

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 671

An Act to amend and reenact §§ 36-85.16, 36-85.18, 36-85.19, 36-85.32 and 46.2-1522 of the Code of Virginia, relating to the Manufactured Housing Licensing and Transaction Recovery Fund Law.

[H 1172]

Approved April 10, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-85.16, 36-85.18, 36-85.19, 36-85.32 and 46.2-1522 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 twelve-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 which (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.

"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.

"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 (§ 9-6.14:1 et seq.) as are necessary to carry out the provisions of this chapter; ~~and~~
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.*

§ 36-85.19. License required; penalty.

A. It shall be unlawful and constitute the commission of a Class 1 misdemeanor for any manufactured home manufacturer, dealer, broker, or salesperson to be engaged in business as such in this Commonwealth without first obtaining a license from the Board, as provided in this chapter.

Application for such license shall be made to the Board at such time, in such form, and contain such information as the Board shall require, and shall be accompanied by required fees established by the Board by regulation in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.). The Board shall 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.*

In such application, the Board shall require information relating to the matters set forth in § 36-85.20 as grounds for refusal of a license, and information relating to other pertinent matters consistent with safeguarding the public interest. All such information shall be considered by the Board in determining the fitness of the applicant to engage in the business for which the license is sought.

All licenses that are granted shall expire, unless revoked or suspended, on the annual anniversary of the date of issuance.

Every regulant under this chapter shall obtain a renewal of a license for the ensuing year, by application, accompanied by the required fee. Upon failure to renew, the license shall automatically expire. Such license may be renewed upon payment of the prescribed renewal fee and upon evidence satisfactory to the Board that the applicant has not engaged in business as a manufactured home manufacturer, dealer, broker, or salesperson after expiration of the license and is otherwise eligible for a license under the provisions of this chapter.

Special licenses, not to exceed ten days in duration, may be issued for each temporary place of business, operated or proposed by the regulant, that is not contiguous to other premises for which a license is issued. The fee for a special license shall be established by the Board, provided that no such license shall be required for a place of business operated by a regulant that is used exclusively for storage.

B. Notwithstanding any other provisions of this chapter, the Board may provide by regulation that a manufactured home salesperson will be allowed to engage in business during the time period after applying for a license but before such license is granted.

§ 36-85.32. Recovery from fund generally.

Any ~~buyer of a manufactured home~~ *person* who suffers any loss or damage by any act of a regulant that constitutes a violation of this chapter shall have the right to institute an action to recover from the recovery fund.

Upon a finding by the Board that a violation has occurred, the Board shall direct the responsible manufacturer, dealer, broker, or salesperson to pay the awarded amount to the claimant. If such amount is not paid within thirty days following receipt of the written decision of the Board and no appeal has been filed in court, the Board shall, upon request of the claimant, pay from the recovery fund the amount of the award to the claimant provided that:

1. The maximum claim of one claimant against the fund because of a single violation by one

regulant shall be limited to \$20,000;

2. The fund balance is sufficient to pay the award;
3. The claimant has assigned the Board all rights and claims against the regulant; and
4. The claimant agrees to subrogate to the Board all rights of the claimant to the extent of payment.

The aggregate of claims against the fund for violations by any one regulant shall be limited by the Board to \$75,000 per manufacturer, \$35,000 per dealer, \$35,000 per broker, and \$25,000 per salesperson during any license period. If a claim has been made against the fund, and the Board has reason to believe there may be additional claims against the fund from other transactions involving the same regulant, the Board may withhold any payments from the fund involving such regulant for a period of not more than one year from the date on which the claimant is approved by the Board for an award from the fund. After this one-year period, if the aggregate of claims against the regulant exceeds the above limitations, said amount shall be prorated by the Board among the claimants and paid from the fund in proportion to the amounts of their awards remaining unpaid.

The amount of damages awarded by the Board shall be limited to actual, compensatory damages and shall not include attorney's fees for representation before the Board.

§ 46.2-1522. Motor Vehicle Transaction Recovery Fund established.

Every applicant for an original motor vehicle dealer's license or certificate of dealer registration shall pay, in addition to other license fees, an assessment fee of sixty dollars and every applicant for an original motor vehicle salesperson's license shall pay, in addition to other license fees, an assessment fee of ten dollars, prior to license issue. Until December 31, 1989, every applicant for a renewal of a motor vehicle dealer's license or certificate of dealer registration shall pay, in addition to other license fees, an assessment fee of sixty dollars and every applicant for a renewal motor vehicle salesperson's license shall pay, in addition to other license fees, an assessment fee of ten dollars, prior to license issue. These assessment fees shall be used to establish the Motor Vehicle Transaction Recovery Fund, hereinafter referred to in this chapter as "the Fund." The Fund shall be used to satisfy unpaid judgments, as provided for in § 46.2-1523.

The minimum balance of the Fund shall be \$500,000. Whenever the balance of the fund is less than this minimum, for the next twelve consecutive months, each licensed or registered motor vehicle dealer applying for a renewal license shall pay, before such renewal shall be issued, a reassessment fee of thirty dollars, and each licensed motor vehicle salesperson applying for a renewal license shall pay, before such renewal shall be issued, a reassessment fee of five dollars.

All assessments for the Fund shall be deposited as a special fund in the state treasury to be expended to pay claims against the Fund and for no other purpose. Any interest income shall accrue to the fund. The Commissioner shall maintain an accurate record of all transactions involving the Fund.

The provisions of this section shall not apply to manufactured home dealers as defined in § 36-85.16.