

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

1800 Third Street, Suite 260, P. O. Box 1407
Sacramento, CA 95812-01407
(916) 445-9471 FAX (916) 327-4712
From TDD Phones: 1-800-735-2929
www.hcd.ca.gov



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INFORMATION BULLETIN 2008-04 (MH, OL)

**TO: Manufactured Home Manufacturers and Dealers
 Contractors State Licensing Board
 Division Staff
 Interested Parties**

**SUBJECT: IMPLEMENTATION OF FEDERAL MANUFACTURED HOME DISPUTE
 RESOLUTION PROGRAM**

Effective February 8, 2008, the U.S. Department of Housing and Urban Development (HUD) will implement the federal Dispute Resolution (DR) program, providing applicants with a federal mediation and arbitration process for unresolved disputes between manufactured home manufacturers, dealers and installers for the correction of defects¹ in manufactured homes.

The federal DR program is a new complaint resolution process available to manufactured housing commercial entities (manufacturers, dealers, installers) in California that will be offered and administered by HUD in addition to that which is already provided under state law by the Department of Housing and Community Development (HCD), which only involves consumers, dealers and manufacturers (but not installers).

The purpose of this Information Bulletin is to provide background information on the new federal rules, and to explain that the rules governing HCD manufactured home warranty complaints and those of the HUD dispute resolution program are statutorily independent.

BACKGROUND

The National Manufactured Housing Improvement Act of 2000 mandates the Secretary of the U.S. Department of Housing and Urban Development (HUD) to establish a federal dispute resolution program and develop guidelines for the creation of similar

¹ 24 CFR, Part 3288, section 3288.3 defines 'defect' as meaning "any defect in the performance, construction, components, or material of a manufactured home or any part of the home not fit for the ordinary use for which it was intended, including, but not limited to, a defect in the construction, safety, or installation of the home."

state-administered dispute resolution programs for the purpose of resolving disputes that occur between manufactured housing manufacturers, dealers and installers.

The Secretary of HUD is required, under federal law, to implement a dispute resolution program in any state that has not established such a program that meets minimum federal requirements, or in any state that does not wish to participate in the new DR program. HUD has issued guidelines for establishing the DR program, which are effective for all manufactured homes sold on or after February 8, 2008.

The implementing regulations are codified in Title 24, Code of Federal Regulations, Chapter XX, Parts 3282 and 3288. Complete details of the DR program were published in the Federal Register on May 14, 2007. Copies may be obtained from HUD's website address: <http://www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm>.

DISPUTE RESOLUTION PROGRAM OVERVIEW

As previously stated, the federal DR program provides for federally-prescribed mediation and arbitration to resolve in a timely manner disputes between manufacturers, dealers, and installers of manufactured homes. The purpose of the DR program is to establish responsibility for the correction or repair of defects in manufactured homes that are reported within one-year of installation.

The federal DR program is intended as a means to resolve complaints between commercial entities only, and for defects that are not the responsibility of the consumer. Consumers may initiate, but not actively participate in, the federal complaint process. HUD, not HCD, administers the federal DR program.

MANUFACTURER, DEALER REQUIRED NOTICES

Federal regulations, Title 24, CFR, Part 3282, sections 3282.207(e)(1) and 3282.207(e)(2), require manufacturers to include a notice in their consumer manuals advising consumers of the availability of the federal dispute resolution program and also provide information on the dispute resolution process. The required language is reprinted and attached to this bulletin for your use.

In addition, federal regulations, Title 24, CFR, Part 3288, section 3288.5, require dealers to provide each purchaser with a standard notice, at or before the signing of a contract for the sale or lease of a manufactured home. The notice shall: 1) alert the purchaser of the existence of the federal DR program; 2) inform the purchaser that the program is available to resolve disputes among manufacturers, dealers, or installers concerning defects in manufactured homes; and 3) that the defect(s) shall be reported within one year from the date of the installation of the manufactured home in order to be eligible for the federal DR program. The required language is reprinted and attached to this bulletin for your use.

HCD COMPLAINT PROCEDURES

California Civil Code, Title 1.7, Chapter 3, (commencing with section 1797) provides that all new manufactured homes sold to a purchaser be covered by a one-year warranty against substantial defects in materials and workmanship², and that the manufacturer and the contractor or dealer shall be jointly and severally liable to the buyer for corrective action in instances of substantial defects in materials or workmanship.

Health and Safety Code sections 18060.5(d) and 18151 provide authorization for HCD to investigate and issue orders for the resolution of unresolved warranty complaints between department licensees (manufactured home manufacturers and dealers) and the buyer.

Current procedures available to California consumers include the ability to submit written complaints to the Office of the Mobilehome Ombudsman should any substantial defects reported to the licensed dealer and / or manufacturer not be corrected within the one-year warranty period provided by state law.

The current HCD process established for warranty complaint submittal, investigation and resolution will not change as a result of the implementation of the federal dispute resolution program. In the unlikely possibility that the warranty issue(s) or substantial defects are not resolved or repaired as ordered by HCD, a consumer or commercial entity may request an administrative hearing from HCD, or elect to invoke the federal mediation / arbitration process by applying directly to HUD.

To preserve the right to request dispute resolution through HUD, alleged defects must be reported to the manufacturer, dealer, Office of the Mobilehome Ombudsman or the California State Administrative Agency (CA-SAA) within one year from the date of installation. In the event HCD's investigation and issuance of orders for repair of the substantial defects takes longer than one year from the date of installation, the consumer or commercial entity is entitled to invoke the federal dispute resolution process, due to the documentation of the alleged defect through the Ombudsman's Office or CA-SAA.

The HUD Dispute Resolution program may be initiated as follows:

1. By mail: U.S. Department of Housing and Urban Development, Office of Manufactured Housing and Regulatory Affairs, 451 Seventh Street SW, Room 9164, Washington D.C .20410
2. By e-mail: <mailto:mhs@hud.gov>
3. By telephone: (202) 708-6423 or (800) 927-2891

² CA Civil Code section 1797.1(d) "Substantial defects in materials and workmanship" means defects objectively manifested by broken, ripped, cracked, stained, or missing parts or components, appliances, or systems as installed or manufactured by the contractor, dealer, or manufacturer.

Callers wishing to initiate the Dispute Resolution process with HUD must provide at least the following information: homeowner name, address, and telephone number; manufacturer name and address; dealer name and address; date of installation of the manufactured home; date the report of the alleged defect(s) was made; and a description of the alleged defect(s).

The Office of the Mobilehome Ombudsman may be reached as follows:

1. By mail: Complaint forms are available on the website located at: <http://www.hcd.ca.gov/codes/ol/ombpg-menu.html> and mail to PO Box 31 Sacramento, CA 95812-0031
2. By e-mail: Ombudsman@hcd.ca.gov
3. By telephone: (800)-952-5275, or (916)-323-9801

The California State Administrative Agency (CA-SAA) may be reached as follows to report manufactured home construction defects:

1. By mail: P.O. Box 31 Sacramento, CA 95812-0031
2. By telephone: (916) 445-3338

For further information on the federal program contact William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 9164, Washington D.C. 20410, telephone (202) 708-6401.

Persons reporting manufactured home construction defects to the CA-SAA must provide manufacturer's name and address location, the serial number or HUD label number of manufactured home, and a brief description of the construction defect(s).

Questions or comments regarding this Information Bulletin should be directed to Richard Weinert, Manufactured Housing Programs Manager (916) 445-3338.

Kim Strange
Deputy Director

FREQUENTLY ASKED QUESTIONS (FAQ's)

Q1. Is there any benefit or detriment if a California consumer bypasses HCD's Office of the Mobilehome Ombudsman and files a complaint directly with HUD for dispute resolution?

A1. If valid, HUD will process the complaint, contact the parties and begin the dispute resolution process. While this scenario may happen, it is not recommended because generally HCD's final decisions achieve the desired results. Additionally, HUD will be charging a user fee for the mediation service making it less likely this process will be utilized. The most likely scenario for this is when the defect either is entirely due to the installer's work or when the defect is subject to the HUD process but not the HCD process.

Q2. Does HUD have the authority to levy administrative fines against a manufacturer, dealer or installer for failing to abide by HUD's final decision or order?

A2. No, however HUD intends to enforce final orders rendered through arbitration and through the court system, and the responsible party or parties will be required to pay for any repair of the manufactured home as a result of a final order from HUD.

Q3. Will HCD's Office of the Mobilehome Ombudsman forward copies of warranty complaints submitted by consumers to HUD for resolution under the DR program?

A3. No, unless requested by HUD or the complainant.

Q4. Does HCD's receipt of a written, oral, or electronic (e-mail) complaint within one year protect a consumer's rights under the federal DR program?

A4. Yes. While oral reports of defects will be allowed by the HUD Washington D.C. office, anyone calling either the HCD Office of the Mobilehome Ombudsman or the CA-SAA office will be asked to validate their complaint by submitting it in writing or by e-mail.

Q5. Why doesn't HCD administer the federal dispute resolution in lieu of HUD?

A5. HCD believes that its existing laws, regulations and complaint procedures provide an acceptable and cost-effective form of complaint resolution for consumers and the manufactured housing industry. The federal DR program may be more costly to operate and provide less interaction by the consumer.

Q6. Can HUD, in its action as a Dispute Resolution administrator, overturn or modify a decision previously made by HCD?

A6. Yes. Should a person initiate the federal dispute resolution process after obtaining a decision from HCD, there may be differences in the outcome, due to the disparity in HUD's definition of 'defect' and HCD's definition of 'substantial defect'.

Q6. What happens if a California consumer files a complaint with both agencies: HUD and HCD/Office of the Mobilehome Ombudsman?

A6. Each agency would process and work separately on the complaint. The results, however, may be different based upon differences in the federal definition of 'defect' and HCD's definition of 'substantial defect', in which case the decision rendered using the HUD DR process would prevail.

Q7. Does HUD's definition of 'defect' cover more problems than HCD's definition of 'substantial defect'?

A7. Yes. For purposes of the HUD DR program, a defect is any problem in the performance, construction, components, or material of the home that renders the home or any part of the home, not fit for the ordinary use for which it was intended, including, but not limited to, a defect in the construction, safety or installation of the home.

MANUFACTURER, DEALER REQUIRED NOTICES

The required dealer notification to the purchaser at time of sale must include the following language:

“The U.S. Department of Housing and Urban Development (HUD) Manufactured Home Dispute Resolution Program is available to resolve disputes among manufacturers, retailers, or installers concerning defects in manufactured homes. Many states also have a consumer assistance or dispute resolution program. For additional information about these programs, see sections titled “Dispute Resolution Process” and “Additional Information—HUD Manufactured Home Dispute Resolution Program” in the Consumer Manual required to be provided to the purchaser. These programs are not warranty programs and do not replace the manufacturer’s, or any other person’s, warranty program.

The Manufactured Home Consumer Manual Dispute Resolution notice must include the following:

“DISPUTE RESOLUTION PROCESS

Many states have a consumer assistance or dispute resolution program that homeowners may use to resolve problems with manufacturers, retailers, or installers concerning defects in their manufactured homes that render part of the home unfit for its intended use. Such state programs may include a process to resolve a dispute among a manufacturer, a retailer, and an installer about who will correct the defect. In states where there is not a dispute resolution program that meets the federal requirements, the HUD Manufactured Home Dispute Resolution Program will operate. These are “HUD-administered states.” The HUD Manufactured Home Dispute Resolution Program is not for cosmetic or minor problems in the home.

You may contact the HUD Manufactured Housing Program Office at (202) 708-6423 or (800) 927-2891, or visit the HUD website at <http://www.hud.gov> to determine whether your state has a state program or whether you should use the HUD Manufactured Home Dispute Resolution Program. Contact information for state programs is also available on the HUD website. If your state has a state program, please contact the state for information about the program, how it operates, and what steps to take to request dispute resolution. When there is no state dispute resolution program, a homeowner may use the HUD Manufactured Home Dispute Resolution Program to resolve disputes among the manufacturer, retailer, and installer about responsibility for the correction or repair of defects in the manufactured home that were reported during the 1-year period starting on the date of installation. Even after the 1-year period, manufacturers have continuing responsibility to review certain problems that affect the intended use of the manufactured home or its parts, but for which correction may no longer be required under federal law.”

The manufacturer must include the following language under a heading of ``Additional Information `` HUD Manufactured Home Dispute Resolution Program" in the consumer manual:

“ADDITIONAL INFORMATION “HUD MANUFACTURED HOME DISPUTE RESOLUTION PROGRAM”

The steps and information outlined below apply only to the HUD Manufactured Home Dispute Resolution Program that operates in HUD-administered states, as described under the heading ``Dispute Resolution Information" in this manual. Under the HUD Manufactured Home Dispute Resolution Program, homeowners must report defects to the manufacturer, retailer, installer, a State Administrative Agency, or HUD within 1 year after the date of the first installation. Homeowners are encouraged to report defects in writing, including, but not limited to, email, written letter, certified mail, or fax, but they may also make a report by telephone. To demonstrate that the report was made within 1 year after the date of installation, homeowners should report defects in a manner that will create a dated record of the report: for example, by certified mail, by fax, or by email. When making a report by telephone, homeowners are encouraged to make a note of the phone call, including names of conversants, date, and time. No particular format is required to submit a report of an alleged defect, but any such report should at a minimum include a description of the alleged defect, the name of the Homeowner, and the address of the home.

Homeowners are encouraged to send reports of an alleged defect first to the manufacturer, retailer, or installer of the manufactured home, or a State Administrative Agency.

Reports of alleged defects may also be sent to HUD at: HUD, Office of Regulatory Affairs and Manufactured Housing, Attn: Dispute Resolution, 451 Seventh Street, SW., Washington, DC 20410-8000; faxed to (202) 708-4213; e-mailed to mhs@hud.gov, or reported telephonically at (202) 708-6423 or (800) 927-2891.

If, after taking the steps outlined above, the homeowner does not receive a satisfactory response from the manufacturer, retailer, or installer, the homeowner may file a dispute resolution request with the dispute resolution provider in writing, or by making a request by phone. No particular format is required to make a request for dispute resolution, but the request should generally include the following information:

- (1) The name, address, and contact information of the homeowner;
- (2) The name and contact information of the manufacturer, retailer, and installer of the manufactured home;
- (3) The date or dates the report of the alleged defect was made;
- (4) Identification of the entities or persons to whom each report of the alleged defect was made and the method that was used to make the report;
- (5) The date of installation of the manufactured home affected by the alleged defect; and
- (6) A description of the alleged defect.

Information about the dispute resolution provider and how to make a request for dispute resolution is available at <http://www.hud.gov> or by contacting the Office of Manufactured Housing Programs at (202) 708-6423 or (800) 927-2891. A screening agent will review the request and, as appropriate, forward the request to the manufacturer, retailer, installer, and mediator. The mediator will mediate the dispute and attempt to facilitate a settlement. The parties to a settlement include, as applicable, the manufacturer, retailer, and installer. If the parties are unable to reach a settlement that result in correction or repair of the alleged defect, any party or the homeowner may request nonbinding arbitration. Should any party refuse to participate, the arbitration shall proceed without that party's input. Once the arbitrator makes a non-binding recommendation, the arbitrator will forward it to the parties and HUD. HUD will have the option of adopting, modifying, or rejecting the recommendation when issuing an order requiring the responsible party or parties to make any corrections or repairs in the home. At any time before HUD issues a final order, the parties may submit an offer of settlement to HUD that may, at HUD's discretion, be incorporated into the order. In circumstances where the parties agree that one or more of them, and not the homeowner, is responsible for the alleged defect, the parties will have the opportunity to resolve the dispute outside of the HUD Mediation and Arbitration process by using the Alternative Process. Homeowners will maintain the right to be informed in writing of the outcome when the Alternative Process is used, within 5 days of the outcome. At any time after 30 days of the Alternative Process notification, any participant or the homeowner may invoke the HUD Manufactured Home Dispute Resolution Program and proceed to mediation.

The HUD Manufactured Home Dispute Resolution Program is not a warranty program and does not replace the manufacturer's or any other warranty program