

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-451
HOUSE BILL 630**

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 TO CHANGE THE MEMBERSHIP OF THE NORTH CAROLINA MANUFACTURED HOUSING BOARD.

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 of a manufactured home for personal use as a residence or other related use.~~
- (3) Code. – Engineering standards adopted by the Commissioner.
- (4) Commissioner. – The Commissioner of Insurance of the State of North Carolina.
- (5) Department. – The Department of Insurance of the State of North Carolina.
- (5a) Deposit. – Any and all funds received by a dealer from a buyer or someone on behalf of a buyer for the performance of services or the provision of goods.

- (5b) Escrow or trust account. – An account with a bank that is designated as an escrow account or as a trust account and that is maintained by a dealer for the deposit of buyers' funds.
- (5c) Escrow or trust account funds. – Funds belonging to a person other than the dealer that are received by or placed under the control of the dealer in connection with the performance of services or the provision of products by a dealer for a buyer.
- (5d) Funds. – Any form of money, including cash, payment instruments such as checks, money orders, or sales drafts, and receipts from electronic fund transfers. The term does not include letters of credit or promissory notes.
- ~~(5a)~~(5e) License. – A license issued under this Article.
- ~~(5b)~~(5f) Licensee. – A person who has been issued a license under this Article by the North Carolina Manufactured Housing Board.
- (6) Manufactured home. – A structure, transportable in one or more sections, which, in the ~~travelling~~ traveling mode, is eight feet or more in width or is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein.
- (7) Manufactured home dealer or dealer. – Any person engaged in the business of buying or selling manufactured homes or offering or displaying manufactured homes for sale in North Carolina. Any person who buys or sells three or more manufactured homes in any 12-month period, or who offers or displays for sale three or more manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "manufactured home dealer" does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.
- (8) Manufactured home manufacturer or manufacturer. – Any person, resident or nonresident, who manufactures or assembles manufactured homes for sale to dealers in North Carolina.
- (9) Manufactured home salesperson or salesperson. – Any person employed by a manufactured home dealer to sell manufactured homes to buyers. Manufactured home salesperson or salesperson also includes sales managers, lot managers, general managers, or others who manage or supervise salespersons.
- (10) Person. – Any individual, natural persons, firm, partnership, association, corporation, legal representative or other recognized legal entity.

- (11) Responsible party. – A manufacturer, dealer, supplier, or set-up contractor.
- (12) Setup. – The operations performed at the occupancy site which render a manufactured home fit for habitation.
- (13) Set-up contractor. – A person who engages in the business of performing setups for compensation in North Carolina.
- (14) Substantial defect. – Any substantial deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also means any structural element, utility system or component part of the manufactured home which fails to comply with the Code.
- (15) Supplier. – The original producer of completed components, including refrigerators, stoves, hot water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, ~~panelling~~, paneling, siding, trusses, and similar materials, which are furnished to a manufacturer or dealer for installation in the manufactured home prior to sale to a buyer."

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

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

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

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

The Commissioner or ~~his~~ the Commissioner's designee shall chair the Board. The Governor shall appoint to the Board the manufactured home manufacturer and the manufactured home dealer. The General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 shall appoint to the Board the representative of the banking and finance ~~industry~~ industry, the employee of a HUD-approved housing counseling agency, and the representative of the insurance industry. The General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 shall appoint to the Board the manufactured home ~~supplier~~ supplier, the accountant, and the set-up contractor. The Commissioner shall appoint two representatives of the general public. Except for the representatives from the general public and the persons appointed by the General

Assembly, each member of the Board shall be appointed by the appropriate appointing authority from a list of nominees submitted to the appropriate appointing authority by the Board of Directors of the North Carolina Manufactured Housing Institute. At least three nominations shall be submitted for each position on the Board. The members of the Board shall be residents of the State.

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

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

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

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

- (1) To issue licenses to manufacturers, dealers, salespersons, and set-up contractors.
- (2) To require that an adequate bond or other security be posted by all licensees, except manufactured housing salespersons.
- (3) To receive and resolve complaints from buyers of manufactured homes and from persons in the manufactured housing industry, in connection with the warranty, warranty service, licensing requirements or any other provision under this Article.
- (4) To adopt rules in accordance with Chapter 150B of the General Statutes as are necessary to carry out the provisions of this Article.
- (5) To file against the bond posted by a licensee for warranty repairs and service on behalf of a buyer.

- (6) To request that the Department of Justice conduct criminal history checks of applicants for licensure pursuant to G.S. 114-19.13.
- (7) To conduct random audits of dealer escrow or trust accounts."

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

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

- (1) Making a material misstatement in application for license.
- (2) Failing to post an adequate corporate surety bond, cash bond or fixed value equivalent.
- (3) Engaging in the business of manufactured home manufacturer, dealer, salesperson, or set-up contractor without first obtaining a license from the Board.
- (4) Failing to comply with the warranty service obligations and claims procedure established by this Article.
- (5) Failing to comply with the set-up requirements established by this Article.
- (6) Failing or refusing to account for or to pay over moneys or other valuables belonging to others that have come into licensee's possession arising out of the sale of manufactured homes.
- (6a) Failing to comply with the escrow or trust account provisions of Part 2 of this Article.
- (7) Using unfair methods of competition or committing unfair or deceptive acts or practices.
- (8) Failing to comply with any provision of this Article.
- (9) Failing to appear for a hearing before the Board or for a prehearing conference with a person or persons designated by the Board after proper notice or failing to comply with orders of the Board issued pursuant to this Article.
- (10) Employing unlicensed salespersons.
- (11) Offering for sale manufactured homes manufactured or assembled by unlicensed manufacturers or selling manufactured homes to unlicensed dealers for sale to buyers in this State.
- (12) Conviction of any crime listed in G.S. 143-143.10A.
- (13) Having had a license revoked, suspended or denied by the Board; or having had a license revoked, suspended or denied by a similar entity in another state; or engaging in conduct in another state which conduct, if committed in this State, would have been a violation under this Article.
- (14) Employing or contracting with any person to perform setups who is not licensed by the Board as a set-up contractor."

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

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

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

- (1) A description of the manufactured home and all accessories included in the purchase.
- (2) The purchase price for the home and all accessories.
- (3) The amount of deposit or other payment toward or payment of the purchase price of the manufactured home and accessories that is made by the buyer.
- (4) The date the retail purchase agreement is signed.
- (5) The estimated terms of financing the purchase, if any, including the estimated interest rate, number of years financed, and monthly payment.
- (6) The buyer's signature.
- (7) The dealer's signature.

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

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

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

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

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

- (1) The manufactured home is in the dealer's inventory, the dealer may retain from the deposit or other payment received from the buyer actual damages up to a maximum of ten percent (10%) of the purchase price; or
- (2) The manufactured home is specially ordered from the manufacturer for the buyer, the dealer may retain actual damages up to the full amount of the buyer's deposit or other payment received from the buyer.

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

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

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

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

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

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

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

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

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

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

(b) Notwithstanding any other provision of law and in addition to any other sanction the Board may impose under this Article, if the Board finds that a dealer has used a buyer's funds for a purpose that is not authorized under subsection (a) of this

section or if the Board finds that a dealer has failed to place deposits in the dealer's escrow or trust account, the Board may fine the dealer or order restitution to the buyer in an amount up to the amount that the dealer misappropriated or failed to place in the account.

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

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

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

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

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

"§ 143-143.54. Audits and record inspection.

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

SECTION 7. Sections 1, 2, 3, and 5 of this act become effective April 1, 2006. The remainder of this act becomes effective July 1, 2006.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

s/ Beverly E. Perdue

President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 5:35 p.m. this 29th day of September, 2005