

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

Director of the Manufactured Housing and )  
Modular Units Program of the Public )  
Service Commission, )

Complainant, )

v. )

Blakely Manufactured Homes, )

Respondent. )

Case No. MC-2006-0389

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**COMPLAINANT'S POST-HEARING BRIEF**

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## TABLE OF CONTENTS

<b>Introduction and Overview .....</b>	<b>2</b>
<b>Statement of Facts .....</b>	<b>4</b>
<b>Argument.....</b>	<b>8</b>
<b>Conclusion .....</b>	<b>24</b>

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**COMPLAINANT'S POST-HEARING BRIEF**

**COMES NOW** the Complainant, Manager of the Manufactured Housing and Modular Units Program of the Public Service Commission (“Manager”) and, for his Post-Hearing Brief, states to the Missouri Public Service Commission as follows:

**INTRODUCTION AND OVERVIEW**

This case involves a single transaction or series of transactions, namely the sale of a modular home to Larry and Joyce King (“Kings”). The home was a year model 2005 Four Seasons modular home bearing modular unit identification number M3264-01 (the “Home”). On October 18, 2005, Respondent, Blakely Manufactured Homes (“Blakely”)<sup>1</sup> and the Kings executed a document referred to as the “Sales Agreement,” wherein the Kings agreed to purchase, and Blakely agreed to sell, the year model 2005 Four Seasons modular home M3264-01. Remarks contained in the sales agreement indicate the purchase price included delivery of the home, as well as complete setup<sup>2</sup>.

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<sup>1</sup> All references to the entity of Blakely Manufactured Homes will be made using simply “Blakely.” References to the individual will be made using “Mr. Blakely.”

<sup>2</sup> See Staff Exhibit 3 HC.

The record clearly shows that the Kings moved into their new home on March 11-13, 2006. Sometime after midnight, in the early morning hours of March 13, 2006, as the Kings were preparing to spend their first night in their new home, a storm blew into the Fulton area. As the Kings moved toward their new basement to take shelter, the home shifted and was partially moved off its concrete foundation. As a result, the Kings were both seriously injured, and their new home was seriously damaged.

The Manager contends that the home, which was bought from Blakely, and which Blakely had the statutory duty to set up and correctly install on its foundation, was neither correctly installed nor fastened to the concrete foundation. The main issue of this case involves whether Blakely met his statutory duty pursuant to section 700.100.3(6) to properly set up and install the home according to the manufacturer's instructions and in accordance with Commission rules.

Blakely apparently contends that it followed the instruction manual that the manufacturer provided, and that it just so happens that the provided manufacturer instructions were not for the type of home or foundation that is at the center of this case. Although no evidence was presented to support this position, Blakely seems to suggest that it followed the manufacturer's instructions that were provided when setting up and installing the home. Blakely also seems to suggest that the provisions contained in regulations 4 CSR 240-123.065(2) and 4 CSR 240-123.080(7) should be interpreted to mean that as long as the instructions given to the dealer by the manufacturer were followed, then it shouldn't matter what instructions they were, and whether they were for the proper home, and/or type of home.

The defense also seems to contend that Blakely was not finished setting up the home. Blakely suggests that the Kings moved in before the home setup was complete, and the installation was fully finished. However, no evidence was offered to prove this theory.

As is apparent from the foregoing discussion, the Respondent's claim is based on supposition, possibility, and just plain wishful thinking. Respondent offers theories on what might have happened, but provides no evidence in support of those theories. Even if evidence had been offered to prove Blakely was given manufacturer's instructions that did not match the home type or style, the evidence would still be unconvincing. Likewise, there was absolutely no evidence to prove that Blakely was not finished setting up the home, or that he intended to complete setup at a later date, a feat which would have been impossible given that the home was already set upon, but not correctly fastened to, the foundation.

### **STATEMENT OF FACTS**

On December 12, 2005, Blakely completed an Application for Manufactured Home or Modular Unit Certificate of Dealer Registration with the Missouri Public Service Commission, which the Commission Staff received on December 28<sup>th</sup>, 2005.<sup>3</sup> On December 29, 2005, the Missouri Public Service Commission issued a Certificate of Dealer Registration to Blakely Manufactured Homes.<sup>4</sup> From that date through the events at issue, Blakely was a licensed manufactured and modular unit home dealer in the state of Missouri.<sup>5</sup>

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<sup>3</sup> See Staff Exhibit 2 HC.

<sup>4</sup> See Staff Exhibit 1.

<sup>5</sup> Tr. 37, lines 12-16.

On October 18, 2005, a sales agreement was executed between the Kings and Blakely, whereby the parties agreed to buy and sell, respectively, a year model 2005 Four Seasons modular home M3264-01.<sup>6</sup> This was the first modular home ever sold by Blakely.<sup>7</sup> On the “Remarks” section of the Sales Agreement, which is Exhibit 3, the following is clearly stated, “All option on attached order sheet includes delivery, complete setup including air conditioning.” The Kings both corroborated this when they testified that the sale of the home included setup and installation and that the setup and installation were not waived in any manner.<sup>8</sup> The Sales Agreement also indicates that the Kings made a cash down payment of \$8,900.00 on the date the Agreement was executed, leaving an unpaid balance of \$80,374.00.<sup>9</sup>

The Kings had several telephone conversations with Mr. Blakely regarding the time when the home would be ready for them to move in. Prior to leaving the state of California, the Kings testified that Mr. Blakely informed them that the home was ready to move in to when they arrived in Fulton.<sup>10</sup> The Kings arrived at the site of their new home on Friday, March 10, 2006, at about noon, and started to move furniture into the home.<sup>11</sup> Upon their arrival at the home site, the Kings were met by Mr. Blakely, who made no comment as to whether the home was completely installed and set up, or whether the home was ready for the Kings to start moving in.<sup>12</sup> At this time, the Kings were still under the impression that the home was ready for them to move in to, and that the only

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<sup>6</sup> See Staff Exhibit 3 HC.

<sup>7</sup> Tr. 128, lines 3-6.

<sup>8</sup> Tr. 43, line 25, and Tr. 44, lines 1-5; Tr. 71, lines 14-20.

<sup>9</sup> See Staff Exhibit 3 HC.

<sup>10</sup> Tr. 44, lines 16-25, and Tr. 45, lines 1-12; Tr. 74, lines 9-17; Tr. 78, lines 7-12.

<sup>11</sup> Tr. 44, lines 6-11.

<sup>12</sup> Tr. 45, lines 19-25, and Tr. 46, lines 1-12.

thing remaining to be completed was some duct work in the basement.<sup>13</sup> The Kings' impression was based partly upon earlier phone conversations with Mr. Blakely, and Mr. Blakely's actions on the day they arrived at their home site. Mr. Blakely helped the Kings begin the moving-in process by helping them line up the moving van so that it would be in line for unloading the contents of the van through a door of the home. Additionally, Blakely's son placed the ramp of the moving van into the doorway which further facilitated the unloading of the van's contents into the new home.<sup>14</sup>

Sometime after midnight, in the early morning hours of March 13, 2006, a storm struck the Fulton area. During the storm, as the Kings were making their way toward their basement to take shelter, the Kings' home was partially removed from its foundation, thereby destroying the home and causing injuries to the Kings, which required them to stay in the hospital until May.<sup>15</sup> The home was moved roughly 14 feet from where it was originally set up.<sup>16</sup> Staff witness Tim Haden testified that the model of home at issue in this case, if built to code, would be able to withstand a 90-mile-an-hour wind.<sup>17</sup> Although the modular home was partially removed from its foundation, the Kings' motor home, which was 10-15 feet away from the modular home at the time of the storm, was only slightly damaged and was still upright after the storm had passed.<sup>18</sup> Mr. Haden further testified that no matter what the wind velocity of the storm was on that

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<sup>13</sup> Tr. 45, lines 19-24; Tr. 56, lines 11-25; Tr. 57, lines 1-2; Tr. 60, lines 8-12; Tr. 66, lines 10-21; Tr. 73, lines 4-6.

<sup>14</sup> Tr. 46, lines 4-15.

<sup>15</sup> Tr. 54, lines 1-12; Tr. 55, lines 18-25; Tr. 56, lines 1-10; Tr. 58, lines 11-25; Tr. 59, lines 1-20; Tr. 87, lines 11-22.

<sup>16</sup> Tr. 176, lines 6-8.

<sup>17</sup> Tr. 141, lines 9-25.

<sup>18</sup> Tr. 64, lines 5-16.

night, the home was not tied to the foundation, and would not have been able to withstand much wind at all.<sup>19</sup>

Mr. Haden, authorized field inspector for the Manager of the Manufactured Housing and Modular Units Program of the Public Service Commission, visited the site of the Kings' home and prepared a Site Inspection Report, dated March 14, 2006.<sup>20</sup> Mr. Haden had learned about the incident from a newspaper article and contacted Ron Pleus, the Manager of the Manufactured Housing and Modular Units Program, who suggested that Mr. Haden look at the site, which he did.<sup>21</sup> After a short initial inspection, Mr. Haden realized that due to the condition of the home and the site, more people were needed to safely conduct the inspection. That afternoon he returned with his supervisor, Gene Winn of the Manufactured Housing and Modular Units Program, and Mr. Pleus, to conduct the official site inspection.<sup>22</sup> At that time, Mr. Haden and Mr. Winn participated jointly in taking the photographs and digital images contained in Exhibit 6.<sup>23</sup>

The Site Inspection Report details specific violations and specific problems that were found with the Kings' home after the storm struck. Under the "Summary of Problems" section of the Site Inspection Report, items numbered 5 through 13 address exclusively the problems and violations associated with the set up and installation of the Kings' home, and the facts therein provide the foundation for each count set forth below.<sup>24</sup>

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<sup>19</sup> Tr. 151, lines 8-14.

<sup>20</sup> See Staff Exhibit 4.

<sup>21</sup> Tr. 95, lines 3-14.

<sup>22</sup> Tr. 95, lines 14-25. Tr. 162, lines 20-24.

<sup>23</sup> Tr. 96, lines 1-25; Tr. 97, lines 1-2. Tr. 163, lines 9-22. Also see Staff Exhibit 6.

<sup>24</sup> See Staff Exhibit 4, page 2.



## **ARGUMENT**

### **COUNT I**

In Count I of its Complaint, the Staff alleges that Blakely failed to properly attach the Kings' home onto the basement foundation in accordance with the manufacturer's instructions. This constitutes a violation of 4 CSR 240-123.065(1) and (2) which state, respectively, "A dealer who sells a modular unit shall arrange for the proper initial setup of the modular unit. . . ." and "As used in this rule, 'proper initial setup' means installation and setup of the modular unit in accordance with the installation manual provided by the manufacturer of the modular unit and in complete compliance with the code and with all of the provisions regarding setup in sections 700.010 to 700.115, RSMo." Blakely's failure to properly attach the Kings' home onto the basement foundation also constitutes a violation of 4 CSR 240-123.080(7) which provides that "all modular units . . . shall be set up or installed according to the manufacturer's installation manual."<sup>25</sup>

The manufacturer has a duty to provide the appropriate instruction manual, which would instruct the dealer on how to properly install the modular home.<sup>26</sup> The manufacturer's instruction manual, which Mr. Haden referred to in his testimony, was obtained from Four Seasons, and was the proper manual to use when setting up and installing the Four Seasons modular home of the type bought by the Kings.<sup>27</sup> Mr. Haden testified that the only knowledge he had of what type of manual Blakely might have used was that, when Blakely was visited shortly after the inspection, he "held up an installation instruction manual for a four Seasons HUD house and he said, this is what I got with the

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<sup>25</sup> See Staff Exhibit 6, page 6.

<sup>26</sup> Tr. 124, lines 12-16.

<sup>27</sup> Tr. 125, lines 1-3.

home.”<sup>28</sup> Mr. Winn also testified that Blakely showed him an installation manual for HUD-built homes.<sup>29</sup> However, Mr. Haden had no direct knowledge of the type of manual supplied to Blakely by the manufacturer, or whether the manufacturer supplied Blakely any type of manual at all.<sup>30</sup> The HUD manual that Blakely might have used to set up and install the King home is a generic manual, and a dealer would need a specific manual for the specific type of home to be able to properly install that exact home.<sup>31</sup> Even if a HUD manual was used and this was a manufactured house instead of a modular home, it would still not have been in compliance with the way it was set up and anchored.<sup>32</sup>

The HUD manual and the manual for the home in question are very similar in the requirements for the fastening of the home to the foundation, column support post securement, stairway installation, end wall fastening, etc. This home was not installed according to the HUD manual that Blakely stated he received.

Blakely seems to contend, although no direct evidence was provided, that he was given the wrong manual by the manufacturer and he used that manual to set up and install the Kings’ home. Furthermore, Blakely suggests that it doesn’t matter what manual he used to install the home, just so long as he used the manual that was provided him by the manufacturer, right or wrong. This argument is unsupported by fact or law.

Section 700.100.3(6) and Commission Rule 4 CSR 240-123.080(7) provides that “all modular units . . . shall be set up or installed according to the manufacturer’s

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<sup>28</sup> Tr. 125, lines 12-20. In the quote, Blakely was apparently referencing the specific home which he sold to the Kings.

<sup>29</sup> Tr. 166, lines 2-5.

<sup>30</sup> Tr. 130, lines 1-5.

<sup>31</sup> Tr. 127, lines 16-23.

<sup>32</sup> Tr. 175, lines 3-7.

installation manual.” Suggesting that this regulation be interpreted so as to allow setup or installation of a home based on the manual for a completely different type of home is preposterous. It is clear that the meaning and intent of this regulation is for dealers to set up and install a modular home according to the manufacturer’s instructions for that specific type of home. Otherwise, there would be no reason for manufacturers to even have a different manual for different types of modular units, whether a unit is to be attached to a simple concrete base or to a foundation with a basement, or whether the home is multi-storied, et cetera.

There must be a reason for different installation instructions based on the type of home, and the reason is presumably that different types of modular homes need different installation procedures to be safely and adequately installed and anchored. The instruction manual used by the dealer should correspond to the type and model of home being installed, regardless of what manual the dealer claims to have been given. The very fact that the manufacturer has an instruction manual for a specific type of home (as evidenced by Mr. Haden’s ability to procure one from the manufacturer<sup>33</sup>) should mean that the dealer has a duty to acquire the appropriate manual and apply its instructions when setting up a modular home.

The Manufacturer’s Instruction Manual,<sup>34</sup> for the Four Seasons home of the type bought by the Kings, required certain procedures to be followed to properly attach the home to the concrete foundation. Mr. Haden testified that the instructions required:

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<sup>33</sup> Tr. 125, lines 1-3.

<sup>34</sup> For purposes of this brief, all following references to “Manufacturer’s Instruction Manual,” “Instructions,” “Manual,” etc. shall be references to the specific Manufacturer’s Instruction Manual for the Four Seasons home of the type bought by the Kings, and not a reference to any other type of manufactured housing manual or modular unit manual.

[A] sill plate to be placed on top of the concrete wall and anchored to the wall with 5/8 inch diameter anchor bolts. Those anchor bolts have a minimum embedment of seven inches into the concrete. The sill plate is then applied to the top of the wall and bolted down with those anchor bolts, and once the home is positioned on top of that sill plate, the home is fastened to the sill plate using the 16-D nail spaced at six inches on center around the perimeter of the home.<sup>35</sup>

According to Mr. Haden's Site Inspection Report, the home was resting on concrete walls on both ends and the back and fastened to the walls using "Minute Man" frame straps that were implanted in the top of the concrete wall and fastened to the inside of the home's perimeter rim joist using one 1/4" x 1 1/2" lag bolt per "Minute Man" strap.<sup>36</sup> When the home was installed, a hole was drilled through the "Minute Man" frame straps and then a 1/4" by 1 1/2" lag screw was attached from the strap to the frame of the home, and these straps were placed roughly two to four feet from the corners, and then spaced six to seven feet along the top of the concrete wall.<sup>37</sup> The "Minute Man" frame straps that were employed are not approved for that use and are not called for or permitted in the Manufacturer's Instruction Manual.<sup>38</sup>

Likewise, there was no sill plate at any place along the concrete foundation wall, nor were anchor bolts embedded into the concrete at any place along that wall.<sup>39</sup> Along the back wall of the home, which was the walk-out section that was wood-framed, there were no fastening devices used at all, but only a strip of spray foam-type insulation for which the only purpose would be to seal outside air from the basement.<sup>40</sup> The installation

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<sup>35</sup> Tr. 101, lines 18-25 and Tr. 102, line 1.

<sup>36</sup> See Staff Exhibit 4, page 2 number 5.

<sup>37</sup> Tr. 102, lines 11-13.

<sup>38</sup> Tr. 102, lines 20-25; Tr. 103, lines 1-7.

<sup>39</sup> Tr. 102, lines 2-6.

<sup>40</sup> Tr. 99, lines 15-24; Tr. 100, lines 9-20; Tr. 102, lines 16-19.

of the sill plate and the proper anchor bolts must be installed prior to setting the home on the foundation.<sup>41</sup>

The foundation is an extremely important part of any structure. Although the security of the concrete foundation itself is not an issue in this case, the way in which the home was fastened and secured to the concrete foundation is an issue. Blakely's failure to properly secure this home to its foundation resulted in an entire modular unit being shifted 14 feet during a storm that didn't even overturn, and barely damaged, a motor home sitting only about 15 feet away.<sup>42</sup>

## **COUNT II**

Count II of the Complaint states that Blakely failed to properly support the centerline of the Kings' home with the necessary number of jack posts, as per the manufacturer's instructions. This is clearly in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7). The Manufacturer's Installation Manual, page 10.1, requires the centerline jack posts to be placed along the length of the home, spaced at various intervals, anywhere from four to six feet, under concentrated loads along the line where the two sections of the home meet (referred to as the "marriage line" or centerline).<sup>43</sup> These jack posts are designed to provide the necessary support for the center of the home, where the two sections meet. This particular home required twelve jack posts along the marriage line, and two more jack posts on the outside corners of the stairwell opening.<sup>44</sup>

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<sup>41</sup> Tr. 159, lines 19-22.

<sup>42</sup> Tr. 176, lines 6-8; Tr. 64, lines 5-16.

<sup>43</sup> Tr. 104, lines 7-20.

<sup>44</sup> Tr. 104, lines 7-20; Tr. 105, lines 10-15.

Mr. Haden testified that the jack posts supporting the Kings' home were evenly spaced along the marriage line at an interval of approximately nine feet, an interval not permitted in the manufacturer's instructions.<sup>45</sup> Likewise, Mr. Haden was unable to find the required total of 14 jack posts needed to support the King home. Because the home was badly damaged during the storm, it was hard for Mr. Haden to determine the exact number of jack posts present at the site. However, from the nine-foot spacing between jack posts that he did observe, he calculated that the home probably had only six or seven jack posts along the marriage line, about half of what is required by the manufacturer.<sup>46</sup> It would have been possible for Blakely to attach jack posts after the initial installation of the home.<sup>47</sup> However, the Kings were under the impression that the home was complete on the day they started moving in, except for some minor duct work.<sup>48</sup> Mr. Blakely said nothing to the Kings about adding more jack posts. Nor did Mr. Blakely inform the Kings of any other work that needed to be finished, either before the Kings moved in or after.<sup>49</sup>

### COUNT III

Count III states that Blakely failed again to follow the manufacturer's instructions by neglecting to properly attach the supporting jack posts to the center beam of the home, as well as to the concrete footing, in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7). According to the manufacturer's instructions, the top of the jack posts are to be attached to the centerline (or marriage line) of the home by two #10 two-

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<sup>45</sup> Tr. 104, lines 21-25; Tr. 105, lines 1-2; Tr. 106, lines 11-13.

<sup>46</sup> Tr. 105, lines 21-25; Tr. 106, lines 1-13.

<sup>47</sup> Tr. 135, lines 1-3.

<sup>48</sup> Tr. 45, lines 19-24; Tr. 56, lines 11-25; Tr. 57, lines 1-2; Tr. 60, lines 8-12; Tr. 66, lines 10-21; Tr. 73, lines 4-6.

<sup>49</sup> Tr. 45, lines 18-25; Tr. 46, lines 7-12.

inch screws that are to be screwed into the centerline beam.<sup>50</sup> The manufacturer also requires four 5/8" by 8" anchor bolts to be fastened from the bottom of the jack posts into the concrete base, to keep the jack posts in place.<sup>51</sup>

Blakely incorrectly fastened the jack posts on the King home to the centerline of the home. Where the two home sections come together, the jack post should be supporting, and attached to, both sections. But on the King home, the jack posts were only attached to one section.<sup>52</sup> The fastening itself was also done improperly, because only a 3/8" or 5/16" bolt (the inspectors were not able to determine which) was used to anchor the jack post to that one side of the home.<sup>53</sup> The manufacturer's instructions require smaller screws to be anchored from the top of the jack post into both sections.<sup>54</sup> Using a large anchor bolt, as Blakely did, could possibly damage the beam by splitting it, or weakening it.<sup>55</sup> Moreover, the jack posts were not attached to the concrete floor.<sup>56</sup> The bottoms of the jack posts were merely resting on the concrete floor.<sup>57</sup> The tops and bottoms of the jack posts could have been properly attached, but were not, after the Kings moved in. However, it should again be noted that Blakely made no mention of having to perform any further work on any portion of the home, aside from the duct work.<sup>58</sup>

#### COUNT IV

Count IV states that Blakely also failed to fasten the home's hinged roof to the kingpost stubs, according to the directions contained in the manufacturer's installation

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<sup>50</sup> Tr. 106, lines 14-25; Tr. 107, lines 1-2.

<sup>51</sup> Tr. 107, lines 11-15.

<sup>52</sup> See Staff Exhibit 6, page 8; Tr. 107, lines 3-10.

<sup>53</sup> Tr. 107, lines 3-10.

<sup>54</sup> Tr. 106, lines 20-25; Tr. 107, lines 3-10 and lines 21-25; Tr. 108, lines 1-3.

<sup>55</sup> Tr. 107, lines 21-25; Tr. 108, lines 1-3.

<sup>56</sup> Tr. 107, lines 11-15; also see Staff Exhibit 6, page 8.

<sup>57</sup> Tr. 107, lines 11-12.

<sup>58</sup> Tr. 45, lines 18-25; Tr. 46, lines 7-12.

instructions. This is also in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7). Mr. Haden explained in his testimony that the type of home the Kings bought includes a hinged roof that can be lowered for transportation purposes. When the home is installed and set up, the hinged roof is lifted up, and a two-piece king post is used to fasten the roof into place.<sup>59</sup> When the roof is lifted, the king post swings out from underneath the roof section. It is placed upon stubbed king posts, which sit along the centerline of both sections of the home. This places the roof in its final position.<sup>60</sup>

Once the roof is placed in its final position, with the hinged king post set upon the stubbed king posts, then the hinged king post is to be fastened to the stub king posts with two #8 x 3" screws at each stub location.<sup>61</sup> The Manufacturer's Installation Manual, page 22, clearly states: "Once the roof has been raised to the proper height, swing the hinged supports into place and fasten the 2x3 center rail into the kingpost stub using two #8 x 3" wood screws [to be] screwed at each truss."<sup>62</sup> Furthermore, there is a king post for every rafter, and the rafters are spaced at 16 inches along the entire length of the home. There is a factory installed device which keeps all of the king posts in alignment, but each king post must still be fastened to the king post stub, all along the length of the home, every 16 inches.<sup>63</sup>

None of the king posts on the Kings' home was fastened to the king post stubs.<sup>64</sup> Neither one of the hinged king post walls were fastened to any of the stubbed king posts, which caused the king posts to actually shift off the stubbed king posts during the

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<sup>59</sup> Tr. 108, lines 9-13.

<sup>60</sup> Tr. 108, lines 9-16; also see Staff Exhibit 6, page 9.

<sup>61</sup> Tr. 108, lines 17-19.

<sup>62</sup> See Staff Exhibit 6, page 9.

<sup>63</sup> Tr. 109, lines 1-15.

<sup>64</sup> Tr. 108, lines 19-22; Tr. 109, lines 14-15.



storm.<sup>65</sup> Although, the king posts could have been attached to the king post stubs at a later time, it is a function that is normally done during the installation process in order to properly secure the roof to the home.<sup>66</sup> Again, though, Blakely made no mention of having any unfinished work in connection with the installation.<sup>67</sup> Because the roof ridge section<sup>68</sup> and the siding on the end walls<sup>69</sup> were already installed, this situation would make it very hard to access the king post sections without tearing out previous work at great cost. These facts strongly suggest that Blakely never intended to properly fasten the king posts to the king post stubs.

### COUNT V

Count V states that Blakely failed to properly fasten in place the drop-in roof ridge sections of the home in accordance with manufacturer installation instructions, again in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7). Mr. Haden explained that once the roof ridge of each home section is raised, and the king posts are properly attached and aligned, then a ridge section is placed which attaches the two roof ridge sections together.<sup>70</sup> The top ridge drops in and should be attached to each roof section by using two #8x3" screws per bay.<sup>71</sup>

For some unknown reason, Blakely used many shims, with a total thickness of four or five inches on each side of the roof ridge, to make the drop-in roof ridge fit correctly. Blakely secured the shims with nails.<sup>72</sup> According to the manufacturer's instructions, two #8 screws are required for each rail, per bay, and no nailing is required

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<sup>65</sup> Tr. 108, lines 19-25, also see Staff Exhibit 6, page 9.

<sup>66</sup> Tr. 135, lines 12-20.

<sup>67</sup> Tr. 45, lines 18-25; Tr. 46, lines 7-12.

<sup>68</sup> Tr. 108, lines 4-25.

<sup>69</sup> Tr. 139, lines 14-17.

<sup>70</sup> Tr. 109, lines 22-25; also see Staff Exhibit 6, page 10.

<sup>71</sup> Tr. 109, lines 22-25, Tr. 110, lines 1-3; also see Staff Exhibit 6, page 10.

<sup>72</sup> Tr. 110, lines 8-17.

at all.<sup>73</sup> Mr. Haden did not observe the use of any screws, but only nails, and a shim was nailed to the top of the roof section to hold it in place.<sup>74</sup> Furthermore, there should not be any shimming between the ridge section and the top of the roof.<sup>75</sup> Because the entire installation of the roof ridge section was improperly done, the actual peak section of the home came loose when the home moved from its foundation.<sup>76</sup>

## COUNT VI

Count VI states that Blakely failed to properly fasten together the two end walls of the home sections as per the directions in the manufacturer's instructions, also in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7). The manufacturer's instructions provide for a way to fasten together the end walls of the two sections of the home. When the home is in its final position, the end walls of the two sections are to be fastened together using #8 x 3" screws spaced 12 inches apart on center.<sup>77</sup>

Blakely did not follow the manufacturer's instructions when fastening together the end walls. The end walls of the Kings' home were fastened together with metal straps that had small screws holding them to the sides of the home sections.<sup>78</sup> In the picture contained on page 11 of Exhibit 6, only two straps are visible. Both of those straps pulled loose when the home was moved from its foundation.<sup>79</sup> Furthermore, the

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<sup>73</sup> Tr. 111, lines 1-5.

<sup>74</sup> Tr. 110, lines 18-25.

<sup>75</sup> Tr. 110, lines 14-17.

<sup>76</sup> Tr. 110, lines 4-6.

<sup>77</sup> Tr. 111, lines 13-25; also see Staff Exhibit 6, page 11.

<sup>78</sup> Tr. 112, lines 1-3.

<sup>79</sup> Tr. 112, lines 1-7.

metal straps used by Blakely to connect the end walls are not approved for that application.<sup>80</sup>

Even though it would have been possible for Blakely to go back and properly connect the two sections, after the home was installed, doing so would be highly impractical and costly. Blakely had already installed siding over the meeting of the two sections.<sup>81</sup> It would be unlikely for Blakely to return to the site and re-fasten together the section end walls. Because, for him to do so, he would have had to tear off, at greater cost to Blakely, the already completed wall siding. This impracticality strongly suggests that Blakely never intended to come back and properly fasten the end walls together.

## COUNT VII

Blakely failed to properly construct the home stairway to the basement in accordance with the International Residential Code-2000. R314.2 2000 IRC states:

The maximum riser height shall be 7 <sup>3</sup>/<sub>4</sub> inches (196mm) and the minimum tread depth shall be 10 inches (254mm). The riser height shall be measured vertically between the leading edges of the adjacent treads. The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The walking surface of treads and landings of a stairway shall be sloped no steeper than one unit vertical in 48 units horizontal (2 percent slope). The greatest rise height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5mm). The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5mm).

Failure to follow the IRC is a violation of 4 CSR 240-123.080(3), (4) and (7), and 4 CSR 240-123.065(1) and (2). 4 CSR 240-123.080(3) provides that modular units "shall be manufactured in accordance with and meet the requirements of . . . [the] International Residential Code-2000." Furthermore, 4 CSR 240-123.080(4) "incorporates by reference

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<sup>80</sup> Tr. 112, lines 8-11.

<sup>81</sup> Tr. 139, lines 14-17.

the full text of the material listed in section 3 [of 4 CSR 240-123.080].” There is no doubt that the IRC governs the present case, and all requirements of the IRC must be met.

Mr. Haden testified that R314.2 2000 IRC requires a minimum tread depth of ten inches and a ¾” nosing if the back of the stairs are enclosed, which these are. The tread area is the place where a person would step if they were walking up or down the stairs. Tread area is measured from front to back.<sup>82</sup> The inspection team measured the tread depth of the Kings’ basement stairs, and the tread was only 9 inches.<sup>83</sup> Likewise, Blakely also failed to install nosing on the stairs.<sup>84</sup>

### **COUNT VIII**

Blakely also failed to install guards on the sides of the home’s basement stairway in accordance with International Residential Code-2000. R316.1 2000 IRC states:

Porches, balconies or raised floor surfaces located more than 30 inches (762 mm) above the floor or grade below shall have guards not less than 36 inches (914 mm) in height. Open sides of stairs with a total rise of more than 30 inches (762mm) above the floor or grade below shall have guards not less than 34 inches (864mm) in height measured vertically from the nosing of the treads.

R316.2 2000 IRC states:

Required guards on open sides of stairways, raised floor areas, balconies and porches shall have intermediate rails or ornamental closures that do not allow the passage of a sphere 4 inches (102 mm) in diameter. Required guards shall not be constructed with horizontal rails or other ornamental pattern that results in a ladder effect.

Exception: The triangle openings formed by the riser, tread and bottom rails of a guard at the open side of a stairway are permitted to be of such size that a sphere 6 inches (152 mm) cannot pass through.

Failure to follow the IRC when constructing a staircase is a violation of 4 CSR 240-123.080(3), (4) and (7), as well as 4 CSR 240-123.065(1) and (2). As Mr. Haden

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<sup>82</sup> Tr. 112, lines 12-25; Tr. 113, lines 1-7.

<sup>83</sup> Tr. 112, line 25; Tr. 113, line 1; also see Staff Exhibit 6, page 12.

<sup>84</sup> Tr. 113, lines 8-11.

explained, unless enclosed by walls, stairs must have guards of at least 34 inches in height above the stairs, to prevent accidents.<sup>85</sup> The stairs to the basement of the Kings' home did not include guards of any type, on either side, even though both sides of the stairway were open. There was nothing on the stairs that would help prevent people from falling.<sup>86</sup> A guard could have been installed after the rest of the home was completed, but again, Blakely made no mention of any further work that needed to be done on the home.<sup>87</sup>

It is important to note that there is a difference between guards and handrails. A guard would be similar to having a wall on each side of the stairway, something that would protect the people traveling the stairway from falling. A guard could also be a railing, just as long as it would be at least 34 inches from the stairs themselves.<sup>88</sup> The handrail may be incorporated into the guard, whether by installing a handrail on top of a railing, or by installing a handrail attached to a wall. In any case, the code requires that a handrail be either incorporated with guards, or installed on a wall.<sup>89</sup>

## **COUNT IX**

Blakely failed to install a handrail on the home's basement stairway in accordance with the International Residential Code-2000. R315.1 2000 IRC states:

Handrails having minimum and maximum heights of 34 inches and 38 inches (864 mm and 965 mm), respectively, measured vertically from the nosing of the treads, shall be provided on at least one side of the stairways. All required handrails shall be continuous the full length of the stairs with two or more from a point directly above the top riser of a flight to a point directly above the lowest riser of the flight. Ends shall be returned or shall terminate in newel posts or

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<sup>85</sup> Tr. 114, lines 13-17.

<sup>86</sup> Tr. 114, lines 13-23; see also Staff Exhibit 6, page 13.

<sup>87</sup> Tr. 140, lines 14-17; Tr. 45, lines 18-25; Tr. 46, lines 7-12.

<sup>88</sup> Tr. 132, lines 15-25; Tr. 133, line 1.

<sup>89</sup> Tr. 133, lines 2-11.

safety terminals. Handrails adjacent to a wall shall have a space of not less than 1.5 inches (38 mm) between the wall and the handrail.

Failure to follow the IRC is again a violation of 4 CSR 240-123.080(3), (4) and (7), and 4 CSR 240-123.065(1) and (2). In addition to guards, the staircase must also have at least one handrail to assist people traveling up or down the stairs. Mr. Haden did not observe any guards, any handrail, or any place where a guard or handrail had been applied.<sup>90</sup> A handrail could have been added after completion of the home, even several months after the Kings moved in, but Blakely did not mention any further work that needed to be done.<sup>91</sup> Blakely implied by his actions that the home was ready for living. Even though additions could have been made to the stairs to make them compliant with the applicable code, Blakely should have at least disclosed the condition of the stairs to the Kings, and mentioned that further work was needed. It appears from the other violations concerning the stair case, such as the failure to properly construct the tread depth of the stairs, that Mr. Blakely had no knowledge of the IRC nor what it contained regarding the construction of a staircase. It appears unlikely that Blakely ever intended to return to the Kings' home to construct the required guards and handrails.

## **PENALTIES**

Section 700.115.1 RSMo. provides that “. . . a violation of the provisions of sections 700.010 and 700.115 shall constitute a violation of the provisions of section 407.020 RSMo.” Section 700.115.2 RSMo. states:

*Notwithstanding any provisions of subsection 1 of this section to the contrary, 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. Each violation of this chapter shall constitute a separate violation with respect to each manufactured home or with respect to*

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<sup>90</sup> Tr. 115, lines 3-16; see also Staff Exhibit 6, page 14.

<sup>91</sup> Tr. 45, lines 18-25; Tr. 46, lines 7-12.

*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. [emphasis added]*

Section 700.040(5) provides that “the Commission may issue and promulgate such rules and regulations as necessary to make effective the code and the provisions of sections 700.010 to 700.115.” Commission Rule 4 CSR 240-123.080(3) requires modular unit homes to be manufactured in accordance with the *International Residential Code-2000*. Because section 700.010(2) defines “Code” as “the standards relating to manufactured homes, or modular units as adopted by the commission”, then any modular unit code or commission rule violations fall within the ambit of the civil penalty provisions of Section 700.115.2 RSMo.

Section 700.100.2 RSMo. provides that:

The Commission may consider a complaint filed with it charging a registered manufacturer or dealer with a violation of the provisions of this section, which charges, if proven, shall constitute grounds for revocation or suspension of his registration, or the placing of the registered manufacturer or dealer on probation.

Section 700.100.3(6) further provides grounds for the Commission to suspend, revoke, or place on probation a dealer’s registration for any dealer’s “. . . failing to arrange for the initial setup of any new . . . modular unit . . .”

Therefore, because the Staff determines Blakely committed multiple violations of Commission Rules 4 CSR 240-123.065 *Modular Unit Dealer Setup Responsibilities* and 4 CSR 240-123.080 *Code for Modular Units* as to Blakely’s setup of the Kings’ home, as enumerated in Counts 1 through 9 above; such violations constitute more than ample grounds for disciplinary action against Blakely by the Commission as authorized under Section 700.100 RSMo.

Furthermore, Section 386.600 RSMo. provides that:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission. [emphasis added]

## **CONCLUSION**

To reiterate, this case consists of the facts and circumstances surrounding the sale, setup, and installation of a single modular home. The installation and setup of the home was grossly inadequate and violated 4 CSR 240-123.065(1) and (2); 4 CSR 240-123.080(7); sections 700.010 to 700.115 of the Revised Statutes of Missouri; and sections R315.1, R316.1 and R316.2 of International Residential Code-2000. Counts I through VI are violations which seriously affected the structural integrity of the modular home. Counts VII through IX contained violations regarding not the structural integrity, but the safety of the occupants as they would normally go about their lives, walking up and down the stairs, which were not constructed properly and were inherently dangerous. All nine counts are the result of shoddy construction and complete lack of attention to the applicable codes and regulations which govern the set up and installation of modular homes. There is nothing to indicate that Mr. Blakely followed any installation instruction for the setup and securement of this home to the foundation. Likewise, all nine counts are equally important and equally subject to sanctions. Finally, all nine counts are violations which made the home inherently unsafe.

**WHEREFORE**, the Director requests that the Commission, as enumerated in Counts I through IX above:



1. Find that Blakely failed to properly attach the Kings' home onto the basement foundation in accordance with manufacturer's instructions in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7);
2. Find that Blakely failed to properly support the centerline of the Kings' home with necessary jack posts according to manufacturer's instructions in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7);
3. Find that Blakely failed to properly attach the supporting jack posts to the home's center beam and to the concrete footing according to the manufacturer's foundation drawing in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7);
4. Find that Blakely failed to properly fasten the home's hinged roof according to the manufacturer's installation instructions in violations of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7);
5. Find that Blakely failed to properly fasten in place the drop-in roof ridge sections of the home in accordance with the manufacturer's installation instructions in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7);
6. Find that Blakely failed to properly fasten together the end walls of both home sections in accordance with the manufacturer's installation instructions in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(7);

7. Find that Blakely failed to properly construct the home stairway to the basement in accordance with the *International Residential Code-2000* in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(3), (4) and (7);
8. Find that Blakely failed to install guards on the sides of the home's basement stairway in accordance with the *International Residential Code-2000* in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(3), (4) and (7);
9. Find that Blakely failed to install a handrail on the home's basement stairway in accordance with the *International Residential Code-2000* in violation of 4 CSR 240-123.065(1) and (2), and 4 CSR 240-123.080(3), (4) and (7); and,
10. Authorize the Commission's General Counsel to seek civil penalties from Blakely Manufactured Homes pursuant to Section 700.115.2; and,
11. Issue other findings and orders as are just and reasonable.

Respectfully submitted,

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to the persons listed below on this 3rd day of January 2007.

**/s/ Robert S. Berlin**

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