

PLEASE NOTE: The following is a brief summary of the minutes of the North Carolina Manufactured Housing Board meeting of April 20, 2004. (The official record is recorded and maintained on tape.)

AMENDED MINUTES OF THE
NORTH CAROLINA MANUFACTURED HOUSING BOARD
APRIL 20, 2004

RALEIGH, NORTH CAROLINA

Linda Willey chaired the April 20, 2004 meeting. Members of the North Carolina Manufactured Housing Board present were: Wesley Layton, Clark Crowther, Lynn Carlson, Danny Chandler, J. P. Cauley, and Dennis Jones; Tim Bradley and Troy Brickey, were not present. Pat Walker was appointed as the Commissioner's designee on the Board in the absence of Tim Bradley. LaShawn Strange, Attorney representing the Board was present. Others in attendance were as follows:

Gail Brown, NC Manufactured Housing Institute (NCMHI)
Frank Gray, Attorney representing NCMHI
Brad Lovin, NCMHI
Jack Holtzman, NC Low Income Housing Coalition (LIHC)
Alfred Ripley, NC Justice Center (NCJC)
Chris Estes, LIHC
Dascheil Propes, DOI
Franklin Drake, NCMHI

1. Introduction from Pat Walker opening meeting.
2. Introduction and swearing in of new Board Member, Lynn Carlson.
3. Minutes of January 20, 2004 meeting were reviewed. Motion was made and seconded to accept these minutes as written. Motion passed.
4. **Old Business:**

Chairman Willey advised the Items would be not taken in order as listed on the Amended Agenda. The first item to be addressed was item E on the agenda.

E. Development of the Consumer Deposit Rules – Effective October 1, 2003 - Section 7(f) of Ratified House Bill 1006 – Committee Report – Committee Chairman, Danny Chandler.

Chairman Chandler expressed appreciation to all committee members. Chandler reported all parties could not reach a decision for resolution of this matter. The committee had 2 proposals to present to the Board for their consideration. Chandler then asked Al Ripley, Attorney with the North Carolina Justice Center (NCJC) to introduce the Low Income Housing Coalition Proposal.

Mr. Ripley provided copies to the Board of a memo from LaShawn Strange dated October 8, 2003 which defined the term practicable. An affidavit from Billy Brewer who is a bankruptcy attorney was provided to Board which went into the detail the concerns

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regarding protection of deposits from bankruptcy without establishing escrow accounts. The Board then reviewed the proposal of the Justice Center and Low Income Housing

Coalition which called for establishing escrow accounts for all deposits. Mr. Ripley reviewed the proposed rule and responded to questions from the Board.

The next proposal was the proposal from the North Carolina Manufactured Housing Institute and was presented by Frank Gray, Attorney for the Institute (NCMHI). Mr. Gray gave remarks to the Board concerning the background of this portion of HB 1006. Mr. Gray introduced Franklin Drake a bankruptcy specialist. Mr. Gray advised it was NCMHI's concern that the Board does not have authority to adapt escrow accounts. Mr. Gray stated that escrow funds are not protected in bankruptcy. Mr. Gray introduced Report of deposit cases. Mr. Gray introduced Proposal of NCMHI. This proposal would provide for the use of the bond to satisfy deposit cases first. Deposit claims would be paid within 90 days up to 50% of the value of the bond and this allows the remaining 50% of the bond to be used for warranty service claims. When a warranty claim involves setup, another bond may be used to satisfy claims. NCMHI has contacted two bonding companies and they do not have a problem with this type of disbursement.

At the conclusion of the presentation of both proposals, Chairman Willey offered an additional proposal in the form of a motion for consideration by the Board. This proposal offered in the form of a motion was: Each dealer is to establish an escrow account of all consumer deposits exceeding \$2000 made for the purchase of a manufactured home. Items such as site prep, permitting, plot plans or site utility connections or other items not specifically for the manufactured home are not subject to escrow.

Dascheil Propes, Chief Deputy Commissioner of the Department of Insurance, spoke to the Board on this issued. He stated for the record that the Staff had no involvement in the legislative proposal. The staff supports the last proposal but does not feel that escrow accomplishes a goal of getting money returned to the consumers. The bond is the answer to that problem and if more bond coverage is needed than we need larger bond coverage. Department will proceed to have this law changed in the long session.

Mr. Gray spoke on behalf of NCMHI and opposes the establishment of escrow accounts. Mr. Ripley states the motion on the floor is vague and it does not define nor structure how these escrow accounts would be handled.

Dennis Jones expressed some concerns regarding the motions ability to protect the funds of the consumer. He had discussed the bankruptcy issue with a bankruptcy attorney and feels escrow accounts will not provide the protection to consumers. Mr. Jones feels there are lots of differences of opinions regarding the bankruptcy protection for escrow accounts and there are differences concerning the legislative intent of this statute and is in favor of letting the legislature telling the Board exactly what they want to happen with this statute. Mr. Jones stated he cannot support the motion of the Chair.

The Board asked the staff is there was a problem with splitting the bond as proposed by NCMHI. Mr. Walker explained some of the problems staff may encounter with splitting the bond.

LaShawn Strange, Board attorney, reminded the Board that the statute requires the Board to adopt rules concerning the terms of any deposit made by a buyer. The Board's rules do not protect deposits. The Board is statutorily mandated to adopt rules and the Board was cautioned not to lose sight of that responsibility.

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J. P. Cauley expressed his concern over the Board's inability to control the funds in an escrow account. The account is under the control of the retailer and he can take

money from the account at any time he chooses. Mr. Cauley feels the bond is the safest protection.

Gail Brown, President of NCHMI, addressed the Board. Ms. Brown speaking on behalf of NCHMI, Champion Retail and as a supplier, advised the Board that escrow accounts would not have protected any of the consumers, manufacturers, or suppliers with the last 3 large retailers that had gone out of business and filed bankruptcy. She stated the money is usually gone from all accounts when the retailer files bankruptcy or closes operations.

Chairman Willey restated the motion she had presented and called for the vote. This motion failed. Walker made a motion to adopt LHC's proposal. The motion received a second from Chairman Willey. Vote was called. Motion failed. Chandler made a motion to adopt the proposal of the industry (NCMHI). Motion seconded by Layton. After much discussion, the motion was amended several times. The final amendment to the motion was to insert under item B: Any valid claim as recognized by this Board, it's staff, or legal jurisdiction. Vote was called. Motion passed by a 5 to 3 vote.

Al Ripley of NC Justice Center presented to the Board a Petition for Rule Making on behalf of Gady's Stroud and Patricia Corder and requested the Board to either deny or grant the Petition. LaShawn Strange, Attorney for the Board, advised the Board must either deny or grant the Petition with 120 days of receipt of the Petition and if the Board denies the Petition, the Board must provide reasons for denying the Petition. The motion was made and seconded to forgo the decision on the Petition until the July 20th Board meeting to allow Board members to review the Petition and attachments more thoroughly. Motion Passed.

- A. Implementation of the Criminal History Check – Effective January 1, 2004
Section 8-12 of Ratified House Bill 1006 – Proposed APA Rules and SBI Contract.**
Report was presented by Pat Walker. Board approved APA rules for Criminal History Check and they also established a criminal history check fee of \$55. In the package is the final version of the criminal history check. The rules have not been submitted for approval through the APA process. We have other APA rules which we are preparing. We plan to submit all the rules at one time. Also since there is a fee involved, it will have to be approved by the Governmental Operations Committee prior to review by the APA Rule Review Committee.
- B. Administrative Procedures Act – Other Proposed Rule Changes – Activity Update ***
The final version of these rules is in this package. They have not been submitted for approval through the APA process because we have other APA rules in the works. We plan to submit all the rules at one time.
- C. Development of the Consumer's Disclosure Notice to be posted at Retail lots and provided to consumers – Effective October 1, 2003 - Section 6(b) of Ratified House Bill 1006 – Committee Report – Committee Chairman, Wesley Layton**
Report was presented by Pat Walker. We approved final version at last Board meeting. The Notice and the hand out have been distributed to each dealership with instructions on the proper posting and distribution. A copy of the instruction memo and the notices are in the package. Proper posting of the notice will be checked by our Field Inspectors during

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their dealer lot inspections. The inspectors will also be checking to assure the signed copies of the notice are in their files.

- D. **Three Day Right to Cancel – New Form 500/Purchase Agreement Changes – Activity Updated.** Pat Walker advised a copy of the new language was included in the Board packages. A memo regarding these required changes on the purchase agreements have been mailed to each dealership. During normal dealer lot inspections, our field inspectors will be checking to assure updated purchase agreements are being used by the dealers.

- F. **APA Rules – Law & Administration/Distance Learning Continuing Education Courses – Activity Update** Pat Walker reported to the Board. These rules were approved by the APA on April 15, 2004 and goes into effect on May 1, 2004.

5. New Business

- A. **Late filing fee report** – Hazel Stephenson gave a report of late filing fees from other States. Twelve (12) states were contacted to determine if they charged late fees. Nine (9) of the states contacted do charge a late fee. A report of the states contacted and the late fees charged was provided to the Board. The written report was included in the Board packages along with the proposed changes to the General Statute and the APA. The proposed changes to the statutes listed the proposed late fees for each type of license.

Motion was made to proceed through the proper channels to establish late fees for renewal of all licenses. Motion passed.

- B. **Pre-Hearing Conference Report** – Hazel Stephenson gave report on Pre-Hearing Conference to Board. The explanation of the set up of the report was given to the Board members for them to better understand the report.

C. Patrick Walker, P. E.
Secretary, N.C. Manufactured Housing Board