

Issues at today's state regulatory board meeting June 15, 2006

Today's public meeting with regulators from the Division of Labor did not turn out to be the type of session many of the 20 or so people in attendance had expected. We thought it would involve a give-and-take, with Mitch Woodrum explaining new legislation, installation standards and exemption contract policy changes. Instead, the West Virginia Manufactured Housing Construction and Safety Standards Board had expected us to comment on issues that Mitch had mailed to the membership prior to today's meeting. So, in a sense, I believe both sides were a little disappointed.

Mitch did agree to address the changes and we then commented on some of those matters and others that were taken up by the board.

The most important issues were these:

The board was reluctant to set up financial standards – maximum and minimum levels a retailer would have to have to get into business in West Virginia – because it believed that authority was not within its jurisdiction. Deputy Commissioner Fran Cook told the board that most of the financial losses incurred by the state's recovery fund resulted not from new, or fly-by-night, retailers, but because of the collapse of long-term well-established companies. The board delayed an actual vote on the issue until board member Steve Solomon is present. Solomon had asked the board to establish some minimum standards.

I argued the board needed to establish some level of financial strength or require some type of bond before it licenses new retailers to help give the public confidence in our dealers, their product and to help ensure the new company will be around in the future to meet its obligations.

Mitch said under federal law that a retailer allowing an unlicensed subcontractor to do work for him without the subcontractor having a license does not meet the federal requirement of 42 U.S.C. 5404 that was effective Dec. 27, 2005. He asked the board to approve a change in state law, in order to meet the federal standard, to require all installers be licensed and receive training in the future.

The board delayed a vote again until Steve Solomon could be present.

The change would have to be approved by the Legislature in 2007. Without the change, Mitch advised the state will be out of compliance with federal law. Mitch said only a handful of retailers use the exemption contract and take responsibility for the sub-contractor's work. He said most require their subs to be licensed.

I disagreed and asked the board to wait for a federal review of the state program before any change was made. If the federal government said the state is out of compliance with the 2005 act, then sufficient time existed to make a change.

The board voted to ask the Contractor Licensing Board to waive its \$90 licensing fee for our members if they pay a \$125 licensing fee to the State Manufactured Housing Construction and Safety Standards Board. If the Contractor Board agrees, this change would be taken to the Legislature.

I complained that this, as with many things, was the first time any of us had heard about this proposed change. I again encouraged the board and staff to share these important issues with us ahead of time so we could reach a consensus and new fees would not be sprung on the membership. I argued it looked like a double fee might end up being imposed on us. I asked that the board reconsider its action and ensure first that the Contractor Board would waive its fee and then allow for the \$125 fee on us. Mitch advised if the Contractor Licensing Board did not agree to waive their \$90.00 fee the statute change regarding contractor/installer fees, talked about today, would not be introduced during the 2007 legislative session.

Judy Ritchie, who runs the regulatory program for The Home Shows, raised several issues of concern. She did not like the proposed change for subcontractors. She was concerned, too, that under the 10B forms the dealer must ensure he does the home placement evaluation and the leveling and trimming of the home and that it cannot be done by the homeowner even if they

want to waive that right. Mitch said the retailer has to ensure the consumer's work was performed properly and meets code.

Mitch said, for example, if a consumer wanted to purchase a singlewide from a retailer and accept the responsibility of transporting and installation the retailer is required to advise the consumer, by letter, they should hire a licensed installer to perform the installation of their home. A copy of this letter should be maintained in the home file for five (5) years. When this occurs the retailer should provide the consumer with an installation manual, counseling on placement and installation and make sure they sign the letter advising they need to use a licensed installer. He said the retailer is responsible for the placement evaluation and leveling and trimming of the home only if they are going to take responsibility of any aspect of the installation or sub-contracts any aspect of installation.

Mitch said retailer's or consumer's setting homes on permanent foundations, such as basements and crawl spaces, can use an engineer's inspection letter that bears a West Virginia engineer's seal when dealing with these foundations that the consumer or licensee has installed.

Mitch said the state continues to work on educational requirements required by the federal government, but that no decisions have been made and no plans completed. We asked that we be allowed to participate in any future deliberations concerning educational requirements.

Mitch said the change in the rules this year for installing support systems coincides with federal changes that required us to take the definition of the site out to 10 feet now from the previous 6 inches because water control around the home is a very important part of installations.