

**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., )  
2455 US Highway 67 South )  
Festus, MO 63028 )

**Case No. MC-2009-0020**

and )

Steven D. Warren, an individual. )  
3936 Falcon View Lane )  
St. Louis, MO 63129 )

Respondents. )

**DIRECTOR'S FIRST AMENDED COMPLAINT**

**COMES NOW** the Director of the Manufactured Homes and Modular Units Program of the Missouri Public Service Commission (Director), by and through the Missouri Public Service Commission's (Commission) Office of General Counsel, pursuant to Sections 386.240, 700.045 and 700.100 RSMo 2000 and rule 4 CSR 240-120.110 and brings the following First Amended Complaint against Brookside Homes, Inc. (Brookside or the Company) and Steven D. Warren, an individual.

In this First Amended Complaint, the Director intends to bring before the Commission for resolution and determination the issue of the corresponding rights and responsibilities of Commission-licensed dealers and installers of manufactured homes. The current statutory scheme in Chapter 700 provides that dealers must "arrange for the proper initial setup" of a

manufactured home. The dealer must use only installers licensed by the Commission to install new manufactured homes. The Director's position is that the dealer remains responsible for all installation issues when the installer incorrectly or incompletely installs a home. Brookside's position appears to be that once a licensed installer is retained, the dealer has discharged its statutory obligation to arrange for proper initial setup.

#### **STATEMENT OF THE CONTROLLING LAW**

1. The Commission has jurisdiction over manufactured homes, manufactured home dealers, and manufactured home installers pursuant to Chapter 700 RSMo 2000<sup>1</sup>.

2. During all times alleged in this First Amended Complaint Brookside was a manufactured home dealer as that term is defined in Section 700.010(4).

3. Steven D. Warren is an individual and the sole shareholder, officer and director of Brookside Homes, exercising complete dominion and control over the affairs of the Company.

4. Under Commission Rule 4 CSR 240-120.065(1), promulgated under the authority of Section 700.040.5, 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.

5. 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.

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<sup>1</sup> All references to the Revised Statutes of Missouri will be to RSMo 2000 as currently supplemented unless otherwise noted.

6. 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. Under the definition provided in this Rule, “proper initial setup” includes installation.

7. Furthermore, 4 CSR 240-120.100 provides that all new manufactured homes shall be set up or installed according to the manufacturer’s installation instructions and in complete compliance with the code.

8. The “code” as is used in 120.100 is defined as the federal standards as incorporated by reference in 24 CFR 3280.

9. 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.

10. In addition to providing for the initial proper setup of new manufactured homes, dealers are subject to Section 700.100.3(9), which 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.

11. 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 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.

### **PROCEDURAL BACKGROUND**

12. In January, 2007, upon application by Brookside, the Commission issued to Brookside a certificate of dealer registration.

13. In December 2007, Brookside applied to renew its dealership registration with the Commission.

14. In January 2008, the Director notified Brookside that he could not process or approve Brookside's renewal application because the Director had deemed that Brookside:

a) failed to arrange for the proper initial setup of three manufactured homes<sup>2</sup> in violation of Section 700.100.3(6) and,

b) engaged in conduct in violation of Section 700.045(5) by failing to correct code violations in three manufactured homes within a reasonable period of time after being ordered to do so by the Director, in violation of Section 700.100.3(9).

15. On July 8, 2008, the Director filed a Complaint, designated by the Commission as Case No. MC-2009-0020, reaffirming his allegations concerning Brookside's conduct and requesting both that the Commission formally reaffirm the Director's allegations and actions and authorize the General Counsel to seek statutory penalties in Circuit Court.

16. On July 24, 2008, the Director sent authorized representatives to inspect the premises of Brookside Homes, Inc. On such date Brookside refused to allow the Director's representatives to review and inspect records which were requested from the dealer at the dealer's place of business.

17. On October 7, 2008, the Director filed a second Complaint, designated by the Commission as Case No. MC-2009-0127, alleging illegality related to Brookside's failure to permit an authorized inspection and further alleging that since January 15, 2008, Brookside and Warren have been holding forth as a dealer by selling and offering for sale new manufactured homes, in violation of RSMo §§ 700.470 and 700.045.

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<sup>2</sup> Two of these homes, the Dememt and Cook homes, are a subject of the current amended complaint.

18. On January 7, 2009, Brookside filed an application with the Director to register as a manufactured home dealer or to renew the registration that was previously denied by the Director in January of 2008.

19. On January 13, 2009, the Director filed a Complaint to Deny Registration, Motion for Hearing, and Motion for Expedited Treatment, designated by the Commission as Case No. MC-2009-0259, motioning the Commission to deny Brookside's current application, after hearing, based upon the conduct alleged by the Director in the previous Complaints, Case Nos. MC-2009-0020 and MC-2009-0127.

20. An evidentiary hearing in Case No. MC-2009-0020 was scheduled to begin February 10, 2009.

21. On February 6, 2009, the parties filed a Joint Motion to Continue Hearing in order to file an amended complaint, the purpose of which was to efficiently present for resolution questions concerning issues of law common to all of the underlying complaints against Brookside.

22. On February 6, 2009, the Commission granted the Joint Motion to Continue Hearing and ordered that the hearing originally scheduled for February 10-11, 2009 be continued until further notice.

23. On or about February 27, 2009, the Director received information indicating that Brookside Homes, Inc. was planning to seek dissolution of its corporate entity and wind-up the affairs of the corporation.

## FACTS SUPPORTING THE DIRECTOR'S ALLEGATIONS

### COUNT I

#### The Mills Home

24. The Director hereby re-alleges and incorporates herein the allegations contained in paragraphs 1-23.

25. On February 15, 2007, the Director inspected a new manufactured home sold by Brookside to Terry and Pamela Mills.

26. The inspection revealed several code violations and setup deficiencies, the responsibility for which was originally assigned by the Director to both the licensed dealer (Brookside) and the licensed installer (Theiss).

27. On February 26, 2007, the Director ordered Brookside in writing to repair the home pursuant to Section 700.045(5).

28. On April 6, 2007, the Director again ordered Brookside in writing to repair the home.

29. On August 24, 2007, the Director re-inspected the Mills home and again noted several code violations and setup deficiencies remaining from the initial February 15, 2007 inspection.

30. As of the date of the filing of this First Amended Complaint Brookside has yet to complete the ordered repairs.

31. More than ninety (90) days have elapsed since Brookside was first ordered to make the repairs to the Mills home.

32. Brookside failed and refused to arrange for the proper initial setup of the Mills home in violation of Section 700.100.3(6) and Commission Rule 4 CSR 240-120.065.

33. Brookside failed and refused to correct code violations within a reasonable period of time after being ordered to do so by the Director, in violation of Section 700.045(5).

## **COUNT II**

### **The Van Morelan Home**

34. The Director hereby re-alleges and incorporates herein the allegations contained in paragraphs 1-33.

35. On April 23, 2007, the Director inspected a new manufactured home sold by Brookside to Van Morelan.

36. The inspection revealed several code violations and setup deficiencies, the responsibility for which was originally assigned by the Director to both the licensed dealer (Brookside) and the licensed installer (Theiss).

37. On April 24, 2007, the Director ordered Brookside in writing to repair the home pursuant to Section 700.045(5).

38. The Director re-inspected the home on March 21, 2008 and noted code several violations and setup deficiencies which remained from the initial April 23, 2007 inspection.

39. On March 28, 2008, the Director again ordered Brookside in writing to repair the home.

40. As of the date of the filing of this First Amended Complaint Brookside has yet to complete the ordered repairs.

41. More than ninety (90) days have elapsed since Brookside was first ordered to make the repairs to the Van Morelan home.

42. Brookside failed and refused to arrange for the proper initial setup of the Van Morelan home in violation of Section 700.100.3(6) and Commission Rule 4 CSR 240-120.065.

43. Brookside failed and refused to correct code violations within a reasonable period of time after being ordered to do so by the Director, in violation of Section 700.045(5).

### **COUNT III**

#### **The Wolff Home**

44. The Director hereby re-alleges and incorporates herein the allegations contained in paragraphs 1-43.

45. On April 30, 2007, the Director inspected a new manufactured home sold by Brookside to Judy Wolff.

46. The inspection revealed several code violations and setup deficiencies, the responsibility for which was originally assigned by the Director to both the licensed dealer (Brookside) and the licensed installer (Theiss).

47. On May 2, 2007, the Director ordered Brookside in writing to repair the home pursuant to Section 700.045(5).

48. As of the date of the filing of this First Amended Complaint Brookside has yet to complete the all of the ordered repairs.

49. More than ninety (90) days have elapsed since Brookside was first ordered to make the repairs to the Wolff home.

50. Brookside failed and refused to arrange for the proper initial setup of the Wolff home in violation of Section 700.100.3(6) and Commission Rule 4 CSR 240-120.065.

51. Brookside failed and refused to correct code violations within a reasonable period of time after being ordered to do so by the Director, in violation of Section 700.045(5).

## COUNT IV

### **The Albert Home**

52. The Director hereby re-alleges and incorporates herein the allegations contained in paragraphs 1-51.

53. On May 10, 2007, the Director inspected a new manufactured home sold by Brookside to Winton and Edna Albert.

54. The inspection revealed several code violations and setup deficiencies, the responsibility for which was originally assigned by the Director to both the licensed dealer (Brookside) and the licensed installer (Theiss).

55. On May 22, 2007, the Director ordered Brookside in writing to repair the home pursuant to Section 700.045(5).

56. On June 13, 2007, the Director again ordered Brookside in writing to repair the home pursuant to Section 700.045(5).

57. On April 10, 2008, the Director re-inspected the home and noted several code violations and setup deficiencies which remained from the initial May 10, 2007 inspection.

58. As of the date of the filing of this First Amended Complaint Brookside has yet to complete the all of the ordered repairs.

59. More than ninety (90) days have elapsed since Brookside was first ordered to make the repairs to the Albert home.

60. Brookside failed and refused to arrange for the proper initial setup of the Albert home in violation of Section 700.100.3(6) and Commission Rule 4 CSR 240-120.065.

61. Brookside failed and refused to correct code violations within a reasonable period of time after being ordered to do so by the Director, in violation of Section 700.045(5).

## COUNT V

### **The Cook Home**

62. The Director hereby re-alleges and incorporates herein the allegations contained in paragraphs 1-61.

63. On June 29, 2007, the Director inspected a new manufactured home sold by Brookside to Bill Cook.

64. The inspection revealed several code violations and setup deficiencies, the responsibility for which was originally assigned by the Director to both the licensed dealer (Brookside) and the licensed installer (Theiss).

65. On July 6, 2007, the Director ordered Brookside in writing to repair the home pursuant to Section 700.045(5).

66. December 18, 2007, the Director again ordered Brookside in writing to repair the home.

67. The Director re-inspected the home on February 20, 2008 and noted several code violations and setup deficiencies which remained from the initial June 29, 2007 inspection.

68. On February 22, 2008, the Director again ordered Brookside in writing to repair the home.

69. Finally, on March 28, 2008 the Director again ordered Brookside in writing to repair the home.

70. More than ninety (90) days have elapsed since the director first ordered Brookside to make repairs to the Cook home.

71. As of the date of this pleading, Brookside has yet to complete the ordered repairs.

72. Brookside failed and refused to arrange for the proper initial setup of the Cook home in violation of Section 700.100.3(6) and Commission Rule 4 CSR 240-120.065.

73. Brookside failed and refused to correct code violations within a reasonable period of time after being ordered to do so by the Director, in violation of Section 700.045(5).

## **COUNT VI**

### **The Hampton Home**

74. The Director hereby re-alleges and incorporates herein the allegations contained in paragraphs 1-73.

75. On July 11, 2007, the Director inspected a new manufactured home sold by Brookside to Charles and Darlene Hampton.

76. The inspection revealed several code violations and setup deficiencies, the responsibility for which was originally assigned by the Director to both the licensed dealer (Brookside) and the licensed installer (Theiss).

77. On July 23, 2007, the Director ordered Brookside in writing to repair the home pursuant to Section 700.045(5).

78. The Director re-inspected the home on March 21, 2008 and noted code several violations and setup deficiencies which remained from the initial July 11, 2007 inspection.

79. On March 28, 2008, the Director again ordered Brookside in writing to repair the home.

80. As of the date of the filing of this First Amended Complaint Brookside has yet to complete the ordered repairs.

81. More than ninety (90) days have elapsed since Brookside was first ordered to make the repairs to the Hampton home.

82. Brookside failed and refused to arrange for the proper initial setup of the Hampton home in violation of Section 700.100.3(6) and Commission Rule 4 CSR 240-120.065.

83. Brookside failed and refused to correct code violations within a reasonable period of time after being ordered to do so by the Director, in violation of Section 700.045(5).

## **COUNT VII**

### **The Dement Home**

84. The Director hereby re-alleges and incorporates herein the allegations contained in paragraphs 1-83.

85. On July 26, 2007, the Director inspected a new manufactured home sold by Brookside to Jeremy and Casey Dement.

86. The inspection revealed several code violations and setup deficiencies, the responsibility for which was originally assigned by the Director to both the licensed dealer (Brookside) and the licensed installer (Theiss).

87. On August 13, 2007, the Director ordered Brookside in writing to repair the home pursuant to Section 700.045(5).

88. The Director re-inspected the home on September 25, 2007 and again noted several code violations and setup deficiencies.

89. On October 2, 2007, the Director again ordered Brookside in writing to repair the home pursuant to Section 700.045(5).

90. On December 18, 2007, the Director again ordered Brookside in writing to complete the repairs.

91. The Director again re-inspected the Dement home on March 25, 2008 and again noted several code violations and setup deficiencies remaining from the initial July 26, 2007 inspection.

92. On March 28, 2008, the Director again ordered Brookside in writing to repair the home.

93. On April 9, 2008, the Director again re-inspected the Dement home and again noted several code violations and setup deficiencies remaining from the initial July 26, 2007 inspection.

94. On April 28, 2008, the Director again ordered Brookside in writing to repair the home.

95. As of the date of the filing of this First Amended Complaint Brookside has yet to complete the ordered repairs.

96. More than ninety (90) days have elapsed since Brookside was first ordered to make the repairs to the Dement home.

97. Brookside failed and refused to arrange for the proper initial setup of the Dement home in violation of Section 700.100.3(6) and Commission Rule 4 CSR 240-120.065.

98. Brookside failed and refused to correct code violations within a reasonable period of time after being ordered to do so by the Director, in violation of Section 700.045(5).

## **COUNT VIII**

### **The Skiles Home**

99. The Director hereby re-alleges and incorporates herein the allegations contained in paragraphs 1-98.

100. On July 27, 2007, the Director inspected a new manufactured home sold by Brookside to Charles and Leigh Ann Skiles.

101. The inspection revealed several code violations and setup deficiencies, the responsibility for which was originally assigned by the Director to both the licensed dealer (Brookside) and the licensed installer (Leeling).

102. On August 13, 2007, the Director ordered Brookside in writing to repair the home pursuant to Section 700.045(5).

103. On August 31, 2007, the Director again ordered Brookside in writing to repair the home pursuant to Section 700.045(5).

104. On December 18, 2007, the Director again ordered Brookside in writing to repair the home.

105. The Director re-inspected the home on February 20, 2008 and noted code several violations and setup deficiencies which remained from the initial July 27, 2007 inspection.

106. On February 22, 2008, the Director again ordered Brookside in writing to repair the home.

107. As of the date of the filing of this First Amended Complaint Brookside has yet to complete the ordered repairs.

108. More than ninety (90) days have elapsed since Brookside was first ordered to make the repairs to the Daugherty home.

109. Brookside failed and refused to arrange for the proper initial setup of the Daugherty home in violation of Section 700.100.3(6) and Commission Rule 4 CSR 240-120.065.

110. Brookside failed and refused to correct code violations within a reasonable period of time after being ordered to do so by the Director, in violation of Section 700.045(5).

## COUNT IX

### **The Schmidt Home**

111. The Director hereby re-alleges and incorporates herein the allegations contained in paragraphs 1-110.

112. On December 4, 2007, the Director inspected a new manufactured home sold by Brookside to Steve Schmidt.

113. The inspection revealed several code violations and setup deficiencies, the responsibility for which was originally assigned by the Director to the licensed dealer (Brookside). On information and belief, the Director alleges that Brookside failed to hire a licensed installer to install the home.

114. On December 12, 2007, the Director ordered Brookside in writing to repair the home pursuant to Section 700.045(5).

115. On March 7, 2008, the Director again ordered Brookside in writing to repair the home.

116. The Director re-inspected the home on March 11, 2008 and noted code several violations and setup deficiencies which remained from the initial December 4, 2007 inspection.

117. On March 18, 2008, the Director again ordered Brookside in writing to repair the home.

118. As of the date of the filing of this First Amended Complaint Brookside has yet to complete the ordered repairs.

119. More than ninety (90) days have elapsed since Brookside was first ordered to make the repairs to the Schmidt home.

120. Brookside failed and refused to arrange for the proper initial setup of the Schmidt home in violation of Section 700.100.3(6) and Commission Rule 4 CSR 240-120.065.

121. Brookside failed and refused to correct code violations within a reasonable period of time after being ordered to do so by the Director, in violation of Section 700.045(5).

## **COUNT X**

### **The Daugherty Home**

122. The Director hereby re-alleges and incorporates herein the allegations contained in paragraphs 1-121.

123. On June 12, 2008, the Director inspected a new manufactured home sold by Brookside to Michael and Nancy Daugherty.

124. The inspection revealed several code violations and setup deficiencies, the responsibility for which was originally assigned by the Director to both the licensed dealer (Brookside) and the licensed installer (Baldwin).

125. On July 3, 2008, the Director ordered Brookside in writing to repair the home pursuant to Section 700.045(5).

126. On January 27, 2009, the Director again ordered Brookside in writing to repair the home.

127. As of the date of the filing of this First Amended Complaint Brookside has yet to complete the ordered repairs.

128. More than ninety (90) days have elapsed since Brookside was first ordered to make the repairs to the Daugherty home.

129. Brookside failed and refused to arrange for the proper initial setup of the Daugherty home in violation of Section 700.100.3(6) and Commission Rule 4 CSR 240-120.065.

130. Brookside failed and refused to correct code violations within a reasonable period of time after being ordered to do so by the Director, in violation of Section 700.045(5).

### **RELIEF SOUGHT**

#### **NON-RENEWAL, REVOCATION AND PENALTIES**

131. Petitioner hereby re-alleges and incorporates herein the allegations contained in paragraphs 1-130.

132. Revocation of Brookside's registration is appropriate because Brookside has a) failed to arrange for the proper initial setup of manufactured homes in violation of Section 700.100.3(6) and 4 CSR 240-120.065 and b) engaged in conduct in violation of Section 700.045(5) by failing to correct code violations in new manufactured homes within a reasonable period of time after being ordered to do so in writing by the Director, in violation of Section 700.100.3(9).

133. Pursuant to Section 700.115.2, each day's violation of Sections 700.100.3(6) and 700.100.3(9) is a separate offense and renders Brookside and Steven D. Warren liable for a penalty of up to \$1,000 for each offense.

**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) 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 Director further prays that the Commission find that Brookside and Steven D. Warren are responsible for correcting all Code violations and installation issues and setup deficiencies occasioned by an installer's failure to properly setup the manufactured homes sold to the following individuals:

- a. Terry and Pamela Mills
- b. Van Morelan
- c. Judy Wolff
- d. Winton and Edna Albert
- e. Bill Cook
- f. Charles and Darlene Hampton
- g. Jeremy and Casey Dement
- h. Charles and Leigh Ann Skiles
- i. Steve Schmidt
- j. Michael and Nancy Daugherty

The Director prays that the Commission issue an order directing Brookside and Warren to correct the Code violations, installation and setup deficiencies within ninety (90) days of the effective date of the Commission's order.

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

Respectfully submitted,

/s/ Eric Dearmont

Eric Dearmont

Missouri Bar No. 60892

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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 3<sup>rd</sup> day of March, 2009.

/s/ Eric Dearmont