

TITLE 14 HOUSING AND CONSTRUCTION
CHAPTER 12 MANUFACTURED HOUSING
PART 4 BONDS AND TRUST ACCOUNTS

14.12.4.1 ISSUING AGENCY: The Manufactured Housing Division of the Regulation and Licensing Department.
[14.12.4.1 NMAC - Rp, 14.12.2.1 NMAC, 12-01-10]

14.12.4.2 SCOPE: These rules and regulations apply to all dealers, brokers, salesperson, manufacturers, repairman, and installers of manufactured homes in the state of New Mexico.
[14.12.4.2 NMAC - Rp, 14.12.2.2 NMAC, 12-01-10]

14.12.4.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Manufactured Housing Act, Sections 60-14-1 through 60-14-20.
[14.12.4.3 NMAC - Rp, 14.12.2.3 NMAC, 12-01-10]

14.12.4.4 DURATION: Permanent.
[14.12.4.4 NMAC - Rp, 14.12.2.3 NMAC, 12-01-10]

14.12.4.5 EFFECTIVE DATE: 12-01-10 unless a later date is cited at the end of a section.
[14.12.4.5 NMAC - Rp, 14.12.2.5 NMAC, 12-01-10]

14.12.4.6 OBJECTIVE: The objective of 14.12.4 NMAC is to set forth the requirements for trust accounts, deposits for a manufactured home transaction, and consumer protection bonds
[14.12.4.6 NMAC - Rp, 14.12.2.6 NMAC, 12-01-10]

14.12.4.7 DEFINITIONS: [RESERVED]
[Refer to 14.12.1.7 NMAC]

14.12.4.8 TRUST ACCOUNTS:

A. This section shall apply only to transactions involving pre-owned manufactured homes in which the dealer or broker has no ownership interest.

B. Every dealer and broker shall maintain a trust account in a banking institution authorized to conduct business in this state.

C. All money, funds or negotiable instruments received by the dealer or broker in a pre-owned manufactured home transaction shall as soon as is practicable be deposited in the trust account and such money, funds or negotiable instruments shall remain in the trust account until the transaction is completed or otherwise terminated. Upon the completion or termination of the transaction, the dealer or broker shall account for all money, funds and negotiable instruments in accordance with these rules and shall disburse each money, funds and negotiable instruments to the parties to the transaction accordingly.

D. Every dealer and broker shall keep records of all money, funds and negotiable instruments received and deposited in the trust account, which records shall include, but are not limited to, the following information:

(1) the type and amount of money, funds or negotiable instruments received and deposited and from whom they were received;

(2) the date money, funds or negotiable instruments are received;

(3) the date of deposit;

(4) the date, amount and purpose of withdrawals;

(5) the name of the person or persons for whose account the money, funds or negotiable instruments were deposited;

(6) to whom the money, funds or negotiable instruments belong.

E. All records, accounts and funds shall be subject to inspection by the division at the dealer's or broker's place of business and at the banking institution.

F. A dealer or broker shall not deposit any money, funds or negotiable instruments in the trust account other than those required by this section. Provided however, a dealer or broker may deposit a sum of money

other than trust money in the trust account in order to meet the minimum balance required by the banking institution to maintain the account and avoid service charges.

[14.12.4.8 NMAC - Rp, 14.12.2.19 NMAC, 12-01-10]

14.12.4.9 DEPOSITS:

A. Consumer deposits for a manufactured home transaction will not be collected without a bona fide purchase agreement or buyer's order signed by both buyer and seller which shall include but is not limited to: year, model, manufacturer, serial number if unit is in stock, purchase price, required deposit and financing terms of the purchase.

B. Deposits will be refunded in full if financing is denied or terms of approval are significantly different from original agreement. If the buyer fails to complete his obligation for the purchase, deposits will be refunded as follows.

(1) Deposits on units in stock will be refunded in full less all actual costs incurred by the seller, such costs to be a maximum of 5% of the purchase price.

(2) Deposits units ordered for a specific purchaser will be refunded in full, less all actual costs incurred by the seller, such costs to be a maximum of 10% of the purchase price. Seller must fully disclose that the unit will be ordered.

(3) Deposits on homes requiring repairs, upgrades, modifications or changes agreed to by both buyer and seller in writing will be refunded in full less actual costs of repairs, upgrades, modifications, or changes.

C. The timetable for refund of deposits is.

(1) Cash deposits should be refunded within one (1) business day, but in no case, later than five (5) business days after the request for refund.

(2) Check deposits should be refunded within one (1) business day after clearing the maker's bank, but in no case, later than five (5) business days, after the refund request.

(3) Deposits other than cash or check will be refunded no later than two (2) days after the refund request.

[14.12.4.9 NMAC - Rp, 14.12.2.20 NMAC, 12-01-10]

14.12.4.10 BONDS:

A. Consumer protection bonds or other security as approved by the division shall not be released by the division until all claims and complaints against the licensee have finally resolved or until two (2) years after the licensee ceased doing business in New Mexico, whichever period is later. In no case shall the division authorize the release of bonds except in accordance with 14.12.4.10 NMAC.

B. All liability on a consumer protection bond or other form of security allowed by the division shall be applicable to the bond or other security in effect as of the date of sale or service of the occurrence which gave rise to the liability. In the event that the total amount of claims against a consumer protection bond exceeds the aggregate total amount of any bond or other form of approved security, the division may distribute the proceeds of such bond or other approved security pro rata to the claimants.

C. The committee may order the division to attach and disburse a licensee's consumer protection bond subsequent to a hearing before the committee without taking action against the licensee's license. The division may attach any licensee's consumer protection bond and indemnify a consumer for losses to the limit of the bond for damages resulting from such licensee's violation of the act or regulations or from fraud, misrepresentation, making of false promises or the refusal, failure of inability to transfer good and sufficient legal titles, as these causes are set forth and authorized in Section 60-14-6, N.M.S.A. 1978. The division, upon a finding of a violation by a licensee, may require the licensee to increase the amount of any bond. Any increase shall be in proportion to the seriousness of the offense or to the repeat nature of the licensee's violation, but shall not exceed one hundred thousand dollars (\$100,000.00) for manufacturers, fifty thousand dollars (\$50,000.00) for dealers, and brokers, twenty-five thousand dollars (\$25,000.00) for installers and repairman to include individuals granted licensure in accordance with 14.12.2.14 NMAC. The division may reduce any increased bond when satisfied that violations have been cured by appropriate corrective action and that the licensee is otherwise in good standing.

D. If reimbursement to a consumer for repairs, parts or other work is requested in a complaint the committee shall determine the reasonable value of such repairs, parts or work.

E. If a licensee does not conduct any business after issuance of his license and the posting of the applicable bond, the division, upon receipt of the satisfactory evidence that no business was conducted, and upon surrender of the license, may release the licensee's bond.

F. A corporate surety which issues a surety bond for a license may cancel the surety bond by giving sixty (60) days prior written notice to the division of such cancellation, provided, however, that no such cancellation shall be effective unless the division has approved the cancellation by appropriate signature on the notice.

G. The division shall give written notice to any corporate surety of any formal notice of contemplated disciplinary action served upon a licensee that is insured by that corporate surety.

H. Payments from a consumer protection surety bond may only be used to reimburse a consumer for actual damages incurred as a result of actions caused by a licensee. Actual damages may include, but are not limited to, repairs, parts or other work requested in a complaint, after the committee determines the reasonable value of such repairs, parts or work, and for reimbursement of deposits or down payments. The proceeds of a bond may not be used to pay punitive damages, attorney fees or costs associated with, or attributable, to pain and suffering.

[14.12.4.10 NMAC - Rp, 14.12.2.28 NMAC, 12-01-10]

14.12.4.11 MANUFACTURER'S CONSUMER PROTECTION BOND:

A. Each manufacturer or manufacturer II re-furbisher shall maintain consumer protection bonds with the division equal to the number of locations or plants shipping units into New Mexico or constructing units in New Mexico. Each bond may be satisfied by a surety bond or other security in the form and in the amount prescribed by the division with a minimum amount for each location, fifty thousand dollars (\$50,000.00) for a Manufacturer I and ten thousand dollars (\$10,000.00) for a Manufacturer II-Re-furbisher. Each surety in the form of a cash consumer protection bond shall be posted with a financial institution located in New Mexico. Out-of-state manufacturers shall submit an affidavit consenting to service of process in New Mexico in connection with all claims filed pursuant to the provisions of the act.

B. Each bond shall be indemnity for any loss sustained by any consumer as a result of:

- (1) a violation by the manufacturer of any provision of the act or of these regulations;
- (2) a violation of the manufacturer's written warranty;
- (3) fraud by the manufacturer in the execution or performance of a contract;
- (4) the misrepresentation or the making of false promises by the manufacturer, or through the advertising, the agents, or the salespersons of the manufacturer;
- (5) refusal, failure or inability of the manufacturer to transfer good and sufficient legal title to the consumer.

[14.12.4.11 NMAC - Rp, 14.12.2.29 NMAC, 12-01-10]

14.12.4.12 DEALER'S CONSUMER PROTECTION BOND:

A. Each dealer shall maintain consumer protection bonds with the division equal to the number of locations at which the dealer does business. Each bond may be satisfied by a surety bond or other security in the form and in the amount prescribed by the division, with a minimum amount of fifty thousand dollars (\$50,000.00) for each location. Each surety in the form of cash consumer protection bond shall be posted with a financial institution located in New Mexico. Out of state dealers shall submit an affidavit consenting to service of process in New Mexico in connection with all claims filed pursuant to the provisions of the act.

B. Each bond shall be indemnity for any loss sustained by the consumer as a result of:

- (1) a violation by the dealer of any provision of the act or of these regulations;
- (2) fraud by the dealer in the execution or performance of a contract;
- (3) the misrepresentation or making a false promise by the dealer, or through the advertising, the agents, or the salespersons of the dealer;
- (4) a violation of the dealer's written warranty;
- (5) refusal, failure or inability of the dealer to transfer good and sufficient legal title to the consumer.

[14.12.4.12 NMAC - Rp, 14.12.2.30 NMAC, 12-01-10]

14.12.4.13 INSTALLER'S OR REPAIRMAN'S CONSUMER PROTECTION BOND:

A. Each installer and each repairman to include individuals granted licensures in accordance with 14.12.2.14 NMAC shall maintain consumer protection bonds with the division. Each bond may be satisfied by a surety bond or other security in the form and in the amount prescribed by the division. The minimum bond amount shall be in an amount not less than ten thousand dollars (\$10,000). Bonds shall be presented to the division upon application for licensure and subsequently at each license renewal period. Each surety in the form of a cash consumer protection bond must be posted with a financial institution located in New Mexico. Out of state installers or repairmen to include individuals granted licensures in accordance with 14.12.2.14 NMAC shall submit an

affidavit consenting to service of process in New Mexico in connection with all claims filed pursuant to the provisions of the act.

B. Each bond shall be indemnity for any loss sustained by any consumer as a result of:

(1) fraud by the installer or repairman to include individuals granted licensures in accordance with 14.12.2.14 NMAC in the execution or performance of a contract;

(2) the misrepresentation or the making of a false promise by the installer or repairman to include individuals granted licensures in accordance with 14.12.2.14 NMAC, or through the advertising, or the agents of the installer or the repairman to include individuals granted licensures in accordance with 14.12.2.14 NMAC;

(3) a violation of the installer's or repairman's written warranty to include individuals granted licensures in accordance with 14.12.2.14 NMAC.

[14.12.4.13 NMAC - Rp, 14.12.2.31 NMAC, 12-01-10]

14.12.4.14 BROKER'S CONSUMER PROTECTION BOND:

A. Each broker shall maintain a consumer protection bond with the division. Each bond may be satisfied by a surety bond or other security in the form and in the amount prescribed by the division, with a minimum amount of fifty thousand dollars (\$50,000.00). Each branch office shall have an associate broker with a proper license and fifty thousand dollars (\$50,000.00) consumer protection bond. Each surety in the form of a cash consumer protection bond must be posted with a financial institution located in New Mexico. Out of state brokers shall submit an affidavit consenting to service of process in New Mexico in connection with all claims filed pursuant to the provisions of the act.

B. Each bond shall be indemnity for any loss sustained by a consumer as a result of:

(1) a violation by the broker of any provision of the act or these regulations;

(2) fraud by the broker in the execution or performance of a contract;

(3) the misrepresentation or the making of a false promise by the broker or through the advertising, or the agents of the broker.

[14.12.4.14 NMAC - Rp, 14.12.2.32 NMAC, 12-01-10]

14.12.4.15 CONSUMER PROTECTION BOND PROCEDURES:

A. A person claiming to be injured by an alleged violation of the act or these regulations or by reason of any other cause set forth in the Manufactured Housing Act, NMSA 1978, Section 60-14-6, may file with the division a written complaint which states the name and address of the bondholder whose bond has been claimed against and includes a concise statement of the cause of the alleged injury. If it is determined by the division that the complaint is insufficient or defective, the complainant shall be promptly notified and may be permitted to amend the complaint, in the sole discretion of the division.

B. Upon receipt of a written complaint, the division shall investigate, by telephone or by in person contact, within thirty (30) days of receipt of the complaint to determine whether cause exists to investigate further. If such cause exists, an on-site inspection may be made within thirty (30) days of such determination. The on-site inspection is not mandatory. The complainant should be available to the investigator during reasonable business hours during the investigation period.

C. The division shall give written notice to the bondholder within ten (10) days of receipt of the complaint. The notice shall request correction of the violations within forty (40) days of the division's receipt of the complaint. The letter may also request investigation according to Subpart I of the Federal Manufactured Home Construction and Safety Standards, Federal Procedural and Enforcement Regulations, which require investigation of class or re-occurrences of non-conformance to the Federal Standards.

D. Any notice or decision required pursuant to this regulation may be served either personally or by regular, or certified mail, return receipt requested, directed to the bondholder's last known address as shown by the records of the division. If the notice or decision is served personally, service shall be made in the same manner as is provided in the Rules of Civil Procedure for the New Mexico district courts. Where the notice or decision is served by certified mail, it shall be deemed to have been served on the date shown on the return receipt showing delivery, or on the date of the last attempted delivery of the notice or decision to the addressee or refusal of the addressee to accept delivery of the notice or decision.

E. If the committee determines that there is no cause for the complaint, the complaint shall be dismissed. The division shall retain all information on which the decision was based in its consumer complaint files for five (5) years after closing the case. This information should include (a) the determination; (b) who made the determination; and (c) how the determination was made.

F. If committee determines that there is cause for the complaint, the division should attempt to achieve a satisfactory resolution of the complaint through correspondence or informal conference.

G. If the committee determines that the items requested to be corrected by the complainant are the responsibility of the manufacturer, and that these items are required to be corrected under the Federal Regulations, the manufacturer will be requested to submit, in writing, a notification or correction plan to the director of the division within twenty (20) days of receipt of the request and as required under Subpart I of the federal regulations. The plan should include, but not be limited to, a list of manufactured homes affected, method of correction, content of notification notice to consumer and the requirements as detailed under Subpart I of the federal regulations. If a plan is submitted to the division, the division should approve or modify the plan and send it back to the manufacturer for remedial action in the case. If, within twenty (20) days, there does not seem to be a reoccurrence of the same deficiencies, no formal plan needs to be submitted if the division has granted waiver to the plan. The manufacturer shall have sixty (60) days to notify and correct, and an additional thirty (30) days to submit closeout reports of all action taken by the manufacturer.

H. The division may charge a re-inspection fee of sixty-five dollars (\$65.00) each time a re-inspection is performed in connection with a consumer complaint. On those consumer complaints, which the division investigates but are not prosecuted by the division, no fee will be charged. The fee, if assessed, shall be charged to the dealer, manufacturer, installer/repairman, or broker as appropriate.

I. If the complaint is not substantially resolved by the foregoing method, the division may send the complaint to the committee for bond attachment proceedings consistent with the procedure set forth herein.

J. If the matter is referred to the committee for bond revocation proceedings, the division shall serve upon the bondholder a written notice containing a statement (1) that the committee has sufficient evidence which, if not rebutted or explained, will justify the committee taking the contemplated action; (2) indicating the general nature of the evidence against the bondholder; (3) the statutes and regulations authorizing the committee to take the contemplated action; (4) that the bondholder may request a hearing on the matter within twenty (20) days after service of the notice; and (5) the rights of a person entitled to hearing as provided under the Uniform Licensing Act, Section 61-1-8 NMSA 1978.

K. If the bondholder does not mail a request for a hearing within the time and in the manner required by this section, the committee may take the action contemplated in the notice, and such action shall be final.

L. If the bondholder timely requests a hearing, the division shall notify the bondholder of the time and place of hearing, the name of the hearing officer, if any, and the statutes and regulations authorizing the committee to take the contemplated action. The notice shall set the hearing within a reasonable time after the division's receipt of the request for hearing, but in no event later than sixty (60) days thereafter.

M. The committee shall conduct the hearing, or may appoint a hearing officer to do so.

N. A bondholder may be represented by counsel, may be represented by a licensed member of his or her profession or occupation, or both; and may present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues;

O. Upon written request to another party, any party may ask to: (1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and (2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing. The division and the committee have no power to force the parties to comply with such requests.

P. The party to whom such a request is made should comply with it within ten (10) days after the mailing or delivery of the request. No such request should be made less than fifteen (15) days before the hearing.

Q. The committee has the discretion to grant continuances, to take testimony or to examine witnesses. The committee may also hold conferences before or during the hearing for the settlement or simplification of the issues.

R. The division shall present the case against the bondholder.

S. The committee may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The committee may in its discretion exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

T. The committee may take notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within their specialized knowledge. When the committee takes notice of a fact, the bondholder should be notified either before or during the hearing of the fact so noticed and its source and shall be afforded an opportunity to contest the fact so noticed.

U. The committee members may use their experience, technical competence and specialized knowledge in the evaluation of evidence presented to them.

V. The record may be preserved by audio or video recording or both.

W. Whether conducted by the committee or by a hearing officer, after a hearing has been completed, all members who were not present throughout the hearing should familiarize themselves with the record, including the hearing officer's report, before participating in the decision.

X. A decision based on the hearing shall be made by a quorum of the committee and signed by the person designated by the committee within ninety (90) days after the hearing.

Y. Within fifteen days (15) after the decision is rendered and signed, the division shall serve upon the bondholder a copy of the written decision.

Z. If a person who has requested a hearing does not appear, and no continuance has been granted, the committee may hear the evidence of such witnesses as may have appeared, and the committee may proceed to consider the matter and dispose of it on the basis of the evidence before it. Where because of accident, sickness or other cause a person fails to request a hearing or fails to appear for a hearing which he has requested, the person may within a reasonable time apply to the committee to reopen the proceeding, and the committee upon finding sufficient cause shall immediately fix a time and place for a hearing and give the person notice as required above. At the time and place fixed, a hearing shall be held in the same manner as would have been employed if the person had appeared in response to the original notice of hearing.

AA. These procedures do not grant a statutory right of review.

[14.12.4.15 NMAC - Rp, 14.12.2.63 NMAC, 12-01-10]

HISTORY of 14.12.4 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

CIC 70-5, 1969 Standards for Mobile Homes, filed 09-02-70

CIC MB 70-9, Standard for Mobile Homes for New Mexico, filed 10-23-70

CIC 71-5, 1971 Mechanical Mobile Home Code for New Mexico, filed 09-16-71

CIC 72-3, 1972 Standards for Mobile Homes, filed 08-18-72

CIC 73-1, 1973 Standards for Mobile Homes, filed 10-30-73

CIC MHB 75-4, 1975 Standard for Mobile Home Regulations pertaining to Manufacturers, Dealers, and Installers, filed 10-08-75

CIC MHB 77-7, Regulations pertaining to Manufacturers, Dealers, Brokers, Salesmen, Installers, and Repairmen, filed 04-02-77

MHD 77-1, Regulations pertaining to Manufacturers, Dealers, Brokers, Salesmen, Installers and Repairmen, filed 04-26-77

MHD 81-1, Mobile Housing Division Regulations, filed 05-27-81

MHD 83-1, Manufactured Housing Division Regulations, filed 08-18-83

MHD 85-1, Manufactured Housing Division Regulations, filed 02-01-85

MHD 88-1, Manufactured Housing Division Regulations, filed 08-09-88

MHD 90-1, Manufactured Housing Division Regulations, filed 12-08-89

History of Repealed Material:

14 NMAC 12.2, Manufactured Housing Requirements (filed 9-16-97) repealed 12-01-1998.

14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) repealed 6-01-1999.

14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) repealed 9-14-2000.

14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) repealed 12-01-2010.

Other History:

MHD 90-1, Manufactured Housing Division Regulations (filed 12-08-89) was renumbered, reformatted, amended and replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 12-01-1998.

14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) was replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 6-01-1999.

14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) was replaced by 14.12.2 NMAC, Manufactured Housing Requirements, effective 9-14-2000.

Those applicable portions of 14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) were replaced by 14.12.4 NMAC, Bonds and Trust Accounts, effective 12-01-2010.