dividends, less any deduction for bank service
8 charges, bank fees and taxes collected with respect to the deposited
9 funds, at least quarterly to the Board.

10 (2) To transmit with each remittance to the Board a statement showing the
11 name of the dealer maintaining the account with respect to which the
12 remittance is sent and the rate of interest applied in computing the
13 remittance.

14 (3) To transmit to the dealer a report showing the amount remitted to the
15 Board and the rate of interest applied in computing the remittance.

16 (c) The Board shall collect the remitted funds in the Manufactured Housing
17 Recovery Fund created under G.S. 143-143.18A."

18 **SECTION 10.** Article 9A of Chapter 143 of the General Statutes is amended
19 by adding a new section to read:

20 **"§ 143-146A. Material comparison checklist.**

21 In order to assist consumers in comparing the quality and features of different makes
22 and models of manufactured homes, the Commissioner shall develop a material
23 comparison checklist for manufactured homes. The checklist shall include information
24 regarding the floor system, the plumbing and ductwork systems, the floor decking,
25 cabinets and fixtures, interior and exterior walls, roof materials, doors and windows,
26 siding and exterior, performance standards, appliances, and additional features.
27 Manufactured home manufacturers shall complete a material comparison checklist for
28 each manufactured home the manufacturers sell in this State and shall also provide the
29 checklist to manufactured home dealers who sell those homes."

30 **SECTION 11.** G.S. 143-151(a) reads as rewritten:

31 **"§ 143-151. Penalties.**

32 (a) Any person who is found by the Commissioner to have violated the
33 provisions of the Act, this Article, or any rules adopted under this Article, shall be liable
34 for a civil penalty not to exceed ~~one ten~~ thousand dollars (~~(\$1,000)~~ (\$10,000) for each
35 violation. Each violation shall constitute a separate violation for each manufactured
36 home or for each failure or refusal to allow or perform an act required by the Act, this
37 Article, or any rules adopted under this Article. The maximum civil penalty may not
38 exceed ~~one ten~~ million dollars (~~(\$1,000,000)~~ (\$10,000,000) for any related series of
39 violations occurring within one year after the date of the first violation. In determining
40 the amount of the penalty, the Commissioner shall consider the degree and extent of
41 harm caused by the violation, the amount of money that inured to the benefit of the
42 violator as a result of the violation, whether the violation was willful, and the prior
43 record of the violator in complying or failing to comply with laws, rules, or orders
44 applicable to the violator. The clear proceeds of civil penalties provided for in this

1 section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with
2 G.S. 115C-457.2."

3 **SECTION 12.** The North Carolina Manufactured Housing Board shall
4 increase the standards for licensure of set-up contractors. The revised standards shall be
5 at least as stringent as the most stringent standards adopted by another state.

6 **SECTION 13.** The North Carolina Manufactured Housing Board shall not
7 issue any new licenses under Article 9 of Chapter 143 unless and until a final rule for
8 obtaining criminal background checks on all applicants is in place and effective.

9 **SECTION 14.** The North Carolina Commissioner of Insurance shall review
10 the standards for installation of manufactured homes and revise the standards to be at
11 least as stringent as the most stringent standards adopted by another state.

12 **SECTION 15.** Sections 3, 12, 13, 14, and 15 of this act are effective when
13 this act becomes law, and the terms of the current appointed members of the North
14 Carolina Housing Board shall terminate. The remainder of this act becomes effective
15 January 1, 2006. Section 9 applies to deposits and funds collected on or after January 1,
16 2006. Section 5 applies to claims arising from acts occurring on or after June 1, 2006.