

SUBTITLE C. REGULATION OF CERTAIN TYPES OF HOUSING AND BUILDINGS

CHAPTER 1201. MANUFACTURED HOUSING

SUBCHAPTER A. GENERAL PROVISIONS

DISCLAIMER: This copy of Chapter 1201 of the Occupations Code was compiled by Texas Department of Housing and Community Affairs (TDHCA) staff, using the text currently available from the Texas Legislature Online and inserting changes made by Senate Bill 521 and House Bills 3507 and 543 of the 78th Legislature (2003). Neither the TDHCA nor the Texas Legislative Council makes any warranty as to the accuracy of the data, and users rely on the data entirely at their own risk. You may visit the Texas Legislature Online to obtain current information regarding legislation at www.capitol.state.tx.us, or you may call the Legislative Reference Library at (512) 463-1252.

§ 1201.001. Short Title

This chapter may be cited as the Texas Manufactured Housing Standards Act.

§ 1201.002. Legislative Findings and Purposes; Liberal Construction

(a) The legislature finds that:

- (1) there is a growing need to provide state residents with safe, affordable, and well-constructed housing;
- (2) manufactured housing has become a primary housing source for many state residents;
- (3) statutes and rules in effect before September 1, 1969, were inadequate to:

(A) fully protect the consumer; and

(B) prevent certain discrimination in this state regarding manufactured housing;

(4) the state is responsible for:

(A) protecting state residents who want to purchase manufactured housing by regulating the construction and installation of manufactured housing;

(B) providing economic stability to manufactured housing manufacturers, retailers, installers, and brokers; and

(C) providing fair and effective consumer remedies; and

(5) the expansion of certain regulatory powers is:

(A) necessary to address the problems described by Subdivisions (1)-(4); and

(B) the most economical and efficient means to address those problems and serve the public interest.

(b) The purposes of this chapter are to:

(1) encourage the construction of housing for state residents; and

- (2) improve the general welfare and safety of purchasers of manufactured housing in this state.
- (c) This chapter shall be liberally construed to promote its policies and accomplish its purposes.

§ 1201.003. Definitions

In this chapter:

(1) "Advertisement" means a commercial message that promotes the sale, exchange, or lease-purchase of a manufactured home and that is presented on radio, television, a public-address system, or electronic media or appears in a newspaper, a magazine, a flyer, a catalog, direct mail literature, an inside or outside sign or window display, point-of-sale literature, a price tag, or other printed material. The term does not include educational material or material required by law.

(2) "Alteration" means the replacement, addition, modification, or removal of equipment in a new manufactured home after sale by a manufacturer to a retailer but before sale and installation by a retailer to a purchaser in a manner that may affect the home's construction, fire safety, occupancy, or plumbing, heating, or electrical system. The term includes the modification of a manufactured home in a manner that may affect the home's compliance with the appropriate standards but does not include:

(A) the repair or replacement of a component or appliance that requires plug-in to an electrical receptacle, if the replaced item is of the same configuration and rating as the replacement; or

(B) the addition of an appliance that requires plug-in to an electrical receptacle and that was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which the appliance is connected.

(2-a) "Attached" in reference to a manufactured home means that the home has been:

(A) installed in compliance with the rules of the department; and

(B) connected to a utility, including a utility providing water, electric, natural gas, propane or butane gas, or wastewater service.

(3) "Board" means the Manufactured Housing Board within the Texas Department of Housing and Community Affairs.

(4) "Broker" means a person engaged by one or more other persons to negotiate or offer to negotiate a bargain or contract for the sale, exchange, or lease-purchase of a manufactured home for which a certificate or other document of title has been issued and is outstanding. The term does not include a person who maintains a location for the display of manufactured homes.

(5) "Business use" means the use of a manufactured home for a purpose other than as a dwelling.

(6) "Consumer" means a person, other than a person licensed under this chapter, who seeks to acquire or acquires by purchase, exchange, or lease-purchase a manufactured home.

(7) "Department" means the Texas Department of Housing and Community Affairs operating through its manufactured housing division.

(8) "Director" means the executive director of the manufactured housing division of the Texas Department of Housing and Community Affairs.

(9) "HUD-code manufactured home":

(A) means a structure:

(i) constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development;

(ii) built on a permanent chassis;

(iii) designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;

(iv) transportable in one or more sections; and

(v) in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet;

(B) includes the plumbing, heating, air conditioning, and electrical systems of the home; and

(C) does not include a recreational vehicle as defined by 24 C.F.R. Section 3282.8(g).

(10) "Installation" means the temporary or permanent construction of the foundation system and the placement of a manufactured home or manufactured home component on the foundation. The term includes supporting, blocking, leveling, securing, anchoring, and properly connecting multiple or expandable sections or components and making minor adjustments.

(11) "Installer" means a person, including a retailer or manufacturer, who contracts to perform or performs an installation function on manufactured housing.

(12) "Label" means a device or insignia that is:

(A) issued by the director to indicate compliance with the standards, rules, and regulations established by the United States Department of Housing and Urban Development; and

(B) permanently attached to each transportable section of each HUD-code manufactured home constructed after June 15, 1976, for sale to a consumer.

(13) "Lease-purchase" means entering into a lease contract containing a provision conferring on the lessee an option to purchase a manufactured home.

(14) "License holder" means a person who holds a department-issued license as a manufacturer, retailer, broker, rebuilder, salesperson, or installer.

(15) "Manufactured home" or "manufactured housing" means a HUD-code manufactured home or a mobile home.

(16) "Manufacturer" means a person who constructs or assembles manufactured housing for sale, exchange, or lease-purchase in this state.

(17) "Mobile home":

(A) means a structure:

(i) constructed before June 15, 1976;

(ii) built on a permanent chassis;

(iii) designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;

(iv) transportable in one or more sections; and

(v) in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet; and

(B) includes the plumbing, heating, air conditioning, and electrical systems of the home.

(18) "Person" means an individual or a partnership, company, corporation, association, or other group, however organized.

(19) "Retailer" means a person who:

(A) is engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering manufactured homes for sale, exchange, or lease-purchase to consumers, including a person who maintains a location for the display of manufactured homes; and

(B) sells, exchanges, or lease-purchases at least two manufactured homes to consumers in a 12-month period.

(20) "Salesperson" means a person who, as an employee or agent of a retailer or broker, sells or lease-purchases or offers to sell or lease-purchase manufactured housing to a consumer for any form of compensation.

(21) "Salvaged manufactured home" means a manufactured home determined to be salvaged under Section 1201.461.

(22) "Seal" means a device or insignia issued by the director that, for title purposes, is to be attached to a used manufactured home as required by the director.

(23) "Standards code" means the Texas Manufactured Housing Standards Code.

(23-a) "Statement of ownership and location" means a statement issued by the department and setting forth:

(A) the ownership and location of a manufactured home that has been sold at a retail sale or installed in this state as provided by Section 1201.205; and

(B) other information required by this chapter.

(24) "Trust fund" means the manufactured homeowners' recovery trust fund.

§ 1201.004. Definitions Binding

The definitions of "mobile home," "HUD-code manufactured home," and "manufactured housing" provided by Section 1201.003 are binding as a matter of law on each person and agency in this state, including a home-rule municipality or other political subdivision. A mobile home is not a HUD-code manufactured home and a HUD-code manufactured home is not a mobile home for any purpose under state law. Those terms may not be defined in a manner that is not identical to the definitions provided by Section 1201.003.

§ 1201.005. Consumer Waiver Void

A waiver by a consumer of this chapter is contrary to public policy and void.

§ 1201.006. Applicability of Business & Commerce Code

The Business & Commerce Code applies to transactions relating to manufactured housing except to the extent that it conflicts with this chapter.

§ 1201.007. Exception for Real Estate Brokers and Salespersons

This chapter does not:

- (1) modify or amend Chapter 1101 or 1102; or
- (2) apply to a person who is licensed as a real estate broker or salesperson under Chapter 1101 and who, as agent of a buyer or seller, negotiates the sale or lease of a manufactured home and the real property to which the home is attached if:
 - (A) the same person is the record owner of both the manufactured home and the real property; and
 - (B) the sale or lease occurs in a single real estate transaction.

§ 1201.008. Regulation by Municipality

- (a) A municipality may prohibit the installation of a mobile home for use as a dwelling in the municipality. The prohibition must be prospective and may not apply to a mobile home previously legally permitted by and used as a dwelling in the municipality. If a mobile home is replaced by a HUD-code manufactured home in the municipality, the municipality shall grant a permit for use of the manufactured home as a dwelling in the municipality.
- (b) On application, the municipality shall permit the installation of a HUD-code manufactured home for use as a dwelling in any area determined appropriate by the municipality, including a subdivision, planned unit development, single lot, and rental community or park. An application to install a new HUD-code manufactured home for use as a dwelling is considered to be granted unless the municipality in writing denies the application and states the reason for the denial not later than the 45th day after the date the application is received.
- (c) Subsections (a) and (b) do not affect the validity of an otherwise valid deed restriction.
- (d) Except as approved by the department, a local governmental unit may not require a permit, a fee, a bond, or insurance for the transportation and installation of manufactured housing by a licensed retailer or installer. This subsection does not prohibit the collection of actual costs incurred by a local governmental unit that result from the transportation of a manufactured home.

SUBCHAPTER B. DEPARTMENT POWERS AND DUTIES

§ 1201.051. Administration and Enforcement of Chapter

The director shall administer and enforce this chapter.

§ 1201.052. General Rulemaking Authority

- (a) The director shall adopt rules, issue orders, and otherwise act as necessary to ensure compliance with the purposes of this chapter to implement and provide for uniform enforcement of this chapter and the standards code.
- (b) To protect the public health, safety, and welfare and to ensure the availability of low cost manufactured housing for all consumers, the director shall adopt rules to:

- (1) protect the interests of consumers who occupy or want to purchase or install manufactured housing; and
- (2) govern the business conduct of license holders.

§ 1201.053. Rules Relating to Compliance With National Standards for Manufactured Housing Construction and Safety; State Plan

(a) The director shall adopt rules, issue orders, and otherwise act as necessary to:

(1) comply with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), including adopting and enforcing rules reasonably required to implement the notification and correction procedures provided by 42 U.S.C. Section 5414; and

(2) provide for the effective enforcement of all HUD-code manufactured housing construction and safety standards in order to have the state plan authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.) approved by the secretary of housing and urban development.

(b) The state plan described by Subsection (a)(2) must provide for a third-party inspection agency approved by the United States Department of Housing and Urban Development to act as an in-plant inspection agency.

§ 1201.054. Procedure for Adopting Rules

(a) Rules must be adopted in accordance with Chapter 2001, Government Code, and with this section.

(b) A proposed rule must be published in the Texas Register before the 30th day preceding the date of a public hearing set to consider the testimony of interested persons. Notice of the time and place of the public hearing must be published in the Texas Register before the 30th day preceding the date of the hearing.

(c) A rule as finally adopted must be published in the Texas Register and state the rule's effective date.

(d) A rule takes effect on the 30th day after the date of publication of notice that the rule has been adopted, except that a rule relating to installation standards may not take effect later than the 60th day after the date of publication of notice.

§ 1201.055. Inspection, Review, and Related Fees

(a) With guidance from the federal Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.) and from the rules and regulations adopted under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), the board shall establish fees as follows:

(1) if the department acts as a design approval primary inspection agency, a schedule of fees for the review of HUD-code manufactured home blueprints and supporting information, to be paid by the manufacturer seeking approval of the blueprints and supporting information;

(2) except as provided by Subsection (e), a fee for the inspection of each HUD-code manufactured home manufactured or assembled in this state, to be paid by the manufacturer of the home;

(3) a fee for the inspection of an alteration made to the structure or plumbing, heating, or electrical system of a HUD-code manufactured home, to be charged on an hourly basis and to be paid by the person making the alteration;

(4) a fee for the inspection of the rebuilding of a salvaged manufactured home, to be paid by the rebuilder;

(5) a fee for the inspection of a used manufactured home to determine whether the home is habitable for the issuance of a new statement of ownership and location; and

(6) a fee for the issuance of a seal for a used mobile or HUD-code manufactured home.

(b) In addition to the fees imposed under Subsections (a)(2), (3), and (4), a manufacturer, a person making an alteration, or a rebuilder, as appropriate, shall be charged for the actual cost of travel of a department representative to and from:

(1) the manufacturing facility, for an inspection described by Subsection (a)(2); or

(2) the place of inspection, for an inspection described by Subsection (a)(3) or (4).

(c) The board shall establish a fee for the inspection of the installation of a mobile or HUD-code manufactured home, to be paid by the installer of the home.

(d) The board shall charge a fee for a consumer complaint home inspection requested by a manufacturer or retailer under Section 1201.355(b), to be paid by the manufacturer or retailer.

(e) The fee described by Subsection (a)(2) does not apply if an inspection agency authorized by the United States Department of Housing and Urban Development, other than the department, acts as the in-plant inspection agency.

(f) The fee described by Subsection (c) must accompany notice to the department of the exact location of the mobile or HUD-code manufactured home. The department shall make an appropriate fee distribution to a local governmental unit that performs an inspection under a contract or other official designation if that unit does not collect a local inspection fee.

§ 1201.056. License Fees

The board shall establish fees for the issuance and renewal of licenses for:

(1) manufacturers;

(2) retailers;

(3) brokers;

(4) salespersons;

(5) rebuilders; and

(6) installers.

§ 1201.057. Instruction Fee

The board shall charge a fee to each person attending a course of instruction described by Section 1201.104.

§ 1201.058. Amount of Fees

The board shall establish the fees imposed under Sections 1201.055-1201.057 in amounts that are reasonable and necessary to cover the cost of administering this chapter.

§ 1201.059. Fees for Statements of Ownership and Location

- (a) The board shall set fees for issuing statements of ownership and location.
- (b) Ten dollars of the fee for each purchase, exchange, or lease-purchase of a manufactured home shall be deposited to the credit of the trust fund and used for the protection programs described by Subchapter I.

§ 1201.060. Venue for Hearing

A hearing under this chapter shall be held in Travis County unless all parties agree to another location.

§ 1201.061. Cooperation With Local Governmental Units

The department shall cooperate with all local governmental units in this state.

§ 1201.062. Seal Property of Department

A seal is the property of the department.

SUBCHAPTER C. LICENSING

§ 1201.101. License Required

- (a) A person may not construct or assemble in this state or ship into this state a new HUD-code manufactured home unless the person holds, at the time the home is constructed or assembled, a manufacturer's license.
- (b) Except as otherwise provided by this chapter, a person may not sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase two or more manufactured homes to consumers in this state in a 12-month period unless the person holds a retailer's license.
- (c) A person may not offer to negotiate or negotiate for others a bargain or contract for the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in this state in a 12-month period unless the person holds a broker's license.
- (d) A person may not perform an installation function on manufactured housing in this state unless the person holds an installer's license.
- (e) A person may not repair, rebuild, or otherwise alter a salvaged manufactured home unless the person holds a rebuilder's or retailer's license.
- (f) A person may not act as a salesperson of manufactured housing unless the person is a license holder. A retailer or broker may not employ or otherwise use the services of a salesperson who is not licensed.
- (g) A person may not make an announcement concerning the sale, exchange, or lease-purchase of, or offer to sell, exchange, or lease-purchase, a manufactured home to a consumer in this state through an advertisement unless the person holds a manufacturer's, retailer's, or broker's license. This subsection does not apply to:
 - (1) a person to whom a statement of ownership and location has been issued showing the person to be the owner of the home if the person does not offer to sell, exchange, or lease-purchase two or more manufactured homes in a 12-month period; or

(2) an advertisement concerning real property to which a manufactured home has been permanently attached.

§ 1201.102. Exceptions to License Requirement

(a) An employee who acts as an agent of a license holder is covered by the holder's license and is not required to hold an individual license.

(b) Except as provided by Section 1201.510, an independent contractor or business entity may not operate under the license of another business entity except as an agent or subcontractor of a licensed installer who is responsible for an installation function performed by the agent or subcontractor.

(c) In the case of a sole proprietorship, partnership, or corporation that holds a retailer's or broker's license, an owner, partner, or officer of that entity is not required to apply for a salesperson's license if that owner, partner, or officer is properly listed in the retailer's or broker's license application.

(d) A person who holds a real estate broker's or salesperson's license under Chapter 1101 may act as a broker or salesperson under this chapter without holding a license or filing a bond or other security as required by this chapter if negotiations for the sale, exchange, or lease-purchase of a manufactured home are conducted for a consumer for whom the person is also acting as a real estate broker or salesperson under Chapter 1101 consistent with Section 1201.007.

§ 1201.103. License Application

(a) An applicant for a license as a manufacturer, retailer, broker, rebuilder, or installer must file with the director a license application containing:

(1) the legal name, address, and telephone number of the applicant;

(2) the trade name by which the applicant does business and, if incorporated, the name registered with the secretary of state and the address of the business; and

(3) the dates on which the applicant became the owner and operator of the business.

(b) A license application must be accompanied by:

(1) proof of the security required by this subchapter; and

(2) payment of the fee required for issuance of the license.

(c) If a change occurs in the information filed with the director under Subsection (a), the applicant shall amend the application to state the correct information.

(d) An applicant for a salesperson's license must:

(1) file with the director an application providing any information the director considers necessary; and

(2) pay the required fee.

§ 1201.104. Qualifications for License

(a) Except as provided by Subsection (e), as a prerequisite for a license, a person who was not licensed or registered with the department or a predecessor agency on September 1, 1987, must attend and complete 20 hours of

instruction in the law, including instruction in consumer protection regulations. The director may not issue a license to that person until the course of instruction is completed.

(b) The course of instruction must be offered at least quarterly.

(c) Instead of the course of instruction:

(1) a manufacturer may request that an authorized representative of the department present a one-day, in-plant training program; or

(2) the director may approve a training program for a license applicant that is conducted by a nonprofit educational institution or foundation.

(d) A manufacturer shall reimburse the department for the actual cost of a program presented under Subsection (c)(1).

(e) Subsection (a) does not apply to a license holder or registration holder who applies:

(1) for a license for an additional business location;

(2) to renew or reinstate a license; or

(3) for a salesperson's license.

(f) An examination may not be made a prerequisite of licensing.

§ 1201.105. Security Required

(a) The department may not issue or renew a license unless a bond or other security in a form prescribed by the director is filed with the department as provided by this subchapter. The bond or other security is payable to the trust fund.

(b) If a bond is filed, the bond must be issued by a company authorized to do business in this state and must conform to applicable provisions of the Insurance Code. If other security is filed, that security must be maintained in or by a banking institution located in this state.

§ 1201.106. Security: Amount

(a) An applicant for a license or a license holder shall file a bond or other security under Section 1201.105 for the issuance or renewal of a license in the following amount:

(1) \$100,000 for a manufacturer;

(2) \$50,000 for a retailer;

(3) \$30,000 for a rebuilder;

(4) \$20,000 for a broker; or

(5) \$10,000 for an installer.

(b) To ensure the availability of prompt and satisfactory warranty service, a manufacturer that does not have a licensed manufacturing plant or other facility in this state from which warranty service and repairs can be provided shall file a bond or other security in the additional amount of \$100,000.

(c) The bond or other security is open to successive claims up to the face value of the bond or other security. The surety is not liable for successive claims in excess of the face value of the bond, regardless of the number of years the bond remains in force.

§ 1201.107. Security: Location

(a) A manufacturer, retailer, broker, or installer who maintains a place of business at one or more locations shall file with the department a separate bond or other security for each location.

(b) Property used for the business that is not contiguous to, or located within 300 feet of, a bonded location requires a separate bond. A location at which a manufactured home is shown to the public or at which the home is offered for sale, exchange, or lease-purchase by a retailer to consumers requires a bond.

(c) A manufactured home installed on a permanent foundation system and offered for sale as real property does not require a bond. A temporary location for a bona fide trade show sponsored by a nonprofit corporation that qualifies for an exemption from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c) of that code does not require a bond.

§ 1201.108. Security: Change in Ownership or Location

(a) A new bond is not required for a change in:

(1) ownership of a corporation that is a license holder; or

(2) location.

(b) The director may require a proper endorsement of the original bond.

§ 1201.109. Security: Cancellation or Other Impairment

(a) If a bond required by this subchapter is canceled, the license for which the security is filed is suspended on the effective date of cancellation. The surety shall provide written notice to the director before the 60th day preceding the effective date of cancellation.

(b) If a surety files for liquidation or reorganization in bankruptcy or is placed in receivership, the license holder shall obtain other security not later than the 60th day after the date that notice of the filing or receivership is received.

(c) If the required face amount of a security is impaired by the payment of a claim, the license holder shall restore the security to the required face amount not later than the 60th day after the date of impairment.

§ 1201.110. Security: Duration

The department shall maintain on file a security other than a bond canceled as provided by Section 1201.109(a) until the later of:

(1) the second anniversary of the date the manufacturer, retailer, broker, installer, or rebuilder ceases doing business; or

(2) the date the director determines that a claim does not exist against the security.

§ 1201.111. Exceptions to Security and Instruction Requirements

(a) Notwithstanding any other provision of this chapter, a state or national bank, state or federal savings and loan association, federal savings bank, or state or federal credit union engaged in the business of selling, exchanging, or lease-purchasing or offering for sale, exchange, or lease-purchase manufactured homes that the institution has acquired through repossession of collateral is not required to attend a course of instruction or file a bond or other security to be licensed as a retailer.

(b) A licensed retailer is not required to file a bond or other security to be licensed as a broker or installer.

§ 1201.112. Temporary Installer's License

The director may issue a temporary installer's license to the owner of a manufactured home for the installation of the manufactured home in accordance with applicable requirements, standards, and rules of the director if the owner:

- (1) applies and pays the required fee; and
- (2) submits proof of insurance as required by the department.

§ 1201.113. Certification and Continuing Education Programs

(a) The board shall recognize, prepare, or administer certification and continuing education programs for persons regulated under this chapter.

(b) A license holder must participate in certification and continuing education programs as provided by Subsection (e).

(c) To prepare or administer a certification or continuing education program under this section, the board may contract with:

(1) a private, nonprofit organization that qualifies for an exemption from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code; or

(2) an educational institution.

(d) To be considered for a contract under Subsection (c), an organization or institution must submit an application. The board may charge an application fee to be set by the board in an amount necessary to pay the costs of processing the application.

(e) Persons regulated under this chapter and directly involved in the sale of manufactured housing must complete eight hours of certification and continuing education programs each year. The programs must address state and federal law applicable to all manufactured housing retailer practices and relevant consumer protection regulations and ethical standards.

(f) The department shall issue an appropriate certificate to a person who completes a certification program and participates in a continuing education program under this section.

(g) The board shall suspend the license of a person regulated under this chapter who does not complete the programs as required by this section. The board shall reinstate the license on the person's completion of the programs.

§ 1201.114. License Expiration

(a) A license is valid for one year and may be renewed as provided by the director. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

§ 1201.115. Notice of License Expiration

Not later than the 30th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

§ 1201.116. Procedure For License Renewal

(a) The department shall renew a license if the department receives the renewal application and payment of the annual fee before the expiration date of the license.

(b) If the department needs additional information for the renewal application or verification of continuing insurance or bond coverage, the license holder must provide the requested information or verification not later than the 20th day after the date of receipt of notice from the department.

(c) The renewal license expires on the first anniversary of the date the license was renewed.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(e) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(f) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

§ 1201.117. Renewal of Expired License by Out-of-State Practitioner

(a) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without fulfilling the instruction requirements of Section 1201.104(a).

(b) The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

SUBCHAPTER D. PRACTICE

§ 1201.1505. Deposit on Specially Ordered Manufactured Homes

A retailer may require an earnest money deposit on a specially ordered manufactured home only if:

- (1) an earnest money contract has been signed by all parties;
- (2) if applicable, the original binding loan commitment letter issued by the lender is delivered to the consumer; and
- (3) the consumer has not rescinded the contract under Section 1201.1521.

§ 1201.151. Refund of Deposit

(a) Except as otherwise provided by this section, a retailer, salesperson, or agent of the retailer must refund a consumer's deposit not later than the 15th day after the date that a written request for the refund is received from the consumer.

(b) The deposit may be retained only if:

- (1) the consumer specially orders from the manufacturer a manufactured home that is not in the retailer's inventory;
- (2) the home conforms to the specifications of the special order and any representations made to the consumer;
- (3) the consumer fails or refuses to accept delivery and installation of the home by the retailer; and
- (4) the consumer was given conspicuous written notice of the requirements for retaining the deposit.

(c) The retailer may not retain more than five percent of the estimated cash price of the specially ordered home and must refund any amount that exceeds five percent.

(d) This section does not apply to:

- (1) a deposit held in escrow in a real estate transaction; or
- (2) money stated to be a down payment in an executed retail installment sales contract.

§ 1201.152. Voidable Contract

(a) If a retailer purchases a new manufactured home from an unlicensed manufacturer in violation of Section 1201.505, a consumer's contract with the retailer for the purchase, exchange, or lease-purchase of the home is voidable until the second anniversary of the date of purchase, exchange, or lease-purchase of the home.

(b) If an unlicensed retailer, broker, or installer enters into a contract with a consumer concerning a manufactured home, the consumer may void the contract until the second anniversary of the date of purchase of the home.

§ 1201.1521. Rescission of Contract for Sale, Exchange, or Lease-Purchase of Home

A person who acquires a manufactured home by purchase, exchange, or lease-purchase may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge.

§ 1201.153. Formaldehyde Health Notice

(a) A retailer or manufacturer may not transfer ownership of a HUD-code manufactured home or otherwise sell, assign, or convey a HUD-code manufactured home to a consumer unless the retailer or manufacturer delivers to the consumer a formaldehyde health notice, subject to the director's rules concerning the notice.

(b) The notice must be delivered before the execution of a mutually binding sales agreement or retail installment sales contract.

(c) The notice must:

(1) contain the information required by the United States Department of Housing and Urban Development; and

(2) be of the type, size, and format required by the director.

(d) A retailer or manufacturer may not vary the content or form of the notice.

§ 1201.154. Sufficiency of Formaldehyde Health Notice; Retailer and Manufacturer Compliance

(a) The formaldehyde health notice required by Section 1201.153 is sufficient, as a matter of law, to advise a consumer of the risks of occupying a HUD-code manufactured home.

(b) The consumer's written acknowledgement of the receipt of the notice is conclusive proof of the delivery of the notice and the posting of the notice in compliance with federal regulations.

(c) A retailer's or manufacturer's compliance with United States Department of Housing and Urban Development regulations and the director's rules concerning the notice is conclusive proof that:

(1) the consumer received sufficient notice of the risks of occupying the home; and

(2) the home is habitable with respect to formaldehyde emissions.

(d) A retailer's or manufacturer's compliance, from September 1, 1981, to September 1, 1985, with Section 1201.153 and the revised formaldehyde warning as adopted by the department is conclusive proof that:

(1) the consumer received sufficient notice of the risks of occupying the home; and

(2) the home is habitable with respect to formaldehyde emissions.

(e) A retailer's or manufacturer's knowing and willful failure to comply with the regulations and rules described by Subsection (c) is conclusive proof that:

(1) the retailer or manufacturer breached the duty to notify the consumer about formaldehyde; and

(2) the home is not habitable.

(f) A retailer's or manufacturer's knowing and willful failure, from September 1, 1981, to September 1, 1985, to comply with Section 1201.153 and the revised formaldehyde warning as adopted by the department is conclusive proof that:

(1) the retailer or manufacturer breached the duty to notify the consumer about formaldehyde; and

(2) the home is not habitable.

§ 1201.155. Disclaimer of Implied Warranty

The seller's proper provision of the warranties and notices as required by Subchapter H or J is a valid disclaimer of an implied warranty of fitness for a particular purpose or of merchantability as described by Chapter 2, Business & Commerce Code.

§ 1201.156. Advertisement as Offer

An advertisement relating to manufactured housing is an offer to sell, exchange, or lease-purchase manufactured housing to consumers.

§ 1201.157. Retailer as Warehouseman

(a) A licensed retailer is a "warehouseman" as defined by Section 7.102, Business & Commerce Code, for the storage of manufactured homes for hire.

(b) The provisions of the Business & Commerce Code relating to the storage of goods for hire apply to a licensed retailer acting as a warehouseman.

§ 1201.158. Salesperson

A licensed salesperson may work for more than one retailer or broker or at more than one sales location.

§ 1201.159. Broker

(a) A broker may but is not required to be the agent of a party involved in the sale, exchange, or lease-purchase of a manufactured home for which a statement of ownership and location has been issued and is outstanding.

(b) A person is not required to be a broker licensed under this chapter but may be required to be a real estate broker or salesperson licensed under Chapter 1101 if:

- (1) the manufactured home is attached; and
- (2) the home is offered as real property.

§ 1201.160. Proof of Insurance Required for Installer

A person may not perform an installation function on manufactured housing in this state unless the person files proof of insurance as required by the director.

§ 1201.161. Transportation of Manufactured Housing

(a) Notwithstanding any other statute or rule or ordinance, a licensed retailer or licensed installer is not required to obtain a permit, certificate, or license or pay a fee to transport manufactured housing to the place of installation except as required by:

- (1) the department; or
- (2) the Texas Department of Transportation under Subchapter E, Chapter 623, Transportation Code.

(b) The department shall cooperate with the Texas Department of Transportation by providing current lists of licensed manufacturers, retailers, and installers.

(c) The Texas Department of Transportation shall send the department monthly:

- (1) a copy of each permit issued in the preceding month for the movement of manufactured housing on the highways; or
- (2) a list of the permits issued in the preceding month and the information on the permits.
- (d) The department shall pay the reasonable cost of providing the copies or the list and information under Subsection (c).

§ 1201.162 Disclosure by Retailer and Lender

(a) Before the completion of a credit application, the retailer or agent must provide to the consumer the following statement that is printed in at least 12-point type and not attached to or combined with any other written material:

"When buying a manufactured home, there are a number of important considerations, including price, quality of construction, features, floor plan, and financing alternatives.

"The United States Department of Housing and Urban Development (HUD) helps protect consumers through regulation and enforcement of HUD design and construction standards for manufactured homes. Manufactured homes that meet HUD standards are known as 'HUD-code manufactured homes.' The Texas Department of Housing and Community Affairs regulates Texas manufacturers, retailers, brokers, salespersons, installers, and rebuilders of manufactured homes.

"If you plan to place a manufactured home on land that you own or will buy, you should consider items such as:

"ZONING AND RESTRICTIVE COVENANTS. Municipalities or subdivisions may restrict placement of manufactured homes on certain lots, may prohibit the placement of homes within a certain distance from property lines, may require that homes be a certain size, and may impose certain construction requirements. You may need to obtain building permits and homeowner association approval before you place a manufactured home on a certain lot. Contact the local municipality, county, and subdivision manager to find out if you can place the manufactured home of your choice on a certain lot.

"WATER. Be sure that your lot has access to water. If you must drill a well, contact several drillers for bids. If water is available through a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system.

"SEWER. If your lot is not serviced by a municipal sewer system or utility district, you will have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support an on-site sewer facility. Check with the local county or a licensed private installer to determine the requirements that apply to your lot and the cost to install such a system.

"HOMEOWNER ASSOCIATION FEES. Many subdivisions have mandatory assessments and fees that lot owners must pay. Check with the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.

"TAXES. Your home will be appraised and subject to ad valorem taxes as are other single-family residential structures. These taxes must be escrowed with your monthly payment, except that your lender is not obligated to impose an escrow requirement in a real property transaction involving a manufactured home if the lender is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property. On closing, you will be notified of all provisions pertaining to federal truth in lending disclosures.

"INSURANCE. Your lender may require you to obtain insurance that meets lender requirements and protects your investment. You should request quotes from the agent of your choice to obtain the insurance.

"TYPES OF MORTGAGES AVAILABLE. The acquisition of a manufactured home may be financed by a real estate mortgage or a chattel mortgage. A real estate mortgage may have a lower interest rate than a chattel mortgage.

"RIGHT OF RESCISSION. If you acquire a manufactured home, by purchase, exchange, or lease-purchase, you may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge."

(b) A federally insured financial institution or lender approved or authorized by the United States Department of Housing and Urban Development as a mortgagee with direct endorsement underwriting authority that fully complies

with federal Truth in Lending disclosures concerning the terms of a manufactured housing transaction is exempt from the disclosure provisions of this section.

(c) Failure to comply with the disclosure provisions of this section does not affect the validity of a conveyance or transfer of title of a manufactured home or otherwise impair a title or lien position.

§ 1201.163. Chattel Mortgage Transaction: Consumer Protection Disclosures

(a) In addition to the disclosure statement required by Section 1201.162, the department shall adopt rules addressing consumer protection disclosures required in chattel mortgage transactions and prescribe the form for the disclosure statement. A consumer protection disclosure statement under this subsection must include the following:

(1) a statement of the significant differences between chattel mortgages and real estate mortgages;

(2) an itemization of estimated closing costs, if any;

(3) an estimate of the total amount of monthly payments, including:

(A) principal and interest payments;

(B) costs of any required insurance; and

(C) costs for payment of ad valorem taxes, based on the current tax rate of each taxing unit in which the manufactured home will be located as applied to the sales price of the manufactured home;

(4) a statement of the roles of the retailer and any affiliated parties in the financing of the first retail sale, as defined by Section 1201.201, and the estimated compensation that they will receive for providing or arranging the financing; and

(5) any other disclosures required by state or federal law, including the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. Section 2601 et seq.) and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.).

(b) A retailer shall provide the consumer protection disclosure statement to the consumer at least 24 hours before the installment contract is fully executed, as provided by Section 1201.164.

(c) On receipt of the consumer protection disclosure statement, the consumer shall execute a written acknowledgment that the consumer has received the statement.

(d) In addition to other rights of rescission provided by this chapter, the installment contract is subject to rescission by the consumer until the earlier of:

(1) the expiration of the two-year period following the date the contract was fully executed; or

(2) the consumer's execution of a written acknowledgment that the consumer has received the consumer protection disclosure statement required by this section.

(e) If the payment was made under the contract, a consumer who rescinds an installment contract as provided by this section is entitled to receive a refund of all money paid to any person by the consumer, except money paid to obtain a credit report.

(f) This section does not apply to a real estate transaction.

§ 1201.164. Advance Copy of Installment Contract and Disclosure Statements; Offer by Retailer

(a) In a chattel mortgage transaction involving an installment contract, a retailer shall deliver to a consumer at least 24 hours before the contract is fully executed the disclosure statements required by this subchapter and the contract, with all required information included, signed by the retailer. The delivery of the disclosure statements and installment contract, with all required information included, signed by the retailer constitutes a firm offer by the retailer. The consumer may accept the offer not earlier than 24 hours after the delivery of the documents.

(b) A consumer may not waive the right to receive the disclosure statements under this section.

§ 1201.165. Nonbinding Estimate

In a chattel mortgage transaction, if a retailer provides a nonbinding estimate regarding the contract price of a manufactured home or the monthly payments or interest rate applicable to a loan issued in connection with the home, the estimate must be made in writing and in good faith.

SUBCHAPTER E. MANUFACTURED HOME STATEMENTS OF OWNERSHIP AND LOCATION

§ 1201.201. Definitions

In this subchapter:

- (1) "Debtor" has the meaning assigned by Section 9.102, Business & Commerce Code.
- (2) "Document of title" means a written instrument issued solely by and under the authority of the director before September 1, 2003, that provides the information required by Section 1201.205, as that section existed before that date. Beginning September 1, 2003, a document of title is considered to be a statement of ownership and location and may be exchanged for a statement of ownership and location as provided by Section 1201.214.
- (3) "First retail sale" means a consumer's initial acquisition of a new manufactured home from a retailer by purchase, exchange, or lease-purchase. The term includes a bargain, sale, transfer, or delivery of a manufactured home for which the director has not previously issued a statement of ownership and location, with intent to pass an interest in the home, other than a lien.
- (4) "Identification number" means the number permanently attached to or imprinted on a manufactured home or section of the home as prescribed by department rule.
- (5) "Inventory" has the meaning assigned by Section 9.102, Business & Commerce Code.
- (6) "Lien" means:
 - (A) a security interest created by a lease, conditional sales contract, deed of trust, chattel mortgage, trust receipt, reservation of title, or other security agreement if an interest other than an absolute title is sought to be held or given in a manufactured home; or
 - (B) a lien on a manufactured home created by the constitution or a statute.
- (7) "Manufacturer's certificate" means a document that meets the requirements prescribed by Section 1201.204.
- (8) "Secured party" has the meaning assigned by Section 9.102, Business & Commerce Code.
- (9) "Security agreement" has the meaning assigned by Section 9.102, Business & Commerce Code.

(10) "Security interest" has the meaning assigned by Section 1.201, Business & Commerce Code.

(11) "Subsequent sale" means a bargain, sale, transfer, or delivery of a manufactured home, with intent to pass an interest in the home, other than a lien, from one person to another after the first retail sale and initial issuance of a statement of ownership and location.

§ 1201.202. Application of Chapter to Certain Certificates of Title or Liens

(a) This chapter applies to a certificate of title to a manufactured home issued before March 1, 1982, under Chapter 501, Transportation Code.

(b) A lien recorded before March 1, 1982, with the Texas Department of Transportation or a predecessor agency of that department is recorded with the department for the purposes of this chapter.

§ 1201.203. Forms; Rules

(a) The director shall prescribe forms and adopt rules relating to:

(1) the manufacturer's certificate;

(2) the statement of ownership and location;

(3) the application for a statement of ownership and location; and

(4) the issuance of a statement of ownership and location at the first retail sale and for a subsequent sale or transfer of a manufactured home.

(b) The director shall adopt rules for the documenting of the ownership and location of a manufactured home that has been previously owned in this state or another state. The rules must protect a lienholder recorded on a statement of ownership and location, a certificate, or other document of title.

§ 1201.204. Manufacturer's Certificate

(a) A manufacturer's certificate must show:

(1) on a form prescribed by the director or on another document, the original transfer of a manufactured home from the manufacturer to the retailer; and

(2) on a form prescribed by the director, each subsequent transfer of a manufactured home between retailers and from retailer to owner, if the transfer from retailer to owner involves a completed application for the issuance of a statement of ownership and location.

(b) At the first retail sale of a manufactured home, a manufacturer's certificate automatically converts to a document that does not evidence any ownership interest in the manufactured home described in the document. A security interest in inventory evidenced by the manufacturer's certificate automatically converts to a security interest in proceeds and cash proceeds.

(c) After the first retail sale of a manufactured home, the retailer may submit the manufacturer's certificate for that home to the department.

§ 1201.205. Statement of Ownership and Location

A statement of ownership and location must provide:

- (1) the names and addresses of the purchaser and seller;
- (2) the manufacturer's name and address and any model designation;
- (3) in accordance with the director's rules:
 - (A) the outside dimensions of the manufactured home when installed for occupancy, as measured to the nearest one-half foot at the base of the home, exclusive of the tongue or other towing device; and
 - (B) the approximate square footage of the home when installed for occupancy;
- (4) the identification number for each section or module of the home;
- (5) the county of this state in which the home is installed for occupancy;
- (6) in chronological order of recordation, the date of each lien on the home and the name and address of each lienholder, or, if a lien is not recorded, a statement of that fact;
- (7) the signature of the owner in ink, given on receipt of the document;
- (8) a statement that if two or more eligible persons, as determined by Section 1201.213, file with the application for the issuance of a statement of ownership and location an agreement signed by all the persons providing that the home is to be held jointly with a right of survivorship, the director shall issue the statement of ownership and location in all the names;
- (9) the location of the home;
- (10) a statement of whether the owner has elected to treat the home as real property or personal property;
- (11) statements of whether the home is a salvaged manufactured home and whether the home is reserved for business use only; and
- (12) any other information the director requires.

§ 1201.2055. Election By Owner

(a) In completing an application for the issuance of a statement of ownership and location, an owner of a manufactured home shall indicate whether the owner elects to treat the home as personal property or real property. An owner may elect to treat a manufactured home as real property only if the home is attached to:

- (1) real property that is owned by the owner of the home; or
 - (2) land leased to the owner of the home under a long-term lease, as defined by department rule.
- (b) A statement of election under Subsection (a) must be made by affidavit.
- (c) If the department issues a statement of ownership and location to an owner who has elected to treat a manufactured home as personal property, the statement of ownership and location on file with the department is evidence of ownership of the home. A lien, charge, or other encumbrance on a home treated as personal property may be made only by filing the appropriate document with the department.
- (d) If the department issues a statement of ownership and location to an owner who has elected to treat a manufactured home as real property, the manufactured home is not considered to be real property until a certified

copy of the statement of ownership and location has been filed in the real property records of the county in which the home is located. After the certified copy has been filed in the real property records of the county, the home is considered to be real property in the form of an improvement to the underlying real property on which the home is located. If a real property election has been made but a certified copy of the statement of ownership and location has not been filed as required by this subsection, the home continues to be treated as personal property until the certified copy is filed.

§ 1201.206. Application for Issuance of Statement of Ownership and Location

- (a) Before the first retail sale of a manufactured home, the retailer shall timely provide to the consumer an application for the issuance of a statement of ownership and location and any information necessary to complete the application.
- (b) At the first retail sale of a manufactured home, the retailer shall provide for the installation of the home and ensure that the application for the issuance of a statement of ownership and location is properly completed. The consumer shall return the completed application to the retailer.
- (c) Not later than the 30th day after the date of the retail sale, the retailer shall provide to the department the completed application for the issuance of a statement of ownership and location.
- (d) At a subsequent sale or transfer of the home, the purchaser or transferee shall apply for the issuance of a new statement of ownership and location.
- (e) Ownership of a manufactured home does not pass or vest at a sale or transfer of the home until a completed application for the issuance of a statement of ownership and location is filed with the department.
- (f) If the owner of a manufactured home relocates the home, the owner shall apply for the issuance of a new statement of ownership and location not later than the 30th day after the date the home is relocated. The department shall require that the owner submit evidence that the home was relocated in accordance with the requirements of the Texas Department of Transportation.

§ 1201.207. Issuance of Statement of Ownership and Location

- (a) The department shall process any completed application for the issuance of a statement of ownership and location not later than the 10th working day after the date the application is received by the department. If the department rejects an application, the department shall provide a clear and complete explanation of the reason for the rejection and instructions on how to cure any defects, if possible.
- (b) If the department issues a statement of ownership and location for a manufactured home, the department shall place in its files the original statement of ownership and location and shall mail a certified copy to the owner of the home and to any lienholder.
- (c) Except with respect to any change in use, but subject to Section 1201.2075, if the department has issued a statement of ownership and location for a manufactured home, the department may issue a subsequent statement of ownership and location for the home only if all parties reflected in the department's records as having an interest in the manufactured home give their written consent or release their interest, either in writing or by operation of law.

§ 1201.2075. Conversion From Personal Property To Real Property

- (a) Except as provided by Subsection (b), the department may not issue a statement of ownership and location for a manufactured home that is being converted from personal property to real property until:
 - (1) each lien on the home is released by the lienholder; or

(2) each lienholder gives written consent, to be placed on file with the department.

(b) The department may issue a statement of ownership and location before the release of any liens or the consent of any lienholders as required by this section only if the department releases a certified copy of the statement to:

(1) a licensed title insurance company that has issued a title insurance policy covering all prior liens on the home; or

(2) a federally insured financial institution or licensed attorney who has obtained from a licensed title insurance company a title insurance policy covering all prior liens on the home.

§ 1201.208. Payment of Taxes Required for Issuance of Statement of Ownership and Location

(a) The department may not issue a statement of ownership and location for a new manufactured home installed for occupancy in this state unless the state sales and use tax has been paid.

(b) Proof of payment may be shown in any manner prescribed by the department.

§ 1201.209. Grounds for Refusal to Issue or for Suspension or Revocation of Statement of Ownership and Location

The department may not refuse to issue a statement of ownership and location and may not suspend or revoke a statement of ownership and location unless:

(1) the application for issuance of the statement of ownership and location contains a false or fraudulent statement, the applicant failed to provide information required by the director, or the applicant is not entitled to issuance of the statement of ownership and location;

(2) the director has reason to believe that the manufactured home is stolen or unlawfully converted, or the issuance of a statement of ownership and location would defraud the owner or a lienholder of the manufactured home;

(3) the director has reason to believe that the manufactured home is salvaged, and an application for the issuance of a new statement of ownership and location that indicates that the home is salvaged has not been filed;

(4) the required fee has not been paid;

(5) the state sales and use tax has not been paid in accordance with Chapter 158, Tax Code, and Section 1201.208; or

(6) a local tax lien was filed before September 1, 2001, and recorded under Section 32.015, Tax Code, as that section existed on the date the lien was filed, and the lien has not been extinguished.

§ 1201.210. Procedure for Refusal to Issue or Suspension or Revocation of Statement of Ownership and Location

(a) If the director refuses to issue or suspends or revokes a statement of ownership and location, the director shall give, by certified mail, written notice of that action to:

(1) the seller and purchaser or transferor and transferee, as applicable; and

(2) the holder of a lien or security interest of record.

(b) An action by the director under Subsection (a) is a contested case under Chapter 2001, Government Code.

(c) A notice of appeal and request for hearing must be filed with the director not later than the 30th day after the date of notice of the director's action.

§ 1201.212. Transfer of Ownership by Operation of Law

(a) If the ownership of a manufactured home in this state is transferred by inheritance, devise, or bequest, by bankruptcy, receivership, judicial sale, or other involuntary divestiture of ownership, or by any other operation of law, the department shall issue a new statement of ownership and location after receiving a certified copy of:

- (1) the order or bill of sale from an officer making a judicial sale;
- (2) the order appointing a temporary administrator;
- (3) the probate proceedings;
- (4) the letters testamentary or the letters of administration; or
- (5) if administration of an estate is not necessary, an affidavit by all of the heirs at law showing:
 - (A) that administration is not necessary; and
 - (B) the name in which the statement of ownership and location should be issued.

(b) The department may issue a new statement of ownership and location in the name of the purchaser at a foreclosure sale:

- (1) for a lien or security interest foreclosed according to law by nonjudicial means, if the lienholder or secured party files an affidavit showing the nonjudicial foreclosure according to law; or
 - (2) for a foreclosed constitutional or statutory lien, if the person entitled to the lien files an affidavit showing the creation of the lien and the resulting divestiture of title according to law.
- (c) The department shall issue a new statement of ownership and location to a survivor if:
- (1) an agreement providing for a right of survivorship is signed by two or more eligible persons, as determined under Section 1201.213; and
 - (2) on the death of one of the persons, the department is provided with a copy of the death certificate of that person.

§ 1201.213. Eligibility to Sign Right of Survivorship Agreement

(a) A person is eligible to sign a right of survivorship agreement under this subchapter if the person:

- (1) is married and the spouse of the signing person is the only other party to the agreement;
- (2) is unmarried and attests to that unmarried status by affidavit; or
- (3) is married and provides the department with an affidavit from the signing person's spouse that attests that the signing person's interest in the manufactured home is the signing person's separate property.

(b) If the Statement of Ownership and Location is being issued in connection with the sale of the home, the seller is not eligible to sign a right of survivorship agreement under this subchapter unless the seller is the child, grandchild,

parent, grandparent, or sibling of each other person signing the agreement. A family relationship required by this subsection may be a relationship established by adoption.

§ 1201.214. Document of Title

- (a) Effective September 1, 2003, all outstanding documents of title are considered to be statements of ownership and location.
- (b) An owner or lienholder may provide to the department the document of title and any additional information required by the department and request that the department issue a statement of ownership and location to replace the document of title. The department shall mail to the owner or lienholder a certified copy of the statement of ownership and location issued under this subsection.
- (c) An owner or lienholder who applies for the issuance of a statement of ownership and location to replace a lost or destroyed document of title must execute an affidavit on a form prescribed by the director.
- (d) If the original document of title is recovered, the owner or lienholder shall immediately surrender the original to the department.

§ 1201.215. Previous Owner or Lienholder Unavailable

If information establishing ownership is unavailable because a previous owner or lienholder cannot be located or because a manufactured home has been abandoned, a person may apply to the department for the issuance of a statement of ownership and location and may receive a certified copy of that statement only by presenting:

- (1) evidence satisfactory to the department that the effort to locate the previous owner or lienholder has been unsuccessful; and
- (2) an affidavit stating that to the best of the applicant's knowledge, the applicant is entitled to a good and marketable title to the manufactured home.

§ 1201.216. Change In Use

- (a) The department shall indicate on the statement of ownership and location for a manufactured home whether the home has been sold, exchanged, or lease-purchased to a purchaser for the purchaser's business use. For a home sold, exchanged, or lease-purchased as described by this subsection, the department shall issue a new statement of ownership and location that indicates that the home is reserved for business use.
- (b) On application, the department may issue a new statement of ownership and location for the home after an inspection and determination that the home is habitable. The statement must indicate that the home is no longer reserved for business use.
- (c) The department shall issue a statement of ownership and location that indicates that a home is salvaged for a salvaged manufactured home.
- (d) For a salvaged manufactured home that is rebuilt according to the director's rules, the department shall issue a new statement of ownership and location, which must indicate that the home is no longer salvaged.

§ 1201.219. Perfection and Effect of Liens

- (a) A lien on manufactured homes in inventory is perfected by filing a security agreement with the department in a form that contains the information the director requires. Once perfected, the lien applies to the manufactured homes

in the inventory as well as to any proceeds from the sale of those homes. The department may suspend or revoke the license of a retailer who fails to satisfy a perfected inventory lien under the terms of the security agreement.

(b) The recordation of a lien with the department is notice to all persons that the lien exists. Except as expressly provided by Chapter 32, Tax Code, a lien recorded with the department has priority, according to the chronological order of recordation, over another lien or claim against the manufactured home.

(c) Notwithstanding any other provision of this subchapter, the filing of a security agreement by a secured party perfecting a lien on the inventory of a retailer does not prevent a buyer in the ordinary course of business, as defined by Section 1.201, Business & Commerce Code, from acquiring good title free of that interest, and the department may not consider that security interest as a lien for the purpose of title issuance.

(d) The department shall print on each statement of ownership and location issued under this subchapter a notice that:

(1) the statement of ownership and location may not reflect the existence of a tax lien notice filed for the manufactured home after the date the statement of ownership and location was issued; and

(2) information about a tax lien for which notice has been filed may be obtained from the department on written request.

§ 1201.220. Report to County Tax Assessor-collector

(a) The department shall provide to each county tax assessor-collector in this state a monthly report that, for each manufactured home installed in the county during the preceding month and for each manufactured home previously installed in the county for which a transfer of ownership was recorded by the issuance of a statement of ownership and location during the preceding month, lists:

(1) the name of the owner of the home;

(2) the name of the manufacturer of the home;

(3) the model designation of the home;

(4) the identification number of each section or module of the home;

(5) the address or location where the home is installed; and

(6) the date of the installation of the home.

(b) The director shall provide a copy of the report to the chief appraiser of the appraisal district established for the county in which the home is installed.

§ 1201.221. Information on Ownership and Tax Lien

(a) On written request, the department shall provide information held by the department on:

(1) the current ownership of a manufactured home; and

(2) the existence of any tax lien on that home for which notice has been filed with the department.

(b) A request under Subsection (a) must contain:

(1) the name of the owner of the home as reflected on the statement of ownership and location; or

(2) the identification number of the home.

§ 1201.222 Certain Manufactured Homes Considered Real Property

(a) A manufactured home is treated as real property only if:

(1) the owner of the home has elected to treat the home as real property as provided by Section 1201.2055; and

(2) a certified copy of the statement of ownership and location for the home has been filed in the real property records of the county in which the home is located.

(b) The closing of a transaction for the acquisition of a manufactured home considered to be real property under this chapter must occur at the office of a federally insured financial institution, a title insurance company, or an attorney at law. If the real property is purchased under a contract for deed, the contract must be filed in the real property records of the county in which the home is installed.

(c) Installation of a manufactured home considered to be real property under this chapter must occur in a manner that satisfies the lending requirements of the Federal Housing Administration (FHA), Fannie Mae, or Freddie Mac for long-term mortgage loans or for FHA insurance. The installation of a new manufactured home must meet, in addition to applicable state standards, the manufacturer's specifications required to validate the manufacturer's warranty.

(d) A civil action to enjoin a violation of this section may be brought by:

(1) a purchaser in the county in which the violation occurs; or

(2) the county in which the violation occurs.

SUBCHAPTER F. STANDARDS

§ 1201.251. Standards and Requirements Adopted by Director

(a) The director shall adopt standards and requirements for:

(1) the installation and construction of manufactured housing that are reasonably necessary to protect the health, safety, and welfare of the occupants and the public; and

(2) the construction of HUD-code manufactured homes in compliance with the federal standards and requirements established under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.).

(b) The standards and requirements adopted under Subsection (a)(1) are the standards code.

(c) The standards adopted under Subsection (a)(1) must ensure that manufactured housing installed on both permanent and nonpermanent foundation systems resists overturning and lateral movement, according to the design loads for the particular wind zone for which the housing was constructed.

§ 1201.252. Power of Local Governmental Unit to Adopt Different Standard

(a) A local governmental unit of this state may not adopt a standard for the construction or installation of manufactured housing in the local governmental unit that is different from a standard adopted by the director unless, after a hearing, the board expressly approves the proposed standard.

(b) To adopt a different standard under this section, the local governmental unit must demonstrate that public health and safety require the different standard.

§ 1201.253. Hearing on Standard or Requirement

The director shall publish notice and conduct a public hearing in accordance with Sections 1201.054 and 1201.060 before:

- (1) adopting a standard or requirement authorized by this subchapter;
- (2) amending a standard authorized by this subchapter; or
- (3) approving a standard proposed by a local governmental unit under Section 1201.252.

§ 1201.254. Effective Date of Requirement or Standard

Each requirement or standard that is adopted, modified, amended, or repealed by the director must state its effective date as provided by Section 1201.054.

§ 1201.255. Installation of Manufactured Housing

Except as authorized under Section 1201.252, manufactured housing must be installed in compliance with the standards and rules adopted and orders issued by the director.

§ 1201.256. Wind Zone Regulations

(a) Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, and Willacy counties are in Wind Zone II. All other counties are in Wind Zone I.

(b) To be installed in a Wind Zone II county, a manufactured home constructed on or after September 1, 1997, must meet the Wind Zone II standards adopted by the United States Department of Housing and Urban Development.

(c) A manufactured home constructed before September 1, 1997, may be installed in a Wind Zone I or II county without restriction.

(d) A retailer who sells a manufactured home constructed on or after September 1, 1997, to Wind Zone I standards must, before the execution of a mutually binding sales agreement or retail installment sales contract, give the consumer notice that:

- (1) the home was not designed or constructed to withstand a hurricane force wind occurring in a Wind Zone II or III area;
- (2) installation of the home is not permitted in a Wind Zone II county in this state; and
- (3) another state may prohibit installation of the home in a Wind Zone II or III area.

SUBCHAPTER G. INSPECTIONS AND MONITORING

§ 1201.301. State Inspectors

(a) The director may employ state inspectors to:

- (1) carry out the functions the department is required to perform under this chapter;
- (2) implement this chapter; and
- (3) enforce the rules adopted and orders issued under this chapter.

(b) In enforcing this chapter, the director may authorize a state inspector to travel inside or outside of the state to inspect a manufacturing facility.

§ 1201.302. Inspection by Entities Other Than Department

(a) To ensure that a manufactured home sold or installed in this state complies with the standards code, the director may by contract provide for a federal agency or an agency or political subdivision of this state or another state to perform an inspection or inspection program under this chapter or under rules adopted by the director.

(b) On request, the department shall authorize a local governmental unit in this state to perform an inspection or enforcement activity related to the construction of a foundation system or the erection or installation of manufactured housing at a homesite under a contract or other official designation and rules adopted by the director. The department may withdraw the authorization if the local governmental unit fails to follow the rules, interpretations, and written instructions of the department.

(c) The department:

- (1) shall advise each local governmental unit biennially in writing of the program for contracting installation inspections;
- (2) shall encourage local building inspection officials to perform enforcement and inspection activities for manufactured housing installed in the local governmental unit; and
- (3) may establish cooperative inspection training programs.

§ 1201.303. Inspections

(a) The director may inspect manufactured homes at the state border and adopt rules necessary for the inspection of manufactured homes entering this state to ensure:

(1) compliance with:

(A) the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.);

(B) the standards code; and

(C) the rules adopted by the director; and

(2) payment of any use tax owed to the state.

(b) The department shall establish an installation inspection program in which at least 25 percent of installed manufactured homes are inspected on a sample basis for compliance with the standards and rules adopted and orders issued by the director. The program must place priority on inspecting multisection homes and homes installed in Wind Zone II counties.

§ 1201.304. Inspection Search Warrants

If required by law or otherwise necessary, the director may obtain an inspection search warrant.

§ 1201.305. Program Monitoring

The director may enter into a contract with the United States Department of Housing and Urban Development or its designee to monitor the programs of that department.

SUBCHAPTER H. WARRANTIES

§ 1201.351. Manufacturer's Warranty

(a) The manufacturer of a new HUD-code manufactured home shall warrant, in a separate written document, that:

(1) the home is constructed or assembled in accordance with all building codes, standards, requirements, and regulations prescribed by the United States Department of Housing and Urban Development under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.); and

(2) the home and all appliances and equipment included in the home are free from defects in materials or workmanship.

(b) The manufacturer's warranty is in effect until at least the first anniversary of the date of initial installation of the home at the consumer's homesite.

(c) At the time the manufacturer delivers the home to the retailer, the manufacturer shall also deliver to the retailer:

(1) the manufacturer's warranty; and

(2) the warranties given by the manufacturers of appliances or equipment installed in the home.

§ 1201.352. Retailer's Warranty

(a) The retailer of a new HUD-code manufactured home shall warrant to the consumer in writing that:

(1) installation of the home at the initial homesite will be completed in accordance with all department standards, rules, orders, and requirements; and

(2) appliances and equipment included with the sale of the home and installed by the retailer are or will be:

(A) installed in accordance with the instructions or specifications of the manufacturers of the appliances or equipment; and

(B) free from defects in materials or workmanship.

(b) The retailer's warranty is in effect until the first anniversary of the date of initial installation of the home at the consumer's homesite.

(c) Before the signing of a binding retail installment sales contract or other binding purchase agreement, the retailer must give the consumer a copy or a general description of:

(1) the manufacturer's warranty; and

(2) the retailer's warranty.

(d) At the time of the initial installation at the consumer's homesite, the retailer shall deliver to the consumer:

(1) the manufacturer's warranty;

(2) the retailer's warranty;

(3) the warranties given by the manufacturers of appliances or equipment included with the home; and

(4) the name and address of the manufacturer or retailer to whom the consumer is to give notice of a warranty service request.

§ 1201.353. Notice of Need for Warranty Service

(a) The consumer shall give written notice to the manufacturer or retailer, as applicable, of a need for warranty service or repairs.

(b) Written notice to the department is notice to the manufacturer or retailer.

§ 1201.354. Corrective Action Required

The manufacturer or retailer, as applicable, shall take appropriate corrective action within a reasonable period as required by department rules to fulfill the written warranty obligation.

§ 1201.355. Consumer Complaint Home Inspection

(a) If the manufacturer or retailer does not provide the consumer with proper warranty service, the consumer may, at any time, request the department to perform a consumer complaint home inspection. The department may not charge a fee for the inspection.

(b) On payment of the required inspection fee, the manufacturer or retailer may request the department to perform a consumer complaint home inspection if the manufacturer or retailer:

(1) believes the consumer's complaints are not covered by the warranty of the manufacturer or retailer, as applicable;

(2) believes that the warranty service was properly provided; or

(3) disputes responsibility concerning the warranty obligation.

(c) The department shall perform a consumer complaint home inspection not later than the 30th day after the date of receipt of a request for the inspection.

§ 1201.356. Report and Order; Amendment; Compliance

(a) Not later than the 10th day after the date of a consumer complaint home inspection, the department shall send a written report and any order to the consumer, manufacturer, and retailer by certified mail, return receipt requested.

(b) The report shall specify:

(1) each of the consumer's complaints; and

(2) whether the complaint is covered by either the manufacturer's or retailer's warranty and, if so, which of those warranties.

(c) The director shall issue to the manufacturer or retailer an appropriate order for corrective action by the manufacturer or retailer, specifying a reasonable period for completion of the corrective action.

(d) The department may issue an amended report and order if all parties receive notice of and are given an opportunity to respond to that report and order. The amended report and order supersede the initial report and order.

(e) The manufacturer, retailer, or installer shall comply with the report and order of the director.

§ 1201.357. Failure to Provide Warranty Service

(a) If the manufacturer or retailer, as applicable, fails to provide warranty service within the period specified by the director under Section 1201.356, the manufacturer or retailer must show good cause in writing as to why the manufacturer or retailer failed to provide the service.

(b) If the manufacturer or retailer, as applicable, fails or refuses to provide warranty service in accordance with the department order under Section 1201.356, the director shall hold a hearing at which the manufacturer or retailer must show cause as to why the manufacturer's or retailer's license should not be suspended or revoked.

§ 1201.358. Failure to Show Good Cause; Hearing Results

(a) Failure by the manufacturer or retailer to show good cause under Section 1201.357(a) is a sufficient basis for suspension or revocation of the manufacturer's or retailer's license.

(b) If after the hearing under Section 1201.357(b), the director determines that the order under Section 1201.356 was correct in the determination of the warranty obligation of the manufacturer or retailer, failure or refusal by the manufacturer or retailer to comply with the order is a sufficient cause for suspension or revocation of the manufacturer's or retailer's license. If the director determines that the order was incorrect regarding that obligation, the director shall issue a final order stating the correct obligation and the right of the manufacturer or retailer to indemnification from the other.

(c) The director may issue an order:

(1) directing a manufacturer or retailer whose license is not revoked and who is not out of business to perform the warranty obligation of a manufacturer or retailer whose license is revoked or who is out of business; and

(2) giving the manufacturer or retailer performing the obligation the right of indemnification against the other.

(d) A manufacturer or retailer entitled to indemnification under this section is a consumer for purposes of Subchapter I and may recover actual damages and attorney's fees from the trust fund.

§ 1201.359. Application of Warranties if Hud-Code Manufactured Home Moved

- (a) The manufacturer's and retailer's warranties do not apply to any defect or damage caused by moving a new HUD-code manufactured home from the initial installation site.
- (b) Conspicuous notice of the warranty exception under Subsection (a) must be given to the consumer at the time of sale.
- (c) The warrantor has the burden of proof to show that the defect or damage is caused by the move.

§ 1201.360. Warranty for Hud-Code Manufactured Home Permanently Attached to Real Property

(a) The seller of real property to which a new HUD-code manufactured home is permanently attached may give the initial purchaser a written warranty that combines the manufacturer's warranty and the retailer's warranty required by this subchapter if:

- (1) the statement of ownership and location reflects that the owner has elected to treat the home as real property;
- (2) the home is actually located where the statement of ownership and location reflects that it is located; and
- (3) a certified copy of the statement of ownership and location has been filed in the real property records for the county in which the home is located.

(b) If a combination warranty is given under this section, the manufacturer and retailer are not required to give separate written warranties, but the manufacturer and retailer are jointly liable with the seller of the real property to the purchaser for the performance of their respective warranty obligations.

§ 1201.361. Installer's Warranty

For all secondary installations not covered by the retailer's warranty described by Section 1201.352 and for the installation of all used manufactured homes, the installer shall give the manufactured home owner a written warranty that the installation of the home was performed in accordance with all department standards, rules, orders, and requirements.

SUBCHAPTER I. MANUFACTURED HOMEOWNERS' RECOVERY TRUST FUND

§ 1201.401. Manufactured Homeowners' Recovery Trust Fund

The manufactured homeowners' recovery trust fund is an account in the general revenue fund.

§ 1201.402. Administration of Trust Fund

- (a) The director shall administer the trust fund as trustee of that fund.
- (b) The director is not required to file a bond or other security to serve as administrator of the trust fund.
- (c) The trust fund, fees collected for the trust fund, and income earned from investment of the trust fund may be used only for the protection programs prescribed by this subchapter.
- (d) Money in the trust fund may be invested and reinvested in the same manner as the funds of the Employees Retirement System of Texas. An investment may not be made that would impair the liquidity necessary to fund the

protection programs prescribed by this subchapter. Income from the trust fund shall be deposited to the credit of the fund.

§ 1201.403. Amount Reserved in Trust Fund; Payment of Costs

(a) One million dollars shall be reserved in the trust fund for payment of valid consumer claims.

(b) Unless the balance of the trust fund is less than \$1 million, the costs of the director and the department in administering the trust fund, keeping books and records, investigating consumer complaints, and conducting the informal dispute resolution process shall be paid from the trust fund.

§ 1201.404. Consumer Compensation

(a) Except as otherwise provided by Subchapter C, the trust fund shall be used to compensate a consumer who sustains actual damages resulting from an unsatisfied claim against a licensed manufacturer, retailer, broker, or installer if the unsatisfied claim results from a violation of:

(1) this chapter;

(2) a rule adopted by the director;

(3) the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.);

(4) a rule or regulation of the United States Department of Housing and Urban Development; or

(5) Subchapter E, Chapter 17, Business & Commerce Code.

(b) The trust fund and the director are not liable to the consumer if the trust fund does not have the money necessary to pay the actual damages and attorney's fees determined to be payable. The director shall record the date and time of receipt of each verified complaint and, as money becomes available, pay the consumer whose claim is the earliest by date and time.

§ 1201.405. Limitations on Claims

(a) The payment of actual damages is limited to the lesser of:

(1) the amount of actual, reasonable costs, not including attorney's fees, that the consumer has incurred or will incur to resolve the act or omission found to be a violation under Section 1201.404; or

(2) \$35,000.

(b) Attorney's fees and costs are limited to 20 percent of the amount of actual damages.

(c) The trust fund is not liable for and the director may not pay:

(1) punitive, exemplary, double, or treble damages; or

(2) damages for pain and suffering, mental anguish, emotional distress, or other analogous tort claims.

(d) Notwithstanding other provisions of this subchapter, this subchapter does not apply to, and a consumer may not recover against the trust fund as a result of, a claim against a license holder that results from a cause of action

directly related to the sale, lease-purchase, exchange, brokerage, or installation of a manufactured home before September 1, 1987.

§ 1201.406. Procedure for Recovery From Trust Fund

(a) To recover from the trust fund, a consumer must file a written complaint in the form required by the director not later than the second anniversary of:

- (1) the date of the alleged act or omission causing the actual damages; or
- (2) the date the act or omission is discovered or should reasonably have been discovered.

(b) On receipt of a verified complaint, the department shall:

- (1) notify each appropriate license holder; and
- (2) investigate the claim to determine:
 - (A) the validity of the claim; and
 - (B) whether the complaint can be resolved by remedial action of the license holder.

§ 1201.407. Disagreement of Parties; Informal Dispute Resolution Process

(a) If the license holders or a license holder and a consumer disagree as to responsibility for a complaint, the department shall conduct an informal dispute resolution process, including a home inspection if appropriate, to resolve the dispute.

(b) For a claim determined to be valid, the department shall make a preliminary determination during the informal dispute resolution process as to the responsibility and liability of the manufacturer, retailer, and installer.

(c) Before making a final determination, the department shall provide a license holder an opportunity to comment on the preliminary determination.

(d) The department shall notify a license holder's surety and give the surety an opportunity to participate in the informal dispute resolution process if the license holder:

- (1) is out of business;
- (2) is no longer licensed; or
- (3) has filed for liquidation or reorganization in bankruptcy.

(e) If, after receiving notice of the claim, a license holder or the license holder's surety fails or refuses to participate in the informal dispute resolution process, the license holder or surety, as applicable, is bound by the department's final determination of responsibility and liability.

§ 1201.408. Agreement of Parties; Arbitration

(a) If the parties agree as to responsibility for a complaint, the department shall prepare and file with the director a written report of the agreement.

(b) If a disputed claim is not resolved through the informal dispute resolution process, the parties may submit the claim for formal binding arbitration under Title 9, United States Code. The director by rule shall establish procedures for:

- (1) the arbitration; and
- (2) approval and selection of arbitrators.

§ 1201.409. Payment by Surety or From Other Security

(a) Except as otherwise provided by Subchapter C, the trust fund shall be reimbursed by the surety on a bond or from other security filed under Subchapter C for the amount of a claim that:

- (1) is paid out of the trust fund by the director to a consumer; and
- (2) resulted from an act or omission of the license holder who filed the bond or other security.

(b) Payment by the surety or from the other security must be made not later than the 30th day after the date of receipt of notice from the director that a consumer claim has been paid.

(c) If payment to the trust fund of a claim is not made by the surety or from the other security in a timely manner, the attorney general shall file suit for recovery of the amount due the trust fund. Venue for the suit is in Travis County.

§ 1201.410. Informational Pamphlet

- (a) The director shall prepare a pamphlet informing consumers of their rights to recover from the trust fund.
- (b) The director may contract with a private party for the printing and distribution of the pamphlet.

SUBCHAPTER J. USED OR SALVAGED MANUFACTURED HOMES

§ 1201.451. Transfer of Good and Marketable Title Required

(a) Except as otherwise provided by this subchapter, a person may not sell, exchange, or lease-purchase a used manufactured home without the appropriate transfer of good and marketable title to the home unless the sale, exchange, or lease-purchase is to:

- (1) a purchaser for the purchaser's business use; or
- (2) a rebuilder for the purpose of rebuilding a salvaged manufactured home.

(b) Not later than the 30th day after the effective date of the transfer of ownership or the date the seller or transferor obtains possession of the necessary and properly executed documents, the seller or transferor shall forward to the purchaser or transferee the necessary, executed documents. On receipt of the documents, the purchaser or transferee shall apply for the issuance of a statement of ownership and location.

§ 1201.452. Seal or Label Required

(a) Except as otherwise provided by this subchapter, a person may not sell, exchange, or lease-purchase or negotiate for the sale, exchange, or lease-purchase of a used manufactured home to a consumer unless the appropriate seal or label is attached to the home.

(b) If the home does not have the appropriate seal or label, the person must:

(1) apply to the department for a seal; and

(2) pay the fee.

§ 1201.453. Habitability

Manufactured housing is habitable only if:

(1) there is no defect or deterioration in or damage to the home that creates a dangerous situation;

(2) the plumbing, heating, and electrical systems are in safe working order;

(3) the walls, floor, and roof are:

(A) free from a substantial opening that was not designed; and

(B) structurally sound; and

(4) all exterior doors and windows are in place.

§ 1201.454. Habitability: Prohibited Alteration or Replacement

A manufacturer, retailer, broker, installer, or lienholder may not repair or otherwise alter a used manufactured home or replace a component or system of a used manufactured home in a way that makes the home not habitable.

§ 1201.455. Warranty of Habitability Required

(a) Except as otherwise provided by this subchapter, a person may not sell, exchange, or lease-purchase a used manufactured home to a consumer for use as a dwelling without providing a written warranty that the home is habitable.

(b) Unless, not later than the 60th day after the date of the sale, exchange, or lease-purchase agreement, the consumer notifies the seller in writing of a defect that makes the home not habitable, any obligation or liability of the seller under this subchapter is terminated. The warranty must conspicuously disclose that notice requirement to the consumer.

§ 1201.456. Habitability: Exception to Warranty Requirement

The warranty requirement imposed by Section 1201.455 does not apply to a sale, exchange, or lease-purchase of a used manufactured home from one consumer to another.

§ 1201.457. Habitability: Change To or From Business Use

(a) If the sale, exchange, or lease-purchase of a used manufactured home is to a purchaser for the purchaser's business use, the home is not required to be habitable. The purchaser of the home shall file with the department an

application for the issuance of a statement of ownership and location indicating that the home is reserved for business use.

(b) The purchaser of a used manufactured home for business use may not sell, exchange, or lease-purchase the home for use as a dwelling unless the director issues a new statement of ownership and location indicating that the home is no longer reserved for business use. On the purchaser's application to the department for issuance of a new statement of ownership and location, the department shall inspect the home and, if the department determines that the home is habitable, issue the statement of ownership and location.

§ 1201.458. Habitability: Exception for Certain Governmental or Nonprofit Entities

(a) Notwithstanding any other provision of this subchapter and on a written application by the purchaser or transferee, the director may give express written authorization to a licensed retailer to sell or exchange a used manufactured home that is not or may not be habitable to or with a governmental housing agency or authority or to a nonprofit organization that provides housing for the homeless.

(b) As a part of the application, the purchaser or transferee must certify to the receipt of a written notice that the home is not or may not be habitable. The consumer protection division of the attorney general's office shall prepare the form of the notice, which must be approved by the director.

(c) The purchaser or transferee may not occupy or allow occupation of the home as a dwelling until the completion of any repair necessary to make the home habitable.

§ 1201.459. Compliance Not Required for Sale for Collection of Delinquent Taxes

(a) In selling a manufactured home to collect delinquent taxes, a tax collector is not required to comply with this subchapter or another provision of this chapter relating to the sale of a used manufactured home.

(b) If the home does not have a serial number, seal, or label, the tax collector may:

- (1) apply to the department for a seal;
- (2) pay the applicable fee; and
- (3) recover that fee as part of the cost of the sale of the home.

(c) The seal issued to the tax collector is for identification purposes only and does not imply that:

- (1) the home is habitable; or
- (2) a purchaser of the home at a tax sale may obtain a new statement of ownership and location from the department without an inspection for habitability.

§ 1201.460. Compliance Not Required for Lienholder

(a) A holder of a lien recorded on the statement of ownership and location of a manufactured home that has not been converted to real property who sells, exchanges, or lease-purchases a repossessed manufactured home covered by that statement of ownership and location is not required to comply with this chapter if the sale, exchange, or lease-purchase is:

- (1) to or through a licensed retailer; or
- (2) to a purchaser for the purchaser's business use.

(b) If the sale, exchange, or lease-purchase of the repossessed manufactured home is to or through a licensed retailer, the retailer is responsible and liable for compliance with this chapter and department rules. The lienholder may not be joined as a party in any litigation relating to the sale, exchange, or lease-purchase of the home.

(c) If the sale, exchange, or lease-purchase of the repossessed manufactured home is to a purchaser for the purchaser's business use, the lienholder shall apply to the department for the issuance of a new statement of ownership and location indicating that the home is reserved for business use.

§ 1201.461. Salvaged Manufactured Home

(a) For the purposes of this chapter, a manufactured home is salvaged if the home is scrapped, dismantled, or destroyed or if an insurance company pays the full insured value of the home. The reasonableness of the insurer's judgment that the cost of repairing the home would exceed the full insured value of the home does not affect whether the home is salvaged.

(b) A person who owns a used manufactured home that is salvaged shall apply to the director for the issuance of a new statement of ownership and location that indicates that the home is salvaged.

(c) If a new manufactured home is salvaged, the retailer shall remove the label and surrender the label and the manufacturer's certificate under Section 1201.204 to the director for issuance of a statement of ownership and location that indicates that the home is salvaged.

(d) A person may not sell, convey, or otherwise transfer to a consumer in this state a manufactured home that is salvaged. A salvaged manufactured home may be sold only to a licensed retailer or licensed rebuilder.

(e) A person may not repair, rebuild, or otherwise alter a salvaged manufactured home unless the person complies with the rules of the director relating to rebuilding a salvaged manufactured home.

(f) If a salvaged manufactured home is rebuilt in accordance with this chapter and the rules of the director, the director shall, on application, issue a new statement of ownership and location that indicates that the home is no longer salvaged.

SUBCHAPTER K. PROHIBITED PRACTICES

§ 1201.501. Prohibited Construction by Manufacturer

A manufacturer may not construct a HUD-code manufactured home in this state for sale or resale unless the manufacturer:

(1) supplies the department with proof of acceptance by a design approval primary inspection agency authorized by the United States Department of Housing and Urban Development;

(2) purchases the required labels; and

(3) has the home inspected by an in-plant inspection agency authorized by the United States Department of Housing and Urban Development.

§ 1201.502. Prohibited Shipping by Manufacturer

A manufacturer may not ship a HUD-code manufactured home into this state for sale or resale unless the manufacturer complies with:

(1) all requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.); and

(2) all standards, rules, and regulations of the United States Department of Housing and Urban Development.

§ 1201.503. Prohibited Alteration

Before the sale to a consumer of a new manufactured home to which a label has been attached and before installation of the home, a manufacturer, retailer, broker, or installer may not alter the home or cause the home to be altered without obtaining prior written approval from the department.

§ 1201.504. Prohibited Sale, Exchange, or Lease-Purchase

(a) A manufacturer may not sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase a manufactured home to a person in this state who is not a licensed retailer.

(b) A retailer may not sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase a new HUD-code manufactured home that was constructed by a manufacturer who was not licensed by the department at the time of construction.

(c) A retailer, broker, or salesperson may not sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase a manufactured home to a consumer in this state for use as a dwelling unless the appropriate seal or label is attached to the home.

§ 1201.505. Prohibited Purchase

A retailer may not purchase for resale to a consumer a new HUD-code manufactured home that was constructed by a manufacturer who was not licensed by the department at the time of construction.

§ 1201.506. Credit

(a) A retailer or broker:

(1) shall comply with Subtitles A and B, Title 4, Finance Code, and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.); and

(2) may not advertise an interest rate or finance charge that is not expressed as an annual percentage rate.

(b) A violation of this section does not create a cause of action or claim for damages for a consumer. The consumer may not recover more than the penalties provided by Subtitles A and B, Title 4, Finance Code, and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.).

§ 1201.507. False or Misleading Information

(a) A retailer or salesperson may not:

(1) assist a consumer in preparing or providing false or misleading information on a document related to the purchase or financing of a manufactured home; or

(2) submit to a credit underwriter or lending institution information known to be false or misleading.

(b) A salesperson may not submit to a retailer information known to be false or misleading.

§ 1201.508. Down Payment

(a) A retailer may not state payment of a down payment in a retail installment sales contract or other credit document unless the retailer has actually received the entire down payment at the time of execution of the document.

(b) If part of the down payment is consideration other than cash, including a loan or trade-in, the retailer must expressly state that fact in the retail installment sales contract or other credit document.

(c) A cash down payment may not be derived in any part from a rebate or other consideration received by, or to be given to, the consumer from the retailer or manufacturer.

(d) The retailer may not require a consumer to make a down payment on the acquisition of a manufactured home from the retailer's inventory until the time the installment contract is executed.

§ 1201.509. Prohibited Retention of Deposit

A retailer, salesperson, or agent of the retailer may not refuse to refund a consumer's deposit except as provided by Section 1201.151.

§ 1201.510. Prohibited Installation of Air Conditioning Equipment

A retailer or an installer may not contract with a person for the installation of air conditioning equipment in connection with the installation of a manufactured home unless the person is licensed by the state as an air conditioning and refrigeration contractor.

§ 1201.511. Prohibited Real Estate Transaction

(a) This section applies to a transaction in which a manufactured home is sold as personal property.

(b) A retailer may not sell, represent for sale, or offer for sale real property in conjunction with the sale of a manufactured home except as authorized by the department consistent with Chapter 1101.

(c) A retailer, broker, or salesperson or a person acting on behalf of a retailer or broker may not receive or accept compensation or consideration of any kind from the seller of the real property or a person acting on the seller's behalf. No part of the down payment on the purchase of the manufactured home or any fees, points, or other charges or "buy-downs" may be paid from money from the seller of the real property or a person acting on the seller's behalf.

§ 1201.512. Prohibited Delivery or Installation of Manufactured Home

(a) In this section, "homesite" means the land on which the foundation system for a manufactured home is or will be located.

(b) Unless the retailer, broker, or salesperson complies with the requirements of the National Flood Insurance Act of 1968 (42 U.S.C. Section 4001 et seq.), Subchapter I, Chapter 16, Water Code, and any other applicable local, state, or federal law, and ensures the consumer's compliance with applicable law by requiring the evidence described by Subsection (c), a retailer, broker, or salesperson who sells, exchanges, or lease-purchases a new or used manufactured home to a consumer for use as a permanent dwelling in this state may not:

- (1) deliver or arrange for the delivery of the home to a homesite in a special flood hazard area designated by the director of the Federal Emergency Management Agency;
 - (2) install or arrange for the installation of the home at a homesite in that area; or
 - (3) assist the consumer in the delivery or installation of, or in making arrangements for the delivery or installation of, the home to or at a homesite in that area.
- (c) Before closing on the acquisition of a new or used manufactured home for use as a permanent dwelling in this state, a consumer seeking to acquire the home must provide to the retailer, broker, or salesperson selling, exchanging, or lease-purchasing the home satisfactory evidence that the home will not be located, in a manner that violates local, state, or federal law, on a homesite in a special flood hazard area designated by the director of the Federal Emergency Management Agency. A consumer may satisfy the evidentiary requirement of this subsection by providing the retailer, broker, or salesperson, as applicable, with a copy of any required permit to install a septic tank on the homesite.
- (d) The following are exempt from the application of this section:
- (1) a manufactured home that on August 31, 2003, was inhabited and located on real property zoned before September 1, 2003, by a local political subdivision for the purpose of developing homesites in a special flood hazard area designated by the director of the Federal Emergency Management Agency, if the home will remain on or be relocated to real property zoned as described by this subsection; and
 - (2) real property zoned before September 1, 2003, by a local political subdivision for the purpose of developing homesites in a special flood hazard area designated by the director of the Federal Emergency Management Agency.

SUBCHAPTER L. DISCIPLINARY PROCEDURES

§ 1201.551. Denial of License; Disciplinary Action

The director, after notice as provided for under Section 1201.054 and a hearing as provided by Sections 1201.054 and 1201.060, may deny, permanently revoke, or suspend for a definite period and specified sales location or geographic area a license if the director determines that the applicant or license holder:

- (1) knowingly and wilfully violated this chapter or a rule adopted or order issued under this chapter;
- (2) unlawfully retained or converted money, property, or any other thing of value from a consumer in the form of a down payment, sales or use tax, deposit, or insurance premium;
- (3) failed to timely provide to a consumer an application for a statement of ownership and location and any information necessary to complete the application;
- (4) failed to give or breached a manufactured home warranty required by this chapter or by the Federal Trade Commission;
- (5) engaged in a false, misleading, or deceptive act or practice as described by Subchapter E, Chapter 17, Business & Commerce Code;
- (6) failed to provide or file a report required by the department for the administration or enforcement of this chapter;
- (7) provided false information on an application, report, or other document filed with the department;

(8) acquired a criminal record during the five-year period preceding the application date that, in the opinion of the director, makes the applicant unfit for licensing; or

(9) failed to file a bond or other security for each location as required by Subchapter C.

§ 1201.554. Probation

The department may place on probation a person whose license is suspended. If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

§ 1201.552. Hearing Concerning License

The director shall conduct a hearing involving the denial, renewal, revocation, or suspension of a license in accordance with Chapter 2001, Government Code.

§ 1201.553. Judicial Review

Judicial review of an order, decision, or determination of the director is instituted by filing a petition with a district court in Travis County as provided by Chapter 2001, Government Code.

SUBCHAPTER M. ENFORCEMENT PROVISIONS AND PENALTIES

§ 1201.601. Action Against Retailer or Manufacturer: Holder of Debt Instrument

(a) If a consumer files a cause of action against a retailer or manufacturer, a claim based on an act of the retailer or manufacturer that the consumer could assert against the holder of the manufactured home debt instrument must be asserted against the holder in the primary suit against the retailer or manufacturer.

(b) A judgment obtained in the primary suit against the retailer or manufacturer is conclusive proof as to the holder of the debt instrument and admissible in an action by the consumer against the holder only if the consumer joins the holder in the primary suit.

(c) The holder of the debt instrument is entitled to full indemnity from the retailer or manufacturer for a claim based on an act or omission of the retailer or manufacturer.

(d) If the consumer asserts against the holder of the debt instrument a claim or defense that arises from a claim or defense of the consumer against the retailer, the consumer's relief against the holder arising from claims and defenses of the consumer against the retailer is limited to recovery of an amount not to exceed the total amount paid by the consumer to the holder and to cancellation of the balance remaining on the instrument. If the balance remaining on the instrument is canceled, the manufactured home shall be returned to the holder.

§ 1201.602. Action Against Manufacturer, Installer, or Retailer: Abatement or Bar

(a) Notwithstanding any other law, a suit alleging that a manufacturer, installer, or retailer failed to perform warranty service or failed to comply with a written or implied warranty is abated if:

- (1) a plea in abatement is filed with the court not later than the 45th day after the movant's answer date; and
- (2) the manufacturer, installer, or retailer requests a consumer complaint home inspection under Section 1201.355.

(b) The abatement continues until the earlier of:

(1) the date on which the department performs a consumer complaint home inspection and the manufacturer, installer, or retailer is given an opportunity to comply with the inspection report, determinations, and orders of the director; or

(2) the expiration of a period not to exceed 150 days.

(c) A consumer's refusal to allow the manufacturer, installer, or retailer to perform warranty service in accordance with the inspection report, determinations, and orders of the director bars a cause of action relating to an alleged failure to:

(1) comply with a written or implied warranty; or

(2) perform warranty service.

§ 1201.603. Deceptive Trade Practices

(a) A person's violation of this chapter or the failure by a manufacturer, installer, or retailer to comply with an implied warranty is a deceptive trade practice actionable under Subchapter E, Chapter 17, Business & Commerce Code.

(b) The venue provisions of Subchapter E, Chapter 17, Business & Commerce Code, apply to a claim under Subsection (a). The remedies available under Subchapter E, Chapter 17, Business & Commerce Code, are cumulative of the remedies under this chapter.

§ 1201.604. Consumer Recovery for Prohibited Retention of Deposit

In addition to any other remedy, a consumer may recover from a retailer, salesperson, or agent of the retailer who violates Section 1201.151:

(1) three times the amount of the deposit; and

(2) reasonable attorney's fees.

§ 1201.605. Administrative Penalty

(a) The director may assess against a person who fails to obtain or maintain a license as required by this chapter an administrative penalty in an amount not to exceed \$10,000 for each violation of this chapter and:

(1) reasonable attorney's fees;

(2) administrative costs;

(3) witness fees;

(4) investigative costs; and

(5) deposition expenses.

(b) The director may assess against a retailer who fails to provide information to a consumer as required by this chapter an administrative penalty in an amount not to exceed:

(1) \$1,000 for the first violation;

(2) \$2,000 for the second violation; and

(3) \$4,000 for each subsequent violation.

§ 1201.606. Criminal Penalty

(a) A person or a director, officer, or agent of a corporation commits an offense if the person, director, officer, or agent knowingly and willfully violates this chapter or a rule adopted or order issued by the department in a manner that threatens consumer health or safety.

(b) An offense under this section is a Class A misdemeanor punishable by:

(1) a fine of not more than \$4,000;

(2) confinement in county jail for a term of not more than one year; or

(3) both the fine and confinement.