

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

**MINUTES OF THE**  
**NORTH CAROLINA MANUFACTURED HOUSING BOARD**  
**July 20, 2004**

**RALEIGH, NORTH CAROLINA**

Tim Bradley chaired the July 20, 2004 meeting. Members of the North Carolina Manufactured Housing Board present were: Linda Willey, Wesley Layton, Clark Crowther, Danny Chandler, J. P. Cauley, Troy Brickey and Dennis Jones. Board Member Lynn Carlson was not present. Staff present: Pat Walker, Hazel Stephenson, Karen Holden, Ellen Tyndall and LaShawn Strange, Staff Attorney. Others in attendance were as follows:

Ernest Tharrington, Set up Contractor  
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  
Alan Greene, DOI

1. Chairman Bradley called the meeting to order.
2. Amended minutes were provided to the Board members. Amended Minutes of April 20, 2004 meeting were reviewed. Motion was made and seconded to accept the amended minutes as written. Motion passed.
3. **Hearings**
  - A. **NCMHB vs. Executive Homes, LTD, License #6778,(MHB FB 3-2004) RE: Deposit Cases Class Continued.** Pat Walker advised the Board a Request to continue this case had been received from the attorney representing Executive Homes. The Request for Continuation was granted and the case was continued until the October Board meeting.
  - B. **NCMHB vs. Ernest Tharrington, Sr., Tharrington Mobile Home Services (MHB FB 4-2204) request for license.** Hazel Stephenson introduced the file into evidence. Ernest Tharrington, Sr. has submitted a complete application to be licensed as a set up contractor. Tharrington Mobile Home Movers was denied a license by the Board at the May 24, 1994 meeting. When the license was denied in 1994, Tharrington testified that he turned his business over to his son who applied for and was granted a set up contractor license. Tharrington stated his son did not let him know there were problems with the company which resulted in the revocation of the son's set up contractor license. Mr. Tharrington, Sr. testified that he made a mistake in 1994 and promised it would not happen again. Mr. Tharrington also stated that his son will not be part of this operation at all. Mr.

Tharrington, Sr. responded to questions of the Board concerning his plans to operate. The Board advised they would meet in Executive Session and all parties would be notified as to their decision.

4. Old Business:

**A. Development of the Consumer Deposit Rules – Effective October 1, 2003 - Section 7(f) of Ratified House Bill 1006.** Pat Walker gave the Board members history on the consumer deposit rules and actions taken since the last board meeting. A transcript of the April 20, 2004 portion of the Board meeting concerning the Consumer Deposit Rules was completed by staff. This was done to assure all the motions concerning this item were listed verbatim as made. Board members were provided with a condensed version which included only the language of the motions made during the meeting. Four (4) different motions were made during the meeting. The final motion, which passed, was to refer the final version of NCMHI's proposal on the Consumer Deposit Rules to staff for further study and to allow DOI staff time to review and make comments at this meeting. Included in this package were 1) NCMHI's original proposal; 2) NCMHI's proposal revised to include the language of the motion; and 3) DOI's revised NCMHI's proposal. The comments of the Manufactured Building Division along with examples of how to handle claims regarding the NCMHI Proposed Consumer Deposit Rules were provided to the Board members in written form and Pat Walker reviewed each of these comments and offered and responded to any questions from the Board and others present for the meeting. Staff offered comments regarding section 11NCAC 08.0913(A)(B) concerning receipt of complaints, validation of complaints and resolution of complaints. Walker expressed concerns with the 90 day time limit for validation of claim. Many outside factors which are beyond the control of the Division are involved in this process. Walker recommended prioritizing the claims by the date received in this office not the date of validation. Consumer deposit claims would be eligible for immediate payment by the bonding company once they are validated. Deposit claims would be eligible for full payment up to 50% of the bond value. Valid deposit claims would be submitted for payment provided sufficient funds are available for all prior submitted claims. The last action by the Board was when a claim was validated; it would be submitted to the bond company for immediate payment up to 100% payment for the amount of the claim. It was basically the first in first served. We would need to assure the claims as they are validated do not exceed 50% of the bond. Examples of various scenarios of deposit bond claims and their method of payment of 50% of the bond were presented to the Board. LaShawn Strange raised the issue of handling the deposit claims this way when in many instances the bond company files an interpleader action where the entire amount of the bond is turned over to the courts. The rule is not practical because the Board is trying to establish that one claim is more valid than another. The courts then disburse the proceeds from the bond. In that instance everyone is treated prorata. Everybody, both warranty and deposit, get treated the same. Is the Board going to look at this situation also? Staff advised at this time a conservative estimate that 45% of the bonds are interpleaded into the courts for the court to distribute the funds. Amendment was offered to the DOI's revised NCMHI's proposal: Change the word may to shall. Date starts from date receive deposit complaint from consumer. Would continue to handle deposit complaints in this manner until 50% of the bond has been depleted. If any is left over from the first half of the bond, it would go to the second half of the bond to be prorated at the end of the one year time period. If a deposit is not completely covered by the 50% of the bond, the bond would paid up to the 50% mark and the remainder of the claim would be considered in with the warranty and other deposit claims received after

the initial 50% had been disbursed. Changes to the language of the proposal would be: Paragraph C, last sentence, change to read "...the remainder of such claims shall be prorated with all warranty service claims." This means as many deposits as possible would be paid and the remainder would be prorated with the warranty claims. A Board member stated the person with a warranty claim at least had received their house and was not as harmed as the person who had a deposit claim. Motion was made and seconded to adopt the rule with the changes. Much discussion was held between the Board members regarding if this motion should be acted upon prior to the review of the Petition for Rule making since they both concern the consumer deposit rules. Question was called. Al Ripley of the NC Justice Center spoke to the Board advising the Justice Center does not feel the rule as proposed now does not satisfy the requirements of NCGS Section 143-143.21A(f). NCJC would just like to state that and ask that it be recorded in the minutes. Motion carried.

- B. Petition for Rule Making – Consumer Deposit Rules:** Petition was submitted at the April Board meeting. All Board members were asked to review the petition and it would be heard before this meeting. Al Ripley of the NCJC addressed the Board with regards to the Petition. "The Petition was brought to the Board on behalf of Gladys Stroud and Patricia Corder pursuant to 11 NCAC 8.903 and NCGS §150B-20. NCJC asked the Board to adopt the attached Rule so the Board may satisfy the requirement of NCGS§ 143-143,21A(f). At the last Board meeting, NCJC did present the details of the proposed rule. Briefly stated those details again for the Board: Believes it is appropriate and completely allowable for the Board to adopt a rule that would use an escrow or trust account in order to conform with the requirements of NCGS§ 143-143.21A(f). This rule does not require a trustee to be paid; it simply requires a bank account, a checking account to be opened. Very little cost involved in that. This rule would also allow manufactured housing dealers to use those moneys that are put on deposit for the express benefit and purposes of the buyer. This rule does not require mandatory audits by the Board." Frank Gray, attorney, representing the NCMHI spoke in opposition of the petition. "The petition is in the name of 2 people, Ms. Stroud and Ms. Corder. And according to the affidavits that accompany the petition, Ms. Stroud received her deposit back and Ms. Corder received part of her deposit back. These are pointed out as additional reasons to not institute new rule making procedures." Board member Chandler pointed out that both the above referenced petitioners that lost money failed to make a complaint to this Board in a timely manner and through our consumer deposit notice that we adopted earlier this year, they would have gotten that information and possibly could have acted sooner to have received all of their money back. Part of that issue has already been addressed. Board member Linda Willey requested the staff to research and determine if these 2 had filed a complaint with the Division. Yes, they both had cases. Motion was made to accept motion of LIHC. Motion failed due to a lack of a second. Board member Dennis Jones moved for denial of the Petition for Rule Making for the following reasons: "First, the Board has been directed by the Legislature "to adopt a rule concerning the terms of a deposit paid by a buyer to a dealer." This rule has been adopted. The law says that the rule should protect deposits in bankruptcy "to the extent practicable". The Board appointed a committee to work on this issue; I was a member of the committee and we met several times to hear and receive information from all interested parties. The subcommittee and the full Board have discussed this matter at length. We have been presented with conflicting legal advice from bankruptcy experts. The LIHC's attorney says that money in an escrow account is protected in bankruptcy; the bankruptcy specialist presented by the NCMHI says the money would not be protected and would be subject to the claims of creditors. No one disputes;

however, that the dealer's bond is protected in bankruptcy, and that is why the Board's rule to give deposit claims priority in the case of dealer bankruptcy or business failure gives the best protection to the consumer. Second, the requirement for an escrow account would not guarantee that the deposit would be protected. The Board was presented with information regarding other professions that require escrow or trust accounts. According to the information we received, 24% of recent disciplinary actions against real estate brokers involve misappropriation of funds and 27% of disciplinary actions against attorneys involve misappropriation of funds. Both the N C Real Estate Commission and the N C State Bar employ staff to audit licensees and investigate them. The Manufactured Housing Board has no such expertise on staff or resources to develop them. Third, our staff has presented us with information showing that there have been very few deposit claims presented to the Board in the last 3 years and most of those cases have been resolved by return of the deposit. In fact, of the two petitioners, one received money back from the dealer and the other from the bond. This is during period of time when hundreds of retail dealers have gone out of business due to economic conditions. This supports shows that the surety bond is the best protection for the Customer. Our previous action to adopt a rule giving these claims priority on the bond will protect deposits to the extent practicable." Motion was seconded. Motion carried.

## 5. New Business

- A. Pre-Hearing Conference Report** – Hazel Stephenson gave report on Pre-Hearing Conferences held during the past quarter to Board. A copy of the PHC report was provided to the Board members in their package.
- B. Direction from Board regarding Form 500 and/or Purchase Agreement Language.**
1. If no money changes hands until closing, is a purchase agreement required?(143-143.21A(c).
  2. Define accessories (143-143.21A (a)(2).
  3. Does the statute anticipate the land/home purchase?
  4. Review & approval of Purchase Agreement Forms.
- Hazel Stephenson advised the Board the staff is receiving a large number of questions concerning the Form 500 and/or Purchase Agreement. She reviewed the requirement of the statute which requires information to be contained on a purchase agreement. Board members questioned who originally designed the Form 500. Hazel Stephenson advised this form has been used for so many years, there doesn't appear to be anyone around that remembers the input for the original design of the Form 500. Chairman Bradley states the Board's concern with the purchase agreement would be that it complies with the statutes governed by the Board. Gail Brown of Champion Enterprises addressed the Board with the industry concerns of the statute being outdated in regards to land home purchases. Industry is looking for direction from the Board regarding the language to be included in the purchase agreement. Retailers want to do it right they just need some direction and clarification. LaShawn Strange, attorney representing the Board, with regards to the land home package. Two different things come into play in these transactions. Hazel Stephenson addressed the concerns of the staff in conjunction with the definition of accessories. It was requested of the Board to provide some direction. Board member Wesley Layton agreed the Board may need to determine what items would be considered accessories and what is considered a site improvement but he is not sure if the Board should get into the legal part of suggesting forms retailers need to use. LaShawn Strange feels the Board can make the determinations regarding accessories on a case by case basis as they come before the Board. Gail Brown

advised she is not asking for legal advice, she is asking for the Board to provide a definition of accessories. Chairman Bradley appointed a committee consisting of Danny Chandler; Committee Chair, Linda Willey, Gail Brown and staff to bring committee recommendations back to the Board.

**C. Removal of supplemental Dealer License Designation.**

Hazel Stephenson addressed the Board concerning staff's request to remove the supplemental dealer license designation. The Supplemental dealer license is allowed by statute. License fee for a retailer is \$250. If a retailer has 2 locations in the same county, the primary location license fee is \$250, the second location license fee is \$100. If a corporation has numerous locations in a county, it can create problems for record keeping. If the primary location closes, staff must remember that location was the primary, and then assign another location as the primary location which is then assessed the \$250 license fee. Manufacturers are not given this option. The manufacturers must pay the same license fee for each plant regardless of the location. This is not requested to increase money but to eliminate a problem in recordkeeping. A copy of the requested general statute change and rules change is provided to each board member. Motion made to approve staff's presentation to remove the supplemental dealer license designation. Motion was seconded. Frank Gray, representing NCMHI, requested the Board to allow NCHMI the opportunity to study this request prior to the Board. Board Member Danny Chandler made a motion to table this issue, motion failed for lack of second. Board returned to the original motion to take this issue to the General Assembly. Motion carried.

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

**BOARD'S DECISION**  
**July 20, 2004**

Hearings:

- A. NCMHB vs. Executive Homes, LTD, License #6778,(MHB FB 3-2004) RE: Deposit Cases Class Continued. Pat Walker advised Board of Request for Continuation.
- B. NCMHB vs. Ernest Tharrington, Sr., Tharrington Mobile Home Services (MHB FB 4-2004) request for license.

Motion was made to issue license with stipulation.

Motion failed.

Motion was amended to deny license

Motion carried.