

CHAPTER 327B

MANUFACTURED HOME SALES

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327B.01 DEFINITIONS.

Subdivision 1. **Terms.** As used in sections 327B.01 to 327B.12 the terms defined in this section have the meanings given them.

Subd. 2. **Affiliate.** "Affiliate" of another person means any person directly or indirectly controlling, controlled by, or under common control with the other person.

Subd. 3. **Broker.** "Broker" means any person who:

(a) For another and for commission, fee or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly lists, sells, exchanges, buys or rents, manages, or offers or attempts to negotiate a sale, option, exchange, purchase or rental of an interest in a manufactured home or advertises or holds out as engaged in such activities;

(b) For another and for commission, fee or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly negotiates or offers or attempts to negotiate a loan, secured or to be secured by a security interest in or other encumbrance on a manufactured home; or

(c) Engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract to undertake to promote the sale of a manufactured home through its listing in a publication issued primarily for the purpose of promoting the sale of manufactured homes or real estate.

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of administration.

Subd. 5. **Consumer customer.** "Consumer customer" means any natural person who, primarily for personal, household or family purposes, buys, sells, or seeks to buy or sell, a manufactured home from, to or through a dealer or manufacturer.

Subd. 6. **Controlling shareholder.** "Controlling shareholder" means a shareholder whose legal, equitable and beneficial holdings, and whose family's such holdings, in a dealership amount to more than ten percent of the outstanding shares.

Subd. 7. **Dealer.** "Dealer" means any person who engages in the business, either exclusively or in addition to any other occupation, of selling or brokering manufactured homes, new or used, or who offers to sell, solicit, broker or advertise the sale of manufactured homes, new or used.

Subd. 8. **Express warranty.** "Express warranty" means a warranty as defined by section 336.2-313.

Subd. 9. **Implied warranty of fitness for particular purpose.** "Implied warranty of fitness for particular purpose" means a warranty as defined by section 336.2-315.

Subd. 10. **Implied warranty of merchantability.** "Implied warranty of merchantability" means a warranty as defined by section 336.2-314.

Subd. 11. **In park sale.** "In park sale" has the meaning specified in section 327C.01, subdivision 2.

Subd. 12. **Manufacturer.** "Manufacturer" means any person who manufactures, assembles or produces manufactured homes.

Subd. 13. **Manufactured home.** "Manufactured home" means a structure, not affixed to or part of real estate, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or 40 body 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 in it.

Subd. 14. **Manufactured home park.** "Manufactured home park" has the meaning specified in section 327C.01, subdivision 5.

Subd. 15. **Net listing agreement.** "Net listing agreement" means any agreement by any dealer to sell, offer for sale, solicit, broker or advertise the sale of a manufactured home on behalf of any person which provides for the dealer to receive any consideration from any person other than a commission based on a single percentage of the price at which the home is actually sold.

Subd. 16. **New manufactured home.** "New manufactured home" means a manufactured home which is purchased for the first time other than for purposes of resale.

Subd. 17. **Person.** "Person" means any individual, corporation, firm, partnership, incorporated and unincorporated association, or any other legal or commercial entity.

Subd. 18. **Sale.** "Sale" means:

- (a) The passing of title from one person to another for consideration; or
- (b) Any agreement to sell under which possession is delivered to the buyer but title is retained in the seller; or
- (c) Any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other than a nominal consideration has the option to become, the owner of the goods upon full compliance with the bailee's or lessee's obligations under the agreement; or

- (d) Any legally binding executory agreement to make a sale.

Subd. 19. **Salesperson.** "Salesperson" means a person who acts on behalf of a dealer in performing any act which sections 327B.01 to 327B.12 authorize or require to be performed by a dealer.

Subd. 20. **Trust account.** "Trust account" means a demand deposit, share draft or checking account maintained for the purpose of segregating trust funds from other funds.

Subd. 21. **Trust funds.** "Trust funds" means funds received by a broker in a fiduciary capacity as a part of a manufactured home sale transaction, pending the consummation or termination of a transaction, and includes all down payments, earnest money deposits, rents for clients, tax and insurance escrow payments, damage deposits, and any funds received on behalf of any person.

History: 1982 c 526 art 1 s 1; 1983 c 142 s 1,2; 1983 c 216 art 1 s 52,53; 1986 c 444

327B.02 WARRANTIES.

Subdivision 1. **Implied warranties.** Every sale of a new manufactured home in this state is made with an implied warranty that the manufactured home conforms in all material aspects to applicable federal or state laws and regulations establishing standards of safety or quality, and with implied warranties of merchantability and fitness for particular purpose as permanent housing in the climate of this state.

Subd. 2. **Express warranties permitted.** This section does not prohibit a manufacturer or dealer from making express warranties with respect to a manufactured home, but a manufacturer or dealer may not limit, modify or disclaim the warranties implied by subdivision 1.

Subd. 3. **Limitations void.** Any attempt to exclude, limit or modify any rights or remedies created by the warranties implied by this section is void.

History: 1982 c 526 art 1 s 2

327B.03 WARRANTIES; DURATION, HONORING.

Subdivision 1. **Duration.** The warranties implied by section 327B.02 shall run for a period of one year from the date of delivery of the manufactured home to the consumer customer.

Subd. 2. **Notice and cooperation by buyer.** To invoke either a warranty implied by section 327B.02 or an express warranty made by the manufacturer the buyer must notify the dealer and the manufacturer within a reasonable time after discovering the breach and not later than 90 days after the expiration of the warranty. To invoke an express warranty made by the dealer, the buyer must notify the dealer within a reasonable time after discovering the breach and not later than 90 days after the expiration of the warranty. After giving the notice the buyer must allow reasonable opportunity for the service or repair.

Subd. 3. **Responsibility to honor.** The manufacturer and dealer, jointly and severally, shall service or repair a manufactured home at its site within a reasonable time after receiving written notice of breach of either a warranty implied by section 327B.02 or an express warranty made by the manufacturer. The dealer shall service or repair a manufactured home at its site within a reasonable time after receiving written notice of breach of an express warranty made by the dealer.

History: 1982 c 526 art 1 s 3

327B.04 MANUFACTURERS AND DEALERS; LICENSES; BONDS.

Subdivision 1. **License and bond required.** No person shall act as a dealer in manufactured homes, new or used, without a license and a surety bond as provided in this section. No person shall manufacture manufactured homes without a license and a surety bond as provided in this section. The licensing and bonding requirements of this section do not apply to any bank, savings bank, savings and loan association or credit union, chartered by either this state or the federal government, which acts as a dealer only by repossessing manufactured homes and then offering the homes for resale through the brokering services of a licensed dealer or real estate broker or salesperson.

Subd. 2. **Subagency licenses.** Any dealer who has a place of business at more than one location shall designate one location as its principal place of business, one name as its principal name, and all other established places of business as subagencies. A subagency license shall be required for each subagency. No dealer shall do business as a dealer under any other name than the name on its license.

Subd. 3. **License application.** Application for a license and its renewal shall be made to the commissioner, shall be in writing, and duly verified by oath. The applicant shall submit any information required by the commissioner, upon forms provided by the commissioner for that purpose, including:

- (a) proof of identity;
- (b) the name under which the applicant will be licensed and do business in this state;
- (c) the applicant's type and place of business;
- (d) The name, home and business address of the applicant's directors, officers, limited and general partners, controlling shareholders and affiliates;
- (e) whether the applicant, or any of its directors, officers, limited or general partners, controlling shareholders or affiliates, has been convicted of a crime within the previous ten years that either related directly to the business for which the license is sought or involved fraud, misrepresentation or misuse of funds, or has suffered a judgment in a civil action involving fraud, misrepresentation, or conversion within the previous five years or has had any government license or permit suspended or revoked as a result of an action brought by a federal or state governmental agency in this or any other state within the last five years; and
- (f) the applicant's qualifications and business history, including whether the applicant, or any of its directors, officers, limited or general partners, controlling sharehold-

ers or affiliates has ever been adjudged bankrupt or insolvent, or has any unsatisfied court judgments outstanding against it or them.

Subd. 4. **License prerequisites.** No application shall be granted nor license issued until the applicant proves to the commissioner that:

(a) the applicant has a permanent, established place of business at each licensed location. An "established place of business" means a permanent enclosed building other than a residence, or a commercial office space, either owned by the applicant or leased by the applicant for a term of at least one year, located in an area where zoning regulations allow commercial activity, and where the books, records and files necessary to conduct the business are kept and maintained. The owner of a licensed manufactured home park who resides in or adjacent to the park may use the residence as the established place of business required by this subdivision, unless prohibited by local zoning ordinance.

If a license is granted, the licensee may use unimproved lots and premises for sale, storage, and display of manufactured homes, if the licensee first notifies the commissioner in writing;

(b) if the applicant desires to sell, solicit or advertise the sale of new manufactured homes, it has a bona fide contract or franchise in effect with a manufacturer or distributor of the new manufactured home it proposes to deal in;

(c) the applicant has secured a surety bond in the amount of \$20,000 for the protection of consumer customers, executed by the applicant as principal and issued by a surety company admitted to do business in this state. The bond shall be exclusively for the purpose of reimbursing consumer customers and shall be conditioned upon the faithful compliance by the applicant with all of the laws and rules of this state pertaining to the applicant's business as a dealer or manufacturer, including sections 325D.44, 325F.67 and 325F.69, and upon the applicant's faithful performance of all its legal obligations to consumer customers;

(d) the applicant has established a trust account as required by section 327B.08, subdivision 3, unless the applicant states in writing its intention to limit its business to selling, offering for sale, soliciting or advertising the sale of new manufactured homes; and

(e) the applicant has provided evidence of having had at least two years' prior experience in the sale of manufactured homes, working for a licensed dealer.

Subd. 5. **Exemption for real estate brokers and salespeople.** Any person licensed as a real estate broker or salesperson under chapter 82 who brokers the sale of used manufactured homes is not required to obtain a license or a bond as required by this section, but is subject to all other provisions of sections 327B.01 to 327B.12. Any real estate broker or salesperson who violates a provision of sections 327B.06 to 327B.09 in selling or offering for sale a used manufactured home shall be deemed to have violated a provision of chapter 82.

Subd. 6. **Certificate of license.** For each license granted the commissioner shall issue a certificate which includes the name of the licensee, the name of the surety company and the amount of the surety bond, the names and addresses of any related principal or subagencies, and a license number.

Subd. 7. **Fees; licenses; when granted.** Each application for a license or license renewal must be accompanied by a fee in an amount established by the commissioner by rule pursuant to section 327B.10, which shall be paid into the state treasury and credited to the general fund. The fees shall be set in an amount which over the fiscal biennium will produce revenues approximately equal to the expenses which the commissioner expects to incur during that fiscal biennium while administering and enforcing sections 327B.01 to 327B.12. The commissioner shall grant or deny a license application or a renewal application within 60 days of its filing. If the license is granted, the commissioner shall license the applicant as a dealer or manufacturer for the remainder of the calendar year. Upon application by the licensee, the commissioner shall renew the license for a two year period, if:

- (a) the renewal application satisfies the requirements of subdivisions 3 and 4;
- (b) the renewal applicant has made all listings, registrations, notices and reports required by the commissioner during the preceding year; and
- (c) the renewal applicant has paid all fees owed pursuant to sections 327B.01 to 327B.12 and all taxes, arrearages, and penalties owed to the state.

History: 1982 c 526 art 1 s 4; 1983 c 142 s 3; 1983 c 216 art 1 s 54; 1986 c 444

327B.05 DENIAL, SUSPENSION AND REVOCATION OF LICENSES.

Subdivision 1. **Grounds.** The commissioner may by order deny, suspend or revoke any license on finding(1) that the order is in the public interest and (2) that the applicant or licensee or any of its directors, officers, limited or general partners, controlling shareholders or affiliates:

- (a) has filed an application for a license or a license renewal which fails to disclose any material information or contains any statement which is false or misleading with respect to any material fact;
- (b) has violated any of the provisions of sections 327B.01 to 327B.12 or any rule or order issued by the commissioner or any prior law providing for the licensing of manufactured home dealers or manufacturers;
- (c) has had a previous manufacturer or dealer license revoked in this or any other state;
- (d) has engaged in acts or omissions which have been adjudicated or amount to a violation of any of the provisions of section 325D.44, 325F.67 or 325F.69;
- (e) has sold or brokered the sale of a home containing a material violation of sections 327.31 to 327.35 about which the dealer knew or which should have been obvious to a reasonably prudent dealer;
- (f) has failed to make or provide all listings, notices and reports required by the commissioner;
- (g) has failed to pay a civil penalty assessed under subdivision 5 within ten days after the assessment becomes final;
- (h) has failed to pay to the commissioner or other responsible government agency all taxes, fees and arrearages due;
- (i) has failed to duly apply for license renewal;
- (j) has violated any applicable manufactured home building or safety code;
- (k) has failed or refused to honor any express or implied warranty as provided in section 327B.03;
- (l) has failed to continuously occupy a permanent, established place of business licensed under section 327B.04;
- (m) has, without first notifying the commissioner, sold a new and unused manufactured home other than the make of manufactured home described in a franchise or contract filed with the application for license or license renewal;
- (n) has wrongfully failed to deliver a certificate of title to a person entitled to it;
- (o) is insolvent or bankrupt;
- (p) holds an impaired or canceled bond;
- (q) has failed to notify the commissioner of bankruptcy proceedings within ten days after a petition in bankruptcy has been filed by or against the dealer or manufacturer;
- (r) has, within the previous ten years, been convicted of a crime that either related directly to the business of the dealer or manufacturer or involved fraud, misrepresentation or misuse of funds;
- (s) has suffered a judgment within the previous five years in a civil action involving fraud, misrepresentation or misuse of funds; or
- (t) has failed to reasonably supervise any employee or agent of the dealer or manufacturer, resulting in injury or harm to the public.

The commissioner may establish rules pursuant to section 327B.10 further specifying, defining or establishing standards of conduct for manufactured home dealers and manufacturers.

Subd. 2. Denial; appeal; reconsideration. The commissioner shall inform the applicant and summarize in writing the reasons for a denial. Within 15 days of receiving the commissioner's notice, the applicant may request in writing that the commissioner reconsider. The request for reconsideration shall explain why the commissioner's previous decision was wrong and shall specifically address each reason given by the commissioner for the denial. Within 20 days of receiving the request for reconsideration, the commissioner shall decide whether to withdraw the denial and grant a license. If the commissioner reaffirms the denial, the applicant may appeal in accordance with chapter 14. An applicant whose application is denied may also cure the defects in the application cited by the commissioner and resubmit the application at no extra charge.

Subd. 3. License suspension or revocation; hearing. Upon the commissioner's motion or upon the complaint of another, the commissioner may prepare and serve upon a licensee a written notice or complaint summarizing the violations charged, and requiring the licensee to appear at a specified time and place to show cause why the license should not be revoked. The hearing on the suspension or revocation shall be conducted pursuant to the contested case provisions of the administrative procedure act. Upon the completion of the hearing, if the commissioner finds the existence of any of the causes for suspension or revocation set forth in subdivision 1 and determines that the license should be revoked or suspended, the commissioner shall make a written order of revocation or suspension. A copy of the order shall be served upon the licensee in the manner provided by law for the service of summons in a civil action.

If the commissioner revokes or suspends the license of any person holding more than one license under the provisions of section 327B.04, subdivision 2, the commissioner shall revoke or suspend all of the licenses of that person and of the affiliates of that person.

Subd. 4. Summary license suspension. The commissioner may by order summarily suspend a license pending final determination of any order to show cause if necessary to prevent immediate and substantial public harm. If a license is suspended pending final determination of an order to show cause, a hearing on the merits shall be held within 30 days of the issuance of the order of suspension.

Subd. 5. Penalties. After having conducted the hearing provided for in subdivision 3, the commissioner may, in addition to or in lieu of revoking or suspending a license, order restitution to an injured consumer customer, or assess a penalty or penalties of not more than \$10,000 against any person who commits any act that is grounds for the suspension or revocation of a license under subdivision 1.

Subd. 6. Appeals. The contested case provisions of chapter 14 shall apply to appeals from any order by the commissioner denying, suspending or revoking a license, or assessing penalties.

History: 1982 c 526 art 1 s 5; 1983 c 142 s 4,6; 1983 c 216 art 1 s 55; 1983 c 247 s 133; 1986 c 444

327B.06 DEALER'S RECORDS.

Subdivision 1. Retention. A dealer shall retain for three years copies of all listings, deposit receipts, credit applications, contracts, disclosure forms, canceled checks, trust account records and other documents reasonably related to carrying on the business of a dealer. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated.

Subd. 2. Examination of records. The commissioner may make examinations within or without this state of each dealer's records at such reasonable time and in such scope as is necessary to enforce the provisions of sections 327B.01 to 327B.12.

History: 1982 c 526 art 1 s 6

327B.07 RESPONSIBILITY OF DEALERS.

Subdivision 1. **Liability.** Each dealer is responsible for the activities of any person employed by or acting on behalf of that dealer when the activities occur in connection with the sale or attempted sale of a manufactured home. Each corporation licensed as a dealer is responsible for the activities of any person employed by or acting on behalf of the corporation when such activities occur in connection with the sale or attempted sale of a manufactured home.

Subd. 2. **Salespeople.** Every dealer shall report in writing to the commissioner the full name, date of birth, business and home address of every salesperson employed by the dealer. Within ten days of hiring, firing or otherwise changing the employment status of a salesperson, the dealer shall notify the commissioner in writing. No salesperson shall work for more than one dealer during the same time period.

History: 1982 c 526 art 1 s 7; 1983 c 142 s 7

327B.08 DUTIES.

Subdivision 1. **Disclosure required.** Prior to the consummation of the sale of any manufactured home where a dealer acts as a broker, the dealer shall disclose in writing to all parties to the transaction all charges, payments, commissions and other fees paid or payable in connection with the transaction. Any commission charged by the dealer shall be expressed both as a dollar amount and as a percentage of the sales price. If the home being sold is located in a manufactured home park, prior to the buyer's signing of the purchase agreement the dealer shall disclose in writing to the buyer the state law concerning the in park sale of manufactured homes. This subdivision does not require any dealer to disclose any consideration received (1) for having acted as an insurance agent, as defined in section 60A.02, subdivision 7, in connection with the transaction, or (2) in return for the dealer having agreed to any contingent liability in connection with the financing of the sale. The commissioner may prescribe a form to be used to comply with this subdivision and may require all dealers to use that form.

Subd. 2. **Presence of parties at closing.** A dealer shall not prohibit, prevent or restrain any party to the brokered sale of a manufactured home from being present at the closing. If a dealer at a closing purports to have authority to act for one of the parties who is not present, the dealer shall exhibit the document granting that authority and shall give a copy of that document to the other parties.

Subd. 3. **Trust account required.** Each dealer who acts as a broker shall maintain a trust account. A trust account shall not be an interest bearing account except by agreement of the parties and subject to rules of the commissioner.

Subd. 4. **Segregation of funds.** A dealer shall deposit all trust funds received in a trust account. A dealer shall not commingle personal funds or other funds with the funds in a trust account, except that a dealer may deposit and maintain a sum from personal funds not to exceed \$100 in a trust account, which sum shall be specifically identified and used to pay service charges relating to the trust account.

Subd. 5. **Trust information required.** At the time of application for a license or renewal of license, each dealer who acts or intends to act as a broker shall tell the commissioner the name of the financial institutions and the trust account identification numbers used to comply with the provisions of this section. A dealer shall immediately report to the commissioner any change of trust account status including changes in financial institutions, account identification numbers, or additional accounts in the same or another financial institution. No dealer may close an existing trust account without giving ten days written notice to the commissioner.

History: 1982 c 526 art 1 s 8; 1986 c 444

327B.09 PROHIBITIONS.

Subdivision 1. **License required.** No person shall engage in the business, either exclusively or in addition to any other occupation of manufacturing, selling, offering to sell, soliciting or advertising the sale of manufactured homes, or act as a broker with-

out being licensed as a manufacturer or a dealer as provided in section 327B.04. Any person who manufactures, sells, offers to sell, solicits or advertises the sale of manufactured homes, or acts as a broker in violation of this subdivision shall nevertheless be subject to the duties, prohibitions and penalties imposed by sections 327B.01 to 327B.12. This subdivision does not prohibit an individual from reselling, without a license, a manufactured home which is or has been the individual's residence.

Subd. 2. Advertising. No person shall advertise as a manufactured home dealer, or as a lister, broker or agent for the sale of manufactured homes, without being licensed as a dealer as provided in section 327B.04.

Subd. 3. Display of license. No person shall act as a dealer or manufacturer unless the certificate authorizing that activity is prominently displayed on the business premises covered by the license. Before moving to a new location from the established place of business occupied when the license is granted, the licensee must first secure the commissioner's written permission. To obtain that permission, the licensee must prove that the proposed new premises conform to the requirements of section 327B.04, subdivision 4.

Subd. 4. Net listing prohibited. No dealer shall use or offer to use a net listing agreement.

Subd. 5. Broker or dealer arrangement of financing. A dealer who is acting as a broker for the sale of a manufactured home and who can arrange financing for the sale may charge a separate fee for that service, if:

(a) the listing agreement does not require that the seller or buyer use the dealer's services to arrange financing;

(b) in arranging the financing, the dealer will pay a fee or will guarantee all or part of the buyer's performance to a third person; and

(c) the listing agreement clearly and conspicuously discloses the amount of the fee, the fact that the fee is in addition to the dealer's commission and the fact that the seller and buyer are not required to use the dealer's services to arrange financing.

History: 1982 c 526 art 1 s 9; 1983 c 142 s 9; 1983 c 216 art 1 s 56; 1986 c 444

327B.10 RULEMAKING AUTHORITY.

The commissioner may promulgate rules and issue orders reasonably necessary to implement and administer the provisions of sections 327B.01 to 327B.12.

History: 1982 c 526 art 1 s 10

327B.11 RECOURSE TO THE BOND.

Subdivision 1. Consumer claimants. Any consumer customer sustaining injuries within the terms of a surety bond issued pursuant to section 327B.04 may proceed against the principal and surety without making the state a party to the proceedings. Provided, however, that the aggregate liability of the surety to all persons for all losses or damages shall in no event exceed the amount of the bond.

Subd. 2. Payment of claims; notice to commissioner. Before paying any claim against a surety bond, the surety company must first notify the commissioner in writing of the amount of the claim, the basis of the claim and the surety company's intention to pay the claim. Unless the commissioner objects in writing within ten days of receiving the notice, the surety company may proceed upon its intention. The commissioner's failure to object is not evidence of the validity of the claim or of the propriety of paying the claim. The commissioner shall object only with reasonable grounds to believe that paying the claim will reduce the obligation of the bond to an amount less than the total amount of other outstanding and valid claims against the bond.

Subd. 3. Application for a referee. Within 15 days of objecting to the payment of a claim, the commissioner shall apply to the district court for an order:

(a) directing the surety company to pay the full obligation of the bond into court; and

(b) appointing a referee to hear claims against the bond and to propose to the court the proper distribution of the bond proceeds.

The surety company and the principals on the bond shall be parties to the proceedings.

History: 1982 c 526 art 1 s 11; 1986 c 444

327B.12 ADDITIONAL REMEDIES AND ENFORCEMENT.

Subdivision 1. Private remedies. Any person injured or threatened with injury by a dealer or manufacturer's violation of sections 327B.01 to 327B.12 may bring a private action in any court of competent jurisdiction.

Subd. 2. Fraud remedies. In addition to the remedies provided in sections 327B.01 to 327B.12, any violation of section 327B.08 or 327B.09 is a violation of section 325F.69, subdivision 1 and the provisions of section 8.31 shall apply.

History: 1982 c 526 art 1 s 12