

June 8, 2012

Good Friday everyone:

I wanted to let you know the results of the statewide meeting we held at Flatwoods on June 7.

A broad spectrum of retailers and one manufacturer were present at the meeting. We had a lengthy discussion on two issues: possibly reforming the 10B forms concerning individuals setting up their own homes without our assistance and whether we should recommend adoption of a certificate of occupancy program.

After much give-and-take in the open forum, the group decided:

--To ask the West Virginia Manufactured Housing Construction and Safety Standards Board to adopt reforms to the 10b program. Maintaining consumer protection remains the top priority of everyone involved, so the panel was interested in keeping most of the structure of the 10b program. However, they believed the sections 10B.6 and 10B.7 no longer had a valid application to our industry and were better-suited to the archaic days when we admit we had some fly-by-nights in the industry. We believe those bad actors all have been eliminated now. Clearly, lawsuits are down substantially, which reflects an improvement in dealer attitudes toward consumers.

The 10B.6 sections deal with a postsale on-site review by the dealer. The dealer or installer must assess 60 days after the home is installed by the consumer whether the setup has been done properly (although the dealer was not involved in the setup) and then must detail any problems the dealer finds with the setup that was done under the control of the private individual.

The 10B.7 sections require the dealer to keep a record of the inspection report for five years, to mail a copy of his or her critique of the private setup and to notify the consumer "of the hazards and risks resulting from his or her failure to comply with his or her assumed obligations."

So, the conclusion by our panel was these two sections can only serve to aggravate the sale situation between the dealer and the consumer, when the consumer has opted to take control of the setup. We want to highlight section 10B.3 which requires that an agreement between the dealer and the consumer, when the consumer agrees to assume all or part of the responsibility for the installation or his or her home, be reduced to writing and explain the obligations of each party. We also are interested in retaining the section that requires the dealer to do an initial on-site evaluation of the home placement location, which we believe is the paramount safety issue.

The panel concluded it is unfair for the dealer to essentially take over the police functions that properly should reside with the State Board and its staff. One person mentioned this would be akin to a dealer selling a car and six months later writing up the customer for not changing the oil. We simply have no policing powers nor should we have that authority. The DOL is a neutral body that was established to ensure the protection of the consumer. To have us do police-function evaluations two months later of work that was assumed by the consumer did not inspire confidence in the discussion panel nor do we think it is a good consumer-protection practice to try to promote to the public.

Clearly, a consumer who is unhappy with his or her setup has two options without recourse to the courts. The consumer can still complain to the Division of Labor or the DOL can inspect the home under its random audit powers.

The discussion group rejected an amendment that would have ordered the postsale inspections be mandated as a duty of the DOL.

We plan to ask the State Board to endorse the reforms and bring them to the Legislature in 2014 as a board proposal. We are doing this now because we want you to have plenty of time to look at and consider our proposals and discuss them with us.

The panel was also unanimous in its rejection of the idea of a certificate of occupancy.

Thank you,
Andy