

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH80190-LK-139 (3/26)

Short Title: Manufactured Housing.

(Public)

Sponsors: Representative Hunter.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO GRANT GREATER CONSUMER PROTECTION TO RESIDENTS OF
MANUFACTURED HOUSING IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47-20.6(a) reads as rewritten:

"(a) If the owner of ~~real property~~ a manufactured home that is defined as real property in G.S. 105-273(13) has surrendered the title to ~~a the~~ the manufactured home ~~that is placed on the real property~~ and the title has been cancelled by the Division of Motor Vehicles under G.S. 20-109.2, the owner, or the secured party having the first security interest in the manufactured home at time of surrender, shall record the affidavit described in G.S. 20-109.2 with the office of the register of deeds of the county where the ~~real property~~ manufactured home is located. Upon recordation, the affidavit shall be indexed on the grantor index in the name of the owner of the manufactured home and on the grantee index in the name of the secured party or lienholder, if any."

SECTION 2. G.S. 47-20.6 is amended by adding a new subsection to read:

"(e) In the event that the owner of a manufactured home described in subsection (a) of this section is not the owner of the real property to which the manufactured home is affixed, the owner or the secured party having the first security interest in the manufactured home at the time of surrender, shall indicate in the affidavit the following:

(1) That the owner of the manufactured home is not the same as the owner of the real property to which the manufactured home is affixed.

(2) That the owner of the manufactured home has entered into a lease for the real property on which the manufactured home is affixed with a primary term of at least 20 years."

SECTION 3. G.S. 47-20.7 reads as rewritten:

"§ 47-20.7. **Declaration of intent to affix manufactured home; transfer of real property with manufactured home attached.**

1 (a) ~~A~~ Except as provided in subsection (e) of this section, a person who owns
2 ~~real property or is purchasing on which~~ a manufactured home ~~that has been, or will be~~
3 ~~placed, as defined in G.S. 105-273(13), and either where the manufactured home has~~
4 ~~never been titled by the Division of Motor Vehicles or where the title to the~~
5 ~~manufactured home has been surrendered and cancelled by the Division, may and that is~~
6 defined as real property in G.S. 105-273(13) or that will be so defined once it is affixed
7 to real property, shall record in the office of the register of deeds of the county where
8 the real property-manufactured home is or will be located a declaration of intent to affix
9 the manufactured home to the real property and may shall convey or encumber the real
10 property, including the manufactured home, only by a deed, deed of trust, or other
11 instrument recorded in the office of the register of deeds. Upon recordation, the
12 declaration of intent shall be indexed on the grantor index in the name of the owner of
13 the manufactured home.

14 (b) The declaration of intent, deed, deed of trust, or other instrument shall contain
15 a description of the manufactured home, including the name of the manufacturer, the
16 model name, if applicable, the serial number, and a statement of the owner's intention
17 that the manufactured home be treated as real property. In addition, in the event that the
18 owner is not also the owner of the real property to which the manufactured home is or
19 will be affixed, the owner shall indicate in the declaration of intent the following:

20 (1) That the owner of the manufactured home is not the same as the owner
21 of the real property to which the manufactured home is affixed.

22 (2) That the owner of the manufactured home has entered into a lease for
23 the real property on which the manufactured home is affixed with a
24 primary term of at least 20 years.

25 (c) On or after the filing of the instrument with the office of the register of deeds
26 pursuant to subsection (a) of this section, the manufactured home placed, or to be
27 placed, on the real property becomes an improvement to real property. Any lien on the
28 manufactured home shall be perfected and have priority in the manner provided for a
29 lien on real property.

30 (d) The provisions of this section control over the provisions of G.S. 25-9-334
31 relating to the priority of a security interest in fixtures, as applied to manufactured
32 homes.

33 (e) Notwithstanding the provisions of subsection (a) of this section, any person
34 who would otherwise be required to file a declaration of intent may elect not to have the
35 owner's manufactured home classified as real property by applying for the issuance of a
36 title for a manufactured home from the Division of Motor Vehicles and by filing a
37 declaration of intent not to affix the manufactured home to real property with the
38 register of deeds of the county where the manufactured home is or will be located. The
39 declaration of intent not to affix shall contain a description of the manufactured home,
40 including the name of the manufacturer, the model name, if applicable, the serial
41 number, and a statement of the owner's intention that the manufactured home not be
42 treated as real property. In the event that a declaration of intent not to affix is filed, the
43 manufactured home will be considered tangible personal property, except as provided in
44 G.S. 105-273(13)."

1 **SECTION 4.** Subdivision (13) of G.S. 105-273 reads as rewritten:

2 **"§ 105-273. Definitions.**

3 When used in this Subchapter (unless the context requires a different meaning):

4 ...

5 (13) "Real property," "real estate," and "land" mean not only the land itself,
6 but also buildings, structures, improvements, and permanent fixtures
7 on the land, and all rights and privileges belonging or in any way
8 appertaining to the property. These terms also mean a manufactured
9 home as defined in G.S. 143-143.9(6) if it is a residential structure; has
10 the moving hitch, wheels, and axles removed; and is placed upon a
11 permanent foundation either on land owned by the owner of the
12 ~~manufactured home.~~ home or on land which the owner of the
13 manufactured home has a leasehold interest pursuant to a lease with a
14 primary term of at least twenty 20 years. A manufactured home as
15 defined in G.S. 143-143.9(6) that does not meet all of these conditions
16 is considered tangible personal property."

17 **SECTION 5.** G.S. 42-14 reads as rewritten:

18 **"§ 42-14. Notice to quit in certain tenancies.**

19 A tenancy from year to year may be terminated by a notice to quit given one month
20 or more before the end of the current year of the tenancy; a tenancy from month to
21 month by a like notice of seven days; a tenancy from week to week, of two days.
22 Provided, however, where the tenancy involves only the rental of a space for a
23 manufactured home as defined in G.S. 143-143.9(6), a notice to quit must be given at
24 least ~~30~~120 days before the end of the current rental period, regardless of the term of the
25 tenancy."

26 **SECTION 6.** Chapter 42 of the General Statutes is amended by adding a
27 new section to read:

28 **"§ 42-14.3. Notice of sale or closure of manufactured home communities.**

29 (a) In the event that an owner of a manufactured home community (defined as a
30 parcel of land, whether undivided or subdivided, that has been designed to
31 accommodate at least three manufactured homes) intends to sell or close the
32 manufactured home community, the owner shall give each resident notice of the
33 intended sale or closure at least one year before the residents are required to vacate,
34 regardless of the term of the tenancy. Failure to give notice as required by this section is
35 a defense in an action for possession.

36 (b) Notwithstanding subsection (a) of this section, if a manufactured home
37 community is being closed pursuant to a valid order of any unit of state or local
38 government, the owner of the community shall be required to give notice of the closure
39 of the community to each resident of the community within three business days of the
40 date on which the order is issued."

41 **SECTION 7.** G.S. 143-143.10(a) reads as rewritten:

42 "(a) There is created the North Carolina Manufactured Housing Board within the
43 Department. The Board shall be composed of nine members as follows:

44 (1) The Commissioner of Insurance or his designee.

- 1 (2) A manufactured home manufacturer.
- 2 (3) A manufactured home dealer.
- 3 (4) A representative of the banking and finance business.
- 4 (5) A representative of the insurance industry.
- 5 (6) A manufactured home supplier.
- 6 (7) A set-up contractor.
- 7 (8) ~~Two representatives of the general public~~individuals then living in
- 8 manufactured homes, as defined in G.S. 143-143.9(6).

9 The Commissioner or his designee shall chair the Board. The Governor shall appoint
10 to the Board the manufactured home manufacturer and the manufactured home dealer.
11 The General Assembly upon the recommendation of the Speaker of the House of
12 Representatives in accordance with G.S. 120-121 shall appoint the representative of the
13 banking and finance industry and the representative of the insurance industry. The
14 General Assembly upon the recommendation of the President Pro Tempore of the
15 Senate in accordance with G.S. 120-121 shall appoint the manufactured home supplier
16 and set-up contractor. The Commissioner shall appoint two ~~representatives of the~~
17 ~~general public~~individuals living in manufactured homes after receiving
18 recommendations from affordable housing advocates. Except for the ~~representatives~~
19 ~~from the general public~~individuals living in manufactured homes and the persons
20 appointed by the General Assembly, each member of the Board shall be appointed by
21 the appropriate appointing authority from a list of nominees submitted to the appropriate
22 appointing authority by the Board of Directors of the North Carolina Manufactured
23 Housing Institute. At least three nominations shall be submitted for each position on the
24 Board. The members of the Board shall be residents of the State.

25 The members of the Board shall serve for terms of three years. In the event of any
26 vacancy of a position appointed by the Governor or Commissioner, the appropriate
27 appointing authority shall appoint a replacement in the same manner as provided for the
28 original appointment to serve the remainder of the unexpired term. Vacancies in
29 appointments made by the General Assembly shall be filled in accordance with G.S.
30 120-122. In the event of any vacancy, the appropriate appointing authority shall appoint
31 a replacement to serve the remainder of the unexpired term. Such appointment shall be
32 made in the same manner as provided for the original appointment. No member of the
33 Board shall serve more than two consecutive, three-year terms.

34 The ~~member~~two members of the Board ~~representing the general public who live in~~
35 manufactured homes shall have no beneficial financial interest connected with the
36 manufactured housing industry. No member of the Board shall participate in any
37 proceeding before the Board involving that member's own business.

38 Each member of the Board, except the Commissioner and any other State employee,
39 shall receive per diem and allowances as provided with respect to occupational licensing
40 boards by G.S. 93B-5. All per diem and travel expenses shall be paid exclusively out of
41 the fees received by the Board as authorized by this Article. In no case shall any salary,
42 expense, or other obligation of the Board be charged against the General Fund of the
43 State of North Carolina. All moneys and receipts shall be kept in a special fund by and
44 for the use of the Board for the exclusive purpose of carrying out the provisions of this

1 Article. At the end of the fiscal year, the Board shall retain fifteen percent (15%) of the
2 unexpended funds collected and received during that year. The remaining eighty-five
3 percent (85%) of these funds shall be credited to the General Fund.

4 (b) In accordance with the provisions of this Article, the Board shall have the
5 following powers and duties:

- 6 (1) To issue licenses to manufacturers, dealers, salespersons, and set-up
7 contractors.
- 8 (2) To require that an adequate bond or other security be posted by all
9 licensees, except manufactured housing salespersons.
- 10 (3) To receive and resolve complaints from buyers of manufactured homes
11 and from persons in the manufactured housing industry, in connection
12 with the warranty, warranty service, licensing requirements or any
13 other provision under this Article.
- 14 (4) To adopt rules in accordance with Chapter 150B of the General
15 Statutes as are necessary to carry out the provisions of this Article.
- 16 (5) To file against the bond posted by a licensee for warranty repairs and
17 service on behalf of a buyer."

18 **SECTION 8.** G.S. 143-143.10 is amended by adding a new subsection to
19 read:

20 "(c) The Board shall meet no less than once every three months to conduct
21 administrative hearings, if necessary, and to discharge any other Board business.
22 Minutes of all Board meetings and records of all official actions taken by the Board,
23 including, without limitation, its decisions with respect to any administrative hearing
24 shall be kept in the Board's public records and posted on the Board's Internet website
25 within one month of the adjournment of any Board meeting. Additionally, a current list
26 of the Board's membership and the Board's next scheduled meetings shall be regularly
27 posted on the Board's Internet website."

28 **SECTION 9.** Chapter 143 of the General Statutes is amended by adding a
29 new section to read:

30 "**§ 143-143.20A. Display of pricing on manufactured homes.**

31 Each manufactured home dealer shall establish, permanently affix, and prominently
32 display pricing for the manufactured homes offered for sale by the dealer. The prices
33 shall be displayed in writing and shall be disclosed in advance of negotiations with any
34 buyer. Each price shall include the cost of the manufactured home and alternative
35 flooring. In addition, each price display shall include a disclosure that the price does not
36 include variable costs, including, without limitation, transportation fees or set-up and
37 installation costs.

38 **SECTION 10.** Chapter 143 of the General Statutes is amended by adding a
39 new section to read:

40 "**§ 143-143.20B. Disclosure of financing options for manufactured housing.**

41 If a consumer is purchasing a manufactured home that shall be permanently affixed
42 to land owned by the consumer or on land in which the purchaser of the manufactured
43 home has a leasehold interest pursuant to a lease with a primary term of at least twenty
44 20 years, the manufactured housing dealer shall disclose in writing to each consumer the

1 option of having the manufactured home classified as real property pursuant to G.S. 47-
2 20.7 and the possibility that, pursuant to that classification, the acquisition of the
3 manufactured home may be financed as real property by a lender. If the consumer elects
4 to classify the manufactured home as real property, then the closing of the acquisition of
5 the home shall be classified as a residential real estate transaction."

6 **SECTION 11.** G.S. 143-143.21A reads as rewritten:

7 **"§ 143-143.21A. Purchase agreements; buyer cancellations.**

8 (a) A purchase agreement for a manufactured home shall include all of the
9 following:

- 10 (1) A description of the manufactured home and all accessories included
11 in the purchase.
- 12 (2) The purchase price for the home and all accessories.
- 13 (3) The amount of deposit or other payment toward or payment of the
14 purchase price of the manufactured home and accessories that is made
15 by the buyer.
- 16 (4) The date the retail purchase agreement is signed.
- 17 (5) The estimated terms of financing the purchase, if any, including the
18 estimated interest rate, number of years financed, and monthly
19 payment.
- 20 (6) The buyer's signature.
- 21 (7) The dealer's signature.

22 (b) The purchase agreement shall contain, in immediate proximity to the space
23 reserved for the signature of the buyer and in at least ten point, all upper-case Gothic
24 type, the following statement:

25 "I UNDERSTAND THAT I HAVE THE RIGHT TO CANCEL THIS PURCHASE
26 BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE THAT
27 I HAVE SIGNED THIS AGREEMENT. I UNDERSTAND THAT THIS
28 CANCELLATION MUST BE IN WRITING. IF I CANCEL THE PURCHASE
29 AFTER THE THREE-DAY PERIOD, I UNDERSTAND THAT THE DEALER MAY
30 NOT HAVE ANY OBLIGATION TO GIVE ME BACK ALL OF THE MONEY
31 THAT I PAID THE DEALER. I UNDERSTAND ANY CHANGE TO THE TERMS
32 OF THE PURCHASE AGREEMENT BY THE DEALER WILL CANCEL THIS
33 AGREEMENT."

34 (c) At the time the deposit or other payment toward or payment for the purchase
35 price is received by the dealer, the dealer shall give the buyer a copy of the purchase
36 agreement and a completed form in duplicate, captioned "Notice of Cancellation,"
37 which shall be attached to the purchase agreement, be easily detachable, and explain the
38 buyer's right to cancel the purchase and how that right can be exercised.

39 (d) The dealer shall return the deposit or other payment toward or payment for
40 the purchase price to the buyer if the buyer cancels the purchase before midnight of the
41 third business day after the date the buyer signed the purchase ~~agreement~~agreement or
42 if any of the material terms of the purchase agreement are changed by the dealer. To
43 make the cancellation effective, the buyer shall give the dealer written notice of the
44 buyer's cancellation of the purchase. The dealer shall return the deposit or other

1 payment toward or payment for the purchase price to the buyer within 15 business days
2 after receipt of the notice of ~~cancellation~~ cancellation or within three business days of
3 any change by the dealer of the purchase agreement. For purposes of this section,
4 "business day" means any day except Sunday and legal holidays. Each time the dealer
5 gives the buyer a new set of financing terms, the buyer shall be given another three-day
6 cancellation period. The dealer shall not commence setup procedures until after the
7 three-day cancellation period has run.

8 (e) If the buyer cancels the purchase after the three-day cancellation period, but
9 before the sale is completed, and if:

10 (1) The manufactured home is in the dealer's inventory, the dealer may
11 retain from the deposit or other payment received from the buyer
12 actual damages up to a maximum of ten percent (10%) of the purchase
13 price; or

14 (2) The manufactured home is specially ordered from the manufacturer for
15 the buyer, the dealer may retain actual damages up to the full amount
16 of the buyer's deposit or other payment received from the buyer.

17 (f) A dealer shall maintain in a segregated escrow fund or trust account any
18 funds that come into the dealer's possession, but that are not the dealer's property and
19 that the dealer is not entitled to retain under the circumstances. The escrow fund or trust
20 account shall be held on deposit at a federally insured financial institution.

21 (g) A dealer may not transfer title to a manufactured home or otherwise sell,
22 assign, or convey a manufactured home to a consumer unless the dealer delivers to the
23 consumer a written document disclosing the total purchase price, as adjusted for any
24 agreed interest rate and any points or fees, and the length of time for any loan
25 repayment."

26 **SECTION 12.** This act becomes effective July 1, 2003.