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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. S-1372

PUBLIC HEALTH:
Enforcement of Federal
Mobile Home Standards
By the Illinois Department
of Public Health

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Director
Department of Public Health
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Dear Dr. Peterson:

I have your letter relating to the enforcement of regulations promulgated by the Department of Housing and Urban Development pursuant to the National Mobile Home Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.) [hereinafter referred to as the National Act], and adopted by reference by the Illinois Department of Public Health pursuant to authority granted to it in section 9 of

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the Illinois Manufactured Housing and Mobile Home Safety Act (Ill. Rev. Stat. 1977, ch. 67 1/2, par. 509) [hereinafter referred to as the Illinois Act]. You inquire whether section 3 of the Illinois Act (Ill. Rev. Stat. 1977, ch. 67 1/2, par. 5003) may be used to compel correction of defects and non-compliances by manufacturers and vendors when Federal law and the regulations promulgated thereunder provide no means for compelling compliance with pertinent safety codes. You also ask what action may be taken by the Department when the non-compliance or defect in a home cannot be corrected by the manufacturer or the vendor.

In response to your first question, it is my opinion that, as a State Administrative Agency under section 623 of the National Act (42 U.S.C. § 5422), the Illinois Department of Public Health may use only those penalties provided by Federal law for enforcing the mobile home standards. State authority in the area of mobile home regulation has been preempted by the Federal government, and a State agency, such as the Department of Public Health, may act only as a Federal agent in the area of preempted regulation.

Subsection 604(d) of the National Act (42 U.S.C. § 5403(d)), which provides for Federal preemption in the area

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of mobile home regulation, reads as follows:

"(d) Wherever a Federal mobile home construction and safety standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any mobile home covered, any standard regarding construction or safety applicable to the same aspect of performance of such mobile home which is not identical to the Federal mobile home construction and safety standard."

Section 3282.11 of the regulations promulgated pursuant to the National Act (24 C.F.R. § 3282.11 (1977)) provides in pertinent part as follows:

"

* * *

(c) * * * No State may establish or keep in effect, through a building code enforcement system or otherwise, procedures or requirements which constitute systems for enforcement of the Federal standards or of identical State standards which are outside the system established in these regulations or which go beyond this system to require remedial actions which are not required by the Act and these regulations. A state may establish or continue in force consumer protections, such as warranty or warranty performance requirements, which respond to individual consumer complaints and so do not constitute systems of the enforcement of the Federal standards, regardless of whether the State qualifies as an SAA or PIA.

* * *

It is clear from the language of the above provisions that section 3 of the Illinois Act cannot be used to enforce the

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mobile home standards, even though such standards may be adopted by reference by the Department of Public Health, in a manner not permissible under Federal law and regulations.

In response to your second question, it is my opinion that the Department of Public Health, as a State administrative agency, may require the replacement of a non-complying or defective mobile home only if the non-compliance or defect presents an unreasonable risk of injury or death to the occupants and can be related to an error in design or assembly of the mobile home by the manufacturer. Otherwise, the Department has no authority to order the repurchase of a home by the manufacturer or to order the correction of a defect.

Section 613 of the National Act (42 U.S.C. § 5412) relates to the correction of non-compliances and defects in a mobile home prior to the sale of such home by the dealer or distributor. When a determination that a particular home does not comply with Federal standards or contains a defect constituting an imminent safety hazard has been made, the manufacturer is required to repurchase the home or provide parts and pay for the cost of bringing the home into compliance. When a defect or non-compliance is discovered after the sale

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of the home to a purchaser, however, the manufacturer is required to correct the defect or bring the home into compliance only if - "(1) the defect presents an unreasonable risk of injury or death to occupants of the affected mobile home or homes; (2) the defect can be related to an error in design or assembly of the mobile home by the manufacturer." 42 U.S.C. § 5414.

If a defect or non-compliance which must be corrected cannot be adequately repaired, the replacement of the home may be required after the sale of the home to a purchaser. (42 U.S.C. § 5414.) Replacement, however, may be ordered only when the defect or non-compliance is one which must be corrected, i.e., one which presents an unreasonable risk of death or injury to the occupants.

The enforcement powers of the Department of Public Health in regard to the Federal standards arise solely out of its status as a State Administrative Agency. As a State Administrative Agency, the Department can compel compliance with Federal standards only within the system provided by Federal law and regulations. The National Act and the regulations promulgated thereunder provide no remedy for a

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purchaser owning a non-complying or defective home, when such non-compliance or defect does not present an unreasonable risk of injury or death. The State Administrative Agency is not given authority to provide remedies not provided by Federal law and therefore, cannot act in the area in question.

It should be noted, however, that the National Act does not impair the right of a consumer to bring a civil action based upon contract or warranty, against a manufacturer or vendor, nor does it prohibit State maintenance of consumer protections. (24 C.F.R. § 3282.11(c) (1977); 24 C.F.R. § 3282.402(a) (1977).) Therefore, although the Department of Public Health cannot compel the correction of certain non-compliances, the individual consumer is not left without an avenue for redress.

Very truly yours,

A T T O R N E Y G E N E R A L