

## **DEPARTMENT OF REGULATORY AGENCIES**

### **Manufactured Housing Licensing Board**

#### **RULES AND REGULATIONS**

##### **3 CCR 714-1**

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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#### **STATEMENT OF BASIS AND PURPOSE**

The authority for the adoption of rules is 12-51.5-103, C.R.S. The purpose for the adoption of the following new and amended regulations and the repeal of certain regulations of the Rules and Regulations of the Colorado Mobile Home Licensing Board is to bring the regulations into conformance with the changes in Title 12, Article 51.5 occasioned by the passage of Senate Bill 23 which becomes effective July 1, 1989, as a result of the Board's Sunset review.

The proposed changes include, but are not limited to, the following:

- Changes in wording which reflect the fact that the Board's name has been changed from the Colorado Mobile Home Licensing Board to the Colorado Manufactured Housing Licensing Board;
- The regulations have been expanded to prescribe standardized forms for use by manufactured housing dealers in connection with the retail purchase or sale of manufactured housing;
- The elimination of certain regulations and parts thereof which are no longer necessary for the protection of the public or which duplicate statutory language; and
- The renumbering of regulations to facilitate a proper format.

#### **A - DEFINITIONS - MEETINGS - FEES**

##### **RULE A-1**

Title 12, Chapter 51.5 Colorado Revised Statutes (C.R.S.), and all amendments thereto, shall be known as the "Colorado Manufactured Housing Licensing Law".

##### **RULE A-2**

The official seal of the Colorado Manufactured Housing Licensing Board shall be a seal that is circular in shape with a picture of a manufactured home in the center surrounded by the words "Colorado Manufactured Housing Licensing Board."

##### **RULE A-3**

All fees paid to the Board are nonrefundable, unless otherwise provided for in these rules. Payment of any fees with personal or company check which fails to clear the bank on which it is drawn shall be considered failure to pay the required fees. Such fee(s) must be paid by certified funds.

##### **RULE A-4**

All regular meetings of the Board are open to the public, who may participate in any one of the following ways: (1) by requesting in writing to the secretary of the Board, that they be included on the agenda; (2) by written invitation of the Board; (3) by signing a register to be available in the Board meeting room on the day of the meeting and indicating thereon those areas of the agenda on which they wish to speak; (4) by verbal invitation of the Board to members of the audience at a Board meeting. The Board may establish a time limit for presentations by the public, and the presiding officer may exclude from the meeting room any person who is disruptive, abusive or disorderly.

#### **RULE A-5**

The Board shall follow Robert's Rules of Order in the conduct of its business except that the Board's presiding officer may make motions and may vote on all questions.

#### **RULE A-6**

The status of licensure is set forth as follows:

Active — A current licensed person and/or entity.

Inactive — A person and/or entity currently not engaged in the manufactured housing business but which has been previously licensed.

#### **RULE A-7**

A single family, single unit manufactured home is any combination of manufactured units, which, when assembled, result in a single family residence on a plot of land, either owned or leased, or in a manufactured housing park.

#### **RULE A-8**

A manufacturer's sale shall be deemed to be a retail sale when said manufacturer sells a single, family residence to anyone other than a licensed dealer.

#### **RULE A-9**

A person named as dealer-designee for a corporation or a partnership by director's resolution shall be deemed to be an officer of said corporation or partnership.

### **B - APPLICATIONS: GENERAL**

#### **RULE B-1**

It shall be incumbent upon the applicant to submit his proofs of qualifications to the Board.

#### **RULE B-2**

Each original application for a manufactured home dealer's license and each original application for a manufactured home salesman's license must be accompanied by the applicant's fingerprints on card No. FD-248. The fingerprints must be taken by an officer of a city police department or a county sheriff's office.

#### **RULE B-3**

A dealer may request that his license be placed on an inactive status and surrender his license to the Board. It is the duty of the inactive dealer to keep the Board informed at all times of his current address.

## **C - APPLICATIONS: DEALER**

### **RULE C-1**

In addition to the dealer application form, the following documents shall be submitted by the applicant for a dealer's license:

- a. If there is more than one business site, a declaration of multiple places of business.
- b. If a corporation, a copy of the corporate minutes naming the applicant as dealer-designee.
- c. If a corporation, a corporation application and a copy of the certificate of incorporation issued by the Secretary of the State. If the corporation is foreign, a copy of the certificate of authority to do business in Colorado issued by the Secretary of the State.
- d. If a partnership, and if this partnership was established by a formal, written partnership agreement, a copy of the partnership agreement.
- e. If a dealer in new homes, a notification of enfranchisement, accompanied by all required letters of enfranchisement.
- f. Documentation satisfactory to the Board that the location of the business site is in an area devoted principally to and occupied for commercial purposes. When the foregoing is not available, documentation and/or other evidence satisfactory to the Board that the proposed site is not contrary to any existing law. In the case of a business site located in a manufactured home park, the documentation shall reflect that the establishment of the business site in the proposed location will not result in any reduction of the area within the park set aside for tenant use as common or recreational facilities. Because of local zoning changes, the Board may, from time to time, require a dealer to obtain documentation satisfactory to the Board designating any place of business as a location complying with the legal location requirements of a principal place of business, or a legal non-complying use as determined by local laws.
- g. A full face, clear photograph of the applicant taken within the past 12 months, approximate size 2" x 3".
- h. Written confirmation from each of the applicant's employers for the past 5 years, attesting to the duration of the applicant's employment.
- i. Balance sheet of the dealer applicant indicating assets, liabilities and other financial information as required, on the forms designated by the Board.

### **RULE C-2**

When a dealer applicant is a corporation, the licensee shall be the corporation itself and not the person who is applying on behalf of the corporation. The person who is applying on behalf of the corporation shall be designated by formal action of the corporation's board of directors, and shall be known as the "dealer-designee". The corporation shall be designated as the "dealer." The dealer-designee shall take the dealer's examination and shall answer for the dealer, with respect to all licensing matters.

### **RULE C-3**

When a dealer applicant is a partnership, the licensee shall be the partnership itself and not the person who is applying on behalf of the partnership. The person who is applying on behalf of the partnership, shall be designated by formal resolution of the partnership, and shall be known as the "dealer-designee".

The partnership shall be designated as the “dealer”. The dealer-designee shall take the dealer's examination and shall answer for the dealer, with respect to all licensing matters.

#### **RULE C-4**

If the manufactured home dealer is a partnership or corporation, the dealer's license fee will be applied to the named dealer-designee and to one additional person named to act as a manufactured home salesman under the authority of that license.

#### **RULE C-5**

If the person who is the dealer-designee for a partnership or a corporation, ceases to be associated with that partnership or corporation, the dealer shall notify the Board immediately of such fact. In order to prevent hardship, the Board, or its Executive Secretary, may approve a person designated by the licensee to apply to become successor dealer-designee, for a non-renewable period of 60 days, pending approval or denial of such applicant as the permanent dealer-designee. The issuance of a temporary status will be reviewed by the Board at its next regularly scheduled meeting. The following factors shall be taken into account in considering temporary licensure: The applicant's past or current status as a licensed manufactured home salesman or dealer, whether the applicant has ever taken, and passed or failed, an examination administered by the Board and whether the change in dealer-designee is accompanied by a complete or significant change in ownership or overall control of the dealership's business. The applicant for successor dealer-designee shall make application as required by statute and rule, whether or not temporary dealer-designee status is granted by the Board.

#### **RULE C-6**

At the time of application, the dealer applicant shall remit the examination fee and the license fee. If the application is approved the applicant shall be considered licensed as of the date the appropriate recovery fund assessment is received by the Board. If the application is denied, or voided, the license fee, but not the examination fee shall be refunded.

#### **RULE C-7**

All dealer licenses issued shall be issued in the name under which the dealer intends to conduct business. Any additional place of business shall be conducted under the same name.

#### **RULE C-8**

No licensee shall do business under a trade name (dba) which is the same as, or is so similar as to be easily confused with, that of any other licensee of this Board. The Board may refuse to issue a license to any person or entity applying for licensure to do business under a trade name which is the same as, or is so similar as to be easily confused with, that of any licensee of the Colorado Real Estate Commission or that of any other person or entity who has registered a trade name with any county of this state or the State Department of Revenue.

### **D - APPLICATIONS: SALESMAN**

#### **RULE D-1**

“Original applicant for a salesman license” means: any person who has never applied to the Board for a license; any person who was formerly licensed by the Board but whose license has lapsed for more than six months; and any person who has not been licensed because his previous application was voided or denied.

#### **RULE D-2**

Pursuant to Section 12-51.5-107, C.R.S., an application for a manufactured home salesman's license will not be accepted and a manufactured home salesman's license will not be issued unless the applicant is employed by an actively licensed manufactured home dealer.

#### **RULE D-3**

Both the applicant for a manufactured home salesman's license and the applicant's sponsoring manufactured home dealer must sign the "Notice to Applicant and Employing Dealer" found in the salesman's application.

#### **RULE D-4**

At the time of application, the salesman applicant shall remit the examination fee, the recovery fund assessment and the license fee. If the application is denied or withdrawn, the license fee, but not the examination fee nor the recovery fund assessment, shall be refunded. In the case that a temporary license had never been issued to the applicant, applicant is entitled to a refund of the recovery fund assessment.

#### **RULE D-5**

The applicant shall furnish and attach to his application, a full face, clear photograph of the applicant taken within the past 12 months, approximately 2" x 3" in size.

### **E - EXAMINATIONS**

#### **RULE E-1**

Any original applicant for a salesman's and/or dealer's license whose application is received at least ten (10) days prior to an established examination date shall be scheduled to take the examination on that date. Any original applicant for a salesman's and or dealer's license whose application is received within ten (10) days prior to an established examination date shall not be scheduled for that examination, but shall instead be scheduled to take the examination on the next scheduled date.

#### **RULE E-2**

The applicant for licensure will be notified in writing by the Board of the time and place of his scheduled examination. When the applicant appears to take the written examination, he shall surrender this notice to a representative of the Board, and he shall present to the Board's representative a positive picture identification. This examination notice does not constitute Board approval of the applicant's qualifications for licensure.

#### **RULE E-3**

An applicant who is scheduled to take an examination shall be required to appear for that examination as scheduled. In the event that the applicant does not appear for the examination as scheduled, such nonappearance shall be considered a failure of this examination. An applicant may for good cause be granted a one time waiver of this rule, if he supplies a request in writing to the Board explaining his reason for nonappearance and if the Board determines that he has thereby shown good cause for waiver.

#### **RULE E-4**

All persons applying for a manufactured home dealer's license either as a sole proprietor or on behalf of a corporation or partnership shall take and pass a manufactured home dealer's licensure examination. The length and content of the examination will be determined by the Board, or its designate. The passing score will be determined by the Board based on a level of minimum competency to engage in the

profession. The examination will be conducted monthly, in Denver and at other sites as designated by the Board. The Board shall provide all applicants a handbook for preparation for the examination, and the examination shall cover the contents of this handbook. This handbook may be revised from time to time.

#### **RULE E-5**

All original applicants for a salesman license shall take and pass a manufactured home salesman's licensure examination. The length and content of the examination will be determined by the Board, or its designate. The examination will be conducted monthly, in Denver and at other sites as designated by the Board. The passing score will be determined by the Board based on a level of minimum competency to engage in the profession. The Board shall provide all applicants a handbook for preparation for the examination, and the examination shall cover the contents of this handbook. This handbook may be revised from time to time.

#### **RULE E-6**

Dealer and salesman applicants will be notified of their examination scores by mail. A notice to an applicant that he received a passing score does not in itself constitute an approval of either a salesman and/or dealer license. Licenses are issued only pursuant to Board vote.

### **F - TEMPORARY SALESMAN LICENSE**

#### **RULE F-1**

All applicants for licensure as manufactured home salesmen shall be eligible for a Temporary License except persons who have been previously denied a license by the Board on the grounds outlined in Section 12-51.5-117, Colorado Revised Statutes.

#### **RULE F-2**

The Board or its Executive Secretary may issue a Temporary License pursuant to Section 12-51.5-103(3)(f), C.R.S., to applicants who are eligible for such a license upon receipt of a complete application including all fees, fingerprint card, and all parts of the application being filled out and signed.

#### **RULE F-3**

This Temporary License shall be effective the date of receipt in the Board's office. It shall be unlawful for an applicant to act as a manufactured home salesman prior to the effective date of this Temporary License.

#### **RULE F-4**

During the period of temporary licensure, the temporary licensee shall be scheduled for the licensing examination, no more than two times. His application shall be evaluated by the Board and disposition of the application shall be made.

#### **RULE F-5**

A temporary licensee may transfer from one dealer to another in the same manner as a holder of an annual license.

#### **RULE F-6**

If during the period of temporary licensure, the applicant ceases to be employed by a licensed dealer or if he transfers employment from one dealer to another, the period of temporary licensure shall continue to

run and the applicant shall sit for the licensing examination as scheduled even though he is not, at the time of examination, currently employed by a licensed dealer.

#### **RULE F-7**

If a temporary licensee fails the licensing examination on his first attempt (including not appearing as scheduled, pursuant to Rule E-2) he shall be re-scheduled for the next examination and will be required to remit the examination fee. If the licensee fails the licensing examination on the second attempt (including not appearing as scheduled pursuant to Rule E-2) his temporary license shall be automatically denied effective five (5) days after the notice of his failing the second time has been mailed or the ninetieth day after issuance, whichever is sooner.

#### **RULE F-8**

If a temporary licensee fails the licensure examination twice he shall not be issued another Temporary License, but may request in writing to sit for successive examinations while not possessing a Temporary License. Requests for admission to successive examinations shall be accompanied by the examination fee such that a new examination fee shall be required for each examination sitting he is scheduled for.

#### **RULE F-9**

If more than 6 months passes between the date his Temporary License expires and the date he requests to sit for the licensing examination, the applicant shall be required to submit a completely new application.

#### **RULE F-10**

If a temporary licensee terminates his employment with a licensed dealer during the time his temporary license is valid, the dealer shall immediately return the Temporary License certificate to the Board with a cover letter detailing the exact date the salesman terminated.

### **G - TRANSFER OF SALESMAN LICENSE**

#### **RULE G-1**

When a person under Temporary License or Annual License wishes to change employment from one dealership to another he may do so by submitting an application for transfer of manufactured home salesman's license.

#### **RULE G-2**

The former employer shall, upon termination of the salesman return the wall certificate to the Board immediately, accompanied by a letter stating the exact date the salesman terminated.

#### **RULE G-3**

The salesman shall retain his pocket card in his possession until such time as he wishes to be reemployed by a manufactured home dealer, and shall return the pocket card with the application for transfer.

#### **RULE G-4**

So long as the Temporary License or Annual License is current, and neither revoked nor suspended, the transfer from one dealership to another shall be an automatic procedure conducted by the Board's staff.

#### **RULE G-5**

The effective date of the transfer shall be the date the application for transfer, accompanied by the transfer fee, is received in the Board's office and it shall be unlawful for a licensee to act as salesman for the new dealer until the transfer is effective.

## **H - BUSINESS OPERATIONS**

### **RULE H-1**

"Reasonable business hours" as used in Section 117 of the Licensing Law, shall be understood by the Board to be no fewer than twelve (12) hours per week of Monday through Friday, and these hours are to be posted conspicuously on the outside of the office or near the main entrance to this office.

### **RULE H-2**

Where the principal place of business of a manufactured home dealer is located in a manufactured home park, the establishment of the principal place of business site shall not result in any reduction of the area within the park set aside for tenant use as common or recreational facilities. The site or location of the principal place of business shall be in an enclosed location and display in an obvious fashion that this location is devoted principally to and occupied for commercial purposes.

### **RULE H-3**

An "additional place of business" shall be any place of business, other than the dealer's principal place of business, where the business of selling manufactured homes is conducted, not contiguous to the dealer's principal place of business but operated and maintained in conjunction therewith, subject to the following:

- a. The site or location of such additional place of business must be devoted mostly or mainly to commercial purposes. In no event shall a private residence, room or rooms in hotel, motel, rooming house or multiple unit dwelling be considered an additional place of business unless the entire floor of such is devoted principally to commercial purposes.
- b. Such additional place of business shall be added to the existing dealer license by the immediate notification to the Board of the existence and address of the additional place of business, together with verifying documentation or evidence that the site otherwise complies with the requirements of a principal place of business as set forth in these rules and regulations, with the exception of the books and records requirement.
- c. A duplicate of the dealer license as displayed at the principal place of business must be obtained from the Board and prominently displayed at any additional place of business.
- d. The license of any salesman doing business at any additional place of business must be displayed at the site of such additional place of business.
- e. Nothing in this rule shall prohibit a licensed dealer from displaying or showing manufactured homes at an exhibit, fair or public event for not more than 20 days provided; (1) the name, business address and dealer license number of said dealership is prominently displayed at such location; (2) final closure of any sale of a manufactured home shall not be made at such location; and (3) written notification is made to the Executive Secretary of the Board prior to such display or show.

### **RULE H-4**

Each dealer and/or dealer-designee shall supervise, train and instruct their manufactured home salesmen. Instruction shall include but is not limited to the following: Colorado Manufactured Housing Licensing Law, Article 51.5 of Title 12, C.R.S.; Colorado Consumer Protection Act, Article 1 of Title 6, C.R.S.; Colorado Consumer Credit Code, Title 5, C.R.S.; Colorado Housing Act of 1970, Title 24, C.R.S.;



Motor Vehicle Law, Title 42, C.R.S.; Certificate of Title Act, Article 42 of Title 6, C.R.S.; Retail Sales Tax Act, Article 26 of Title 39, C.R.S.; Mobile Home Park Landlord-Tenant Act, Article 12 of Title 38, C.R.S.; Titles to Manufactured Homes Act, Article 29 of Title 38, C.R.S.

## **I - BUSINESS OPERATIONS: IDENTIFICATION**

### **RULE I-1**

The pocket card issued by the Board shall be carried on the licensee's person at all times that he is engaging in activities that require licensing by the Board. If this pocket card is lost, the licensee must report the loss immediately and request in writing that a replacement be issued.

### **RULE I-2**

There shall be affixed to the wall visible to the eye in the main waiting room or, if there is not a waiting room, in the room where most of the manufactured home transactions are completed, of each place of business of a manufactured home dealership, the dealer's license and the salesman's/salesmen's license(s) under glass.

## **J - RETAIL DELIVERED PRICE**

### **RULE J-1**

Every licensed dealer shall affix a "Price Information" statement to the front of the refrigerator door or in some other conspicuous location in the kitchen area of all new manufactured homes offered for sale.

### **RULE J-2**

The Price Information statement shall be no less than 8-1/2 inches by 11 inches in outside dimensions and shall include the following:

- a. The title "Price Information".
- b. The make, year and serial number of the manufactured home.
- c. The base price of the manufactured home (FOB dealer's lot) which is the selling price of the manufactured home minus the cost of all factory installed and dealer installed options (for which there is a separate charge).
- d. An itemized listing of all factory installed options in the unit on display with their prices (if included in base price, the options are still to be itemized but "N/C" can be entered for the price).
- e. An itemized listing of all dealer installed options in the unit on display with their prices (if included in base price, the options are still to be itemized but "N/C" can be entered for the price).
- f. The "Retail Delivered Price" which is the sum of c, d, and e above.
- g. A statement entitled Note #1 which says: "Delivery, set up and skirting charges will vary depending upon site selection and have not been included in the retail delivered price."
- h. A statement entitled Note #2 which says: "Local and State Taxes are additional."
- i. The name of the dealership and the dealership license number.

### **RULE J-3**

The information in J-2 above shall be printed in letters no smaller than standard "elite" type (12 characters per inch) and the title of the form, the contents of Note #1 and the contents of Note #2 shall be in capital letters.

#### **RULE J-4**

This price information statement shall be in place prior to the unit's being offered for sale to the public.

#### **RULE J-5**

Units which are not for public display need not have the statement affixed, but such a statement shall be kept in the dealer's records of such units.

### **K - DELIVERY AND WARRANTIES**

#### **RULE K-1**

All dealers must secure from the purchaser a signed delivery receipt of the manufactured home whether it be new or used. The receipt shall identify each dealer installed optional item. The receipt shall state whether all dealer installed optional items have been received. It is further understood that at the customer's request a complete walk through shall be conducted.

#### **RULE K-2**

All dealers shall present to the purchaser all manufacturer warranties at time of closing of the manufactured home. Whenever dealer warranties are provided in a written contract for the purchase of a manufactured home, the licensee shall disclose in writing the express conditions and terms of the warranty.

The dealer shall instruct the purchaser to notify the dealer in writing if the manufacturer fails to perform warranty work in a reasonable manner and in a reasonable time.

### **L - CONTRACTS**

#### **RULE L-1 CONTRACT COPIES**

The sales agent or dealer shall give a legible copy of any document or agreement signed by the buyer (or seller) to the buyer at the time the buyer signs it. A fully executed and legible copy of any document or agreement shall be delivered to the buyer (or seller) prior to or at the time of closing.

#### **RULE L-2 DEALER PURCHASE AGREEMENTS, NEW AND USED (DEALER OWNED HOMES)**

When a dealer is the seller of a new or used home, the following items shall appear in each written purchase agreement or as an attachment thereto:

- a. The date of the agreement to purchase.
- b. A description of the manufactured home that is sold and purchased including make, year, serial number and size. In case of a factory order the letters "F.O." will be used in lieu of the serial number.
- c. The name and address of the licensee.
- d. The name and address of the purchaser.

- e. The sales price, together with itemization of all charges to the purchaser affecting or adjusting the price including but not limited to the following conditions: Whether the cost of the following items are included in the selling price - delivery to site, set-up including blocks and leveling, heat tape, steps, tie downs, sewer hookup and electrical connections, and the inclusion of wheels, tires and axles.
- f. The down payment made on the manufactured home and the terms and conditions of the trade-in agreements, if any.
- g. Whether the purchase is contingent upon any items, including financing, and if purchase is subject to obtaining space in a manufactured home community, and if so, the express terms of said contingency(ies).
- h. Whether the manufactured home is new or used.
- i. Every page of the purchase agreement and any exhibits or attachments thereto must be signed or initialed by the purchaser and dealer. Any change in the purchase agreement must be signed or initialed in the same manner. In the case of a deletion, the original item must be struck through with a single line.
- j. When earnest money or a down payment has been made at the time of signing of the purchase agreement, the conditions under which such monies or down payment will be refundable when any contractual contingency is not met. When the dealer is obtaining the loan commitment, the dealer must specifically state a given date by which such loan commitment is to be obtained.

### **RULE L-3 BROKERAGE AGREEMENTS (THREE-PARTY TRANSACTIONS)**

#### **a. Listing Agreements.**

Any dealer who contracts with an owner of a manufactured home to sell or trade such home as the owner's agent shall execute a listing agreement with the owner(s). The following items shall appear in each listing agreement.

- 1. The effective date and termination date of the agreement.
- 2. The amount and manner in which the dealer's fee is to be paid.
- 3. The sales price and the terms of sale.
- 4. A legal description of the manufactured home including make, year, serial number and size.
- 5. The name of any lienholder and approximate amount of lien, if any.
- 6. Improvements, equipment and components which are included or excluded with the listing.
- 7. Name and address of licensee.
- 8. Name and address of the owner-seller.
- 9. Each page and or attachment(s) thereto shall be signed or initialed by the owner-seller and the agent. Any change in the original listing agreement must be signed or initialed by both parties.

#### **b. Three-Party Sales Agreements.**

(Buyer, seller and agent,) Any dealer who contracts to sell or trade a manufactured home as an owner's agent shall execute a written agreement wherein the following items appear:

1. The date of the agreement.
2. The amount of earnest money or payments made by the buyer at the time the agreement is signed.
3. The present location of the home.
4. The legal description of the home including year, make, size and serial number.
5. The selling price and terms of the sale.
6. Improvements, equipment and components which are included with the sale.
7. The date of closing and date of possession.
8. The name of any lienholders and the amount of lien.
9. Name and address of the licensee.
10. Name and address of owner-seller.
11. Name and address of the buyer.
12. Each page and or attachments shall be signed or initialed by the owner-seller, the agent-licensee and the buyer. Any changes in the agreement must be signed or initialed by all three parties.
13. The amount of the commission the dealer is receiving in the transaction.

#### **L-4 CODE DISCLOSURE**

The licensee shall in each contract in which there is a writing affirmatively state the code to which the manufactured home was built, i.e., FB (factory built), HUD or PRE-HUD.

#### **M - BUSINESS OPERATION: DISCLOSURES AND FIDUCIARY OBLIGATIONS**

##### **RULE M-1**

Any dealer who contracts with an owner of a manufactured home to sell or trade such manufactured home as owner's agent, owes to the owner any and all fiduciary duties owed by an agent to his principal. Any violation of these duties shall be deemed a fraudulent transaction in violation of Section 12-51.5-117(1)(h), C.R.S. These duties include, but are not limited to:

- a. The duty to communicate all facts coming to the licensee's knowledge which might reasonably affect the owner's decision to sell; including, absent specific instructions to the contrary, all offers to purchase such manufactured home. Such offers shall be in writing, signed and dated by the party making the offer and the listor acknowledging receipt thereof.
- b. The duty not to use information acquired because of the agency to the licensee's profit without the knowledge and consent of the owner. For example: dealer may not list at given price, then, knowing of possible sale at a higher price, purchase home himself for less than listed price during time of listing agreement.

##### **RULE M-2**

A licensee will disclose to a prospective purchaser any information which he knows about the manufactured home which would be considered material to a decision to purchase, including but not limited to:

- a. The inability to place the manufactured home or purchaser in a specific manufactured home community identified by the purchaser.
- b. Any defect which would make the home uninhabitable.
- c. The lack of the number of wheels, axles and tires included as original equipment.
- d. The fact that the manufactured home would violate existing zoning laws governing the location being considered by the purchaser.

### **RULE M-3**

Any and all pre-existing liens with respect to a particular sale must be satisfied at time of closing, or if the transaction includes the assumption of an existing lien, the licensee must obtain in writing the approval of the lienholder. Failure to do either of the above shall be deemed a violation of Section 12-51.5-117(1)(e)(h), C.R.S.

### **RULE M-4**

All licensees shall make financial disclosure in conformance with Colorado Consumer Credit Code, Title 5, C.R.S., and any violation of that code will be considered in violation of Section 12-51.5-117(1)(n), C.R.S.

### **RULE M-5**

A manufactured home licensee who acts in the capacity of a broker shall furnish to each buyer and to each seller, at the time such transaction is consummated, a complete detailed closing statement as it applies to the buyer and to the seller as follows:

- a. The dealer shall retain a copy for three years of all closing statements approved by the respective buyers or sellers for future use or for inspection by an authorized representative of the Board.
- b. The closing statement or statements of such manufactured home transactions shall show the following:
  1. The date of closing.
  2. The total purchase price, itemization of all adjustments, money, or things of value received or paid showing to whom each item is credited and/or to whom each item is debited.
  3. The balances due from the respective parties to the transaction, and the names of the payees, makers and assignees, of all notes paid or made or assumed.
  4. Closing statements must be signed as approved by the dealer or licensee or his agent and both the purchaser and seller.

## **N - ESCROW ACCOUNTS**

### **RULE N-1**

Any escrow or trust account shall be a separate account and identified as such, and upon request of the Board, the dealer shall furnish to the Board the name of the financial institution in which the account has been created and all information relevant to said account. The dealer shall maintain at his principal place of business a record of such trust or escrow account which the Board or its authorized agent shall have the power to audit or review.

## **RULE N-2**

All monies belonging to others received and/or accepted by a licensee in his capacity as an agent shall be deposited in said trust or escrow account and shall not be co-mingled with property, monies or assets of such dealer-designee.

## **O - INFORMAL SETTLEMENTS**

### **RULE O-1**

A complaint may be dismissed by the Board prior to the initiation of a disciplinary proceeding when an informal settlement has been reached between the complainant and licensee and approved by an investigator for the Division of Registration, Department of Regulatory Agencies. The Board must approve all such settlements and, upon approval, may dismiss further disciplinary proceedings against the licensee. All such informal settlements shall be in writing, shall include a waiver on the part of complainant of any further claims against the licensee or the recovery fund arising out of the incident or events from which the complaint arose, and shall be signed by all complaining parties involved, by the licensee, and by the Board.

## **P - DEALER'S LICENSE REQUIRED**

### **RULE P-1**

For the purpose of enforcing the provisions of Section 12-51.5-101(5)(e), C.R.S., the Board shall determine on a case by case basis, pursuant to its records, and other information presented to it, whether a manufactured home is or is not located in a "community" where there is no licensed dealer actively engaged in the business of listing and selling owner-occupied manufactured housing. This determination may include the determination of what constitutes the relevant community, and may include inquiry into the business activity(ies) of licensed dealers, if any, in the community.

## **Q - DECLARATORY ORDERS**

THIS SECTION OF THE REGULATIONS IS INCLUDED AS MANDATED BY SECTION 24-4-105(11), C.R.S.

### **RULE Q-1**

Any person may petition the Board for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Board.

### **RULE Q-2**

The Board will determine, in its discretion and without notice to petitioner, whether to rule upon any such petition. If the Board determines that it will not rule upon such a petition, the Board shall promptly notify the petitioner in writing of its action and state the reasons for such action.

### **RULE Q-3**

In determining whether to rule upon a petition filed pursuant to this rule, the Board will consider the following matters, among others:

- a. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision or rule or order of the Board.
- b. Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court involving one or more of the petitioners.
- c. Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter of investigation currently pending before the Board or a court but not involving any petitioner.
- d. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
- e. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to rule 57, Colo. R. Civ. P., which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.

#### **RULE Q-4**

Any petition filed pursuant to this rule shall set forth the following:

- a. The name and address of the petitioner and whether the petitioner is licensed pursuant to Section 12-51.5-101, C.R.S., et seq.
- b. The statute, rule or order to which the petition relates.
- c. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.

#### **RULE Q-5**

If the Board determines that it will rule on the petition, the following procedures shall apply:

- a. The Board may rule upon the petition based solely upon facts presented in the petition. In such a case:
  - 1. Any ruling of the Board will apply only to the extent of the facts presented in the petition and any amendment to the petition.
  - 2. The Board may order the petitioner to file a written brief, memorandum or statement of position.
  - 3. The Board may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.
  - 4. The Board may request the petitioner to submit additional facts, in writing. In such event, such additional facts will be considered as an amendment to the petition.
  - 5. The Board may take administrative notice of facts pursuant to the Administrative Procedure Act, Section, 24-4-105(8), C.R.S., and may utilize its experience, technical competence and specialized knowledge in the disposition of the petition.

6. If the Board rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.
7. The Board may, in its discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Board intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner, and any other facts which the petitioner desires the Board to consider.

#### **RULE Q-6**

The parties to any proceeding pursuant to this rule shall be the Board and the petitioner. Any other person may seek leave of the Board to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Board. A petition to intervene shall set forth the same matters as required by section Q-4 of this rule. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Board.

#### **RULE Q-7**

Any declaratory order or other order disposing of a petitioner pursuant to this rule shall constitute agency action subject to judicial review pursuant to Section 24-4-106, C.R.S.

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#### **Editor's Notes**

#### **History**