

PLEASE NOTE: The following is a brief summary of the minutes of the North Carolina Manufactured Housing Board meeting of April 26, 2005. (The official record is recorded and maintained on CD)

MINUTES OF THE
NORTH CAROLINA MANUFACTURED HOUSING BOARD
April 26, 2005

RALEIGH, NORTH CAROLINA

Tim Bradley chaired the April 26, 2005 meeting. Members of the North Carolina Manufactured Housing Board present were: Linda Willey, Danny Chandler, Larry Garner, Johnnie Burgess, Wesley Layton and Clark Crowther. Board Members Dennis Jones and Lynn Carlson were not present. Staff present: Hazel Stephenson, Pat Walker, Karen Holden, Ellen Tyndall and LaShawn Strange, Staff Attorney. Others in attendance were as follows:

Wayne Goodwin, Deputy State Fire Marshall (DOI)
Alex Spencer, Chief Deputy Commissioner (DOI)
Ken McCabe, B & M Mobile Home Movers
Bill Rowe, NC Justice Center, (NCJC)
Chris Estes, LHC
Frank Gray, NC Manufactured Housing Institute (NCMHI)
Brad Lovin, NCMHI
Kathy Wilson, B & M Mobile Home Movers
Richard Walton, (DOI)

1. Chairman Bradley called the meeting to order.
2. Chairman Bradley introduced Wayne Goodwin, Assistant General Counsel and Deputy State Fire Marshal of the Department of Insurance. Mr. Goodwin made a few comments to the Board.
3. Minutes of the January 18, 2005 were reviewed. Motion was made and seconded to accept the minutes as written. Motion passed.
4. Chairman Bradley explained to the Board the recent organizational changes that have been made in the Manufactured Building Division. Chairman Bradley advised these changes will allow better utilization of the staff's fields of expertise. Hazel Stephenson is the Acting Deputy Director of Manufactured Building Division. Pat Walker is the Technical Services Manager and will be the supervisor for the Field Staff. Chairman Bradley also advised the Board of the creation of new positions. Staff to provide organizational chart to Board Members
5. **Hearings**
 - A. **NCMHB vs. Kenneth Michael McCabe dba B & M Mobile Home Movers, License # 3041; RE: Deposit Cases Class** Hazel Stephenson introduced the file into evidence. B & M Mobile Home Movers is a licensed set up contractor. This case concerned two (2) cases in which the respondent received money to move and set up homes and he failed to complete the contracts. This matter was scheduled for Pre-Hearing Conference and Respondent did not appear. Kenneth McCabe was sworn in and responded to

questions of the Board. Mr. McCabe indicated to the Board that he was not in business at the present time due to some legal problems. Mr. McCabe requested the McKinney case be continued until the next Board meeting. Motion was made, seconded and passed that the Board would hear both cases as noticed. The Board asked questions on both cases. Mr. McCabe advised the Board he was having some financial difficulty and had not returned the money in either case. The Board advised they would meet in Executive Session and all parties would be notified of their decision.

5. **Old Business**

- A. **Development of Consumer Deposit Rules –** Committee Chair, Linda Willey reported that additional legislation has been introduced, which if it passes, may make the consumer deposit rules adopted by the Board a moot point. We will have to await the outcome of the new legislation to see what effect it will have on the adopted rules.
- B. **Proposed Draft of Consumer Deposit Rules Submitted by NCMHI –** Chairman Bradley advised the Board members a copy of a proposed draft submitted by NCMHI concerning the consumer deposit rules is included in the package. This is a draft for establishing escrow accounts for consumer deposits. We have had recommendations from the LIHC and NCJC but we have been unable to come to a consensus. There is legislation that has been introduced under HB 630 which may or may not have impact on the problem of consumer deposits. Chairman Bradley opened the floor for discussion of the draft. Board member Willey requested a representative of the industry speak on behalf of the proposed draft.

Brad Lovin, Executive Director of NCMHI, spoke to the Board with regards to the latest proposal. It is the position of the Association that the best way to comply with the law as written and to better protect the consumer's deposit would be to use our current bonding system. Since NCMHI could not get the bond coverage to pass, the NCMHI board proposed a reasonable escrow rule. A dealer has to establish an escrow account but the dealer can use money out of the account for that particular consumer's project. NCMHI believes the current proposal meets the intent of the law and NCMHI hopes the Board will adopt the proposal.

Bill Rowe of the NCJC spoke to the Board. They have reviewed the draft and feel the previous draft submitted to the Board by NCJC does the same thing. The charge from the legislature to the Board is to try to protect the deposits from the claims of creditors of dealers if there is a bankruptcy and also to provide for the proper return of deposits when the buyer is entitled to receive them back. NCJC has a number of questions with regards to the draft. It is not clearly stated that the deposit is not the property of the dealer. NCJC has been advised by bankruptcy attorneys that in order to protect the money from creditors you have to have some statement that the money is being held in escrow for the buyer. NCJC understands that some of the money would be used for moving and set up and would provide for that but if this is not clearly stated, when a dealer goes to bankruptcy court and the courts look at this rule, it doesn't state that. There is no prohibition against co-mingling money. NCJC feels the rule should also be specific as to the amount of time the dealer has to place the deposit in the in an escrow account. . NCJC thinks a requirement of receipts being given to the consumer should be included in the rule. Primarily, NCJC feels there must be a statement that this money still belongs to the buyer and it can be used by the

Minutes of April 26, 2005 Manufactured Housing Board Meeting

Page 3 of 5

dealer for the buyers benefit but without that language, NCJC feels the Board will not fulfill the obligation given to the Board by the legislature. NCJC states they do not agree with the \$2,000 limit even though the legislature gave permission to exclude deposits under \$2,000 but the legislature also requires the prompt return of deposits and without escrow the money may not be available for refund. Board member Chandler spoke in favor of adopting the draft. Rowe indicated NCJC will request additional time for tweaking the language. Chairman Bradley offered the following suggestions to the draft. Section B to read The dealer may use the deposit funds only to complete the steps necessary for site work, financing, installation, delivery and closing on the sale of the home and all accessories to the buyer described by the contract. Also under item G, add the following language ...for the benefit of the buyer, and shall be the buyer's property, and excluded from the property of the estate of the dealer.

Motion made and seconded to adopt the escrow account draft from the NCMHI with the changes to Section B and G. Motion passed.

Adopted draft will be provided to Legal Division for preparation in rules form and noticed for the Public Hearing.

- C. **Update on the Lawsuit filed by the NCJC** - Chairman Bradley requested that LaShawn Strange give the Board an update on the pending lawsuit. She indicated she has filed a motion to dismiss. She will keep the Board updated on the progress of this action.

5. New Business

- A. Executive Homes Appeal to Board Order from January 18, 2005 Meeting – Report from Hazel Stephenson and LaShawn Strange. Strange advised the Board she has filed a motion to dismiss in this matter. Staff was advised to refer all calls from Executive Homes to LaShawn Strange since an appeal has been filed in the matter.
- B. Introduced Legislation Involving Manufactured Housing – Chairman Bradley reviewed new bills introduced in the General Assembly concerning Manufactured Housing. HB 630, which is Manufactured Housing Escrow Accounts, hopefully will be set aside once the determination that the Board has moved on escrow, but it is an active bill and will proceed until something concrete happens on escrow.

SB 346 is much more sweeping bill which has significant changes to the make up of the Board. It changes some of the fines and penalties, changes some of issues involved in warranties, sales contracts and in addition sets up a recovery fund.

Change in APA rules presented which involves the change of address for Division. This is a housecleaning change.

HB 803 allows the Division to charge and collect late filing fees and if this passes, the Board will be required to write rules.

Hazel T. Stephenson
Secretary, N.C. Manufactured Housing Board

BOARD'S DECISION
April 26, 2005

Hearings:

- A. **NCMHB vs. Kenneth Michael McCabe dba B & M Mobile Home Movers, License #3041 (MHB FB 2-2005) RE: Deposit Cases Class.**

Motion: was made to revoke license and deposits to be returned within thirty days. Failure to refund the deposits within 30 days will result in a \$5000.00 fine. Respondent must appear before Board prior to renewing or reissuing license.

Motion: Carried.