

Chapter Comm 97

MANUFACTURED HOME DEALER TRADE PRACTICES, FACILITIES AND RECORDS

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Note: This chapter replaces ch. Trans 141. Chapter Adm 67 was renumbered chapter Comm 97 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats., Register July 2001, No. 547.

Comm 97.01 Purpose and authority. This chapter is promulgated under the authority of ss. 101.02 (1) and 101.92, Stats., to implement ss. 101.951 and 101.952, Stats. This chapter applies to any person applying for or holding a Wisconsin manufactured home dealer or salesperson license.

History: Cr. Register, February, 1998, No. 506, eff. 3-1-98.

Comm 97.02 Definitions. In this chapter:

(1) "Available for delivery" means a home that has been constructed and is ready to be delivered to the purchaser from the home sales location or the point of manufacture.

(2) "Cash price" means dealer asking price including dealer installed options and accessories and additional dealer mark-up, profit and transportation charges, minus the dollar value of cash discounts.

(3) "Damage" means defects caused by reasons other than normal wear through home age and usage.

(4) "Department" means the department of commerce.

(5) "Licensee" means any manufactured home dealer or salesperson or any person who is both a manufactured home dealer and a salesperson.

(6) "Manufactured home" or "home" means a mobile home which is transportable in one or more sections, which in the traveling mode, is more than 8 feet 6 inches in width or more than 45 feet in length, or when erected on site, is more than 340 square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the manufactured home. Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections contacting the interior space, but do not include bay windows. For purposes of this chapter, the measurement of length shall be determined in accordance with s. 348.07 (3), Stats.

(7) "Manufactured home dealer" or "dealer" means any of the following:

(a) A mobile home dealer as set forth in s. 218.10 (1g), Stats., but does not include:

1. A recreational vehicle dealer as defined in s. Trans 142.02 (7).
2. Governmental units or agents performing their official duties.
3. Advertising media and agents performing their assigned duties.
4. A licensed realtor involved in a manufactured home sale solely as a result of a real estate transaction including the manufactured home and the real estate site on which the manufactured home is located.

(b) A person not excluded by par. (a) who sells 2 or more new or used manufactured homes in any one calendar year.

Note: Section 218.10 (1g) was amended by 1999 Wis. Act 9 to apply to recreational vehicle dealers. Act 9 created s. 101.91 (2b), which defines "manufactured home dealer."

(8) "Mobile home" has the meaning set forth in s. 101.91 (2k), Stats.

(9) "New home" means a manufactured home that has never been occupied, used or sold for personal or business use.

(10) "Retail purchaser" or "purchaser" means any purchaser not licensed as a manufactured home dealer or salesperson.

(11) "Service agreement" means any repair agreement sold by a licensee.

(12) "Used home" means any untitled or titled manufactured home or mobile home that has been previously occupied, used or sold for personal or business use.

(13) "Site" means any plot of land which is owned or rented, and used or intended to be used for the accommodation of a manufactured home or mobile home for residential purposes.

History: Cr. Register, February, 1998, No. 506, eff. 3-1-98.

Comm 97.03 Advertising and sales representations. (1) **TRUTHFUL.** The use of false, deceptive or misleading advertising or representations by any licensee to induce the purchase of a manufactured home constitutes an unfair practice and is prohibited.

(2) **FACTUAL.** Any licensee, making a statement of fact to the public in an advertisement, written statement or representation concerning the manufactured home offered for sale, the services provided or any other aspects of business operation, shall upon request of the department, furnish evidence of the validity and accuracy of the statement of fact at the time it was made.

(3) **DISCLOSURES REQUIRED WHEN ADVERTISING PRICE.** When the price of a manufactured home is advertised by a licensee, the advertised price shall include all charges that shall be paid by the purchaser to acquire ownership of the advertised home with the exception of the sales tax and the title registration fees.

(4) **NAME.** Advertisements for manufactured home sales shall include the licensed business name.

(5) **NEW OR USED.** When advertising a manufactured home, a licensee shall state whether the home is new or used. If all of the homes in an advertisement are new or used, one reference designating that they are new or used is sufficient.

(6) **EXPIRATION TERMS OF SALES OR PROMOTIONS.** Whenever a sale or promotion offering gifts, merchandise, equipment, accessories, service, discounts, price reductions or cash is advertised, the advertisement shall specifically disclose the expiration terms or date of the sale or promotion.

(7) **RELOCATIONS.** Whenever a licensee advertises a manufactured home on a rental lot site which may have to be moved as a condition of the sale, that fact shall be stated in the advertisement.

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Comm 97.04 Purchase contract. (1) **USAGE.** (a) A licensee shall furnish retail purchasers with a copy of a document

entitled "manufactured home purchase contract" that clearly states that the retail purchaser is making an offer to purchase a manufactured home. An exact copy of the purchase contract shall be provided to the purchaser at the time the purchaser signs the offer and again after the offer is accepted by the dealer. Any changes in the purchase contract after signing by the purchaser or subsequent to acceptance by the dealer shall be initialed by all the parties on all copies.

(b) A manufactured home purchase contract shall be executed whenever the licensee accepts a down payment, deposit, or title for a trade-in unit from a prospective retail purchaser.

(2) CONTRACT FACE REQUIREMENTS. A purchase contract shall accomplish all of the following on its face:

(a) Clearly identify the names and addresses of the dealer and the purchaser.

(b) Describe the manufactured home purchased by year, make, model and identification number, and any trade-in unit by year, make and model and specify whether the purchased home is new or used.

(c) State the date and time each signature is affixed.

(d) Include the salesperson's name and license number in an area separate from the signatures of the purchaser and dealer or authorized representative.

(e) Specify an anticipated delivery date and state further in bold faced type next to the anticipated delivery date: **IF THE MANUFACTURED HOME ORDERED BY THE PURCHASER IS NOT AVAILABLE FOR DELIVERY BY THE DEALER WITHIN 15 CALENDAR DAYS AFTER THE ANTICIPATED DELIVERY DATE, EXCEPT WHEN TRIP PERMITS TO TRANSPORT THE HOME CANNOT BE ISSUED, THE PURCHASER MAY CANCEL THIS ORDER. THE PURCHASER SHALL RECEIVE A FULL REFUND OF ANY DOWN PAYMENT AND RETURN OF THE TRADE-IN, OR TITLE FOR THE TRADE-IN OR BOTH BY THE CLOSE OF THE DEALER'S NEXT BUSINESS DAY. IF THE TRADE-IN HAS BEEN SOLD, THE PURCHASER SHALL RECEIVE THE TRADE-IN ALLOWANCE SPECIFIED IN THE OFFER.**

(f) Clearly state the price due on closing and the known components of that price including, but not limited to, the price of the manufactured home, the price and description of any additional accessories, options or equipment, sales tax if applicable, license, title fees if applicable, down-payment and trade-in allowance. Rebates shall be stated separately by dollar amount and assignment.

(g) Clearly state whether the contract is subject to the purchaser obtaining acceptable financing through the dealer or at the creditor of the purchaser's choice, and how long the purchaser has to obtain financing. If the purchaser is unable to obtain acceptable financing, the purchaser may cancel the contract without penalty and shall, by the close of the dealer's next business day, receive a full refund of any down-payment and return of the trade-in, title for the trade-in or both. The licensee may delay returning a deposited down-payment beyond the close of the dealer's next business day only when the purchaser's personal check or other negotiable instrument has not cleared the payor's bank. If the check or other negotiable instrument clears, the licensee shall return, in person or by mail, the down-payment to the purchaser within 24 hours of receiving evidence of clearance. If the trade-in has been sold, the purchaser shall receive the trade-in allowance specified in the offer.

(h) Specify all other negotiated conditions of the sale not stated elsewhere on the contract.

(3) TERMINATION OF OFFER TO PURCHASE. (a) Unless otherwise specified in the contract, the offer to purchase is automatically voided if the licensee fails to accept or reject the offer by the close of the dealer's next business day.

(b) The licensee shall not sell the manufactured home to any other party until the offer is rejected by the licensee or the offer is voided in accordance with this section, or the purchaser cancels the contract in accordance with sub. (4).

(c) Any down payment, deposit or title shall be returned to the prospective retail purchaser within 2 working hours of the time the offer to purchase is rejected by the licensee. If the prospective purchaser is not present or available during the 2 hour period, those items shall be returned in person or mailed by the close of the dealer's next business day.

(4) PENALTIES FOR CANCELLATION BY PURCHASER. (a) The purchase contract shall clearly state that cancellation of a manufactured home contract within 24 hours of acceptance by a dealer may subject the purchaser to a penalty of up to 1% of the cash price of the manufactured home and that cancellation after the 24 hour period may subject the purchaser to a penalty not to exceed the penalty amount specified in the contract. Modification of the purchase contract shall not extend the 24 hour period. Documented proof of notification of cancellation is required regardless of the method of notification.

(b) The title and any down-payment or deposit which is not retained by the dealer as a penalty in accordance with par. (a) shall be returned to the purchaser by the close of the dealer's next business day following receipt of the purchaser's notice of cancellation.

(5) PRICE CHANGES. Any increase in price to a retail purchaser after the dealer has accepted an offer is an unfair practice and prohibited except when the price increase is due to any of the following:

(a) The addition of new equipment required by state or federal law.

(b) State or federal tax changes.

(c) The reappraisal of a trade-in unit which has suffered damage as defined in this chapter or is missing parts or accessories which were part of the trade-in unit at the time the purchase contract was executed. Reappraisal by the licensee shall be limited to an amount equal to the retail repair costs of damages incurred, or to the value of parts or accessories removed.

(6) WARRANTIES. (a) Reference to any warranties, service agreements or warranty disclaimers which apply to the manufactured home shall be made on the purchase contract.

(b) If a manufactured home is sold with a warranty, the warranty shall be in writing and shall be provided to the purchaser at the time the home is delivered.

(c) If a manufactured home is sold on an as is, no warranty basis, the purchase contract shall include the following statement in bold face type: "AS IS - NO WARRANTY" - "EXCEPT FOR ANY EXPRESSED OR IMPLIED WARRANTY BY THE MANUFACTURER OR OTHER THIRD PARTY WHICH EXISTS ON THIS MANUFACTURED HOME, THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THIS HOME IS WITH THE PURCHASER, AND SHOULD THE HOME PROVE DEFECTIVE FOLLOWING THE PURCHASE, THE PURCHASER SHALL ASSUME THE ENTIRE COST OF ALL SERVICING AND REPAIR."

(d) A warrantor shall service or repair a manufactured home in accordance with the terms and conditions of the warranty or service agreement.

(7) NAME OF PRIOR OWNER. The purchase contract shall include the name and address of the current titled owner if the manufactured home is consigned to or listed by the licensee. The name and address of the previous owner shall be kept on file at the dealer's business office if the manufactured home is owned and offered for sale by the licensee.

(8) ON SITE SALES. If the manufactured home is displayed for sale on a rental lot site or if a licensee represents that a manufac-

tured home may occupy a site in a specified home park, the dealer shall:

(a) Clearly state on the purchase contract whether or not the manufactured home may have to be moved from the site.

(b) Clearly state on the purchase contract that the contract is voidable by the purchaser if the purchaser or home is not acceptable in the home park.

(c) If the home may remain on site, inform the prospective purchaser in writing prior to the execution of the contract that a copy of the current home park lease and rules may be obtained from the current home owner or park operator.

(9) **SERVICE FEES.** A licensee shall not assess a purchaser an additional service charge or fee for completing any sales-related home inspection forms which are required by law or rule.

(10) **WAIVER.** The use of a manufactured home purchase contract which requires the purchaser to waive any claims the purchaser may have for breach of contract by the licensee is an unfair practice and is prohibited.

History: Cr. Register, February, 1998, No. 506, eff. 3-1-98.

Comm 97.05 Selling agreements. (1) **USAGE AND CONTENTS.** Whenever a manufactured home dealer lists or offers to sell a home on consignment a written selling agreement shall be completed and shall include:

(a) The date of the selling agreement.

(b) The name of the home owner and dealer and any other parties to the agreement.

(c) The description of the home including year, make and identification number.

(d) The terms of the agreement including the duration of the agreement, the selling price, the amount of sales commission or fee and when the sales commission or fee is to be paid. The sales commission or fee shall not be charged until the sale of the home.

(e) A statement by the owner indicating that either the home is clear of any liens, or the amount of any outstanding lien balance.

(f) Signatures of the home owner and the selling dealer.

(2) **ON-SITE SALES ON RENTAL SITES.** Manufactured homes selling agreements for units offered for sale on-site shall state whether the home may remain on the same rental lot following the sale. If it may remain, the park operator or owners of the land shall provide the licensee with a copy of the current lease agreement and written rules.

(3) **NET SALES PROHIBITED.** Licensees shall not obtain, negotiate, or attempt to negotiate any manufactured home selling agreement providing for a stipulated net price to the owner with the excess over the stipulated net price to be received by the licensee as commission.

History: Cr. Register, February, 1998, No. 506, eff. 3-1-98.

Comm 97.06 Disclosure of the condition of the manufactured home. (1) **MODEL YEAR DESIGNATION.** Changing the model year of a manufactured home is an unfair practice and is prohibited. If no model year is designated, the year of manufacture applies.

(2) **NEW MANUFACTURED HOME DISCLOSURE.** The licensee shall, on the face of the new manufactured home purchase contract, disclose all dealer installed options or accessories and whether or not the options or accessories are warranted.

(3) **USED MANUFACTURED HOME GENERAL CONDITION DISCLOSURE.** (a) Licensees shall inform prospective retail purchasers of used manufactured homes in writing before the execution of the purchase contract in the manner and on the form prescribed by the department, of all significant structural or mechanical defects or damage. If the licensee is unable to determine whether specific damage or defects exist, that fact shall also be noted on the disclosure form. Disclosure of information shall include that which the licensee discovers as a result of a close visual inspection which

shall consist of, but is not limited to, a walk-around and interior inspection, an under home inspection, roof inspection and inspection of the appliances. Licensees are not required to dismantle any part of the manufactured home during the inspection process.

(b) Unless otherwise agreed to in the purchase contract, the inspection disclosures shall neither create any warranties, expressed or implied, or affect warranty coverage provided for in the purchase contract.

History: Cr. Register, February, 1998, No. 506, eff. 3-1-98.

Comm 97.07 Facilities and records. (1) **BUSINESS FACILITIES.** Business facilities required to be provided and maintained by manufactured home dealers shall be as follows:

(a) A business office shall maintain books, records and files necessary to conduct business. The required business office may be established within a residence if it is accessible to an outside entrance and is used primarily for conducting the manufactured home business.

(b) If a display lot is provided, it shall be within the same block or directly across the street from the main business location.

(c) A repair shop, or a service contract with a nearby repair shop, where there are repair tools, repair equipment and personnel to perform the services provided for in a warranty applicable to a home sold by the dealer. Any service contract shall be on the form provided by the department.

(2) **RELOCATION.** A licensed location may not be relocated without notice to the department.

(3) **ZONING.** The business premises shall comply with all local zoning, building code and permit requirements.

(4) **SIGN.** Manufactured home dealers who carry and display inventory shall provide an exterior business sign in compliance with s. 100.18 (5), Stats.

(5) **TEMPORARY SALES LOCATIONS.** Manufactured homes dealers shall be permitted to display and sell homes at a temporary site other than the licensed place of business provided that:

(a) Each licensee furnishes the department with written notification of the sale and location at least 10 days in advance of any temporary sale to last longer than 10 days.

(b) The dealer does not participate in more than 6 sales at a temporary site during each licensing calendar year.

(c) A consigned, listed or model home shall not be considered a temporary sales location.

(d) Whenever a home is sold away from the licensed place of business, the dealer shall furnish the customer with a written notice of the 3-day cooling-off rights pursuant to s. 423.202, Stats.

(6) **RECORDS KEPT.** The minimum of books and records required to be kept and maintained at the license business premises by a manufactured home dealer under ss. 101.951 (3) and (7) (c) and 342.16 (2), Stats., shall include:

(a) The title for each used home owned and offered for sale and the manufacturer's statement of origin information for each new home owned and offered for sale. The dealer shall also have either a factory invoice, a completed dealer reassignment form or a purchase contract evidencing trade-in or purchase when a manufacturer or lending institution is holding the title or manufacturer's statement of origin of the manufactured home.

(b) A written selling agreement between the owner and dealer for each manufactured home owned by an individual and offered for sale or listed by the dealer.

(c) The original or a copy of all manufactured home purchase contracts, purchase orders and invoices. The records shall also include a copy of MVI Wisconsin title and registration application forms as additional evidence of the sale as well as information regarding collection of sales tax and Wisconsin title and registration fees, if applicable.

(d) A record of every manufactured home bought, sold, exchanged, consigned, or listed. The information shall be maintained at each licensed location in the following format:

Date Acquired	Acquired From Name & Address	New or Used	Year Make-ID	Date Sold or Disposed of	Disposed of or sold to: Name & Address

(7) MAINTENANCE OF RECORDS. The records described in sub. (6) (d) shall be maintained for 5 years as required by s. 342.16 (2),

Stats., and all other required records shall be maintained for a period of 5 years from the date of sale including copies of factory invoices, dealer reassignment forms, selling agreements, purchase contracts, MV1 and MV11 Wisconsin title and registration applications if applicable, regular and conforming power of attorney forms for motor vehicles taken in on trade, and prior owner odometer disclosure statements. The records shall be kept in the place of business during business hours and shall be open to inspection and copying by the department during reasonable business hours.

History: Cr. Register, February, 1998, No. 506, eff. 3-1-98.