

MANUFACTURED HOMES REGULATIONS AND MANUFACTURER'S SALES RESPONSIBILITY

The New York State Department of State has received reports alleging that one or more Manufacturers have sold manufactured homes to developers or operators of manufactured home community operators, or to other purchasers, who are not certified as Retailers, but who routinely sell the homes to third parties. Please be advised that a Manufacturer that engages in such activity is in violation of Article 21-B of the Executive Law and Title 19 NYCRR Part 1210.

19 NYCRR Section 1210.03(a) provides that no person or business entity shall sell any manufactured home in the State of New York unless (1) the person or business entity selling the manufactured home is certified as a Retailer, or (2) the sale is a "non-retail sale." The term "non-retail sale" is defined in 19 NYCRR Section 1210.02(u), and includes the sale of a manufactured home to a certified Retailer for the purpose of resale by such certified Retailer. Therefore, a Manufacturer is permitted to sell a manufactured home to a *certified* Retailer. However, the sale of a manufactured home to a person who or business entity which is not certified as a Retailer is *not* a "non-retail sale," and these provisions do *not* authorize a Manufacturer to sell a manufactured home to any such noncertified person or business entity.

Of course, a Manufacturer certified as both a Manufacturer and a Retailer may, as a certified Retailer, sell a manufactured home to a person who, in good faith, purchases such a home for such person's residential use. However, this does not mean that a Manufacturer certified as both a Manufacturer and a Retailer may sell manufactured homes to any purchaser, without regard to what the purchaser does or intends to do with the homes. A Manufacturer, whether certified as a Manufacturer only or as both a Manufacturer and a Retailer, must not knowingly aid and abet the wrongful actions of a third party. The Department of State takes the position that if a Manufacturer (1) sells manufactured homes to a purchaser, (2) knows that the purchaser is not certified as a Retailer, and (3) knows that the purchaser routinely sells such homes to third parties, the Manufacturer is knowingly aiding and abetting the wrongful actions of that purchaser and, by doing so, the Manufacturer has demonstrated incompetency and untrustworthiness. Such a Manufacturer is subject to suspension or revocation of its certification(s) and to civil penalties under Part 1210.

To summarize, when a Manufacturer sells a manufactured home, it is the Manufacturer's responsibility to ensure (1) that the Manufacturer is authorized to make the sale and (2) that the purchaser does not plan to deal with the home in a manner that violates Article 21-B or Part 1210. A Manufacturer is authorized to sell a manufactured home to a *certified* Retailer. A Manufacturer certified as both a Manufacturer and a Retailer is authorized (as a certified Retailer) to sell a home to a person who intends to use the home as his or her residence. In either case, however, the Manufacturer must not sell a home to a purchaser if the Manufacturer knows that the purchaser is not certified as a Retailer and that the purchaser routinely sells homes to third parties.

To download Part 1210, find a training opportunity, or obtain a certification application, or for more information on Manufacturers Home regulations, visit the Department of State, Manufactured Housing Unit website at: www.dos.ny.gov/dcea/manuf.html



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