

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Director of the Manufactured Housing and)
Modular Units Program of the Missouri)
Public Service Commission,)
)
Complainant,)
)
v.)
)
Brookside Homes, Inc.,)
)
And)
)
Steven D. Warren, an individual,)
)
Respondents.)

Case No. MC-2009-0020

**MEMORANDUM IN SUPPORT OF DIRECTOR'S
MOTION FOR SUMMARY DETERMINATION ON COUNTS V, VII AND IX**

COMES NOW the Director the Manufactured Housing and Modular Units Program ("the Director") of the Missouri Public Service Commission ("the Commission") and for his Memorandum in Support of Director's Motion for Summary Determination on Counts V, VII and IX¹ respectfully states as follows:

STATEMENT OF FACTS

The Cook Home

On June 29, 2007, Staff inspected a new manufactured home owned by Billy Cook ("the Cook Home"). (Exhibit A, p. 5). The Cook Home was manufactured by Four Seasons and was sold by Brookside Homes, Inc. ("Brookside"), a Commission-registered dealer. (Exhibit A, p. 5).

¹ The Director's Motion for Summary Determination on Counts V, VII, and IX and Statement of Undisputed Material Facts in Support Thereof ("Motion") has been submitted contemporaneously with the Director's Memorandum in Support of Director's Motion for Summary Determination on Counts V, VII and IX ("Memorandum") and is incorporated herein by reference.

Staff's June 29, 2007 inspection revealed several code violations and setup deficiencies. (Exhibit A, p. 5). Staff assigned the responsibility for these dealer-related violations and/or deficiencies to Brookside. (Exhibit A, p. 5). On July 6, 2007, Staff mailed Brookside a letter, instructing the Company to repair the Cook Home pursuant to Section 700.045(5) RSMo. (Exhibit A, p. 5). December 18, 2007, Staff mailed another letter to Brookside, again instructing the Company to repair the Cook Home. (Exhibit A, p. 5).

On February 20, 2008 Staff re-inspected the Cook Home and noted several code violations and setup deficiencies which remained from Staff's June 29, 2007 inspection. (Exhibit A, p. 6). On February 22, 2008, Staff mailed another letter to Brookside in which Staff again instructed the Company to repair the Cook Home. (Exhibit A, p. 6). On March 28, 2008 Staff mailed another letter to Brookside in which Staff again instructed the Company to repair the Cook Home. (Exhibit A, p. 6).

As of February 20, 2008, the date of Staff's re-inspection, Brookside had not repaired all of the code violations and/or setup deficiencies that were assigned by Staff to Brookside as a Commission-registered dealer. (Exhibit A, p. 6). Brookside agrees that these items are dealer setup deficiencies. (Deposition of Steven D. Warren, p. 44, lns. 4-6. A true and accurate copy of this deposition is attached hereto as Exhibit C and is incorporated by reference).

The Dement Home

On July 26, 2007, Staff inspected a new manufactured home owned by Jeremy and Casey Dement ("the Dement Home"). (Exhibit A, p. 7). The Dement Home was manufactured by Fleetwood Homes and was sold by Brookside, a Commission-registered dealer. (Exhibit A, p. 7).

Staff's July 26, 2007 inspection revealed several code violations and setup deficiencies. Staff assigned the responsibility for these dealer-related violations and/or deficiencies to

Brookside. (Exhibit A, p. 7). On August 13, 2007, Staff mailed Brookside a letter, instructing the Company to repair the Dement Home pursuant to Section 700.045(5). (Exhibit A, p. 7).

On September 25, 2007, Staff re-inspected the Dement Home and again noted several code violations and setup deficiencies which remained from Staff's July 26, 2007 inspection. (Exhibit A, p. 7). On October 2, 2007, Staff mailed a letter to Brookside, again instructing the Company to repair the Dement Home pursuant to Section 700.045(5). (Exhibit A, p. 7). On December 18, 2007, Staff mailed another letter to Brookside, again instructing the Company to repair the Dement Home. (Exhibit A, p. 8).

On March 25, 2008, Staff re-inspected the Dement Home and again noted several code violations and setup deficiencies remaining from Staff's July 26, 2007 inspection. (Exhibit A, p. 8). On March 28, 2008, Staff mailed a letter to Brookside in which Staff again instructed the Company to repair the Dement Home. (Exhibit A, p. 8).

On April 9, 2008, Staff again re-inspected the Dement Home and again noted several code violations and setup deficiencies remaining from Staff's July 26, 2007 inspection. (Exhibit A, p. 8). On April 28, 2008, Staff sent another letter to Brookside in which Staff again instructed Brookside to repair the Dement Home. (Exhibit A, p. 8).

As of April 9, 2008, the date of Staff's final re-inspection, Brookside had failed to repair all of the code violations and/or setup deficiencies that were assigned by Staff to Brookside as a Commission-registered dealer. (Exhibit A, pp. 8-9). As of the date of the deposition of Steven D. Warren, January 22, 2009, all of the code violations and/or setup deficiencies that were assigned by Staff to Brookside as a Commission-registered dealer had not been corrected by Brookside. (Exhibit C, p. 46, Ins. 21-24).

The Schmidt Home

On December 4, 2007, Staff inspected a new manufactured home owned by Steve Schmidt (“the Schmidt Home”). (Exhibit B, p. 5). The Schmidt Home was manufactured by Champion Homes and was sold by Brookside, a Commission-registered dealer. (Exhibit B, p. 5).

The Schmidt Home was delivered to the site by Lou Theiss. (Exhibit B, p. 5). At the time of the delivery of the Home, Lou Theiss was not licensed by the Commission as an installer. (Exhibit B, p. 5). Lou Theiss installed the Schmidt Home. (Exhibit B, p. 5). Brookside did not initially arrange for a Commission-licensed installer to install the Schmidt Home. (Exhibit B, p. 6).

Staff’s December 4, 2007 inspection revealed several code violations and setup deficiencies, the responsibility for which Staff assigned to the Commission-registered dealer (Brookside). (Exhibit B, p. 6). On December 12, 2007, Staff mailed Brookside a letter in which Staff instructed Brookside to repair the Schmidt Home pursuant to Section 700.045(5). (Exhibit B, p. 6). On March 7, 2008, Staff mailed Brookside another letter, again instructing the Company to repair the Schmidt Home. (Exhibit B, p. 6).

On March 11, 2008, Staff re-inspected the Schmidt Home and noted code several violations and setup deficiencies which remained from Staff’s December 4, 2007 inspection, as well as several additional code violations and/or setup deficiencies which were not noted in Staff’s December 4, 2007 inspection. (Exhibit B, p. 6). On March 18, 2008, Staff mailed Brookside another letter in which Staff again instructed Brookside in writing to repair the Schmidt Home. (Exhibit B, p. 6).

As of March 11, 2008, the date of Staff's re-inspection, Brookside had not repaired all of the code violations and/or setup deficiencies that were originally assigned by Staff to Brookside as a Commission-registered dealer. (Exhibit B, pp. 6-8).

STANDARD FOR SUMMARY DETERMINATION

Except in a case seeking a rate increase or which is subject to an operation of law date, any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period.

4 C.S.R.240-2.117(1)(A)

The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law.

4 C.S.R. 240-2.117(1)(E)

ARGUMENT

- A. Because Brookside Homes, Inc. and Steven D. Warren have failed to arrange for the “proper initial setup” of the new manufactured home sold by Brookside to Billy Cook and have failed to correct certain code violations within a reasonable period of time, the Director is entitled to Summary Determination on Count V of the Director’s First Amended Complaint.**

The pleadings, discovery, and affidavits on file in this matter demonstrate both that there is no genuine issue as to any material fact regarding certain violations of law by the Respondents and that the Director is entitled to relief as a matter of law.

The Commission has jurisdiction over manufactured homes, manufactured home dealers, and manufactured home installers pursuant to Chapter 700, RSMo (2000)². Under Commission Rule 4 CSR 240-120.065(1), a dealer who sells a new manufactured home shall arrange for the “proper initial setup” of the manufactured home unless the dealer obtains a written waiver of that service from the purchaser of the home. Pursuant to Section 700.010(14), “setup” is defined as the operations performed at the occupancy site which renders a manufactured home or modular unit fit for habitation, which include but are not limited to, moving, blocking, leveling, supporting and assembling multiple or expandable units. Commission Rule 4 CSR 240-120.065(2) further provides that as used in the Commission Rule, “proper initial setup” means installation and setup of the home in accordance with the installation manual provided by the manufacturer. Furthermore, 4 CSR 240-120.100 provides that all new manufactured homes shall be setup or installed according to the manufacturer’s installation instructions and in complete compliance with the “code”. The “code” as is used in 120.100 is defined as the federal standards as incorporated by reference in 24 CFR 3280.

Pursuant to Section 700.100.3(6) and 4 CSR 240-120.065(3) any dealer that fails to arrange for the “proper initial setup” of a new manufactured home is subject to having its registration not renewed, revoked, suspended, or placed on probation by the Commission. In addition, Section 700.100.3(9) provides that any dealer that engages in conduct that is in violation of Section 700.045 is subject to having its license not renewed, revoked, suspended, or placed on probation by the Commission. Section 700.045(5) provides that a dealer that fails to correct a code violation in a new manufactured home within a reasonable period of time not to

² Unless otherwise noted, all references to the Revised Statutes of Missouri will be to RSMo 2000, as currently supplemented.

exceed ninety (90) days after being ordered to do so in writing by the Director has engaged in conduct that is defined as a misdemeanor. Failure to correct an applicable deficiency also subjects a Commission-registered dealer to Section 700.115.2, which provides in relevant part as follows:

...whoever violates any provision of this chapter shall be liable to the state of Missouri for a civil penalty in an amount which shall not exceed one thousand dollars for each such violation. If, after a hearing, the commission finds that the person has violated any provision of this chapter, it may direct its general counsel to enforce the provisions of this section by filing a petition in circuit court for such civil penalties. Each violation of this chapter shall constitute a separate violation with respect to each manufactured home or modular unit or with respect to each failure or refusal to allow or perform an act required by this chapter; except that, the maximum civil penalty may not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation.

Brookside Homes, Inc. and Steven D. Warren (“Warren”) failed to arrange for the “proper initial setup” of the manufactured home sold to Billy Cook, in violation of Commission Rule 4 CSR 240-120.065(1) and failed to install the home according to “code,” in violation of Commission Rule 4 CSR 240-120.100. Brookside and Warren failed to correct these violations within a reasonable period of time not to exceed ninety (90) days after being ordered to do so in writing by the Director, in violation of Section 700.045. The failure to correct these deficiencies subjects Brookside and Warren to the statutory penalties provided for in Section 700.115.2 and provides justification for the Director’s refusal to renew Brookside’s registration.

On June 29, 2007, Staff inspected a new manufactured home owned by Billy Cook (“the Cook Home”). (Exhibit A, p. 5). The Cook Home was manufactured by Four Seasons and was sold by Brookside, a Commission-registered dealer. (Exhibit A, p. 5).

Staff's June 29, 2007 inspection revealed several code violations and setup deficiencies. Staff assigned the responsibility for these dealer-related violations and/or deficiencies to Brookside. (Exhibit A, p. 5). Brookside *agrees* that both of these items constitute dealer setup deficiencies. (Exhibit C, p. 44, lns. 4-6. Emphasis added).

After Staff's June 29, 2007 inspection Staff provided notice of its findings to Brookside. On July 6, 2007, Staff mailed Brookside a letter in which Staff instructed Brookside to repair the Cook Home pursuant to Section 700.045(5). (Exhibit A, p. 5). December 18, 2007, Staff mailed another letter to Brookside, again instructing Brookside to repair the Cook Home. (Exhibit A, p. 5).

On February 20, 2008 Staff re-inspected the Cook Home and noted several code violations and setup deficiencies which remained from Staff's June 29, 2007 inspection. (Exhibit A, p. 6). On February 22, 2008, Staff mailed another letter to Brookside in which Staff again instructed Brookside to repair the Cook Home. (Exhibit A, p. 6). On March 28, 2008 Staff mailed another letter to Brookside, again instructing Brookside to repair the Cook Home. (Exhibit A, p. 6).

As of February 20, 2008, the date of Staff's re-inspection, Brookside had not repaired all code violations and/or setup deficiencies that were assigned by Staff to Brookside as a Commission-registered dealer. (Exhibit A, p. 6). As of February 20, 2008, Brookside had failed to place in conduit an A/C electrical wire under the home, in violation of Section 3280.808(k) of the Manufactured Home Construction and Safety Standards. (Exhibit A, p. 6). This deficiency was noted as dealer item Number 5 on Staff's February 20, 2008 re-inspection report. (Exhibit A, p. 6). As of February 20, 2008, Brookside had failed to place in conduit the water tank or pump electrical wire under the home, in violation of Section 3280.808(k)(3) of the Manufactured

Home Construction and Safety Standards. (Exhibit A, p. 6). This deficiency was noted as dealer item Number 8 on Staff's February 20, 2008 re-inspection report. (Exhibit A, p. 6). Again, Brookside agrees that both of these items constitute dealer set-up deficiencies. (Exhibit C, p. 44, lns. 4-6). The period of time from the date on which Brookside was ordered to correct the above deficiencies until the date of Staff's re-inspection exceeds ninety (90) days.

As demonstrated by the facts contained herein, Brookside has failed to install the Cook Home according to "code," in violation of Commission Rule 4 CSR 240-120.100 and has failed to arrange for the "proper initial setup" of the Cook Home Home, in violation of Commission Rule 4 CSR 240-120.065(1). Furthermore, the facts contained herein demonstrate that Brookside failed to correct the above deficiency within ninety (90) days after being ordered to do so by the Director, in violation of Section 700.045(5). The failure to correct these deficiencies subjects Brookside and Warren to the statutory penalties provided for in Section 700.115.2 and serves as justification for the Director's previous refusal to renew Brookside's registration.

B. Because Brookside Homes, Inc. and Steven D. Warren have failed to arrange for the "proper initial setup" of the new manufactured home sold by Brookside to Jeremy and Casey Dement and have failed to correct certain code violations within a reasonable period of time, the Director is entitled to Summary Determination on Count VII of the Director's First Amended Complaint.

The pleadings, discovery, and affidavits, on file in this matter demonstrate both that there is no genuine issue as to any material fact regarding certain violations of law by the Respondents and that the Director is entitled to relief as a matter of law.

Brookside Homes, Inc. and Steven D. Warren failed to arrange for the "proper initial setup" of the manufactured home sold to Jeremy and Casey Dement, in violation of Commission Rule 4 CSR 240-120.065(1) and failed to install the home according to "code," in violation of

Commission Rule 4 CSR 240-120.100. Brookside and Warren failed to correct these violations within a reasonable period of time not to exceed ninety (90) days after being ordered to do so in writing by the Director, in violation of Section 700.045. The failure to correct these deficiencies subjects Brookside and Warren to the statutory penalties provided for in Section 700.115.2 and provides justification for the Director's previous refusal to renew Brookside's registration.

On July 26, 2007, Staff inspected a new manufactured home owned by Jeremy and Casey Dement ("the Dement Home"). (Exhibit A, p. 7). The Dement Home was manufactured by Fleetwood Homes and was sold by Brookside, a Commission-registered dealer. (Exhibit A, p. 7).

Staff's July 26, 2007 inspection revealed several code violations and setup deficiencies. Staff assigned the responsibility for these dealer-related violations and/or deficiencies to Brookside. (Exhibit A, p. 7). On August 13, 2007, Staff mailed Brookside a letter in which Staff instructed Brookside to repair the Dement Home pursuant to Section 700.045(5). (Exhibit A, p. 7).

On September 25, 2007 Staff re-inspected the Dement Home and again noted several code violations and setup deficiencies which remained from Staff's July 26, 2007 inspection. (Exhibit A, p. 7). On October 2, 2007, Staff mailed a letter to Brookside in which Staff again instructed Brookside to repair the Dement Home pursuant to Section 700.045(5). (Exhibit A, p. 7). On December 18, 2007, Staff mailed another letter to Brookside in which Staff again instructed the Brookside to repair the Dement Home. (Exhibit A, p. 8).

On March 25, 2008, Staff again re-inspected the Dement Home for a third time and again noted several code violations and setup deficiencies remaining from Staff's July 26, 2007 inspection. (Exhibit A, p. 8). On March 28, 2008, Staff mailed a letter to Brookside in which Staff again instructed the Brookside to repair the Dement Home. (Exhibit A, p. 8).

On April 9, 2008, Staff inspected the Dement Home for a fourth and final time, and again noted several code violations and setup deficiencies remaining from Staff's July 26, 2007 inspection. (Exhibit A, p. 8). On April 28, 2008, Staff sent another letter to Brookside in which Staff again instructed Brookside to repair the Dement Home. (Exhibit A, p. 8).

As of April 9, 2008, the date of Staff's fourth and final inspection, Brookside had failed to repair all code violations and/or setup deficiencies that were assigned by Staff to Brookside as a Commission-registered dealer. (Exhibit A, pp. 8-9). As of April 9, 2008, Brookside had failed to repair to DAPIA specifications a damaged rim joist, in violation of Sections 3280.305(f) and 3280.305(g) of the Manufactured Home Construction and Safety Standards. (Exhibit A, pp 8-9). This deficiency was noted as dealer item Number 19 on Staff's April 9, 2008 re-inspection report. (Exhibit A, p. 9). As of April 9, 2008, Brookside had failed to repair damaged roof decking, in violation of Section 3280.307(a) of the Manufactured Home Construction and Safety Standards. (Exhibit A, p. 9). This deficiency was noted as dealer item Number 20 of Staff's April 9, 2008 re-inspection report. (Exhibit A, p. 9). As of the date of the deposition of Steven D. Warren, January 22, 2009, the above-listed dealer deficiencies had not been corrected by Brookside. (Exhibit C, p. 46, lns. 21-24).

The period of time from the date on which Brookside was ordered to correct the above deficiencies until the date of Staff's final re-inspection exceeds ninety (90) days. The period of time from the date on which Brookside was ordered to correct the above deficiencies until the date of Warren's deposition exceeds ninety (90) days.

According to Brookside, the violations and deficiencies related to the Schmidt Home are the result of damaged incurred to the Home in the course of its delivery to the site. (Exhibit C, p. 40, lns. 16-25). Apparently, Lou Theiss, an individual who was at the time licensed by the

Commission as an installer, was hired by Brookside to deliver the Dement Home, and did in fact deliver the Home. (*See* Exhibit C, p. 41, Ins. 1-7).

A dealer is under the statutory obligation to hire a Commission-licensed installer to install a new manufactured home. *See generally* §§ 700.650 to 700.692, RSMo (2000); *see also* § 700.656.3, RSMo, (2000). The parties agree that the use of a licensed installer is not required for the delivery of a manufactured home from a dealer's sales lot to the customer site. (Exhibit B, p. 5; Exhibit C, p. 28, Ins. 3-9). In this respect, an individual who delivers a home, even if licensed as an installer, is working as the "deliverer" and not the "installer" at the time of the delivery. As such, a deliverer is akin to a subcontractor hired by the dealer, and subjects the dealer to any and all liability which arises from that relationship. Brookside agrees that if a dealer hires a contractor or subcontractor to perform duties other than the installation of the home and those individuals perform "subpar" work, then it is the dealer's responsibility to ensure that the final product complies with the code. (Exhibit C, p. 34, Ins. 7-24).

As demonstrated by the facts contained herein, Brookside has failed to install the Dement Home according to "code," in violation of Commission Rule 4 CSR 240-120.100 and has failed to arrange for the "proper initial setup" of the Dement Home, in violation of Commission Rule 4 CSR 240-120.065(1). Furthermore, the facts contained herein demonstrate that Brookside failed to correct the above deficiency within ninety (90) days after being ordered to do so by the Director, in violation of Section 700.045(5). The failure to correct these deficiencies subjects Brookside and Warren to the statutory penalties provided for in Section 700.115.2 and provided justification for the Director's refusal to renew Brookside's registration.

C. Because Brookside Homes, Inc. and Steven D. Warren have failed to arrange for the “proper initial setup” of the new manufactured home sold by Brookside to Steve Schmidt and have failed to correct certain code violations within a reasonable period of time, the Director is entitled to Summary Determination on Count IX of the Director’s First Amended Complaint.

The pleadings, discovery, and affidavits, on file in this matter demonstrate both that there is no genuine issue as to any material fact regarding certain violations of law by the Respondents and that the Director is entitled to relief as a matter of law.

In addition to the statutory obligations described above, dealers are under the statutory obligation to hire Commission-licensed installers to install new manufactured homes. *See generally* §§ 700.650 to 700.692; *see also* § 700.656.3. The term “installation” is defined similarly by Section 700.650(4) and Commission Rule 4 CSR 240-125.010(12). Commission Rule 4 CSR 240-125.010(12) defines “installation” as “...*any work undertaken at the place of occupancy of a manufactured home to ensure the proper initial setup of the home*, which shall include the joining of all sections of the home, installation of stabilization, support, and leveling systems, assembly of multiple or expanded units, and installation of applicable utility hookups and anchoring systems that render the home fit for habitation.” (Commission Rule 4 CSR 240-125.010(12). Emphasis added). Installation includes setting a home on a foundation.

On December 4, 2007, Staff inspected a new manufactured home owned by Steve Schmidt (“the Schmidt Home”). (Exhibit B, p. 5). The Schmidt Home was manufactured by Champion Homes and was sold by Brookside, a Commission-registered dealer. (Exhibit B, p. 5).

Staff’s December 4, 2007 inspection revealed several code violations and setup deficiencies, the responsibility for which Staff assigned to the Commission-registered dealer (Brookside). (Exhibit B, p. 6). Although the correction of a number of these violations would

have ordinarily been assigned as the responsibility of the Commission-licensed installer, Brookside did not initially arrange for a Commission-licensed installer to install the Schmidt Home. (Exhibit B, p. 6). To the contrary, the Schmidt Home was delivered to the site by Lou Theiss. (Exhibit B, p. 5). At the time of the delivery of the Home, Lou Theiss was not licensed by the Commission as an installer. (Exhibit B, p. 5). Lou Theiss installed the Schmidt Home. (Exhibit B, p. 5). Brookside is liable under Chapter 700 for those deficiencies occasioned by Brookside's failure to hire a Commission-licensed installer.

On December 12, 2007, Staff mailed Brookside a letter in which Staff instructed Brookside to repair the Schmidt Home pursuant to Section 700.045(5). (Exhibit B, p. 6). On March 7, 2008, Staff mailed Brookside another letter in which Staff again instructed the Company to repair the Schmidt Home. (Exhibit B, p. 6).

On March 11, 2008 Staff re-inspected the Schmidt Home and noted code several violations and setup deficiencies which remained from Staff's December 4, 2007 inspection, as well as several additional code violations and/or setup deficiencies which were not noted in Staff's December 4, 2007 inspection. (Exhibit B, p. 6). On March 18, 2008, Staff mailed Brookside another letter in which Staff again instructed Brookside in writing to repair the Schmidt Home. (Exhibit B, p. 6).

As of March 11, 2008, the date of Staff's re-inspection, Brookside had failed to repair all code violations and/or setup deficiencies that were originally assigned by Staff to Brookside as a Commission-registered dealer. (Exhibit B, pp. 6-8). To begin, the basement foundation installed by Brookside is not in compliance with Champion Homes' approved design, in violation of page 14 of the manufacturer's installation instructions and Commission Rules 4 CSR 240-120.065(1)

and 4 CSR 240-120.065(2). (Exhibit B, p. 7). This deficiency was noted as dealer item Number 2 in Staff's March 11, 2008 re-inspection report. (Exhibit B, p. 7).

Furthermore, during the installation of this home on the basement foundation there were three of the frame cross members and one outrigger cut and removed to allow placement of the home on the foundation. (Exhibit B, p. 7). A dealer must apply for an application to alter and submit all necessary documents for the removal and or repair method, which Brookside did not do. (Exhibit B, p. 7). This deficiency is in violation of Section 700.025. (Exhibit B, p. 7). This deficiency was noted as dealer item Number 3 in Staff's March 11, 2008 re-inspection report. (Exhibit B, p. 7).

Additionally, Brookside violated its responsibility to provide a fire separation between the garage and the home and the electrical outlets and lighting required for the garage required by local codes. (Exhibit B, p. 7). This deficiency is in violation of Section 3280.303(A) of the Manufactured Home Construction and Safety Standards. (Exhibit B, p. 7). This deficiency was noted as dealer item Number 4 in Staff's March 11, 2008 re-inspection report. (Exhibit B, p. 8).

Furthermore, the vent pipe and flashing for the master bath exhaust fan is pulled loose from the roof, in violation of Section 3280.307(b) of the Manufactured Home Construction and Safety Standards. (Exhibit B, p. 8). This deficiency was noted as dealer item Number 5 in Staff's March 11, 2008 re-inspection report. (Exhibit B, p. 8).

Additionally, the OSB underlayment on the ends of the home is exposed and there appears to be water damage to the underlayment, in violation of Section 3280.307(a) of the Manufactured Home Construction and Safety Standards. (Exhibit B, p. 8). This deficiency was noted as dealer item Number 6 in Staff's March 11, 2008 re-inspection report. (Exhibit B, p. 8).

Finally, the exterior vinyl siding on the front and back sides of the home is loose or has been removed in several areas, in violation of Section 3280.307(a) of the Manufactured Home Construction and Safety Standards. (Exhibit B, p. 8). This deficiency was noted as dealer item Number 7 in Staff's March 11, 2008 re-inspection report. (Exhibit B, p. 8).

As demonstrated by the facts contained herein, Brookside has failed to arrange for a Commission-licensed installer to install the Schmidt Home, in violation of Chapter 700, has failed to install the Schmidt Home according to "code," in violation of Commission Rule 4 CSR 240-120.100 and has failed to arrange for the "proper initial setup" of the Schmidt Home, in violation of Commission Rule 4 CSR 240-120.065(1). Furthermore, the facts contained herein demonstrate that Brookside has failed to correct the above deficiency within ninety (90) days after being ordered to do so by the Director, in violation of Section 700.045(5).

WHEREFORE, the Director prays that the Commission affirm the Director's actions of January, 2008 in refusing to process or approve Brookside's 2008 registration application for failing to arrange for the "proper initial setup" of the Cook and Dement Homes (Counts V and VII, respectively) and for failing to correct code violations in the Cook and Dement Homes within a reasonable period of time after being ordered to do so by the Director.

The Director further prays that the Commission find that Brookside and Steven D. Warren failed to arrange for "proper initial setup" of the homes described above and that Brookside failed to correct code violations within a reasonable period of time after being ordered to do so by the Director.

The Directors further prays that the Commission find that Brookside and Warren failed to hire a Commission-licensed installer to install the manufactured home sold by Brookside to Steve Schmidt, in violation of Chapter 700.

The Director prays that the Commission authorize the General Counsel to proceed to circuit court to seek penalties against Brookside and Warren for violations of Chapter 700 and the Commission's rules.

Respectfully submitted,

/s/ Bob Berlin

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 31st day of August, 2009.

/s/ Eric Dearmont