

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 350

An Act to amend and reenact §§ 36-85.16, 36-85.18, and 36-85.20 of the Code of Virginia, relating to the Manufactured Housing Board.

[H 44]

Approved March 5, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-85.16, 36-85.18, and 36-85.20 of the Code of Virginia are amended and reenacted as follows:

§ 36-85.16. Definitions.

As used in this chapter, unless a different meaning or construction is clearly required by the context:

"Board" means the Virginia Manufactured Housing Board.

"Buyer" means the person who purchases at retail from a dealer or manufacturer a manufactured home for personal use as a residence or other related use.

"Claimant" means any person who has filed a verified claim under this chapter.

"Code" means the appropriate standards of the Virginia Uniform Statewide Building Code and the Industrialized Building and Manufactured Home Safety Regulations adopted by the Board of Housing and Community Development and administered by the Department of Housing and Community Development pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 for manufactured homes.

"Defect" means any 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 failure of any structural element, utility system or the inclusion of a component part of the manufactured home which fails to comply with the Code.

"Department" means the Department of Housing and Community Development.

"Director" means the Director of the Department of Housing and Community Development, or his designee.

"Fund" or "recovery fund" means the Virginia Manufactured Housing Transaction Recovery Fund.

"Manufactured home" means a structure constructed to federal standards, transportable in one or more sections, which, in the traveling mode, is 8 feet or more in width and 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.

"Manufactured home broker" or "broker" means any person, partnership, association or corporation, resident or nonresident, who, for compensation or valuable consideration, sells or offers for sale, buys or offers to buy, negotiates the purchase or sale or exchange, or leases or offers to lease used manufactured homes that are owned by a party other than the broker.

"Manufactured home dealer" or "dealer" means any person, resident or nonresident, engaged in the business of buying, selling or dealing in manufactured homes or offering or displaying manufactured homes for sale in Virginia. Any person who buys, sells, or deals in 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.

"Manufactured home manufacturer" or "manufacturer" means any persons, resident or nonresident, who manufacture or assemble manufactured homes for sale in Virginia.

"Manufactured home salesperson" or "salesperson" means any person who for compensation or valuable consideration is employed either directly or indirectly by, or affiliated as an independent contractor with, a manufactured home dealer, broker or manufacturer to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale or exchange, or to lease or offer to lease new or used manufactured homes.

"New manufactured home" means any manufactured home that (i) has not been previously sold except in good faith for the purpose of resale, (ii) has not been previously occupied as a place of habitation, (iii) has not been previously used for commercial purposes such as offices or storage, and (iv) has not been titled by the Virginia Department of Motor Vehicles and is still in the possession of the original dealer. If the home is later sold to another dealer and then sold to a consumer within two years of the date of manufacture, the home is still considered new and must continue to meet all state warranty requirements. However, if a home is sold from the original dealer to another dealer and it is more than two years after the date of manufacture, and it is then sold to a consumer, the home must be

sold as "used" for warranty purposes. Notice of the "used" status of the manufactured home and how this status affects state warranty requirements must be provided, in writing, to the consumer prior to the closing of the sale.

"Person" means any individual, natural person, firm, partnership, association, corporation, legal representative, or other recognized legal entity.

"Regulant" means any person, firm, corporation, association, partnership, joint venture, or any other legal entity required by this chapter to be licensed by the Board.

"Responsible party" means a manufacturer, dealer, or supplier of manufactured homes.

"Set-up" means the operations performed at the occupancy site which render a manufactured home fit for habitation. Such operations include, but are not limited to, transportation, positioning, blocking, leveling, supporting, anchoring, connecting utility systems, making minor adjustments, or assembling multiple or expandable units. Such operations do not include lawful transportation services performed by public utilities operating under certificates or permits issued by the State Corporation Commission.

"Substantial identity of interest" means (i) a controlling financial interest by the individual or corporate principals of the manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed or (ii) substantially identical principals or officers as the manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed by the Board.

"Supplier" means the original producer of completed components, including refrigerators, stoves, water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, panelling, siding, trusses, and similar materials, which are furnished to a manufacturer or a dealer for installation in the manufactured home prior to sale to a buyer.

"Used manufactured home" means any manufactured home other than a new home as defined in this section.

§ 36-85.18. Powers and duties of Manufactured Housing Board.

The Virginia Manufactured Housing Board shall have the following powers and duties:

1. To issue licenses to manufacturers, dealers, brokers, and salespersons;
2. To require that an adequate recovery fund be established for all regulants;
3. To receive and resolve complaints from buyers of manufactured homes and from persons in the manufactured housing industry;
4. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) as are necessary to carry out the provisions of this chapter, *including but not limited to the licensure of manufactured home brokers, dealers, manufacturers, and salespersons and the relicensure of manufactured home brokers, dealers, manufacturers, or salespersons after license revocation or nonrenewal;*
5. To make case decisions in accordance with the Administrative Process Act as are necessary to carry out the provisions of this chapter; and
6. To levy and collect fees that are sufficient to cover the expenses for the administration of this chapter by the Board and the Department. Such fees may be levied and collected on a per unit sold basis, a percentage basis, an annual per dealer basis, or a combination thereof.

§ 36-85.20. Grounds for denying, suspending or revoking license.

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

1. Material misstatement in application for license;
2. Failure to pay required assessment to the Manufactured Housing Recovery Fund;
3. Engaging in the business of a manufactured home manufacturer, dealer, broker, or salesperson without first obtaining a license from the Board;
4. Failure to comply with the warranty service obligations and claims procedure established by this chapter;
5. Failure to comply with the set-up and tie-down requirements of the Code;
6. Having knowingly failed or refused to account for or to pay over moneys or other valuables belonging to others which have come into the regulant's possession arising from the sale of manufactured homes;
7. Use of unfair methods of competition or unfair or deceptive commercial acts or practices;
8. Failure to appear before the Board upon due notice or to follow directives of the Board issued pursuant to this chapter;
9. Employing unlicensed retail salespersons;
10. Knowingly offering for sale the products of manufacturers who are not licensed pursuant to this chapter or selling to dealers not licensed pursuant to this chapter manufactured homes which are to be sold in the Commonwealth to buyers as defined in this chapter;
11. Having had a license revoked, suspended, or denied by the Board under this chapter; 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 Commonwealth, would have been a violation under this chapter;
12. Defrauding any buyer, to the buyer's damage, or any other person in the conduct of the regulant's

business; or

13. Failure to comply with any provisions of this chapter.

B. The Board may revoke or deny renewal of an existing license or refuse to issue a license to any manufactured home broker, dealer, manufacturer or salesperson who is shown to have a substantial identity of interest with a manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed by the Board.

C. Any person whose license is revoked or not renewed by the Board shall not be eligible for a license under any circumstances or under any name, except as provided by regulations of the Board pursuant to § 36-85.18.