

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF CODES AND STANDARDS**

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INFORMATION BULLETIN 2005-04 (MH, OL)

TO: Manufactured Home, Mobilehome, Multi-Unit Manufactured Housing, and Commercial Modular Manufacturers and Dealers
Mobilehome Park Operators
Interested Parties
Approved Course Providers and Instructors
Division Staff

SUBJECT: 2004 LEGISLATIVE CHANGES

This Information Bulletin summarizes the 2004 legislative changes to the California Health and Safety Code (HSC) and California Civil Code (CC) affecting manufactured home and commercial modular manufacturers, dealers, salespersons, consumers, escrow agents, mobilehome park operators, and residents. These changes became effective January 1, 2005. The amendments and additions listed below may not reflect all the changes made to the applicable statutes. You may wish to review the bills at: <http://www.leginfo.ca.gov/bilinfo.html> or the statutes on or after their effective dates at: <http://www.leginfo.ca.gov/calaw.html>.

Chapter 236, Statutes of 2004 (Assembly Bill No. 1572, Lieber) amends Health and Safety Code Sections 18070, 18070.2, 18070.3, and 18070.5 and adds Sections 18070.6 and 18070.7, relating to the Manufactured Home Recovery Fund.

- Health and Safety Code Section 18070 is amended to provide legislative intent that claims for primary residences be given greater priority to over those claims received from persons selling or purchasing a manufactured home for investment purposes; that expenses incurred by victims pursuing compensation often may exceed their financial abilities, and that compensation received from the Manufactured Home Recovery Fund (MHRF) may be inadequate to cover such expenses. It added numerous definitions necessary to apply the requirements of the MHRF provisions.
- Health and Safety Code Section 18070.2 is amended to state that the date of sale shall be either when escrow closes, or for all other sales including sales by dealers in which escrow does not close, the date when the buyer has paid the purchase price, or in lieu of payment, has signed a security agreement, option to purchase, or

purchase contract and has taken physical possession or delivery of the manufactured home.

- Health and Safety Code Section 18070.3 expands applicant rights and reorganizes the MHRF claim requirements by amending them to include:
 - adding a person or entity (rather than only a licensee) who is or has been the subject of a bankruptcy proceeding and manufactured home manufacturers to those entities against whom a judgment may be procured in order to qualify for claim filing;
 - for purposes of grounds for securing a judgment, adding fraud and willful misrepresentation relating to financial issues as a basis to file a claim;
 - adding willful violations of any other provision of the Health & Safety Code, Division 13, Part 2, Mobilehomes-Manufactured Housing Act of 1980, including the escrow provisions and registration and titling provisions; and
 - adding willful violations of California Civil Code, Title 17, Chapter 3, Mobilehome Warranties, beginning with Section 1797.

Amends the statute to require, whether or not the claim is based on a judgment, that the claimant have “diligently” pursued collection efforts against all the assets of the judgment debtor (rather than “executed judgment”) or the licensee, or in lieu of providing evidence satisfactory to the Department (with examples in the statute) that the debtor is judgment proof, demonstrate that the costs of collection are likely to be in excess of the amounts that could be collected.

Amends the statute to require that all claims based on warranty issues, subject to the Civil Code requirements, shall require that the claimant provide satisfactory evidence that full compensation or corrections have been denied after an effort to exercise those rights.

Amends the statute to extend the time period for filing a claim to one of the following:

- Two years from the date of judgment;
- If no judgment, two years from termination of bankruptcy proceedings;
- if no judgment, two years from the date of sale as defined; or
- If no judgment, within 2 years from discovery of the violations, but no longer than 5 years after the date of sale.

Amends the statute to require that the claimant must mail a copy of the claim by first-class mail to the last known address of the judgment debtor, and that the Department must act on an application within one year of the date of a properly submitted application (rather than merely the original date of the application).

- Health and Safety Code Section 18070.5 is amended to provide the Department subrogation rights in the event that payments are made to “any person” rather than only when payments are made to a “judgment creditor.”
- Health and Safety Code Section 18070.6 is added to require that the Department, to the extent that personnel and resources allow, to make a reasonable effort to obtain an order of restitution in administrative actions brought by the Department;

this order may be deemed a final judgment for the purposes of a MHRF claim. If such an order is received and approved by the Director, a claimant may waive rights to any additional compensation from the fund and seek compensation based on the administrative order after demonstrating efforts to collect that amount.

- Health and Safety Code Section 18070.7 is added to clarify that the amendments to the MHRF statutes in this Act shall apply to any transaction for which the amended statute of limitations established in 18070.3 has not expired on January 1, 2004.

Chapter 567, Statutes of 2004 (Senate Bill No. 1090, Dunn) amends Section 798.71 of the Civil Code, and amends Sections 18024, 18060.5, 18062.2, and 18063, and adds Sections 18014.5 and 18061.6.

- Civil Code Section 798.71 is amended, providing technical changes to include the term “manufactured home” (“mobilehome” and “manufactured home” have the same meaning). Amendments to this statute now also prohibit mobilehome park management from requiring a homeowner, heir, joint tenant, or personal representative of an estate to use a specific broker, dealer or person to act as the agent as a condition of the resale of a manufactured home in the park.

- Several laws are amended or added to regulate “net listings” of manufactured homes; these include:

* Health and Safety Code Section 18014.5 is added to define the term "net listing agreement" as any agreement entered into by a seller of a used manufactured home or mobilehome and a licensed dealer in which the seller agrees to accept a specific purchase price and the dealer may receive as a commission all proceeds from the sale in excess of that purchase price.

* Health and Safety Code Section 18024 is amended to allow the Department to begin issuing citations ordering the abatement of unlicensed activities and may assess civil penalties up to two thousand dollars (\$2,000) without prior adoption of regulations, it; however, continues authority to promulgate those regulations if the Department determines to do so.

* Health and Safety Code Section 18060.5 is amended to change the term for “commercial coach” to “commercial modular” and adds, as an unlawful business practice, failure to disclose to the seller specified information and within specified timeframes for net listing sales. Dealers are required to submit into escrow a copy of the disclosure required by this section and maintain a copy for three years following the sale. Escrow agents must ensure that the disclosure document deposited into escrow is executed and complete, but they are not required to determine the accuracy of statements made within the disclosure document.

- Health and Safety Code Section 18061.6 is added to allow a dealer to advertise a new manufactured home or commercial modular which was previously installed as a model, display unit, or used for other occupancy, without

advertising this fact. The dealer must post a conspicuous notice in a prominent location immediately outside the primary entrance of the unit that the unit was previously installed as a model, display unit, or used for other occupancy. Additionally, a similarly conspicuous and prominent notice shall be included in the purchase agreement and contain the initials of the buyer(s).

The advertising of the year of manufacture for a new manufactured home or commercial modular is not required provided the new unit is not more than three years old. Additionally, the model name is not required to be advertised provided the model name is disclosed in a conspicuous and prominent notice, requiring the buyer's separate initials in the purchase agreement.

Note: In accordance with CCR Title 25, Section 5013 a manufactured home, mobilehome, or commercial modular is acceptable as the dealer's place of business provided that the unit is not a part of the dealer's inventory and is not being offered for or subject to sale while being used as an office.

- Health and Safety Code Sections 18062.2 and 18063 are amended to make it an unlawful act for a dealer or salesperson, respectively, who is also the mobilehome park owner or manager, or its agent, to knowingly violate Sections 798.72, 798.73, 798.73.5, 798.75.5, or 798.83 of the Civil Code pertaining to the sale, transfer, or repair of manufactured homes or mobilehomes to be installed or sold in a park.

Chapter 818 of the 2004 Statutes (Senate Bill No. 1777, Ducheny) amends Government Code Section 65584.1, and amends Health and Safety Code Sections 17021.6, 18021.7, 50451, 50452 and 50453 and repeals Section 50524. For purposes of this bulletin, only Section 18021.7 relating to citations is addressed.

- Health and Safety Code Section 18021.7 is amended to require that the time period within which the Department may issue a citation and assess the related civil penalty is increased from six months to one year after discovery of the violation.

Agencies and associations may include a copy of this Information Bulletin in any periodic publications you distribute to your customers, members, and clients. The Manufactured Home Recovery Fund claim forms can be downloaded at our Department website at: <http://www.hcd.ca.gov/codes/ol/mhrfmenu.htm> or obtained by contacting our Occupational Licensing Program office. If you have any questions or wish to discuss this Information Bulletin, please contact the Occupational Licensing Program at (916) 323-9803.

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