

Memorandum

June 6, 2007

To: Stacey Epperson, Executive Director
Frontier Housing

From: Diane Korte, AICP
The Balance Group, Inc.

RE: **Doing business as a nonprofit provider of manufactured housing
in the State of Tennessee**

Disclaimer:

The following information is provided as a preliminary outline to assist in the investigation of certain business practices in the State of Tennessee. Home building is a very complex process with many layers of regulation and levels of authority that are constantly changing. The Balance Group, Inc. does not warrant this information as being complete or accurate. It is based on investigation of agency web sites, telephone conversations with agency staff and reading of their codes. Information received regarding the interpretation of various codes during this process was contradictory.

Given:

Frontier Housing - Frontier is licensed as a manufactured home retailer and installer in the State of Kentucky. The Organization is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

Questions:

What measures, steps, resources and capacity would the HCD of Clinch Valley need to order Clayton-manufactured homes through Frontier Housing as a distributor? What are the licensing and dealership requirements in Tennessee so that Frontier, acting as product distributor, could deliver Clayton-manufactured homes to the HDC of Clinch Valley. To answer these questions, at this stage, the staff and agencies contacted were asked about unnamed nonprofit home builders from Kentucky assisting their sister organizations in Tennessee with an unspecified brand of manufactured home.

In the State of Tennessee, what licenses would be required for a nonprofit homebuilder to buy manufactured homes, set them and sell them to home buyers? If the Tennessee nonprofit wished to be assisted by a nonprofit licensed in Kentucky, as a conduit to the manufacturer, what licenses would be required? Are there any reciprocal arrangements between Tennessee and other states for licensing? Are there any different regulations that apply to nonprofit home builders?

Simple answer:

"Effective January 1, 2004, "retailer" means any person engaged in the sale, leasing, or distribution of new or used manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale ("dealer" as defined by 24 C.F.R. § 3282.7) or any person engaged in the sale and distribution of manufactured homes or recreational vehicles for resale. ("distributor" as defined by 24 C.F.R. § 3282.7). "Retailer" does not include any financial institution or mortgage company that sells new or used manufactured homes." RULES OF TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE, DIVISION OF FIRE PREVENTION, CHAPTER 0780-2-4 NEW MANUFACTURED HOMES AND RECREATIONAL VEHICLES

Therefore, in Tennessee, the federal "dealer" and "distributor" functions are both defined as a "retailer" (see summary of requirements below). Frontier Housing and the local HDC may both have to be licensed as a "manufactured home retailer". The legal and functional characteristics of the business relationship between Frontier and Clayton would need to be evaluated in relation to these regulations.

Manufactured home installers must be licensed (see summary of requirements below). In Tennessee, unlike other states, a salesperson does not have to be licensed. In Tennessee, unlike North Carolina, there is no blanket prohibition against movement of 16 foot wide units. The Department of Transportation deals with routing on a individual basis when transport permits are given to the transporters.

A manufactured home must follow the local jurisdictions land use regulations. Local code officials handle the building permits, inspections for on-site elements (foundations, decks, garages and utility connections), and certificates of occupancy for the home.

Other nonprofits (Noji Gardens) have successfully used HUD Code compliant duplexes, however, the Tennessee regulations seem to require any unit above a single family to be a modular.

"(1) All manufactured homes (but not park trailers), shall be constructed in accordance with the standards established by the United States Department of Housing and Urban Development (HUD) pursuant to the National Manufactured Home Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.). All multi-family homes designed and manufactured with more than one (1) living unit must be constructed in accordance with the Tennessee Modular Building Act (Tenn. Code Ann. Title 68, Chapter 126, Part 3)." 0780-2-4-.05 ADOPTION BY REFERENCE OF STANDARDS. RULES OF TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE, DIVISION OF FIRE PREVENTION, CHAPTER 0780-2-4 NEW MANUFACTURED HOMES AND RECREATIONAL VEHICLES

According to the SAA office, there are no special regulations that distinguish between for-profit and nonprofit in these provisions. Tennessee Code (68-126-214) allows for reciprocal agreements with officials of other states. However, the SAA states that none currently exists.

Federal

U.S. Department of Housing and Urban Development (HUD)
www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm

Manufactured Housing is regulated at the federal level by the Department of Housing and Urban Development, HUD. The HUD Code regulates the home's design and construction, strength and durability, transportability, fire resistance, energy efficiency, and quality control. It also sets performance standards for the heating, plumbing, air conditioning, thermal, and electrical systems. The HUD Code is unique since it is specifically designed for compatibility with the factory production process.

A major revision of the law was accomplished with the "Manufactured Housing Improvement Act" of December 27, 2000. The Act benefits industry and homeowners by **requiring that each state must institute an installation program and a dispute resolution program** within five years of the law's enactment. Now, almost seven years later, the process of defining the minimum threshold for these programs is still underway. Therefore, many of the regulations and programs reported in this document may be reevaluated and refined in the next few years.

In each state HUD has a designated State Administrative Agency (SAA) that regulates manufactured housing under the federal authority. Unfortunately, the methods used to implement the mandates of the federal law are different and inconsistent in each state. This explains the lack of reciprocity for dealers/retailers or installers across state lines.

Tennessee

In Tennessee, there are two separate state agencies involved.

1. The SAA, Department of Commerce & Insurance, Fire Prevention Division, Manufactured Housing Section
2. The Department of Safety - Titles and Registration (sometimes identified as the DMV on web pages)

HUD's designated State Administrative Agency (SAA): Tennessee

Department of Commerce & Insurance, Fire Prevention Division, Manufactured Housing Section

<http://www.state.tn.us/commerce/sfm/manufactHouse.html>

Address: Tennessee Department of Commerce and Insurance
Division of Fire Prevention
Manufactured Housing Section
500 James Robertson Parkway - 3rd Floor
Nashville, Tennessee 37243-1162

Phone: 615-741-7192, Fax: 615-741-9388

Contact: Mr. Joe Vanhooser, Manufactured Home Inspector Supervisor for Middle and West Tennessee/SAA Office Manager phone615.532.5808

The Manufactured Housing Section administers portions of the Uniform Standards Code for Manufactured Homes and Recreational Vehicles Act (TCA Title 68, Chapter 126, Part 2) related to H.U.D. Labeled Manufactured Homes, the Tennessee Manufactured Home Installation Act (TCA Title 68, Chapter 126, Part 4), and acts as HUD's State Administrative Agent and exclusive Production Inspection - Primary Inspection Agency, to administer certain aspects of the National Manufactured Housing Construction and Safety Standards Act of 1974 (the Federal Act).

Under State of Tennessee Law, the Manufactured Housing Section is responsible for:

- Licensing HUD labeled manufactured home manufacturers, retailers, and installers;
- Monitoring used manufactured homes safety standards;
- Performing manufactured home installation inspections in accordance with State law; and
- Investigating and taking appropriate action against violators of the Tennessee Acts referenced above.

Under its current agreement with HUD, the Manufactured Housing Section administers parts of the Federal Act which involve:

- Monitoring manufacturers' home construction quality control program;
- Investigating and monitoring consumer complaints under the Standards Act;
- Searching for and when warranted, initiating class action cases through HUD;
- Performing post-production monitoring of manufactured homes produced in and/or shipped to Tennessee; and
- Investigating and taking appropriate action against violators of the Federal Act referenced above.

The State Law:

Tennessee Code - Title 68 Health, Safety and Environmental Protection

68-126-201. Short title. — This part shall be known and may be cited as the "Uniform Standards Code for Manufactured Homes Act." [Acts 1979, ch. 310, § 1; T.C.A., §§ 53-4821, 68-36-201; Acts 2005, ch. 379, § 1.]

(Michie's Legal Resources web portal, search Manufactured Housing)

<http://michie.lexisnexis.com/tennessee/lpxext.dll?f=templates&fn=main-h.htm&cp=>

The implementing regulations:

RULES OF TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE DIVISION OF FIRE

PREVENTION

CHAPTER 0780-2-4 NEW MANUFACTURED HOMES AND RECREATIONAL VEHICLES

<http://tennessee.gov/sos/rules/0780/0780-02/0780-02-04.pdf>

Retailer's Resource Information Page:

<http://www.state.tn.us/commerce/sfm/manuhousret.html>

Licensing of Retailers

- An applicant for a license as a retailer shall complete an application form prescribed by the commissioner and submit the same to the commissioner along with a nonrefundable application fee of forty dollars (\$40.00). The applicant shall also submit a surety bond in the amount of twenty-five thousand dollars (\$25,000.00), executed by the applicant as principal and issued by a surety company qualified to do business in the State of Tennessee.
- An applicant for a license as a manufactured home retailer shall provide proof, at the time of application, of having completed a fifteen (15) hour course and passing an examination, approved by the commissioner, in the installation of manufactured homes.
- As a prerequisite to renewal of a license as a manufactured home retailer, the retailer shall provide proof of having completed a five (5) hour course and of having passed an examination, approved by the commissioner, in the installation of manufactured homes.
- A license as a retailer shall expire one (1) year after the date of issuance, unless renewed. Any retailer who fails to renew a license prior to its expiration but before ninety (90) days after its expiration shall pay a late penalty of fifty dollars (\$50.00) in addition to the renewal fee. Any person desiring to renew a license later than ninety (90) days after the date of its expiration shall submit a new application and meet all other application requirement.
- Any retailer who commences business in this State prior to obtaining proper licensure shall be assessed a civil penalty of one thousand dollars (\$1,000.00) for each manufactured home sold prior to licensure.

Installer's Resource Information Page:

<http://www.state.tn.us/commerce/sfm/manhousinst.html>

Licensing of Installers:

- Effective July 1, 2003, an applicant for a license as an installer shall complete an application form prescribed by the commissioner and submit the same to the commissioner along with a nonrefundable application fee of twenty-five dollars (\$25.00). The applicant shall also submit a surety bond in the amount of ten thousand dollars (\$10,000.00), executed by the applicant as principal and issued by a surety company qualified to do business in the State of Tennessee.
- Effective July 1, 2003, an applicant for a license as an installer shall provide proof, at the time of application, of having completed a fifteen (15) hour course, approved by the commissioner, in the installation of manufactured homes.
- Effective July 1, 2003, an applicant for a license as an installer shall provide proof, at the time of application, of having passed an examination, approved by the commissioner, in the installation of manufactured homes.
- A license as an installer shall expire one (1) year after the date of issuance, unless renewed. Any person desiring to renew a license later than ninety (90) days after the date of its expiration shall submit a new application and meet all other application requirements.
- Effective January 1, 2004, and as a prerequisite to renewal of a license for 2004 as an installer, the installer shall provide proof of having completed a fifteen (15) hour course, approved by the commissioner, in the installation of manufactured homes and of having passed an examination, approved by the commissioner, in the installation of manufactured homes.
- Any installer who fails to renew a license prior to its expiration but before ninety (90) days after its expiration shall pay a late penalty of fifty dollars (\$50.00) in addition to the renewal fee.

- Any installer who commences business in this State prior to obtaining proper licensure shall be assessed a civil penalty of one thousand dollars (\$1,000.00) for each manufactured home set up prior to licensure.

Useful Links at: <http://www.state.tn.us/commerce/sfm/manufactHouse.html>

View for State Law (Tennessee Code Annotated) related to Manufactured Housing.

View Commerce & Insurance Rules on New Manufactured Homes.

View Commerce & Insurance Rules on Used Factory Manufactured Homes.

View Commerce & Insurance Rules on Installation of Manufactured Homes.

Visit HUD's Manufactured Housing Main Menu page for more information on Manufactured Homes.

View Federal Manufactured Home Construction and Safety Standards (24 CFR 3280).

View Federal Manufactured Home Procedural and Enforcement Regulation (24 CFR 3282).

Manufactured Housing Board

Tennessee does not have a Manufactured Housing Board. Dispute resolution issues that are often handled by this type of group in other states are referred to the SAA's staff attorneys. Other issues that may be arbitrated by MH Boards go directly to the court system.

Department of Safety (DMV)

RULES OF DEPARTMENT OF SAFETY MOTOR VEHICLE DIVISION

CHAPTER 1340-5-13

<http://www.tennessee.gov/sos/rules/1340/1340-05/1340-05-13.pdf>

When reading the regulations it is confusing that the text does not specifically mention manufactured housing. The SAA suggested that these rules apply as they would to an auto vehicle. (A call to the DMV for clarification solicited the recommendation that I call an existing retailer and ask them how it works.) There is confusion regarding the assignment of titles to manufactured units. I contacted the DMV who referred me to the SAA and said that the title was initiated by the county clerk at the local level. When I contacted the SAA, he said that they did not have anything to do with the process of titling the units. He noted that the assignment of random, arbitrary numbers to the title instead of the HUD number (assigned by the manufacturer) made tracking the units much more difficult.

To "de-title" (surrender) the title and record a deed, please refer to the following web page:

Manufactured Homes Affixed to Real Property - De-title Process

<http://www.tennessee.gov/revenue/vehicle/generalinfo/mobilehomes.htm>

Local Government

- Planning Department, land use regulations
- Permit/Building Department, building permit
- Local Health Department Environmentalist, septic systems or wells
- County Solid Waste Coordinator (for disposal of uninhabitable units)

Home Buyer

- Chooses builder, retailer
- Selects home
- Secures financing
- Purchases or leases lot for home
- May apply for building permit (must include the license name and number of the set up contractor)
- Decides to retain title to home as personal property or to surrender the title in favor of a deed or deed of trust, as real property
- Must receive a Consumer and Installation Manual provided for their specific home by the manufacturer.

Resources

The Tennessee Manufactured Housing Association (TMHA) is a non-profit trade and professional association whose member companies include: Retail Sales Centers, Manufacturers, Service Suppliers, Financial Institutions, Insurers, Communities and Parks, Builder Developers and Realtors.

www.tnmha.net

The association provides certified training for licensing.

Manufactured Housing Institute, MHI (national association)

www.mfghome.org