

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 630
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Third Edition Engrossed 5/12/05
Senate Commerce Committee Substitute Adopted 8/11/05

Short Title: Manufactured Homes Escrow Accounts.

(Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE MANUFACTURED HOME DEALERS TO ESTABLISH AND MAINTAIN ESCROW OR TRUST ACCOUNTS FOR BUYER DEPOSITS; TO CLARIFY THE CONTRACT NEGOTIATION PROCESS AND EXTEND THE CANCELLATION PERIOD; TO CHANGE THE MEMBERSHIP OF THE NORTH CAROLINA MANUFACTURED HOUSING BOARD; AND TO PROVIDE BUYERS WITH INFORMATION REGARDING THE PRICE OF MANUFACTURED HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-143.8 through G.S. 143-143.25 of Article 9A of Chapter 143 of the General Statutes are redesignated as Part 1 of Article 9A of Chapter 143 of the General Statutes to be entitled "Part 1. Duties, Warranties, Purchase Transaction.". The Revisor of Statutes is authorized to make changes in the newly designated Part 1 that will reflect the results of the recodification.

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

"§ 143-143.9. Definitions.

The following definitions apply in this Article:

(1) ~~Board.—The North Carolina Manufactured Housing Board.~~Bank. — A federally insured financial institution including institutions defined under G.S. 53-1(1), savings and loan associations, credit unions, savings banks and other financial institutions chartered under this or any other state law or chartered under federal law.

(1a) Board. — The North Carolina Manufactured Housing Board.

(2) ~~Buyer. — A person who purchases at retail from a dealer or manufacturer for whom a dealer performs, or is engaged to perform, any services or provides any products including the purchase and setup~~

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

- 1 (8) Manufactured home manufacturer or manufacturer. – Any person,
2 resident or nonresident, who manufactures or assembles manufactured
3 homes for sale to dealers in North Carolina.
- 4 (9) Manufactured home salesperson or salesperson. – Any person
5 employed by a manufactured home dealer to sell manufactured homes
6 to buyers. Manufactured home salesperson or salesperson also includes
7 sales managers, lot managers, general managers, or others who
8 manage or supervise salespersons.
- 9 (10) Person. – Any individual, natural persons, firm, partnership,
10 association, corporation, legal representative or other recognized legal
11 entity.
- 12 (11) Responsible party. – A manufacturer, dealer, supplier, or set-up
13 contractor.
- 14 (12) Setup. – The operations performed at the occupancy site which render
15 a manufactured home fit for habitation.
- 16 (13) Set-up contractor. – A person who engages in the business of
17 performing setups for compensation in North Carolina.
- 18 (14) Substantial defect. – Any substantial deficiency in or damage to
19 materials or workmanship occurring in a manufactured home which
20 has been reasonably maintained and cared for in normal use. The term
21 also means any structural element, utility system or component part of
22 the manufactured home which fails to comply with the Code.
- 23 (15) Supplier. – The original producer of completed components, including
24 refrigerators, stoves, hot water heaters, dishwashers, cabinets, air
25 conditioners, heating units, and similar components, and materials
26 such as floor coverings, ~~panelling~~paneling, siding, trusses, and similar
27 materials, which are furnished to a manufacturer or dealer for
28 installation in the manufactured home prior to sale to a buyer."

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

30 **"§ 143-143.10. Manufactured Housing Board created; membership; terms;
31 meetings.**

32 (a) There is created the North Carolina Manufactured Housing Board within the
33 Department. The Board shall be composed of ~~nine~~11 members as follows:

- 34 (1) The Commissioner of Insurance or ~~his~~the Commissioner's designee.
35 (2) A manufactured home manufacturer.
36 (3) A manufactured home dealer.
37 (4) A representative of the banking and finance ~~business~~industry.
38 (5) A representative of the insurance industry.
39 (6) A manufactured home supplier.
40 (7) A set-up contractor.
41 (8) Two representatives of the general public.
42 (9) A person who is employed with a HUD-approved housing counseling
43 agency in the State.
44 (10) An accountant.

1 The Commissioner or ~~his~~ the Commissioner's designee shall chair the Board. The
2 Governor shall appoint to the Board the manufactured home manufacturer and the
3 manufactured home dealer. The General Assembly upon the recommendation of the
4 Speaker of the House of Representatives in accordance with G.S. 120-121 shall appoint
5 to the Board the representative of the banking and finance ~~industry~~ industry, the
6 employee of a HUD-approved housing counseling agency, and the representative of the
7 insurance industry. The General Assembly upon the recommendation of the President
8 Pro Tempore of the Senate in accordance with G.S. 120-121 shall appoint to the Board
9 the manufactured home ~~supplier~~ supplier, the accountant, and the set-up contractor. The
10 Commissioner shall appoint two representatives of the general public. Except for the
11 representatives from the general public and the persons appointed by the General
12 Assembly, each member of the Board shall be appointed by the appropriate appointing
13 authority from a list of nominees submitted to the appropriate appointing authority by
14 the Board of Directors of the North Carolina Manufactured Housing Institute. At least
15 three nominations shall be submitted for each position on the Board. The members of
16 the Board shall be residents of the State.

17 The members of the Board shall serve for terms of three years. In the event of any
18 vacancy of a position appointed by the Governor or Commissioner, the appropriate
19 appointing authority shall appoint a replacement in the same manner as provided for the
20 original appointment to serve the remainder of the unexpired term. Vacancies in
21 appointments made by the General Assembly shall be filled in accordance with
22 G.S. 120-122. In the event of any vacancy, the appropriate appointing authority shall
23 appoint a replacement to serve the remainder of the unexpired term. Such appointment
24 shall be made in the same manner as provided for the original appointment. No member
25 of the Board shall serve more than two consecutive, three-year terms.

26 The ~~member~~ members of the Board ~~representing the general public~~ designated in
27 subdivisions (8), (9), and (10) of this subsection shall have no current or previous
28 financial interest connected with the manufactured housing industry. No member of the
29 Board shall participate in any proceeding before the Board involving that member's own
30 business.

31 Each member of the Board, except the Commissioner and any other State employee,
32 shall receive per diem and allowances as provided with respect to occupational licensing
33 boards by G.S. 93B-5. All per diem and travel expenses shall be paid exclusively out of
34 the fees received by the Board as authorized by this Article. In no case shall any salary,
35 expense, or other obligation of the Board be charged against the General Fund of the
36 State of North Carolina. All moneys and receipts shall be kept in a special fund by and
37 for the use of the Board for the exclusive purpose of carrying out the provisions of this
38 Article. At the end of the fiscal year, the Board shall retain fifteen percent (15%) of the
39 unexpended funds collected and received during that year. The remaining eighty-five
40 percent (85%) of these funds shall be credited to the General Fund.

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

- 43 (1) To issue licenses to manufacturers, dealers, salespersons, and set-up
44 contractors.

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

14 **SECTION 4.** G.S. 143-143.13(a) reads as rewritten:

15 "(a) A license may be denied, suspended or revoked by the Board on any one or

16 more of the following grounds:

- 17 (1) Making a material misstatement in application for license.
- 18 (2) Failing to post an adequate corporate surety bond, cash bond or fixed
- 19 value equivalent.
- 20 (3) Engaging in the business of manufactured home manufacturer, dealer,
- 21 salesperson, or set-up contractor without first obtaining a license from
- 22 the Board.
- 23 (4) Failing to comply with the warranty service obligations and claims
- 24 procedure established by this Article.
- 25 (5) Failing to comply with the set-up requirements established by this
- 26 Article.
- 27 (6) Failing or refusing to account for or to pay over moneys or other
- 28 valuables belonging to others that have come into licensee's possession
- 29 arising out of the sale of manufactured homes.
- 30 (6a) Failing to comply with the escrow or trust account provisions of Part 2
- 31 of this Article.
- 32 (7) Using unfair methods of competition or committing unfair or deceptive
- 33 acts or practices.
- 34 (8) Failing to comply with any provision of this Article.
- 35 (9) Failing to appear for a hearing before the Board or for a prehearing
- 36 conference with a person or persons designated by the Board after
- 37 proper notice or failing to comply with orders of the Board issued
- 38 pursuant to this Article.
- 39 (10) Employing unlicensed salespersons.
- 40 (11) Offering for sale manufactured homes manufactured or assembled by
- 41 unlicensed manufacturers or selling manufactured homes to unlicensed
- 42 dealers for sale to buyers in this State.
- 43 (12) Conviction of any crime listed in G.S. 143-143.10A.

1 (13) Having had a license revoked, suspended or denied by the Board; or
2 having had a license revoked, suspended or denied by a similar entity
3 in another state; or engaging in conduct in another state which
4 conduct, if committed in this State, would have been a violation under
5 this Article.

6 (14) Employing or contracting with any person to perform setups who is
7 not licensed by the Board as a set-up contractor."

8 **SECTION 5.** G.S. 143-143.21A reads as rewritten:

9 **"§ 143-143.21A. Purchase agreements; buyer cancellations.**

10 (a) A purchase agreement for a manufactured home shall include all of the
11 following:

12 (1) A description of the manufactured home and all accessories included
13 in the purchase.

14 (2) The purchase price for the home and all accessories.

15 (3) The amount of deposit or other payment toward or payment of the
16 purchase price of the manufactured home and accessories that is made
17 by the buyer.

18 (4) The date the retail purchase agreement is signed.

19 (5) The estimated terms of financing the purchase, if any, including the
20 estimated interest rate, number of years financed, and monthly
21 payment.

22 (6) The buyer's signature.

23 (7) The dealer's signature.

24 (a1) The dealer shall not commence set-up procedures until after the expiration of
25 the three-day right to cancel period following the finalization of all terms set forth in
26 G.S. 143-143.21A.

27 (b) The purchase agreement shall contain, in immediate proximity to the space
28 reserved for the signature of the buyer and in at least ten point, all upper-case Gothic
29 type, the following statement:

30 "I UNDERSTAND THAT I HAVE THE RIGHT TO CANCEL THIS PURCHASE
31 BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE THAT
32 I HAVE SIGNED THIS AGREEMENT. I UNDERSTAND THAT THIS
33 CANCELLATION MUST BE IN WRITING. IF I CANCEL THE PURCHASE
34 AFTER THE THREE-DAY PERIOD, I UNDERSTAND THAT THE DEALER MAY
35 NOT HAVE ANY OBLIGATION TO GIVE ME BACK ALL OF THE MONEY
36 THAT I PAID THE DEALER. I UNDERSTAND ANY CHANGE TO THE TERMS
37 OF THE PURCHASE AGREEMENT BY THE DEALER WILL CANCEL THIS
38 AGREEMENT."

39 (c) At the time the deposit or other payment toward or payment for the purchase
40 price is received by the dealer, the dealer shall give the buyer a copy of the purchase
41 agreement and a completed form in duplicate, captioned "Notice of Cancellation,"
42 which shall be attached to the purchase agreement, be easily detachable, and explain the
43 buyer's right to cancel the purchase and how that right can be exercised.

1 (d) The dealer shall return the deposit or other payment toward or payment for
2 the purchase price to the buyer if the buyer cancels the purchase before midnight of the
3 third business day after the date the buyer signed the purchase agreement or if any of the
4 material terms of the purchase agreement are changed by the dealer. To make the
5 cancellation effective, the buyer shall give the dealer written notice of the buyer's
6 cancellation of the purchase. The dealer shall return the deposit or other payment toward
7 or payment for the purchase price to the buyer within ~~15~~seven business days after
8 receipt of the notice of cancellation or within three business days of any change by the
9 dealer of the purchase agreement. For purposes of this section, "business day" means
10 any day except Sunday and legal holidays. Each time the dealer gives the buyer a new
11 set of financing terms, ~~unless the financing terms are more favorable to the buyer,~~ the
12 buyer shall be given another three day cancellation period. The dealer shall not
13 commence setup procedures until after the final three day cancellation period has
14 expired.

15 (e) If the buyer cancels the purchase after the three-day cancellation period, but
16 before the sale is completed, and if:

17 (1) The manufactured home is in the dealer's inventory, the dealer may
18 retain from the deposit or other payment received from the buyer
19 actual damages up to a maximum of ten percent (10%) of the purchase
20 price; or

21 (2) The manufactured home is specially ordered from the manufacturer for
22 the buyer, the dealer may retain actual damages up to the full amount
23 of the buyer's deposit or other payment received from the buyer.

24 ~~(f) The Board shall adopt rules concerning the terms of any deposit paid by a
25 buyer to a dealer. The rules may exempt deposits of less than two thousand dollars
26 (\$2,000). To the extent practicable, the rules shall protect the deposits from the claims
27 of the creditors of a dealer that may thereafter be in bankruptcy. The rules shall further
28 provide for the prompt return of a buyer's deposit if the buyer is entitled to its return."~~

29 **SECTION 6.** Article 9A of Chapter 143 of the General Statutes is amended
30 by adding the following new Part to read:

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

32 **"§ 143-143.50. Escrow or trust account required.**

33 (a) Dealers shall maintain buyers' deposits in an escrow or trust account with a
34 bank. A dealer shall not commingle any other funds with buyers' deposits in the escrow
35 or trust account.

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

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

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

1 **"§ 143-143.51. Use of escrow or trust funds; penalty for violations.**

2 (a) Buyer funds in the dealer's escrow or trust account shall be held for the
3 benefit of the buyer and may only be used for purposes authorized under the contractual
4 obligations of the dealer to the buyer. No buyer funds in the dealer's escrow or trust
5 account may be used by the dealer until after all the terms set forth in G.S. 143-143.21A
6 are finalized and after the three-day right of cancellation period as set forth in
7 G.S. 143-143.21A has expired. The dealer may use buyer funds to complete the steps
8 necessary for site preparation of property, when approved in writing in advance by the
9 buyer. Buyer funds in the dealer's escrow or trust account shall be promptly returned to
10 the buyers when the buyer is entitled to return of the funds in accordance with
11 G.S. 143-143.21A.

12 (b) Notwithstanding any other provision of law and in addition to any other
13 sanction the Board may impose under this Article, if the Board finds that a dealer has
14 used a buyer's funds for a purpose that is not authorized under subsection (a) of this
15 section or if the Board finds that a dealer has failed to place deposits in the dealer's
16 escrow or trust account, the Board may fine the dealer or order restitution to the buyer
17 in an amount up to the amount that the dealer misappropriated or failed to place in the
18 account.

19 **"§ 143-143.52. Minimum requirements for dealer records for escrow or trust**
20 **accounts at banks.**

21 The records required for escrow or trust accounts maintained at a bank shall consist
22 of the following and be maintained for a period of five years from the date of purchase:

- 23 (1) All bank receipts or deposit slips listing the source and date of receipt
24 of all funds deposited in the account and the name of the buyer to
25 whom the funds belong.
- 26 (2) All cancelled checks or other instruments drawn on the account, or
27 printed digital images thereof furnished by the bank, showing the
28 amount, date, and recipient of the disbursement.
- 29 (3) All instructions or authorizations to transfer, disburse, or withdraw
30 funds from the escrow or trust account.
- 31 (4) All bank statements and other documents received from the bank with
32 respect to the escrow or trust account, including notices of return or
33 dishonor of any instrument drawn on the account against insufficient
34 funds.
- 35 (5) A ledger containing a record of receipts and disbursements for each
36 buyer from whom and for whom funds are received and showing the
37 current balance of funds held in the escrow or trust account for each
38 buyer.

39 **"§ 143-143.53. Accountings for escrow or trust funds.**

40 Upon the request of the buyer, the dealer shall provide to the buyer a written
41 accounting of the receipts and disbursements of all escrow or trust funds upon the
42 complete disbursement of the escrow or trust accounts.

43 **"§ 143-143.54. Audits and record inspection.**

1 All financial records required by this Part shall be subject to audit for cause and to
2 random audit at the discretion of and by the Board, the Commissioner, or the Attorney
3 General. The Board may inspect these records periodically, without prior notice and
4 may also inspect these records whenever the Board determines that the records are
5 pertinent to an investigation of any complaint against a licensee. The dealer shall
6 provide written authorization to the bank that holds the escrow or trust account to
7 release any and all requested information relative to the account to the parties
8 authorized under this section to inspect those records."

9 **SECTION 7.** Sections 1, 2, 3, 4, and 8 of this act become effective April 1,
10 2006. The remainder of this act becomes effective July 1, 2006. Appointment of
11 members to the North Carolina Manufactured Housing Board under Section 3 of this act
12 for any positions existing prior to the effective date of Section 3 shall be effective upon
13 the completion of the existing term, terminating on or after the effective date of this act.
14 Appointment of new members to the North Carolina Manufactured Housing Board
15 under Section 3 of this act shall be effective on October 1, 2005.