

1999 SUNRISE REVIEW

Mobile/Manufactured Home Dealers

Colorado Department of Regulatory Agencies



Office of Policy and Research

February 19, 1999

Members of the Colorado General Assembly
c/o The Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

We have completed our evaluation of the sunrise application for regulation of mobile/manufactured home dealers and are pleased to submit this written report. This report is submitted pursuant to §24-34-104.1, Colorado Revised Statutes, 1988 Repl. Vol., (the "Sunrise Act") which directs that the Department of Regulatory Agencies to conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

The report discusses the question of whether there is a need for the regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm and, whether the public can be adequately protected by other means in a more cost effective manner.

Sincerely,

M. Michael Cooke
Executive Director

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Executive Summary

The Department of Regulatory Agencies (DORA) has completed its evaluation of the application for regulation of mobile/manufactured home dealers. The applicants seek state regulation of mobile/manufactured home dealers. Pursuant to the Colorado Sunrise Act, §24-34-104.1, Colorado Revised Statutes (C.R.S.), the applicant must prove the benefit to the public of the proposal for regulation according to the following criteria:

- 1) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument;
- 2) Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence; and,
- 3) Whether the public can be adequately protected by other means in a more cost-effective manner.

The American Mobilehome Association (AMA) has applied for regulation of mobile/manufactured home dealers. The AMA is an association of mobile home owners in Colorado. The AMA Sunrise Review Application states that the association is an advocate for mobile home owners. The application requests regulation of the industry but does not specify the level or type of regulation.

As part of this sunrise review process, DORA interviewed the applicant, mobile/manufactured home dealers, manufacturers, industry representatives, consumers, agencies with regulatory oversight of the industry, and other interested parties. The Department performed a literature review, contacted pertinent professional associations, and reviewed other states' statutes regarding mobile/manufactured home dealer regulation.

Specifically, DORA contacted the Colorado Attorney General's Office, local district attorneys, the Colorado Division of Housing and various Better Business Bureaus. All reported receiving complaints involving the delivery of manufactured homes. In particular, the problem concerning delivery of mobile homes appears to be acute on the Western Slope of Colorado.

In addition to problems identified by the applicant, DORA research revealed significant problems concerning installation of mobile homes. Eighty percent of the complaints received by the Division of Housing (Division) involve improper installation. All manufacturers have warranties on their homes, if they are sited properly. Improper installation voids the warranty. The Division reports that most complaints about manufacturer defects are actually installation related damages.

Executive Summary

Based on the information contained in the sunrise application and the review conducted by the Department of Regulatory Agencies it does appear the regulation of manufactured housing dealers and installers is justified. This report recommends that a registration program would be the most reasonable and cost-effective option to address the concerns raised in this review. Such a registration program should have a sunset review time period, such as three years, sufficient to allow enough data to be gathered for the General Assembly to evaluate the need for additional regulatory requirements.

Simplified registration programs allow any parties who submit a fee to be placed on a state registry. There are no education, examination or financial requirements to be verified by a regulatory agency. The registry makes limited information, such as the address, qualifications, and complaints against the registered party, available to the public. Like licensing, registration programs have the ability to investigate complaints, and there is an administrative process to remove violators from the registry.

The advantage of a registration program over the status quo is the creation of a centralized agency to collect data regarding the retail segment of the manufactured housing industry. The cost of the program would be offset by the registration fees assessed the industry. The level of the fees would depend on the number of registrants, the amount of information collected and disseminated, and the method of dissemination (mail, telephone, toll free number, internet web page, etc.).

History And Terminology

Prior to 1975, the Colorado Motor Vehicle Dealer Board, in the Department of Revenue, licensed mobile home dealers and salespersons. From 1975 through 1992, the Colorado Manufactured Housing Licensing Board, located within DORA's Division of Registrations regulated manufacturers, dealers, and salespersons selling mobile or manufactured homes in Colorado. This regulation terminated July 1, 1993 following the wind down period when the General Assembly elected to sunset the program.

Prior to the 1993 sunset of the regulatory board, DORA completed a sunset review as required by §24-34-104, C.R.S. In the 1991 sunset report, DORA found that continued regulation of the industry was necessary to protect the public health, safety and welfare. The DORA report recommended continuation of the program with some modifications.

Disagreements between various segments of the industry and the traditional real estate profession resulted in a collapse of the support for the continuation of the program in 1992. A bill was introduced during the 1993 legislative session to restore regulation. The House sponsor withdrew this bill when Senate amendments were found to be unacceptable.

Terminology

The terms “manufactured home”, “mobile home“, “factory built home”, and “modular home” are used interchangeably by many different government entities and consumers, including the current C.R.S. Within the industry, however, these terms have very different meanings. For purposes of this report, unless referring to a government report, the terms used will be those commonly used within the industry.

“Factory built homes” is a term that covers all segments of the industry that constructs housing units in a factory setting for shipping, either completed or in sections, for assembly at another site for occupation.

“Manufactured homes” are those homes built on a chassis with wheels and are traditionally thought of as being capable of being moved from site to site. These homes are sometimes referred to within the industry as HUD homes because the federal Department of Housing and Urban Development establishes the construction standards. Some federal reports still refer to these homes as “mobile homes”.

“Modular homes” are built in sections in factories and shipped to their destination to be placed on a permanent foundation. These units are designed to be permanent structures once they are placed at the site. Construction standards for these units are established by the State Housing Board.

“Site-built houses” are those homes constructed at the building site from materials obtained by the builder. Inspections on these units are the responsibility of local governments, except for electrical and plumbing inspections in those areas of the state without a local inspection program where state inspections apply.

Industry

The factory built home industry can be divided into two segments. The first, and larger segment in Colorado, is what is typically termed a manufactured (or mobile) home. These dwellings are mounted on a permanent chassis with wheels and are towed by a semi-tractor over public roadways to a home site. While these manufactured homes have wheels, they are typically not moved once they are delivered. Usually, manufactured home owners rent space in mobile home parks. The Department of Local Affairs reported over 61,600 mobile home spaces in mobile home parks in Colorado in 1997.

Mobile home parks range in size from just a few homes with limited amenities to several hundred homes sharing common areas and facilities. Mobile home parks are regulated by Article 12 of Title 38 of the Colorado Revised Statutes, the Mobile Home Park Act. Once placed in a mobile home park, the wheels are usually removed from the home and utilities are hooked to the unit. It is not uncommon for fixed additions, such as porches and decks, to be constructed onto the home once it is placed. Manufactured homes can have several bedrooms and are usually one story. Occasionally a manufactured home is situated on a fixed foundation including a basement. The Manufactured Housing Institute (MHI), a national trade organization for manufactured homebuilders, reports that 60 percent of all manufactured homes are installed on private property, not in mobile home parks.

According to the US Department of Commerce, mobile homes averaged approximately \$38,000 in initial costs in 1997. This price does not include installation, transportation, tap fees, insurance, or space rental. The Department reported initial costs of over \$47,000 for manufactured homes in the Western Region, which includes Colorado. The federal Department of Housing and Urban Development (HUD) requires certification and inspections of all factories that manufacture mobile homes. All homes built to HUD standards are inspected by HUD-approved inspectors, and receive a certification plaque known as a "red label".

The second segment of the industry is the modular home market. These homes are assembled in a factory and transported to the home site on a trailer. Modular homes are constructed in accordance with the Uniform Building Code (UBC). The UBC is the most widely accepted construction code used in Colorado, although local jurisdictions frequently modify the UBC to meet local concerns or conditions. Modular homes in Colorado must be constructed according to the UBC as adopted by the State Housing Board. Since modular homes fall under the jurisdiction of the State Housing Board, local building departments may not enforce local building code requirements, except as they relate to foundations and utility hook-ups or other external features of the home.

Modular homes are usually placed on a permanent foundation. While some developers may choose to erect modular homes in a specific development, it is becoming more common for a modular home to be integrated in a development with a variety of site-built homes. Representatives of this segment of the industry maintain that modular homes are popular in rural areas of the state because of the quality of the homes, lower cost, and convenience in comparison to site-building on privately-owned land.

Industry

Modular homes can be much larger than a typical manufactured home. Retail prices are commensurately higher. Typical modular home prices exceed \$60,000¹ and a modular home may have multiple stories in addition to a basement. Retail costs again do not include land, installation, transportation, tap fees, or insurance. While modular homes are built for transportation initially, they are not designed for easy relocation.

Manufactured homes are more popular in warm weather states; however, they are increasingly being used in Colorado as an affordable housing alternative. According to a survey conducted by the *Foremost Insurance Company*, a major insurer of manufactured homes, 47 percent of the owners of manufactured homes have a high school education or less. The total household income of 47 percent of the families living in manufactured homes is less than \$30,000 per year and the net worth of 46 percent of these residents is less than \$50,000.

Reports by the Manufactured Housing Institute show that manufactured homes accounted for approximately 24 percent of the single-family home starts nationally in 1997. In Colorado, approximately 5,200 manufactured and 1,300 modular homes were sold new in 1997. There is no reliable reporting mechanism to track sales of used factory built homes in Colorado. Therefore, it is unknown what percentage of the secondary housing market consists of factory manufactured homes.

¹ The US Department of Commerce includes manufactured homes in traditional single family home statistics. Cost figures used are estimates provided by the Colorado Department of Local Affairs, Division of Housing.

Regulation

The federal government, through HUD, has developed standards for the construction of manufactured homes. Federal regulations are based on 42 United States Code (USC) 5401 et seq., and are contained in 24 Code of Federal Regulations (CFR) Parts 3280 and 3282. These regulations focus on construction standards for the industry. The regulations also provide for an inspection program for manufactured homes. If states do not adopt a program for inspections and administrative actions, HUD will provide these services. Colorado is one of 36 states that have a State Administrative Agency (SAA). Each state's program differs in terms of the level of regulation and administrative placement.

The Division of Housing (Division) in the Department of Local Affairs (DOLA) administers the Colorado program, under the authority of §24-32-701, et seq., C.R.S. The Division insures that any manufactured home sold in Colorado is constructed according to federal standards. Inspections of manufactured homes are the responsibility of the state where the plant is located. Individual states accept the inspection approved by the home state. The Division currently certifies that all modular homes sold in Colorado are constructed according to the Uniform Building Code (UBC) as adopted by the State Housing Board. The Division does not regulate the sale or installation of the homes, nor does it have any jurisdiction over the resale of homes.

In Colorado, a "manufactured home" is defined in §42-1-102(106)(b), C.R.S., the Uniform Motor Vehicle Act, as:

"manufactured home" means any preconstructed building unit or combination of preconstructed building units, without motive power, where such unit or units are manufactured in a factory or at a location other than the residential site of the completed home, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which unit or units are not licensed as a vehicle.

This definition includes both modular and manufactured homes. The industry differentiates between these two types of homes.

The Colorado Mobile Home Park Act (Act) contained in §38-12-200.1, et seq., C.R.S., is intended to provide guidelines for park owners and tenants. Residents of mobile home parks may own or rent the home they live in, but in either situation, the land that the manufactured home is sited on is owned by the mobile home park. The Act contains specific definitions including; mobile home park, mobile home space, rent, rental agreement and tenancy.

Regulation

The Act details the requirements for a written rental agreement and notice requirements for evicting a tenant for nonpayment of rent or other actions, including violating park regulations. The Act, in §38-12-205, C.R.S., prohibits park owners from terminating a renter's lease solely for the purpose of making a space available in the park. The remedy section of the Act, §38-12-208, C.R.S., is specifically intended to provide legal recourse for park owners wishing to take action against tenants. The only provision in the Act which provides relief for a homeowner in a park is §38-12-209 (4), C.R.S., which authorizes a resident to bring a civil action for a violation of the rental agreement or any provision of the Act. The prevailing party in a civil action brought under this section may be awarded actual damages only. No punitive damages, or attorney's fees are provided for.

Closed parks, where a park owner requires tenants to purchase a home from a particular seller, and mandatory selling fees, where a park owner requires a "transfer fee" from a prospective buyer to guarantee a space in the park, are prohibited. New parks or manufactured home developments are permitted to require first time renters or purchasers to use an exclusive dealer or manufacturer. Park owners are required to maintain sewer and utility lines and to retain any utility deposits paid by renters in an escrow account. The management of a park may adopt rules and regulations for renters.

Other than the limited right to pursue civil action against a landlord, manufactured home owners have little protection under the Act. In 1998, HB 98-1203 amended the Colorado Consumer Protection Act to include some specific requirements in agreements to sell manufactured homes. These changes focused on the delivery of a manufactured home within a specific agreed upon timeframe, and a requirement to escrow deposit or down payment funds. The changes do not specifically regulate manufactured housing dealers or salespersons. Each of the previously mentioned statutes are contained as appendices in this report. In addition HUD construction requirements, manufactured housing in Colorado must comply with local zoning codes. Modular homes must be constructed according to the UBC as modified by the State Housing Board.

Other States' Regulatory Programs

Other states have a variety of regulatory programs, ranging from the basic program Iowa has, to very comprehensive licensing schemes. Some states require the same license for manufactured housing sales as for other forms of real estate. At least one state licenses manufactured home dealers through the same agency that licenses motor vehicle dealers, a carryover from the days when manufactured homes were truly mobile.

According to the National Conference of States on Building Codes and Standards (NCSBCS), 36 states have HUD approved SAA inspection programs, 22 states license mobile housing dealers, 10 license sales persons, and nine require dealers to be bonded. See Table 1 on the following page for additional information on other states with administrative programs approved by HUD.

Other States' Regulatory Programs

Table 1

State Programs

State	Dealer Inspections	Dealer Licensed	Salesperson Licensed	Installer Regulation
AL	YES	YES		L, C
AZ	YES	YES	YES	L, B
AR	YES	C	YES	L
CA	YES	YES	YES	
CO	YES			
FL	YES	YES, B		L,C,B
GA	YES	YES		L,C
ID	YES	YES, B		L,B
IN				
IA				C (Voluntary)
KY	YES	YES		C
LA		YES	YES	L
ME	YES	YES		L
MD				
MI		YES, B		L
MN	YES	YES, B		C,B
MS	YES	YES		L
MO	YES	YES		1
NE	YES			
NV		YES	YES	L
NJ	YES			
NM	YES	YES, B	YES	L,B
NY				
NC	YES	YES, B	YES	L,B
OR	YES			L,B
PA	YES			
RI				L,B
SC		YES, B	YES	L,B
SD	YES			
TN	YES	YES, B		L,B
TX		YES, B	B	L,B
UT	YES	Registration		
VA	YES	YES	YES	
WA		YES		L,C,B
WI				
WV	YES	YES		L

L = Licensed C = Certified B = Bonding requirement

1. Dealers are responsible for setups

Other States' Regulatory Programs

In the surrounding states, Arizona licenses manufactured housing dealers and salespersons through a licensing board located in the Department of Building and Fire Safety. Installers are also regulated in Arizona. Kansas and Wyoming do not have a state centralized regulatory program. Nebraska has a program similar to Colorado's. New Mexico licenses manufactured housing dealers and installers. Utah requires dealers to register, and a bill to require dealer bonding in Utah is expected to be introduced in 1999.

Manufactured Housing Market In Colorado

Manufactured housing tends to be a regionalized industry, in that there are many small to medium sized manufacturers serving several states. According to DOLA, Colorado has two separate factories dedicated to the construction of manufactured homes and six factories manufacturing modular custom homes. These factories sell the majority of their finished product within the state.

The U.S. Bureau of the Census Construction Report quantifies single family housing permits issued by local governments, as well as mobile home placements. A review of the construction reports shows a significant increase in manufactured housing in the inventory of single family homes in Colorado. Table 2 illustrates the number of single family housing permits issued and mobile homes placed in Colorado from 1991 through 1997, as reported by the Census Bureau. The Census Bureau Construction Reports combine modular housing and site-built homes as single family home permits. Therefore, the percentages reflect only manufactured homes, not the entire factory built home market.

Table 2

Colorado Mobile Home Market

	1991	1992	1993	1994	1995	1996	1997
Permits	12,900	20,700	25,900	29,300	28,400	30,400	31,900
Mobile Homes	1,100	1,500	2,700	3,800	3,900	4,500	5,200
MH Percentage	7.8	6.8	9.4	11.4	12.1	12.9	16.3

Public Harm

The Sunrise Criteria require an analysis of the potential harm to the public by the unregulated practice of the occupation or profession for which regulation is being sought. The applicant contends that there is potential public harm in several areas:

1. Initial purchase issues

- Failure to deliver the home in a timely manner
- Failure to deliver the home that was ordered

The Colorado Attorney General's Office, local district attorneys, the Colorado Division of Housing, and the Better Business Bureau (BBB) all report receiving complaints involving the delivery of manufactured homes. This issue was a particular problem on the Western Slope during the past two years. Because there is no centralized data collection mechanism, some complaints may be reported to more than one agency or organization, making the task of quantifying complaints difficult. Nonetheless, the number of complaints can be high. The Pueblo BBB reports an average of 160 complaints per year related to factory built homes. The Pueblo BBB does not differentiate between modular and manufactured home in its reporting.

Manufactured homes are an affordable, convenient alternative for many individuals in rural areas. One of the desirable features of a manufactured home is that since it is constructed in a factory, weather related delays in construction are minimized. But, some consumers have placed significant deposits, or down payments, on factory built homes only to suffer through delays in delivery. In some situations when the deliveries were finally made, the home was not the model ordered.

There is no centralized database for complaints of this type because there is no regulatory agency with authority over manufactured home dealers. However, several consumers contacted DORA during the course of this review to relate their individual cases. In some instances, the dealers went out of business or filed bankruptcy, leaving consumers with no recourse to obtain relief.

House Bill 98-1203, amended the Colorado Consumer Protection Act (CPA) to specifically address some of these issues. The CPA requires dealers to escrow sale deposits and to give a date certain for delivery of the home. The Act provides for civil remedies for aggrieved parties.

2. Financing Issues

- "Bait and Switch" on interest rates promised in financing;
- Escalating down payments; and
- Requiring the buyer to finance with a mortgage company provided by the dealer.

According to a 1997 Harvard University study commissioned by the manufactured housing industry, approximately 10 percent of the financing of manufactured homes is done by traditional housing lenders. The majority of manufactured home financing is accomplished through personal property loans. There are a few large lenders specializing in manufactured home lending, usually at higher interest rates and shorter terms than real estate loans.

Affordable housing advocates maintain that some dealers require consumers to use a specific finance company. The dealer may either receive a referral fee or some other compensation for sales financed through a particular company. Consumers complain that terms of financial agreements are sometimes changed without their knowledge.

Most financial institutions will only consider a manufactured home for a traditional mortgage if the home is being placed on land owned by the prospective owner of the manufactured home. When this occurs, the manufactured home is treated as a property improvement. Real estate loans are subject to strict oversight and disclosures. This is not true in the typical financial transaction involving manufactured homes.

3. Disclosure Issues

- Failure to inform the buyer of the space lease conditions on a used home located in a park at the time of sale;
- Failure to inform and advise the consumer of the results of financing an insurance premium with the home loan, perhaps even suggesting that the premium was free;
- Failure to inform and advise the consumer regarding his/her right to purchase home insurance where he/she wishes; and
- Failure to inform and advise the consumer of their responsibility when contracting with a third party installer. Third party installation effectively eliminates all responsibility of the dealer to perform warranty or repair work. Installers may not be knowledgeable, and are not regulated with regards to siting and installing manufactured homes.

According to the Harvard study, low income and first-time homebuyers are attracted to manufactured homes because of the low cost. These individuals may lack experience and expertise in complex purchasing decisions and can potentially be harmed by dealers who take advantage of the naivete of these consumers. In real estate transactions, brokers and lenders are required to disclose information about the transaction, such as warranty issues, liens on the property, or the consumer's right to seek financing or insurance from any provider.

The same requirements do not apply to a manufactured home purchase. A common complaint in mobile home parks is that consumers sometimes purchase a home only to be informed that the park owner refuses to rent space. The new owner is forced to find a new location for the home, and pay for the move, which can exceed \$2,000 for each section of the home. In other scenarios, the current owner discloses the park owner's refusal upfront, lowering the potential resale value of the home. Consumer advocates maintain that it is difficult to find space for manufactured homes, particularly older homes. These older homes are frequently the most affordable for low-income and first-time buyers.

All new homes are sold with a manufacturer warranty. Warranties require homes to be installed or sited according to the manufacturer's directions to maintain the warranty. Some dealers do not provide installation services. Instead, the purchaser must arrange with a third party contractor for installation. If the installation is not done correctly, the manufacturer's warranty is void. Since the dealer did not perform the installation, the consumer would not have any real legal recourse to recover damages.

4. Lot space issues

- Tacking on fees at the end of the purchase deal to obtain a lot in a park;
- Escalating tap fees and utility hook-up fees;
- Conflict of interest when the park owner is both the dealer and the landlord. Park dealers are arbitrarily requiring older manufactured homes be removed from the park upon sale of the home, so the park dealer can replace the home with a new sale; and
- Park dealer "scams" where used homes are sold to a marginal buyer on a Contract for Deed. The park management harasses the homeowner until the owner is evicted or intimidated into wanting to sell and move. Management then requires that the home be moved out of the park if sold. (There is no place to move older homes to, even if the individual has the money to move it.) The homeowner is reduced to signing the title over to the park/dealer, and the process is repeated.

The Mobile Home Park Act (Act) (§38-12-211, C.R.S.) prohibits park owners from requiring fees from a tenant or prospective purchaser of a manufactured home to reserve a space in a park. However, the applicant maintains that park owners frequently ignore this provision.

The applicant alleges that park owners sometimes charge excessive fees and deposits for utility hook-ups and refuse to refund deposits when leases are terminated. Sections 38-12-202.3 and 212.7, C.R.S. of the Act require the park owner to maintain utility lines and connections and to remit the resident's portion of the utility payment to the utility within 45 days. The provision provides the utility with the ability to collect costs from the park owner in collection efforts. It does not address the rights of the resident tenant regarding the fees or deposits a park owner may charge for hook ups.

Park owners selling homes is one of the more controversial issues addressed in this report. The applicant has provided testimonials from individuals harmed in a variety of ways by unethical practices of park owners acting as dealers. Several individuals have provided information about the difficulty of selling a manufactured home in a park. Park owners who are also dealers can make huge profits when they sell a new home in their park, if they can free up a space.

Consumers claim that park owners refuse to approve prospective purchasers for residency in the park to either force the current owner to sell to the park owner at a much lower price, or to move the home. In either scenario, the park owner obtains a huge windfall; a home that can be rented at a substantial profit or a vacant space on which to place a new home.

According to park owners, they have a right to determine who should be able to live on their property, as long as decisions are not contrary to fair housing laws. Park owners also maintain they should be able to improve the appearance and value of the property by moving out older low value homes and upgrading them with newer, higher-priced homes. Representatives of the park owners state that requirements to move homes are based on the condition and appearance of the homes, not on the age of the unit. Placing restrictions on space rental runs the risk of bringing up the specter of rent control and constitutional takings issues.

5. Other issues

- Theft of construction loan proceeds;
- Theft of fraudulently obtained bill consolidation loan proceeds; and
- Deceptive real estate practices in land/home packages.

The applicant has not provided documentation of these issues other than a number of anecdotal reports. Even if documentation could be provided, theft, fraud, and deceptive real estate practices are criminal violations under current laws.

Issues From Other Sources

1. Installation

Eighty percent of the complaints received by the Division of Housing (Division) involve improper installation. All manufacturers have warranties on their homes, if they are sited properly. Improper installation voids the warranty. The Division reports that most complaints about manufacturer defects actually concern installation-related damages.

Many installations are done by private arrangements with an independent contractor. Colorado does not license or regulate contractors. According to the Division, only 10 percent of the local jurisdictions have any inspection or regulatory requirements for manufactured housing installations.

According to the Division, it has the expertise to implement an inspection program statewide with very little fiscal impact. However, during interim hearings in 1998 the Legislative Audit Committee voted to introduce a bill to reduce the responsibilities of the Division related to manufactured housing. It is not known what impact this will have on the operation of the Division.

2. Bonding

The Colorado Manufactured Housing Association (CMHA) maintains that most of the issues involving dealers are a result of undercapitalized companies, and that bonding will solve any consumer protection issues. CMHA advocates a \$50,000 bonding requirement for any individual or company involved in the retail sale of manufactured homes. The bond would not replace the provision in the Consumer Protection Act requiring dealers to escrow down payments pending the delivery of the home.

Bonding does provide some reactive protection to consumers, in that there may be some funds available to compensate consumers after damage has occurred. However, if a bonded company causes damage to several consumers, the amount of the bond may not be sufficient to make all of the consumers whole. Another consideration is the expense of a bond. Insurance companies issue most bonds, and the premiums are based on the risk associated with the bond amount. The cost to the business can be very expensive, thereby restricting entry to this field. Fewer businesses engaged in a particular field lowers competition and increases costs to consumers.

This is not to say that a bonding requirement is not a valid public protection measure, but that care must be taken not to cause unnecessary expense to the public. A reasonable bond amount, combined with another regulatory scheme may provide adequate public protection with minimal impact on the businesses engaged in the industry.

Analysis And Recommendation

The average price of a single family home in Colorado has risen to over \$175,000 in recent years. A home is one of the basic needs for any family. However buying a house can be a complex transaction involving significant risk. Recognizing this, the state has long regulated the sale of real estate.

Nationally, and in Colorado, the number of manufactured homes sold as primary residences is increasing. While manufactured homes are generally less expensive than traditional site-built homes, they represent a substantial investment on the part of the purchaser. Yet the regulatory requirements for the sale of this primary residence are significantly less protective of the public than the regulatory requirements to sell a used automobile.

The regulation of manufactured home standards is delegated to the states by the federal government through HUD. Occasionally there are consumer complaints, to either state agencies or HUD, regarding violations of design or building standards. However, the current regulatory structure appears adequate to ensure the protection of the public. In any event, the applicant did not request additional regulation of manufacturers, nor was there a clear indication that additional regulation is necessary for this aspect of the industry.

There are significant public protection concerns in three specific areas related to the sale of manufactured housing: initial sales; installation; and mobile home park regulation/resale. There is limited regulation in some of these areas. However, for the most part, the purchase of a manufactured home is a “buyer beware” proposition.

Initial Sales

Conventional wisdom indicates that a home is the most expensive investment most individuals will make. Licensed real estate brokers, regulated by the Colorado Real Estate Commission sell the majority of homes in Colorado. Real estate brokers are required to obtain pre-licensure education, including ethics courses, prior to being admitted to the licensing examination. Brokers must submit to a criminal background check, and are subject to disciplinary action by the Commission for infractions of the laws or regulations regarding real estate sales.

The initial sales of homes in new developments are exempt from many of the regulations of the Commission. However, they are still subject to some requirements. Individual transactions between private parties are not regulated, but they make up a very small percentage of the total home sales.

It is unusual for a home purchase to be made with existing resources. In other words, most individuals buying a home must secure a mortgage loan. Most home loans are backed by a federal agency, such as the Federal Housing Administration or the Veterans Administration. Each of these agencies has strict requirements such as disclosure or inspection. Such standards are designed to protect the consumer and the federal agency, as the guarantor of the loan.

The Division inspects manufactured homes to ensure they are constructed according to the applicable requirements. However, they have no regulatory authority over any aspect of the sales transaction, unless the manufactured home has a manufactured defect or is damaged while in the possession of the dealer.

Most loans for manufactured homes are personal property loans. The majority of these loans are made through finance companies that specialize in manufactured housing loans. Manufactured home loans are subject to limited federal and state regulation such as truth in lending and usury laws. However, these regulations fall far short of the protections offered in a typical real estate mortgage.

Installation

Before a house may be moved along public roadways, a permit must be obtained from the Colorado Department of Transportation. The transportation of a manufactured home is subject to more regulation than the installation of the same dwelling once it reaches its final destination. There is no state regulation governing the installation of manufactured housing. Most local governments inspect at least some aspects of site-built housing to ensure they are not a risk to the health and safety of the residents. However, only ten percent of local governments have inspection programs that cover manufactured housing installations.

The Division reports that almost 80 percent of the complaints it receives are related to improper installation issues. Complaint reports from the Colorado Attorney General and local Better Business Bureaus are comparable in the high percentage of complaints regarding installation. One local jurisdiction with an inspection program reports an average of 100 inspections per year, 80 percent of which result in corrective notices for improper installation.

Examples of improper installation include the failure to either install a support under the seam of a doublewide unit, or installing a support with inadequate load bearing capacity which will eventually cause the floors and walls to sag and damage the home. Improper spacing or anchoring of the support piers makes the home susceptible to wind damage. The local jurisdiction also refused to issue certificates of occupancy for instances of leaking gas lines, unsafe electrical connections, unsanitary sewer hook-ups, and improper water connections. Any of these situations could result in health and safety issues or potential economic harm to the consumer.

Manufacturers are responsible for structural problems associated with the construction of the unit. If the unit is not sited properly, according to the manufacturer's instructions, the

warranty is void. Colorado has no regulatory oversight of installers as 22 other states do. Since only 10 percent of local governments have inspection programs for manufactured homes, homeowners are at significant risk of purchasing a home in good faith and having it become uninhabitable because of poor installation practices.

The Division and three of the four Better Business Bureaus serving Colorado report approximately 75 complaints per year involving installation deficiencies. The Pueblo BBB did not categorize the nature of the complaints. It is probable that some of these complaints are reported to both agencies. At least one local jurisdiction with a local regulatory program reports 80 installation-related deficiencies each year. Since there is no centralized regulatory agency for these types of complaints, many more installation issues probably go unreported.

The Colorado Manufactured Housing Association (CMHA) has a voluntary dispute resolution program for members of the association. Consumers may contact CMHA for assistance with a dispute against a manufacturer, dealer, or park owner. CMHA has a committee that reviews the written complaint and suggests a resolution to both the homeowner and the member firm.

CMHA members notify consumers of the CMHA process when a consumer asks about filing a complaint. CMHA also provides informational brochures on purchasing a manufactured home to prospective purchasers at trade shows and by request through the mail. Because CMHA is a private association, it is not known how many consumers are aware that the voluntary process exists.

CMHA reports that this voluntary process was used 25 times in 1996 and 31 times in 1997. Again, the most common area for disputes involved improper installations. The CMHA complaint process is somewhat cumbersome for the consumer. CMHA requires detailed information from the consumer and imposes some strict deadlines for submitting the information. A sample of the complaint form is included as Appendix D on page 55. CMHA does not review complaints on homes out of warranty. The complaint process is voluntary for members, and CMHA has no enforcement authority. CMHA does forward copies of the complaints to both the Division of Housing and the Consumer Protection Division of the Department of Law.

Like many professional and trade associations, CMHA represents only a portion of the members of the industry. Consumers with complaints against non members of the organization would be unlikely to report complaints to CMHA. Associations claim that the more progressive and reputable members of the profession join their association, one of the selling points of joining. If these generalizations hold true in the manufactured housing industry, it is likely that the number of consumers with problems with a dealer are two to three times the number reported by CMHA. It must also be noted that the CMHA complaint process only accepts complaints related to warranty issues.

Improper installation may not be readily apparent. For example, the wrong structural support under the seam of a doublewide unit may eventually cause the floor to sag and the walls to separate. This may not be noticed for years after the initial installation, after the warranty has expired.

Mobile Home Park Regulation/Resale

There are over 61,600 manufactured homes sited on leased space in mobile home parks in Colorado. Some of the residents of these parks are the initial purchasers of the home; others obtained the home in the secondary market. The most egregious examples of public harm are testimonials from individuals who have lost the majority of their investment in a manufactured home because of the practices of some mobile home park owners.

In some respects, leasing space in a mobile home park is similar to renting an apartment. The owner or manager of the property usually will require an application to be completed and conduct some type of a background and/or credit check. Deposits and fees are sometimes charged to tenants.

Park owners should have some control over who is allowed to rent space in a park, to protect their investment and to maintain harmony in the park community. As long as the criteria used to screen tenants does not violate state and federal fair housing laws, there is no prohibition against denying an application to rent or lease space.

A major issue identified in the Sunrise Application is the hardship placed on individuals who try to sell their manufactured home, only to have the park owner reject prospective purchasers as unfit tenants. There have also been situations where sellers have misled purchasers into believing the lease was transferable.

A scenario described by the applicant, by other interested parties, and documented in a Consumers Report evaluation of manufactured housing, details how some park owners obtain and churn manufactured homes. An owner of a manufactured home leasing space in a park desires to sell their manufactured home. The home is appraised at a specific dollar value by an independent, certified appraiser and the owner or a broker representing the owner employs marketing efforts. When a prospective purchaser makes an offer, the purchaser also applies to lease space in the park. The park owner rejects the application.

After several prospective purchasers have been denied, the park owner offers to buy the home for a price below the appraised value. The current owner is left with few alternatives:

abandon the house completely, in which case the park owner may obtain title as abandoned property for back rent, or sell to the park owner at below market value. The only other option is to find a buyer who is willing to move the home to another location. Moving a manufactured home is expensive. With reliable estimates in the \$2,000 per unit range, a doublewide home may cost \$4,000 to move. Homes can only be moved if there is an opening in another park, or if the purchaser has private property to site the home. In either case, the seller is forced to reduce the price of the home to attract a purchaser.

It is not uncommon for a park owner to also be a dealer. The applicant charges that park owners sometimes force purchasers of used homes to move the homes because they want newer homes in the park. The owner gets a commission on the sale of a new home and can increase the space rental rate if the home is a newer, larger model.

The applicant also claims that some park owners, once they have obtained a home at a reduced price from a former tenant, will sell the home to an under-qualified buyer at an inflated price and finance the purchase. After a few payments have been made, the owner begins to harass the tenant until the tenant abandons the house and the owner can reclaim it because of defaulted payments.

Recommendation

Create a registration program for manufactured housing dealers and installers including a sunset review in three years.

The information contained in the sunrise application and supported by additional research indicates that there is potential harm to the public by the unregulated practice of the sale and installation of manufactured housing. When potential public harm is identified, the sunrise provisions of §24-34-104.1, C.R.S., direct DORA to investigate the least restrictive form of regulation necessary to protect the public.

Factory built housing dealers and salespersons were previously licensed under the authority of the Manufactured Housing Licensing Board (Board) in DORA. The General Assembly allowed that program to sunset in 1993. At the time the program sunset, there were 85 licensed housing dealers and 158 licensed salespersons. The 1991 sunset review reported that the Board received an average of 76 complaints per year related to the sale of factory built homes.

The 1991 sunset review showed that the Board dismissed 70% of the complaints received. Of the complaints investigated by the Board, 10 licensees received formal disciplinary action against their license; four revocations, two suspensions, two letters of admonition and two injunctions over a four year period. In addition, the Board levied \$20,050 in fines against licensees for violations of the statutes and regulations.

A licensing program is the highest level of state regulation. Occupational licensing programs usually involve some education or experience requirements in order to be considered eligible to sit for a qualifying examination. Important factors in considering the creation of a regulatory program are the scope of the program and the number of potential parties to be regulated. In descending order of importance to be regulated in the

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manufactured housing industry, the scope of a regulatory program should include the manufacturer, the dealer, the installer, and the salesperson.

All factory built homes sold in Colorado must be built to meet one of two standards, either the HUD standards, or the UBC as adopted by the State Housing Board. All homes are inspected at the factory by inspectors approved by the Division of Housing. The Division, either at the dealer lot or at the home site also inspects most homes again for manufacturing related problems. Therefore, additional regulation of manufacturers would be unnecessary and duplicative of other regulatory efforts.

Factory built home dealers are not currently regulated by any entity. Therefore, the public has no governmental protection in an area as important as the purchase of a home. Dealers are not required to disclose information to consumers or to use standardized contracts or forms. The Manufactured Housing Institute reports the economic impact of the manufactured housing industry in Colorado to be nearly \$200 million². This figure does not include those homes sold on the secondary market. Since dealers are the most direct link between the consumer and the home, it is in the best interest of the consumer for the General Assembly to provide some public protection at this level.

The vast majority (almost 80%) of the complaints received by a variety of public and private agencies relating to manufactured homes concern installation. No matter what care is taken at the factory, or with the dealer, significant damage can occur if the home is not sited properly. This damage is compounded by the fact that if the home is not installed properly, the manufacturer's warranty can be voided. If the state or local governments had adequate inspection programs for installers, additional regulation would not be necessary. However, only 10 percent of the local jurisdictions inspect manufactured home installations. The Division only inspects upon complaint, and can only address those issues that are a result of a manufacturer defect. The Division has no jurisdiction over installation issues.

Salespersons are the initial point of contact for consumers. They negotiate and close the deals that result in the consumer purchasing the home. Nine states license salespersons, in addition to the dealer. However, the dealer is the entity ultimately responsible for the actions of its employees. Therefore, this report does not recommend salespersons be included in the regulatory scheme.

² Manufactured Housing Economic Impact Study, 1997. Produced by the Manufactured Housing Institute.

Once the scope of the program has been identified, it is easier to estimate the number of potential parties to be regulated. Since there is currently no centralized database for dealers or installers, reasonable estimates are necessary. According to the 1991 sunset report, there were 85 licensed dealers in the state. There were 1,100 manufactured homes sited in Colorado that same year. In 1997, there were approximately five times as many homes sold. The CMHA reports 109 retail dealers as members of the organization.

There is little information to estimate the number of installers. Some dealers take responsibility for installation of the homes they sell. For lack of any other formula, DORA estimates .5 installer for each dealer. If the formula for installer estimation is applied to the estimated number of dealers, we arrive at an estimate of over 450 entities to be regulated.

The regulation of manufactured housing sales and installation is currently an option for local jurisdictions. However, very few local governments have any form of regulation or inspection for manufactured homes. In 1997 manufactured homes accounted for over 16% of the single-family homes sold in Colorado, and the trend indicates this percentage will increase. There are over 61,000 manufactured homes leasing space in mobile home parks statewide. The protection of consumers purchasing and living in manufactured housing is clearly a matter of statewide concern and should be addressed by the General Assembly.

At the very least, manufactured housing dealers should be required to use standardized sales contracts with clear language consumers can understand. Dealers should be required to disclose relevant information about the home, financing, and land leases issues similar to the disclosures required of real estate brokers.

A complex regulatory program could overly burden some small mobile home park owners. These park owners may occasionally sell a home that they have obtained from a tenant who abandoned the property or owed back rent. An exemption from licensure or registration for park owners who sell two homes or less per year should be considered. Park owners should still be required to comply with the standardized contract and disclosure requirements.

Regulatory Options

The General Assembly has several options regarding the regulation of manufactured housing. By not implementing a state regulatory program, the General Assembly permits local governments the option of creating a program to meet local needs. However, at this time only a small number of the local entities that could establish regulatory programs as have done so, leaving the majority of the consumers in the state with no protection. If the General Assembly agrees that the unregulated sale and installation of manufactured housing presents a potential harm to the public that is a matter of statewide concern, there are other regulatory options available. A state regulatory program could adopt some of the features of the state electrical program, in that local governments could still provide inspection programs at their discretion.

Licensing

The General Assembly could consider creating a licensing program for the manufactured housing industry. Because of the regulation of manufacturers discussed earlier in this report, licensing should be limited to dealers and installers of manufactured homes. Licensing programs generally establish some minimum standards for licensees based on some combination of education, experience, financial condition, and examination. A portion of the administration of the program is devoted to verifying the licensing standards.

The licensing program should adopt an administrative model; the director should be empowered to establish licensing standards and regulations, within a framework established by the General Assembly, for dealers and installers to comply with.

The public would have an administrative agency to obtain relief from in the event a licensee violated the statute or regulations promulgated under the regulatory authority. The benefit of an administrative process to the public would be significant. Administrative processes are generally viewed as cost effective and more timely than civil legal proceedings.

Registration

An alternative to a full licensure program is a registration program for dealers and installers. Registration contains some of the features of a licensing program, however registration programs are less costly to maintain.

Simplified registration programs allow any parties to submit a fee to be placed on a state registry. There are no education, examination or financial requirements to be verified by a regulatory agency. The registry makes limited information, such as the address, qualifications, and complaints against the registered party, available to the public. Like licensing, registration programs have the ability to investigate complaints, and there is an administrative process to remove violators from the registry.

The advantage of a registration program over the status quo is the creation of a centralized agency to collect data regarding the retail segment of the manufactured housing industry. The cost of the program would be offset by the registration fees assessed the industry.

The level of the fees would depend on the number of registrants, the amount of information collected and disseminated, and the method of dissemination (mail, telephone, toll free number, internet web page, etc.).

Location

If the General Assembly decides to regulate dealers and installers of manufactured homes a decision must be made on the location of the program. There are several possibilities for agencies to administer either a licensing or registration program: the Division of Registrations in DORA, the Real Estate Commission, and the Division of Housing in DOLA.

The Manufactured Housing Licensing Board was located in the Division of Registrations until 1993. There may be some historical justification for returning the regulatory functions to that agency. However, this report does not recommend reconstituting the Board, nor is there a compelling argument that any budgetary economies could be obtained by locating the program in the Division of Registrations.

A manufactured house is essentially a single family home. The Real Estate Commission (REC) and the Real Estate Division have expertise in the regulation of entities selling homes. The REC is familiar with issues related to financing, disclosure, and contract law. These issues are common in the manufactured housing industry as well as the real estate industry.

According to the Manufactured Housing Institute, an increasing number (60%) of manufactured homes are being placed on private property. When the sales of these homes are part of a land/home deal, they come under the jurisdiction of the REC under current law. When homes sited on private property are sold in the secondary market, they are considered real estate and are subject to regulation by the REC. Therefore, the REC could be a good fit for a program to regulate manufactured housing.

The Division of Housing currently operates as a State Administrative Agency (SAA) under the authority of HUD to inspect manufactured homes. There is a current level of expertise, knowledge and comfort between the industry and the Division. It may be more efficient to expand some of the duties of the Division rather than creating new authority in another agency.

While the REC has experience and expertise in the sale of real estate, including improvements such as homes attached to the property, the REC does not currently interact with the manufactured housing industry. The Division of Housing currently inspects plants manufacturing homes and has an established relationship with dealers and installers around the state.

Based on the information contained in the sunrise application and the review conducted by the Department of Regulatory Agencies, it does appear the regulation of manufactured housing dealers and installers is justified. A registration program would be the most logical and cost effective option available based on the information contained in this report. The registration program should have a sunset review time period, such as three years,

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sufficient to allow enough data to be gathered for the General Assembly to evaluate the need for additional regulatory requirements.

Appendices

Appendix A - §38-12-200.1, et seq., C.R.S.

38-12-200.1 - Short title.

This part 2 shall be known and may be cited as the "Mobile Home Park Act".

38-12-200.2 - Legislative declaration.

The general assembly hereby declares that the purpose of this part 2 is to establish the relationship between the owner of a mobile home park and the owner of a mobile home situated in such park.

38-12-201 - Application of part 2.

(1) This part 2 shall apply only to manufactured homes as defined in section 42-1-102 (106) (b), C.R.S.

(2) Repealed.

38-12-201.5 - Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Home owner" means any person or family of such person owning a mobile home that is subject to a tenancy in a mobile home park under a rental agreement.

(1.5) "Management" or "landlord" means the owner or person responsible for operating and managing a mobile home park or an agent, employee, or representative authorized to act on said management's behalf in connection with matters relating to tenancy in the park.

(2) "Mobile home" means a single-family dwelling built on a permanent chassis designed for long-term residential occupancy and containing complete electrical, plumbing, and sanitary facilities and designed to be installed in a permanent or semipermanent manner with or without a permanent foundation, which is capable of being drawn over public highways as a unit, or in sections by special permit.

(3) "Mobile home park" or "park" means a parcel of land used for the continuous accommodation of five or more occupied mobile homes and operated for the pecuniary benefit of the owner of the parcel of land, his agents, lessees, or assignees. Mobile home park does not include mobile home subdivisions or property zoned for manufactured home subdivisions.

(4) "Mobile home space", "space", "mobile home lot" or "lot" means a parcel of land within a mobile home park designated by the management to accommodate one mobile home and its accessory buildings and to which the required sewer and utility connections are provided by the mobile home park.

(5) "Premises" means a mobile home park and existing facilities and appurtenances therein, including furniture and utilities where applicable, and grounds, areas, and existing facilities held out for the use of home owners generally or the use of which is promised to the home owner.

(6) "Rent" means any money or other consideration to be paid to the management for the right of use, possession, and occupation of the premises.

(7) "Rental agreement" means an agreement, written or implied by law, between the management and the home owner establishing the terms and conditions of a tenancy, including reasonable rules and regulations promulgated by the park management. A lease is a rental agreement.

(8) Repealed.

(9) "Tenancy" means the rights of a home owner to use a space or lot within a park on which to locate, maintain, and occupy a mobile home, lot improvements, and accessory structures for human habitation, including the use of services and facilities of the park.

38-12-202 - Tenancy - notice to quit.

(1) (a) No tenancy or other lease or rental occupancy of space in a mobile home park shall commence without a written lease or rental agreement, and no tenancy in a mobile home park shall be terminated until a notice to quit has been served. Said notice to quit shall be in writing and in the form specified in section 13-40-107 (2), C.R.S. The property description required in section 13-40-107 (2), C.R.S., shall be deemed legally sufficient if it states:

(I) The name of the landlord or the mobile home park;

(II) The mailing address of the property;

(III) The location or space number upon which the mobile home is situate; and

(IV) The county in which the mobile home is situate.

(b) Service of the notice to quit shall be as specified in section 13-40-108, C.R.S. Service by posting shall be deemed legally sufficient within the meaning of section 13-40-108, C.R.S., if the notice is affixed to the main entrance of the mobile home.

(c) (I) Except as otherwise provided in subparagraph (II) of this paragraph (c), the home owner shall be given a period of not less than thirty days, to be extended to not less than sixty days where the home owner must remove a multisection mobile home, to remove any mobile home from the premises from the date the notice is served or posted. In those situations where a multisection mobile home is being leased to, or occupied by, persons other than its owner and in a manner contrary to the rules and regulations of the landlord, then, in that event, the tenancy may be terminated by the landlord upon giving a thirty-day notice rather than said sixty-day notice.

(II) If the tenancy is terminated on grounds specified in section 38-12-203 (1) (f), the home owner shall be given a period of not less than ten days, to be extended to not less than fifteen days where the home owner must remove a multisection mobile home, to remove any mobile home from the premises from the date the notice is served or posted.

(d) No lease shall contain any provision by which the home owner waives his rights under this part 2, and any such waiver shall be deemed contrary to public policy and shall be unenforceable and void. However, any lease may provide that the tenancy may be terminated on the landlord's notice in writing to the home owner, in such prescribed manner, to remove the home owner's unit from the premises within a period of not less than thirty days, to be extended to not less than sixty days where the home owner must remove a multisection mobile home, from the date the notice is served or posted. In those situations where a multisection mobile home is being leased to, or occupied by, persons other than its owner and in a manner contrary to the rules and regulations of the landlord, then, in that event, the tenancy may be terminated by the landlord upon giving a thirty-day notice rather than said sixty-day notice.

(2) The landlord or management of a mobile home park shall specify, in the notice required by this section, the reason for the termination of any tenancy in such mobile home park. If the tenancy is being terminated based on the mobile home or mobile home lot being out of compliance with the rules and regulations adopted pursuant to section 38-12-203 (1) (c), C.R.S., the notice required by this section shall include a statement advising the home owner that the home owner has a right to cure the noncompliance within thirty days of the date of service or posting of the notice to quit. The thirty-day period to cure any noncompliance set forth in this subsection (2) shall run concurrently with the thirty-day period to remove a mobile home from the premises as set forth in paragraphs (c) and (d) of subsection (1) of this section. Acceptance of rent by the landlord or management of a mobile home park during the thirty-day right to cure period set forth in section 38-12-203 (1) (c) shall not constitute a waiver of the landlord's right to terminate the tenancy for any noncompliance set forth in section 38-12-203 (1) (c).

38-12-202.5 - Action for termination.

(1) The action for termination shall be commenced in the manner described in section 13-40-110, C.R.S. The property description shall be deemed legally sufficient and within the meaning of section 13-40-110, C.R.S., if it states:

- (a) The name of the landlord or the mobile home park;
- (b) The mailing address of the property;
- (c) The location or space number upon which the mobile home is situate; and
- (d) The county in which the mobile home is situate.

(2) Service of summons shall be as specified in section 13-40-112, C.R.S. Service by posting shall be deemed legally sufficient within the meaning of section 13-40-112, C.R.S., if the summons is affixed to the main entrance of the mobile home.

(3) Jurisdiction of courts in cases of forcible entry, forcible detainer, or unlawful detainer shall be as specified in section 13-40-109, C.R.S. Trial on the issue of possession shall be timely as specified in section 13-40-114, C.R.S., with no delay allowed for the determination of other issues or claims which may be severed at the discretion of the trial court.

(4) After commencement of the action and before judgment, any person not already a party to the action who is discovered to have a property interest in the mobile home shall be allowed to enter into a stipulation with the landlord and be bound thereby.

38-12-203 - Reasons for termination.

(1) A tenancy shall be terminated pursuant to this part 2 only for one or more of the following reasons:

- (a) Failure of the home owner to comply with local ordinances and state laws and regulations relating to mobile homes and mobile home lots;
- (b) Conduct of the home owner, on the mobile home park premises, which constitutes an annoyance to other home owners or interference with park management;

(c) Failure of the home owner to comply with written rules and regulations of the mobile home park either established by the management in the rental agreement at the inception of the tenancy, amended subsequently thereto with the consent of the home owner, or amended subsequently thereto without the consent of the home owner on sixty days' written notice if the amended rules and regulations are reasonable; except that the home owner shall have thirty days from the date of service or posting of the notice to quit set forth in section 38-12-202 (2) to cure any noncompliance on the mobile home or mobile home lot before an action for termination may be commenced, except if local ordinances, state laws and regulations, park rules and regulations, or emergency, health, or safety situations require immediate compliance. If a homeowner was in violation or noncompliance pursuant to this paragraph (c) and was given notice and a right to cure such noncompliance and within a twelve-month period from the date of service of the notice is in noncompliance of the same rule or regulation and is given notice of the second noncompliance, there shall be no right to cure the second noncompliance. Regulations applicable to recreational facilities may be amended at the discretion of the management. For purposes of this paragraph (c), when the mobile home is owned by a person other than the owner of the mobile home park, the mobile home is a separate unit of ownership, and regulations which are adopted subsequent to the unit location in the park without the consent of the home owner and which place restrictions or requirements on that separate unit are prima facie unreasonable. Nothing in this paragraph (c) shall prohibit a mobile home park owner from requiring compliance with current park unit regulations at the time of sale or transfer of the mobile home to a new owner. Transfer under this paragraph (c) shall not include transfer to a coowner pursuant to death or divorce or to a new coowner pursuant to marriage.

(d) (I) Condemnation or change of use of the mobile home park. When the owner of a mobile home park is formally notified by an appropriate governmental agency that his mobile home park is the subject of a condemnation proceeding, the landlord shall, within seventeen days, notify his home owners in writing of the terms of the condemnation notice which he receives.

(II) In those cases where the zoning law allows the landlord to change the use of his land without obtaining the consent of the zoning authority and where such change of use would result in eviction of inhabited mobile homes, the landlord shall first give the owner of each mobile home subject to such eviction a written notice of his intent to evict not less than six months prior to such change of use of the land, notice to be mailed to each home owner.

(e) The making or causing to be made, with knowledge, of false or misleading statements on an application for tenancy;

(f) Conduct of the home owner or any lessee of the home owner or any guest, agent, invitee, or associate of the home owner or lessee of the home owner, that:

(I) Occurs on the mobile home park premises and unreasonably endangers the life of the landlord, any home owner or lessee of the mobile home park, any person living in the park, or any guest, agent, invitee, or associate of the home owner or lessee of the home owner;

(II) Occurs on the mobile home park premises and constitutes willful, wanton, or malicious damage to or destruction of property of the landlord, any home owner or lessee of the mobile home park, any person living in the park, or any guest, agent, invitee, or associate of the home owner or lessee of the home owner;

(III) Occurs on the mobile home park premises and constitutes a felony prohibited under article 3, 4, 6, 7, 9, 10, 12, or 18 of title 18, C.R.S.; or

(IV) Is the basis for a pending action to declare the mobile home or any of its contents a class 1 public nuisance under section 16-13-303, C.R.S.

(2) In an action pursuant to this part 2, the landlord shall have the burden of proving that the landlord complied with the relevant notice requirements and that the landlord provided the home owner with a statement of reasons for the termination. In addition to any other defenses a home owner may have, it shall be a defense that the landlord's allegations are false or that the reasons for termination are invalid.

38-12-204 - Nonpayment of rent - notice required for rent increase.

(1) Any tenancy or other estate at will or lease in a mobile home park may be terminated upon the landlord's written notice to the home owner requiring, in the alternative, payment of rent or the removal of the home owner's unit from the premises, within a period of not less than five days after the date notice is served or posted, for failure to pay rent when due.

(2) Rent shall not be increased without sixty days' written notice to the home owner. In addition to the amount and the effective date of the rent increase, such written notice shall include the name, address, and telephone number of the mobile home park management, if such management is a principal owner, or owner of the mobile home park and, if the owner is other than a natural person, the name, address, and telephone number of the owner's chief executive officer or managing partner; except that such ownership information need not be given if it was disclosed in the rental agreement made pursuant to section 38-12-213.

38-12-205 - Termination prohibited.

A tenancy or other estate at will or lease in a mobile home park may not be terminated solely for the purpose of making the home owner's space in the park available for another mobile home or trailer coach.

38-12-206 - Home owner meetings.

Meetings of home owners relating to mobile home living and affairs in their park community hall or recreation hall, if such a facility or similar facility exists, shall not be subject to prohibition by the park management if the hall is reserved according to the park rules and such meetings are held at reasonable hours and when the facility is not otherwise in use.

38-12-207 - Security deposits - legal process.

(1) The owner of a mobile home park or his agents may charge a security deposit not greater than the amount of one month's rent or two month's rent for multiwide units.

(2) Legal process, other than eviction, shall be used for the collection of utility charges and incidental service charges other than those provided by the rental agreement.

38-12-208 - Remedies.

(1) (a) Upon granting judgment for possession by the landlord in a forcible entry and detainer action, the court shall immediately issue a writ of restitution which the landlord shall take to the sheriff. Upon receipt of the writ of restitution, the sheriff shall serve notice in accordance with the requirements of section 13-40-108, C.R.S., to the home owner of the court's decision and entry of judgment.

(b) The notice of judgment shall state that at a specified time, not less than forty-eight hours from the entry of judgment, the sheriff will return to serve a writ of restitution and superintend the peaceful and orderly removal of the mobile home under that order of court. The notice of judgment shall also advise the home owner to prepare the mobile home for removal from the premises by removing the skirting, disconnecting utilities, attaching tires, and otherwise making the mobile home safe and ready for highway travel.

(c) Should the home owner fail to have the mobile home safe and ready for physical removal from the premises or should inclement weather or other unforeseen problems occur at the time specified in the notice of judgment, the landlord and the sheriff may, by written agreement, extend the time for the execution of the writ of restitution to allow time for the landlord to arrange to have the necessary work done or to permit the sheriff's execution of the writ of restitution at a time when weather or other conditions will make removal less hazardous to the mobile home.

(d) If the mobile home is not removed from the landlord's land on behalf of the mobile home owner within the time permitted by the writ of restitution, then the landlord and the sheriff shall have the right to take possession of the mobile home for the purposes of removal and storage. The liability of the landlord and the sheriff in such event shall be limited to gross negligence or willful and wanton disregard of the property rights of the home owner. The responsibility to prevent freezing and to prevent wind and weather damage to the mobile home lies exclusively with those persons who have a property interest in the mobile home; except that the landlord may take appropriate action to prevent freezing, to prevent wind and weather damage, and to prevent damage caused by vandals.

(e) Reasonable removal and storage charges and the costs associated with preventing damage caused by wind, weather, or vandals can be paid by any party in interest. Those charges will run with the mobile home, and whoever ultimately claims the mobile home will owe that sum to the person who paid it.

(2) (a) Prior to the issuance of said writ of restitution, the court shall make a finding of fact based upon evidence or statements of counsel that there is or is not a security agreement on the mobile home being subjected to the writ of restitution. A written statement on the

mobile home owner's application for tenancy with the landlord that there is no security agreement on the mobile home shall be prima facie evidence of the nonexistence of such security agreement.

(b) In those cases where the court finds there is a security agreement on the mobile home subject to the writ of restitution and where that holder of the security agreement can be identified with reasonable certainty, then, upon receipt of the writ of restitution, the plaintiff shall promptly inform the holder of such security agreement as to the location of the mobile home, the name of the landlord who obtained the writ of restitution, and the time when the mobile home will be subject to removal by the sheriff and the landlord.

(3) The remedies provided in part 1 of this article and article 40 of title 13, C.R.S., except as inconsistent with this part 2, shall be applicable to this part 2.

38-12-209 - Entry fees prohibited - entry fee defined - security deposit - court costs.

(1) The owner of a mobile home park, or the agent of such owner, shall neither pay to nor receive from an owner or a seller of a mobile home an entry fee of any type as a condition of tenancy in a mobile home park.

(2) As used in this section, "entry fee" means any fee paid to or received from an owner of a mobile home park or his agent except for:

(a) Rent;

(b) A security deposit against actual damages to the premises or to secure rental payments, which deposit shall not be greater than the amount allowed under this part 2. Subsequent to July 1, 1979, security deposits will remain the property of the home owner, and they shall be deposited into a separate trust account by the landlord to be administered by the landlord as a private trustee. For the purpose of preserving the corpus, the landlord will not commingle the trust funds with other money, but he is permitted to keep the interest and profits thereon as his compensation for administering the trust account.

(c) Fees charged by any state, county, town, or city governmental agency;

(d) Utilities;

(e) Incidental reasonable charges for services actually performed by the mobile home park owner or his agent and agreed to in writing by the home owner.

(3) The trial judge may award court costs and attorney fees in any court action brought pursuant to any provision of this part 2 to the prevailing party upon finding that the prevailing party undertook the court action and legal representation for a legally sufficient reason and not for a dilatory or unfounded cause.

(4) The management or the resident may bring a civil action for violation of the rental agreement or any provision of this part 2 in the appropriate court of the county in which the park is located. Either party may recover actual damages or, the court may in its discretion award such equitable relief as it deems necessary, including the enjoining of either party from further violations.

38-12-210 - Closed parks prohibited.

(1) The owner of a mobile home park or his agent shall not require as a condition of tenancy in a mobile home park that the prospective home owner has purchased a mobile home from any particular seller or from any one of a particular group of sellers.

(2) Such owner or agent shall not give any special preference in renting to a prospective home owner who has purchased a mobile home from a particular seller.

(3) A seller of mobile homes shall not require as a condition of sale that a purchaser locate in a particular mobile home park or in any one of a particular group of mobile home parks.

(4) The owner or operator of a mobile home park shall treat all persons equally in renting or leasing available space. Notwithstanding the foregoing, nothing in this subsection (4) shall be construed to preclude owners and operators of mobile home parks from providing housing for older persons as defined in section 24-34-502 (7) (b), C.R.S.

38-12-211 - Selling fees prohibited.

The owner of a mobile home park or his agent shall not require payment of any type of selling fee or transfer fee by either a home owner in the park wishing to sell his mobile home to another party or by any party wishing to buy a mobile home from a home owner in the park as a condition of tenancy in a mobile home park for the prospective buyer. This section shall in no way prevent the owner of a mobile home park or his agent from applying the normal park standards to prospective buyers before granting or denying tenancy or from charging a reasonable selling fee or transfer fee for services actually performed and agreed to in writing by the home owner. Nothing in this section shall be construed to affect the rent charged. The owner of a mobile home shall have the right to place a "for sale" sign on or in his mobile home. The size, placement, and character of such signs shall be subject to reasonable rules and regulations of the mobile home park.

38-12-212 - Certain types of landlord-seller agreements prohibited.

A seller of mobile homes shall not pay or offer cash or other consideration to the owner of a mobile home park or his agent for the purpose of reserving spaces or otherwise inducing acceptance of one or more mobile homes in a mobile home park.

38-12-212.3 - Responsibilities of landlord - acts prohibited.

(1) (a) Except as otherwise provided in this section, a landlord shall be responsible for and pay the cost of the maintenance and repair of:

(I) Any sewer lines, utility service lines, or related connections owned and provided by the landlord to the utility pedestal or pad space for a mobile home sited in the park; and

(II) Any accessory buildings or structures, including, but not limited to, sheds and carports, owned by the landlord and provided for the use of the residents; and

(III) The premises as defined in section 38-12-201.5 (5).

(b) Any landlord who fails to maintain or repair the items delineated in paragraph (a) of this subsection (1) shall be responsible for and pay the cost of repairing any damage to a mobile home which results from such failure.

(2) No landlord shall require a resident to assume the responsibilities outlined in subsection (1) of this section as a condition of tenancy in the mobile home park.

(3) Nothing in this section shall be construed as:

(a) Limiting the liability of a resident for the cost of repairing any damage caused by such resident to the landlord's property or other property located in the park; or

(b) Restricting a landlord or his agent or a property manager from requiring a resident to comply with reasonable rules and regulations or terms of the rental agreement and any covenants binding upon the landlord or resident, including covenants running with the land which pertain to the cleanliness of such resident's lot and routine lawn and yard maintenance, exclusive of major landscaping projects.

38-12-212.7 - Landlord utilities account.

(1) Whenever a landlord contracts with a utility for service to be provided to a resident, the usage of which is to be measured by a master meter or other composite measurement device, such landlord shall remit to the utility all moneys collected from each resident as payment for the resident's share of the charges for such utility service within forty-five days of the landlord's receipt of payment.

(2) If a landlord fails to timely remit utility moneys collected from residents as required by subsection (1) of this section, such utility may, after written demand therefor is served upon the landlord, require the landlord to deposit an amount equal to the average daily charge for the usage of such utility service for the preceding twelve months multiplied by the sum of ninety.

(3) Any utility which prevails in an action brought to enforce the provisions of this section shall be entitled to an award of its reasonable attorney fees and court costs.

38-12-213 - Rental agreement - disclosure of terms in writing.

(1) The terms and conditions of a tenancy must be adequately disclosed in writing in a rental agreement by the management to any prospective home owner prior to the rental or occupancy of a mobile home space or lot. Said disclosures shall include:

- (a) The term of the tenancy and the amount of rent therefor;
- (b) The day rental payment is due and payable;
- (c) The day when unpaid rent shall be considered in default;
- (d) The rules and regulations of the park then in effect;
- (e) The name and mailing address where a manager's decision can be appealed;
- (f) All charges to the home owner other than rent.

(2) Said rental agreement shall be signed by both the management and the home owner, and each party shall receive a copy thereof.

(3) The management and the home owner may include in a rental agreement terms and conditions not prohibited by this part 2.

38-12-214 - Rules and regulations.

(1) The management shall adopt written rules and regulations concerning all home owners' use and occupancy of the premises. Such rules and regulations are enforceable against a home owner only if:

(a) Their purpose is to promote the convenience, safety, or welfare of the home owners, protect and preserve the premises from abusive use, or make a fair distribution of services and facilities held out for the home owners generally;

(b) They are reasonably related to the purpose for which they are adopted;

(c) They are not retaliatory or discriminatory in nature;

(d) They are sufficiently explicit in prohibition, direction, or limitation of the home owner's conduct to fairly inform him of what he must or must not do to comply.

38-12-215 - New developments and parks - rental of sites to dealers authorized.

(1) The management of a new mobile home park or manufactured housing community development may require as a condition of leasing a mobile home site or manufactured home site for the first time such site is offered for lease that the prospective lessee has purchased a mobile home or manufactured home from a particular seller or from any one of a particular group of sellers.

(2) A licensed mobile home dealer or a manufactured home dealer may, by contract with the management of a new mobile home park or manufactured housing community development, be granted the exclusive right to first-time rental of one or more mobile home sites or manufactured home sites.

38-12-216 - Mediation, when permitted - court actions.

(1) In any controversy between the management and a home owner of a mobile home park arising out of the provisions of this part 2, except for the nonpayment of rent or in cases in which the health or safety of other home owners is in imminent danger, such controversy may be submitted to mediation by either party prior to the filing of a forcible entry and detainer lawsuit upon agreement of the parties.

(2) The agreement, if one is reached, shall be presented to the court as a stipulation. Either party to the mediation may terminate the mediation process at any time without prejudice.

(3) If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief.

38-12-217 - Notice of sale of mobile home park.

(1) The mobile home park owner shall notify the owners of all mobile homes in the park of his intent to sell. Such notification shall be made only once for any particular contract to sell or trade and shall be by written notice mailed to each mobile home owner at the address shown on the rental agreement with the mobile home park owner at least ten days prior to the first scheduled closing for the sale or trade.

(2) The provisions of this section shall not apply to the sale of a mobile home park when such sale occurs between members of an immediate family or partners in a partnership. For purposes of this section "immediate family" means persons related by blood or adoption.

Appendix B - §24-32-701, et seq., C.R.S.

24-32-701 - Short title.

This part 7 shall be known and may be cited as the "Colorado Housing Act of 1970".

24-32-702 - Legislative declaration.

(1) It is hereby declared that there exists in this state a need for additional adequate, safe, sanitary, and energy-efficient new and rehabilitated dwelling units; that a need exists for assistance to families in securing new or rehabilitated rental housing; and that, unless the supply of housing units is increased, a large number of residents of this state will be compelled to live under unsanitary, overcrowded, and unsafe conditions to the detriment of their health, welfare, and well-being and to that of the communities of which they are a part. It is further declared that coordination and cooperation among private enterprise and state and local government are essential to the provision of adequate housing, and to that end it is desirable to create a division of housing within the department of local affairs. The general assembly further declares that the enactment of these provisions as set forth in this part 7 are for the public and statewide interest.

(2) The general assembly further finds that, in an effort to meet the housing needs within the state, the private housing and construction industry has developed mass production techniques which can substantially reduce housing construction costs and that the mass production of housing, consisting primarily of factory manufacture of dwelling units, presents unique problems with respect to the establishment of uniform health and safety standards and inspection procedures. The general assembly further finds that by minimizing the problems of standards and inspection procedures it is demonstrating its intention to encourage the reduction of housing construction costs and to make housing and home ownership more feasible for all residents of the state.

24-32-703 - Definitions.

As used in this part 7, unless the context otherwise requires:

(1) "Board" means the state housing board created by this part 7.

(1.4) "Dealer" means any person engaged in the sale, leasing, or distribution of new mobile homes primarily to persons who in good faith purchase or lease mobile homes for purposes other than resale.

(1.6) "Defect" includes any defect in the performance, construction, components, or material of a mobile home that renders the home or any part thereof not fit for the ordinary use for which it was intended.

(1.8) "Distributor" means any person engaged in the sale and distribution of mobile homes for resale.

(2) "Division" means the division of housing created by this part 7.

(3) "Factory-built housing" means any structure, or component thereof, designed primarily for residential occupancy, either permanent or temporary, including a mobile home which is wholly or in substantial part made, fabricated, formed, or assembled in manufacturing facilities for installation, or assembly and installation, on the building site.

(3.2) "Federal act" means the "National Mobile Home Construction and Safety Standards Act of 1974", 42 U.S.C.A. § § 5401 to 5426.

(3.4) "Federal mobile home construction and safety standard" or "federal standard" means any standard promulgated by the secretary of the United States department of housing and urban development pursuant to the "National Mobile Home Construction and Safety Standards Act of 1974".

(3.8) "Imminent safety hazard" means an imminent and unreasonable risk of death or severe personal injury.

(4) "Installation" means the assembly of factory-built housing on site and the process of affixing factory-built housing to land, a foundation, footings, or an existing building.

(5) "Local government" means the government of a town, city, county, or city and county.

(6) "Manufacture" means the process of making, fabricating, constructing, forming, or assembling a product from raw, unfinished, or semifinished materials.

(6.1) "Manufactured housing unit" means a preconstructed complete building unit or combination of preconstructed complete building units without motor power designed and commonly used for single-family, single-unit residential occupancy by persons in either temporary or permanent locations, which unit or units are manufactured in a factory or at a location other than the residential site of the completed home and which unit or units are not licensed as a recreational vehicle.

(6.2) "Manufacturer" means any person engaged in manufacturing, assembling, altering, or substantially repairing mobile homes.

(6.3) "Mobile home", for the purposes of construction inspection and certification, means a structure, transportable in one or more sections, which is eight body feet or more in width and is thirty-two body feet or more in length and which is built on a permanent chassis and designed to be used as a dwelling without permanent foundation when connected to required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

(6.4) "Mobile home construction" means all activities relating to the assembly, manufacture, major repair, or alteration of a mobile home, including but not limited to those relating to durability, quality, and safety.

(6.5) "Mobile home safety" means the performance of a mobile home in such a manner that the public is protected against any unreasonable risk of the occurrence of accidents

due to the design or construction of such mobile home or any unreasonable risk of death or injury to the user or to the public if such accidents do occur.

(6.7) "Purchaser" means the first person purchasing a mobile home in good faith for purposes other than resale.

(6.9) "Secretary" means the secretary of the United States department of housing and urban development.

(7) "Site" means the entire tract, subdivision, or parcel of land on which factory-built housing is installed.

24-32-704 - Division of housing - director.

(1) There is hereby created within the department of local affairs a division of housing, referred to in this part 7 as the "division". The division shall be headed by the state director of housing appointed by the executive director of the department of local affairs in accordance with section 13 of article XII of the state constitution.

(2) The division of housing shall exercise its powers and perform its duties and functions specified in this part 7 under the department of local affairs as if it were transferred to the department by a type 1 transfer as such transfer is defined in the "Administrative Organization Act of 1968", being article 1 of this title.

24-32-705 - Functions of division.

(1) The division has the following functions:

(a) To encourage private enterprise and all public and private agencies engaged in the planning, construction, and acquisition of adequate housing or the rehabilitation or weatherization of existing housing in Colorado by providing research, advisory, and liaison services and rehabilitation, construction, acquisition, and weatherization grants from appropriations made for this purpose by the general assembly. For the purposes of this paragraph (a), "weatherization" means the provision and installation of materials and devices which improve the thermal performance of a residence so as to conserve energy and reduce energy costs and includes those structural, heating, electrical, and plumbing repairs and improvements which are necessary to safely and effectively improve thermal performance. All such grants to public and private agencies shall be at least equally matched from a nonstate source and shall be for providing energy-efficient housing to low-income households. None of these grants shall be used for development, planning, or administration which shall be funded within the administrative budget of the division.

(b) To assist local communities in the development and operation of local housing authorities;

(c) To encourage and promote cooperation among counties and municipalities to jointly establish and operate housing authorities;

(d) To administer uniform construction and maintenance standards adopted by the board pursuant to section 24-32-707 (1) (b);

(e) To conduct continuing research into new approaches to housing throughout the state including, but not limited to, the following:

(I) Development of housing standards and construction codes based on performance;

(II) Modular housing;

(III) Programs for low-income housing throughout the state designed to discourage concentration in urban centers and particularly in urban center ghettos;

(f) To investigate living, dwelling, and housing conditions in the state and the means and methods of correcting unsafe, unsanitary, or substandard conditions;

(g) To enter upon buildings or property in order to conduct investigations or to make surveys or soundings. In the event the division is unable to obtain permission for such entry, the director may petition the district court in which the property is located for an order authorizing such entry. Upon a finding by the court that the order requested is reasonably necessary to carry out the intent of this part 7, the order shall be granted.

(h) To make available to responsible agencies, boards, commissions, or other governmental agencies its findings and recommendations with regard to any building or property where conditions exist which are unsafe, unsanitary, or substandard;

(i) To accept and receive grants and services from the federal government and other sources and to process such grants and services for other public and private nonprofit agencies and corporations;

(j) To enforce the provisions of part 9 of this article and the rules and regulations adopted pursuant thereto;

(k) To provide training and technical assistance to counties and municipalities which have building codes in the development of energy efficiency construction and renovation performance standards by such local governments;

(l) To provide in graphic illustrations and charts the information needed by a person who applies for or obtains a homeowner's permit to build his own home to correlate the R-values to the U-values of the more energy conserving performance standards as found in section 6-7-105 (2), C.R.S. This information shall be distributed to local building departments and building material supply outlets in the state and shall be given to builders and unlicensed persons who apply for or obtain homeowners' permits to build their own homes.

(m) To provide technical assistance to building officials, who shall instruct persons who apply for or obtain homeowners' permits to build their own homes on the use of the information provided in paragraph (l) of this subsection (1);

(n) Pursuant to section 24-32-717, to administer loans to local housing authorities and public and private nonprofit corporations.

(2) The division, through the director thereof, shall serve in an advisory capacity to the state housing and finance authority, created by part 7 of article 4 of title 29, C.R.S., and shall provide information on the housing facility needs of low- and moderate-income families in the state of Colorado.

(3) A full report on the weatherization grants program shall be made by the division to the general assembly within six months after the end of each fiscal year. The report shall contain but not be limited to the following:

(a) The actual program expenses, itemized appropriately;

(b) The total number of eligible residences upon which weatherization services were performed, with a differentiation to distinguish between repair and maintenance and weatherization;

(c) The income eligibility guidelines for residences receiving weatherization services;

(d) The average energy savings realized by such residences;

(e) Recommendations for improvements and changes in program design and administration.

24-32-706 - State housing board.

(1) There is hereby created, within the division of housing, the state housing board. The board shall consist of seven members who shall be appointed by the governor for terms of four years each, except as provided in subsection (2) of this section.

(2) Appointments made to take effect January 1, 1983, shall be made in accordance with section 24-1-135. On and after January 1, 1983, and prior to June 15, 1987, their successors shall be appointed for terms of six years each. Persons holding office on June 15, 1987, are subject to the provisions of section 24-1-137. Thereafter members shall be appointed for terms of four years each. Members shall not serve more than two consecutive full terms. All members shall be appointed with the consent of the senate.

(3) At least one member shall be appointed from each congressional district and shall be a qualified elector thereof. A vacancy on the board occurs whenever any member moves out of the congressional district from which he was appointed. A member who moves out of such congressional district shall promptly notify the governor of the date of such move, but such notice is not a condition precedent to the occurrence of the vacancy. The governor shall fill the vacancy as provided in subsection (5) of this section.

(4) Not more than four members shall be from any one political party.

(5) Any vacancy shall be filled by the governor for the unexpired term.

(6) Members of the board shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.

(7) The board shall meet upon call of the chairman or whenever directed by the governor.

(8) The governor may remove any appointed member of the commission for malfeasance in office, failure to regularly attend meetings, or for any cause that renders said member incapable or unfit to discharge the duties of his office, and any such removal, when made, shall not be subject to review.

24-32-707 - Powers of board.

(1) The board shall have the following powers:

(a) To advise the general assembly, the governor, and the division on housing matters;

(b) To establish uniform construction and maintenance standards for hotels, motels, and multiple dwellings in those areas of the state where no such standards exist and for factory-built housing;

(c) To develop and submit to the general assembly and units of local government recommendations for uniform housing standards and building codes;

(d) To conduct examinations and investigations and to take testimony and proof under oath at hearings;

(e) Through the division of housing, to act as agent for local governmental and private nonprofit entities in connection with federal, state, and local public and private nonprofit housing programs;

(f) To promulgate rules and regulations concerning the safety of equipment of camper trailers and camper coaches and to perform the functions provided in part 9 of this article;

(g) To promulgate rules and regulations establishing income limits for the determination of what constitutes a low- or moderate-income family pursuant to section 24-32-717 (4) (b);

(h) To promulgate rules and regulations establishing standards for the installation and setup of manufactured housing units as defined by this article. Any such rules and regulations promulgated by the board shall make provisions for enforcement of such rules and regulations by local governmental subdivisions of this state and may provide for additional regulation by such governmental subdivisions concerning special weather and topographical conditions in the area comprised by such governmental subdivisions.

(2) The board shall serve in an advisory capacity to the state housing finance authority, created by part 7 of article 4 of title 29, C.R.S., and shall provide information as to the need for development of housing facilities for low- and moderate-income families in Colorado.

(3) Nothing in this article shall be construed to prevent local governmental subdivisions of this state from enforcing rules and regulations for installation of manufactured housing as promulgated by the board and from collecting fees therefor.

24-32-709 - Certification of factory-built housing.

(1) (a) Factory-built housing manufactured, substantially altered or repaired, sold, or offered for sale within this state after the effective date of the rules adopted pursuant to section 24-32-710 must bear an insignia of approval issued by the division.

(b) Paragraph (a) of this subsection (1) shall not apply to the sale or the offer for sale of any factory-built unit after the first purchase of it in good faith for purposes other than resale, unless said unit has been substantially altered or repaired as defined by board rule.

(2) Factory-built housing manufactured prior to the effective date of the rules adopted pursuant to section 24-32-710 shall be subject to any existing state or local government regulations relating to the manufacture of such housing.

(3) All factory-built housing bearing an insignia of approval issued by the division pursuant to this part 7 shall be deemed to comply with the requirements of all ordinances or regulations, including those for electrical and plumbing, enacted by the state government and any local government which are applicable to the manufacture of such housing. The determination by the board of the scope of such approval is final.

(4) No factory-built housing bearing a department insignia of approval pursuant to this part 7 shall be in any way modified contrary to the rules adopted pursuant to section 24-32-710 prior to or during installation unless approval is first obtained from the division.

(5) The board, through the division, by rule shall establish a schedule of fees designed to pay the reasonable costs incurred by it for the work related to spot inspection, administration, and enforcement of this section.

(6) All rules promulgated by the division under section 24-32-710 shall be adopted pursuant to article 4 of this title.

24-32-710 - Rules - enforcement - advisory committee.

(1) The board shall promulgate rules to interpret, implement, and make specific the provisions of this part 7. These rules shall include provisions imposing requirements reasonably consistent with recognized and accepted standards adopted by the building officials conference of America, the international conference of building officials, the southern building codes congress, the national fire protection association, the international association of plumbing and mechanical officials, the Colorado state plumbing and electrical codes, the city and county of Denver and the cities of Englewood and Lakewood, and the United States department of housing and urban development, or a combination thereof, except to the extent that the board finds such standards and codes are inconsistent with this part 7.

(2) The division shall enforce the provisions of this part 7 and the regulations adopted pursuant to this section.

(3) (a) The board shall consult with and obtain the advice of an advisory committee on residential and nonresidential structures in the drafting and promulgation of rules. The committee shall consist of twelve members appointed by the state director of housing from the following professional and technical disciplines: One member from architecture, one from structural engineering, three from building code enforcement, one from mechanical engineering or contracting, one from electrical engineering or contracting, one from the plumbing industry, one from the mobile home industry, one from the construction design or producer industry, one from manufactured housing, and one from organized labor. Committee members shall be reimbursed for actual and necessary expenses incurred while engaged in official duties.

(b) (Deleted by amendment, L. 93, p. 672, § 3, effective May 1, 1993.)

(4) The division may act as agent for the federal government for the enforcement of mobile home safety and construction standards relating to any issue with respect to which a federal standard has been established under the federal act.

24-32-711 - Recognition of similar standards.

If the board determines that standards for factory-built housing prescribed by statute or rule of another state or by the United States department of housing and urban development are reasonably consistent with, or at least equal to, standards developed by the board under this part 7, it may provide by rule that factory-built housing approved by such other state or by the United States department of housing and urban development is approved by the board.

24-32-712 - Noncompliance with standards.

(1) The state director of housing may obtain injunctive relief from the appropriate court to enjoin the manufacture, substantial repair or alteration, sale, delivery, or installation of factory-built housing upon an affidavit specifying the manner in which the housing does not conform to the requirements of this part 7 or to rules issued pursuant to section 24-32-710. The director, or his designee, may suspend the issuance of insignias of approval while injunctive relief is being sought.

(2) If the division, acting as agent for the federal government, determines that any mobile home does not conform to applicable state or federal mobile construction and safety standards or that it contains a defect which constitutes an imminent safety hazard after the sale of such mobile home by a manufacturer to a distributor or dealer and prior to the sale of such mobile home by such distributor or dealer to a purchaser, the manufacturer shall provide for parts replacement and installation reimbursement, as required under the federal act or regulations adopted pursuant thereto.

24-32-713 - Violation - penalty.

(1) A person who violates any of the provisions of section 24-32-709 or any rule adopted pursuant to section 24-32-710 shall be subject to a civil penalty of up to one thousand dollars as determined by the board. A separate violation shall be deemed to have occurred with respect to each housing unit involved. Any civil penalty collected pursuant to this section shall be transmitted to the state treasurer, who shall credit it to the general fund.

(2) In the case of any unit certified by the division, acting as agent for the federal government, federal jurisdiction, federal venue, and civil and criminal penalties provided for in the federal act or related regulations shall apply.

24-32-714 - Local enforcement.

Nothing in this part 7 shall interfere with the right of local government to enforce local regulations governing the installation of factory-built housing approved pursuant to section 24-32-709, if such local regulations are not inconsistent with state rules adopted pursuant to section 24-32-710.

24-32-715 - Inspection of mobile homes and records.

(1) When acting as agent for the federal government, the division is authorized to conduct such inspections and investigations as may be necessary to promulgate or enforce federal mobile home construction and safety standards established under the federal act or otherwise to carry out its duties under its agreement as agent. The division shall furnish the secretary any information obtained indicating noncompliance with such standards for appropriate action.

(2) (a) For the purposes of enforcement of this part 7, persons duly designated by the state director of housing, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized:

(I) To enter, at reasonable times and without advance notice, any factory, warehouse, or establishment in which mobile homes are manufactured, stored, or held for sale; and

(II) To inspect, at reasonable times, within reasonable limits, and in a reasonable manner, any such factory, warehouse, or establishment and to inspect such books, papers, records, and documents as are set forth in the federal act or federal regulations. Each such inspection shall be commenced and completed with reasonable promptness.

(b) The state director of housing is authorized to contract, as agent for the federal government, to conduct inspections, hearings, and building plan approvals, keep records, and report inspections and all other necessary activities to fulfill federal functions under the federal act.

24-32-715.5 - Inspections of electrical work - manufactured units.

In addition to any other inspection responsibilities, the division shall have the responsibility for the electrical inspections of any manufactured units in plants which are certified by the division pursuant to this part 7.

24-32-716 - Notification and correction of defects.

Every manufacturer of mobile homes to be certified as meeting federal standards shall furnish notification of any defect in any mobile home produced by such manufacturer, which he determines, in good faith, relates to a mobile home construction or safety standard or contains a defect which constitutes an imminent safety hazard to the purchaser of such mobile home, within a reasonable time after such manufacturer has discovered such defect in accordance with the provisions under the federal act or any board rule.

24-32-717 - Home investment trust fund - short-term loans.

(1) For the purpose of meeting the federal matching fund requirements of Title II of the federal "National Housing Act", the division shall establish a home investment trust fund which shall be created and administered pursuant to the provisions of 24 CFR part 92, as may be amended from time to time. The division shall pay into such fund any moneys made available by the state or federal government for the purpose of making loans as provided in this section. Any moneys in such fund at the end of any fiscal year shall not revert to the general fund.

(2) Upon the approval of the board, the division may make a loan from moneys in the home investment trust fund to any local housing authority, public nonprofit corporation, or private nonprofit corporation for development or redevelopment costs incurred prior to the completion or occupancy of low- or moderate-income housing or for the rehabilitation of such housing. The interest rate on such loan shall be determined by the board and set forth in the loan agreement signed by the applicant. In conjunction with the making of such loan, the division shall require the borrower to furnish collateral security in such amounts and in such form as the division shall determine to be necessary to assure the payment of such loan and the interest thereon as the same become due. The loan shall be subject to the terms and conditions imposed by the division and shall be repaid within the time and in the manner specified by the division in the loan agreement.

(3) As principal and interest payments are received by the division from the borrower, such moneys shall be deposited in the home investment trust fund.

(4) For the purposes of this section, unless the context otherwise requires, the following definitions shall apply:

(a) "Family" means two or more persons related by blood, marriage, or adoption who live or expect to live together as a single household in the same home, a single person who is either at least sixty-two years of age or has a disability, or a single person whom the board may by regulation determine to be eligible for assistance under this part 7.

(b) "Low- or moderate-income family" means a family whose income is insufficient to secure decent, safe, and sanitary housing provided by private industry without public assistance and whose income is below the respective income limits established by the board by regulation, taking into consideration such factors as the following:

- (I) The amount of the total income of such family available for housing needs;
- (II) The size of the family;
- (III) The cost and condition of housing facilities available;

(IV) The ability of such family to compete successfully in the private housing market and to pay the amounts at which private enterprise is providing decent, safe, and sanitary housing; and

(V) Standards established by various programs of the federal government for determining eligibility based on the income of such family.

(c) "Low- or moderate-income housing" means a residential structure or structures occupied by one or more low- or moderate-income families.

(5) Effective July 1, 1992, all moneys remaining in the revolving fund created pursuant to this section, as this section existed prior to said date, shall be transferred to the home investment trust fund created by this section.

Appendix C - House Bill 98-1203

HOUSE BILL 98-1203

BY REPRESENTATIVES Smith, K. Alexander, Dyer, George, Nichol, and Tupa;
also SENATORS Perlmutter, Chlouber, Hernandez, J. Johnson, Martinez, Rupert, Schroeder, and
Tanner.

AN ACT

CONCERNING DECEPTIVE TRADE PRACTICES RELATING TO THE SALE OF
MANUFACTURED HOMES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 6-1-102, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

6-1-102. Definitions. As used in this article, unless the context otherwise requires:

(4.9) "MANUFACTURED HOME" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 42-1-102 (106) (b), C.R.S.

(13.5) "UNAVOIDABLE DELAY" MEANS INCLEMENT WEATHER AND OTHER EVENTS OUTSIDE THE CONTROL OF THE BUYER OR SELLER.

SECTION 2. 6-1-105 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

6-1-105. Deceptive trade practices. (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

(qq) EXCEPT WITH RESPECT TO ACTIVITIES SUBJECT TO ARTICLE 61 OF TITLE 12, C.R.S., AND THOSE THAT WOULD BE COVERED EXCEPT FOR A SPECIFIC EXEMPTION SET FORTH IN SAID ARTICLE 61 OF TITLE 12, C.R.S., IN CONNECTION WITH THE ADVERTISEMENT OR SALE OF A MANUFACTURED HOME:

(I) FAILS TO DISCLOSE CLEARLY AND CONSPICUOUSLY IN THE CONTRACT THE DATE ON WHICH THE MANUFACTURED HOME WILL BE DELIVERED, SUBJECT TO THE POSSIBILITY OF UNAVOIDABLE DELAY;

(II) (A) FAILS TO ESCROW HOME SALE DEPOSITS IN A SEPARATE FIDUCIARY ACCOUNT FOR THE BENEFIT OF HOME PURCHASERS IN A BANK OR TRUST COMPANY DOING BUSINESS IN THE STATE OF COLORADO OR PROVIDE A LETTER OF CREDIT, CERTIFICATE OF DEPOSIT ISSUED BY A LICENSED FINANCIAL INSTITUTION, OR A SURETY BOND ISSUED BY AN AUTHORIZED INSURER IN A FORM APPROVED BY THE ATTORNEY GENERAL OF THE STATE OF COLORADO AND CONDITIONED UPON THE PERSON'S REFUND OF ANY HOME SALE DEPOSIT RECEIVED UNDER AGREEMENTS FOR THE SALE OF MANUFACTURED HOMES. NO FINANCIAL INSTITUTION OR CORPORATE SURETY SHALL BE REQUIRED TO MAKE ANY PAYMENT TO ANY PERSON CLAIMING UNDER SUCH DEPOSIT OR BOND UNTIL A FINAL DETERMINATION OF FRAUD, DEFALCATION OF FUNDS, OR CONVERSION HAS BEEN MADE BY A COURT OF COMPETENT JURISDICTION OR UPON A BANKRUPTCY FILING BY THE SELLER, OR UPON THE FAILURE TO REFUND OR PAY A REASONABLE PER DIEM LIVING EXPENSE PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH(qq).

(B) ANY LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, SURETY BOND, OR OTHER SIMILAR SURETY SHALL BE FILED WITH AND DRAWN IN FAVOR OF THE ATTORNEY GENERAL OF THE STATE OF COLORADO FOR USE OF THE PEOPLE OF THE STATE OF COLORADO WHO ARE PURCHASERS OF MANUFACTURED HOMES AND SHALL BE REVOCABLE ONLY WITH THE WRITTEN CONSENT OF THE ATTORNEY GENERAL.

(C) IN ANY CONTRACT FOR THE SALE OF A MANUFACTURED HOME, THE SELLER SHALL DISCLOSE IN THE CONTRACT THAT THE BUYER MAY HAVE NO LEGAL RIGHT TO RESCIND THE CONTRACT UNLESS SPECIFICALLY PROVIDED BY THE TERMS OF THE CONTRACT OR FOR DELINQUENT DELIVERY AND THAT THE SELLER HAS A SEPARATE FIDUCIARY ACCOUNT FOR THE ESCROW OF HOME SALE DEPOSITS PENDING DELIVERY OR A LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, SURETY BOND, OR OTHER SIMILAR SURETY FILED WITH THE ATTORNEY GENERAL OF THE STATE OF COLORADO FOR THE REPAYMENT OF HOME SALE DEPOSITS PENDING DELIVERY OF MANUFACTURED HOMES. ANY SUCH CONTRACT SHALL ALSO DISCLOSE THAT ESCROW DEPOSIT COMPLAINTS AGAINST SELLERS OF MANUFACTURED HOMES MAY BE FILED WITH THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF COLORADO OR THE DISTRICT ATTORNEY FOR THE JUDICIAL DISTRICT WHERE THE SALE OCCURS. ANY SUCH CONTRACT SHALL ALSO DISCLOSE THAT AN AGGRIEVED PERSON MAY BRING A CIVIL ACTION UNDER THE "COLORADO CONSUMER PROTECTION ACT" TO REMEDY VIOLATIONS OF THE PROVISIONS OF THIS PARAGRAPH (qq).

(III) ALL CONTRACTS FOR THE SALE OF A MANUFACTURED HOME MUST PROVIDE A DATE CERTAIN FOR DELIVERY OF THE HOME, OR A SPECIFICATION OF DELIVERY PRECONDITIONS WHICH MUST OCCUR BEFORE THE DATE OF HOME DELIVERY CAN BE DETERMINED. UNLESS DELAY IN DELIVERY IS UNAVOIDABLE, OR CAUSED BY THE BUYER, THE CONTRACT FOR MANUFACTURED HOME SALE SHALL FURTHER PROVIDE THAT, AT SELLER'S ELECTION, HE WILL REFUND THE HOME SALE DEPOSIT OR PAY A REASONABLE BUYER LIVING EXPENSE PER DIEM WHICH RELATES BACK TO THE CONTRACT DELIVERY DATE IF THE DATE OF DELIVERY IS MORE THAN SIXTY DAYS AFTER THE CONTRACT DATE OF DELIVERY OR THE COMPLETION OF DELIVERY PRECONDITIONS SET FORTH IN THE CONTRACT IF NO DELIVERY DATE CERTAIN HAS BEEN SET.

SECTION 3. The introductory portion to 6-1-113 (2), Colorado Revised Statutes, is amended, and the said 6-1-113 is further amended BY THE ADDITION OF A NEW SUBSECTION to read:

6-1-113. Damages. (2) Except in a class action OR A CASE BROUGHT FOR A VIOLATION OF SECTION 6-1-105 (1) (qq), any person who, in a private civil action, is found to have engaged in or caused another to engage in any deceptive trade practice listed in section 6-1-105 or 6-1-105.5 shall be liable in an amount equal to the sum of:

(2.5) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION, IN THE CASE OF ANY VIOLATION OF SECTION 6-1-105 (1) (qq), IN ADDITION TO INTEREST, COSTS OF THE ACTION, AND REASONABLE ATTORNEY FEES AS DETERMINED BY THE COURT, THE PREVAILING PARTY SHALL BE ENTITLED ONLY TO DAMAGES IN AN AMOUNT SUFFICIENT TO REFUND MONEYS ACTUALLY PAID FOR A MANUFACTURED HOME NOT DELIVERED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 6-1-105 (1) (qq).

SECTION 4. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to the advertisement or sale of manufactured homes on or after the applicable effective date of this act.

Approved: May 22, 1998

Appendix D - CMHA Consumer Relations Council - Complaint Questionnaire
