

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed
Adoption of Rules relating to
the Licensing of Manufactured
Home Dealers & Manufacturers

STATEMENT OF
NEED AND
REASONABLENESS

The above captioned proposed rules are extensions for enforcement of Mn. Statutes 327B.01 through 327B.12 of the 1982 Session Laws. These rules specify and clarify those requirements pertaining to the licensing of Dealers and Manufacturers of Manufactured Homes in this State.

2MCAR Sl.8001 Authority: Needed to reference source of authority for these rules.

2MCAR Sl.8002 Definitions: Needed to define terms used in the rules in Chapter 526 of the 1982 Session Laws in the Minnesota Manufactured Home Building Code, the Federal Regulations, and to clarify words subject to misinterpretation - i.e. "distributor".

2MCAR Sl.8003 License Application - Dealer

- A. Forms. All license application forms meet licensing requirements of the law (Chapter 526 of the Laws of 1982) and have been processed, checked, and printed accordingly.
- B. Required Information. - Self explanatory.
 - la. This rule specifies the acceptable type of proof of identity required by Sec. 4 327B.04 Subd. 3(a) which is not specific as to type of proof of identity.
 - b. Business name. Assumed names and corporations are required to be listed with the Secretary of State. These requirements protect the consumer by assuring that such documentation regarding Manufactured Home Dealers is filed with the Building Codes and Standards Division.
 - c. Type of business. By the applicant's checking the appropriate box, the application can be assessed and categorized to check that proper, complete, and necessary accompanying documents are included for processing.
 - d. Owners' Names - Sec. 4 Subd. 3(d). The submitted information satisfies the requirements of Sec. 4, 327B.04 Subd. 3(d) and is needed to contact parties involved in consumer complaints.
 - e. Signature for the application. To be valid, the applicant's notarized signature must be either that of owner, general partner, or corporate president.

- f. Qualifications. The applicant's qualifications are required primarily for the protection of the consumer. Consumer complaint files of this Division indicate problems caused by lack of education, work experience, and/or business knowledge.
- g. Other Licenses. The need to know of licenses held in other states is to determine whether the applicant has a history of business improprieties or a bad record in those states. This information is relevant in considering licensure and in assessing possible similar wrongs to consumers in this State.
- h. Business History. This information is principally needed to protect the consumer by evaluation of applicant's history of performance and to anticipate possible problems which may be due to inexperience or other causes.
- i. Surety Bond. The only legally acceptable bond is the original form furnished and approved by the Commissioner.

2. Application for Manufacturer's License.

- a. Business name. Required by 327B.04(b).
 - b. List of Dealers. Franchise or written agreement is required by 327B.04 Subd. 4(b).
 - c. Manufactured Facilities - Needed to determine location of manufacturer of specific homes to facilitate action of consumer complaints.
 - d. Brand names. Unless brand names are provided by the manufacturer it is very difficult to determine what brands are manufactured by whom, especially when a brand name only is given when referring to a consumer complaint.
- C. Fee. Fees are set to be approximately equal to expenses incurred during the fiscal biennium to administer and enforce the licensing provisions of Chapter 526 of the 1982 Session Laws. (Ref. Sec. 4 Subd. 7).
- D. Copy of applicant's records. Retaining photocopies of application and documents permits dealer to check information on file in this Division which dealers may have forgotten, or to show possible errors. This is part of required dealer record keeping pursuant to 327B.06 - Dealer's Records.

2MCAR S 1.8004 Establishment place of Business. A proof required. Per Stat. 327B.04 Subd. 4(a).

- B. This rule explains what kinds of buildings and facilities are needed and reasonably acceptable according to type of business dealer is engaged in and specifies reasonable conditions for such activity.

It is not uncommon for a manufactured home to be used as an office. The conditions of this rule state requirements to qualify such office as an "established place of business" in accordance with Mn. Stat. 327B.04 Subd. 4(a).

Floor ceiling walls & separate entrance doors within commercial office space provide privacy from adjoining business activity, avoiding confusion on the part of the consumer.

- C. Unimproved lots and premises. Allows dealer latitude within reasonable limits to operate efficiently, without creating uncertainty or confusion to consumers. Photo will illustrate relationship of business location to location of premises.
 - D. Unimproved storage lots storage of manufactured homes on unimproved lots or premises. The Building Codes & Standards Division needs to be apprised of the location of such property to know where these homes are in order to include them in scheduling monitoring inspections.
 - E. Photo of business location. Verifies acceptability of business location.
 - F. Deed or Lease. Needed to substantiate "established place of business", showing evidence of intent to pursue business on a permanent, rather than temporary basis per 327B.04 Subd. 4(a).
 - G. One licensee per established place of business. Affords protection for consumer by eliminating likely confusion caused by two or more licensees sharing the same office space, and avoids the probability of salespersons working for two dealers simultaneously as prohibited under 327B.07 Subd. 2.
- 2MCAR Sl.8005 Manufacturers Sales Agreement. Copies of same are necessary to confirm dealer compliance with requirements of 327B.04 Subd. 4(b) and assures consumer protection under dealer warranty obligations - Ref. 327.02 and 327.03.
- Manufacturer may refuse to honor warranties on sale of new home if sale is made by unfranchised dealer. The dealer's notification of change of status of contract or franchise is to inform this Division so that dealer records are current and accurate.
- 2MCAR Sl.8006 Trust Account. If dealers bank was not located in this State it would be difficult to obtain information from the bank if such account needed to be investigated. It is not unreasonable to expect a Minnesota licensed dealer to have a trust account in a Minnesota bank. Changes in trust account status necessitate additional expense to this Division. The fee will defray administrative costs of further processing.
- 2MCAR Sl.8007 Insufficient checks. A service charge is necessary to offset administrative costs required to process checks returned without payment.
- 2MCAR Sl.8008 Issued Licenses. Clearly posted current licenses attest that the named dealer is bonafide. There have been numerous instances of dealers failing to post current licenses and at least one occasion of a dealer posting an expired license not corresponding to the address of that location.

2MCAR Sl.8009 License Reapplication. The provision to require resolution of a problem caused by a dealer violation or error is reasonable and needed for the protection of the citizens of this State, while observing the rights of the applicant. To permit reapplication without resolving the problem is to compound it.

2MCAR Sl.8010 Return of License. There have been instances where dealers have gone out of business or moved to a new location without notifying this Division. This requirement maintains current records of dealer business status.

2MCAR Sl.8011 Application for License Renewal. Application renewal forms furnished by the Commissioner establish uniform processing and record keeping procedures by this Division. Since 1975, experience shows that a large percentage of dealers fail to renew licenses on time, some being months late. This condition creates problems for the Division, requiring further written notices, letters, and follow-up calls, all of which are costly and time consuming. The deadline established encourages timeliness.

Automatic cancellation of license upon failure to renew invites promptness as does application for new license when dealer allows his existing license to expire.

2MCAR Sl.8012 Dealers Records. There have been occasions where dealers did not have their dealer records in subagency locations, saying that records are kept in principal place of business only. Consequently, because of itinerary, either the scheduled inspections had to be postponed by making an out of the way trip or by scheduling a visit to the principal place of business at a later date. The problem of extra travel is eliminated by requiring records to be kept at each location. The management of licensed subagencies should be as responsible as any other dealership. If examination of records indicate evidence requiring further investigation of practices at a subagency, the records of the principal business may show a pattern of possible violations throughout all subagency locations of that business. Sending copies of completed sales transactions made by subagencies to the principal place of business within 14 days is a reasonable period to maintain relatively up-to-date records at corporate office, ref. 327B.06 Subd. 1 & 2.

2MCAR Sl.8013 Salespeople. A form provided by the Commissioner will be furnished to every dealer. This form provides for all salesperson information required by law. Such information will be fed into the Division computer so that a complete list of all dealer's salespersons are current (within 10 days of any changes). The salespersons employed by any dealer, or the location of any salesperson who has left a dealer's employ to work for another dealer will be instantly available, ref. 327B.07 Subd. 2.

2MCAR Sl.8014 Fee Schedule. The new law, 327B.04 Subd. 7 requires that fees be established by rule.

2MCAR Sl.8015 Trust Funds.

- A. If a second dealer, who has an agreement with the listing dealer, sells the home and takes a downpayment, that money should be deposited in the trust account of the listing dealer who has a written contract with the seller. This eliminates possible confusion on the part of the consumer and makes the listing dealer responsible for the trust funds rather than the selling dealer who may be unknown to the owner.
- B. Disbursements of monies from trust accounts have been delayed by dealers for whatever reason. This requirement assures prompt disbursement if conditions of transactions are silent.

2MCAR Sl.8016 Notice to the Commissioner.

- A. Requires Commissioner to be notified pursuant to B though E.
- B. Change on License Application. The 10 day period specified is a reasonable time for dealer to notify the Division of business status so that dealer files are kept current.
- C. The 10 day notification by dealer of civil judgements in which he is named as a defendant updates information required by Sec. 4 327B.04 Subd. 3(e).
- D. Disciplinary Action in another State. If another State revokes or suspends a dealer's license, it is reasonable cause to suspect that such dealer may pose a potential problem to citizens of Minnesota. Notification alerts this Division of that dealer's performance in this State.
- E. Criminal Offense. It is reasonable to inquire about past criminal activity of dealer relating to the type of business activity applicant is seeking to be licensed for to assess whether applicant should be licensed and, if so, to alert the Building Codes & Standards Division of possible future problems which may harm consumers.

2MCAR Sl.8017 Required Documents. Consumer complaints have arisen from problems involving documents. In some cases contracts were not signed or incomplete, or simply not furnished. Each party to a sale is entitled to all documents in connection with that sale. It is necessary that they be complete and clear. This requirement will tend to minimize consumer complaints involving sales documents.

2MCAR 1.8018 Standard of Conduct. This rule is authorized by Sec. 5 327B.04 Subd. 1(t) and is needed to expand on dealer conduct as set forth in Rule 21.

2MCAR Sl.8019 Responsibility of Dealers.

- A. It is reasonable to require that dealers supervise the sales activities of their personnel and review sales records. This provides better consumer protection and improves dealer service. Dealer failure to reasonably supervise employees is cause for denial, suspension, or revocation of license according to 327B.05 Subd. 1(t).
- B. Preparation and safekeeping of documents. At least one dealer in the past has sought to avoid responsibility by attempting to assign responsibility to a salesperson. This clearly affixes responsibility on the dealer.
- C. Resolution of complaints. If any employee of the dealer is engaging in questionable or other practices in connection with the sales of manufactured homes, which give rise to any consumer complaint, it is a reflection of that dealership. This rule is needed to help in the reduction of consumer complaints by eliminating or solving problems at the source.
- D. Supervision, at multiple locations especially, is usually under the manager's direction. This rule stresses the importance of responsibility of and upon the dealer and manager.

2MCAR Sl.8020 Salesperson disclosure in sales transactions. The consumer customer is entitled to know the name of the company the salesperson represents. This rule assures salesperson's compliance with requirement of 327.07 Subd. 2, not working for two dealers simultaneously.

2MCAR Sl.8021 Length and Width. A number of consumer complaints originate in confusion involving these dimensions after purchase or misrepresentation of a manufactured home. Length and width are defined. These rules will be sent to every manufactured dealer who is responsible for dissemination of this information to all salespersons.

2MCAR Sl.8022 Disclosure. This rule protects the buyer's rights before the sale when purchasing a manufactured home which may be over 15 years old, located within a park.

2MCAR Sl.8023 Enforcement: These provisions are needed to identify the Commissioner as the administrative authority for these rules.


James J. Hiniker, Jr.
Commissioner

Date: September 13, 1982