



Texas Department of Housing and Community Affairs
Manufactured Housing Board Meeting
March 26, 2008

Valeri Stiers Malone, Chair

Carlos Amaral, Member

Michael H. Bray, Member

Pablo Schneider, Member

Kimberly A. Shambley, Member

**Texas Department of Housing and Community Affairs
Manufactured Housing Board Meeting**

March 26, 2008

ROLL CALL

	<u>Present</u>	<u>Absent</u>
Valeri Stiers Malone, Chair	_____	_____
Carlos Amaral, Member	_____	_____
Michael H. Bray, Member	_____	_____
Pablo Schneider, Member	_____	_____
Kimberly A. Shambley, Member	_____	_____
Number Present	_____	
Number Absent		_____

_____, Presiding Officer

MANUFACTURED HOUSING BOARD MEETING
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
State Insurance Annex, 221 E. 11th Street, Room 116
Austin, Texas 78701
March 26, 2008 10:00 a.m.

AGENDA

CALL TO ORDER, ROLL CALL Chair

CERTIFICATION OF QUORUM Chair

The Board of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (TDHCA) will meet to consider and possibly act upon:

ACTION ITEMS

- | | | |
|---------|---|------------|
| Item 1. | Consideration and possible action to approve the minutes of the board meeting of January 18, 2008. | Chair |
| Item 2. | Discussion and possible action to allow other instruction providers to offer the Licensing Education Course (20-hour). | Chair |
| Item 3. | Discussion and possible action to post a position for General Counsel. | Chair |
| Item 4. | Discussion and possible action to stop accepting bonds from Washington International. | Jim Hicks |
| Item 5. | Presentation, discussion and action concerning the State Office of Administrative Hearings (SOAH) Proposal for Decision:

In the Matter of the Complaint of TDHCA vs. DJ Birdsell, Inc. dba Factory Direct Homes, Docket Number: 332-06-2936. | Jim Hicks |
| Item 6. | Consideration and possible action to approve proposed amendments to 10 TAC, Chapter 80, §§80.3, 80.90, 80.93, and 80.100 for publication in the Texas Register for public comment. | Joe Garcia |

REPORT ITEMS

- | | |
|--------------------------------|------------|
| 1. Executive Director's Report | Joe Garcia |
|--------------------------------|------------|

PUBLIC COMMENT Chair

EXECUTIVE SESSION Chair

Note: The Board may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

- (a) If necessary, the Board will go into executive session to discuss Personnel Matters pursuant to Sec. 551.074, Texas Government Code.
- (b) If necessary, the Board will go into executive session for Consultation with Attorney pursuant to Sec. 551.071, Texas Government Code.

RECONVENE Chair

Reconvene in public session and take action on any matters coming out of Executive Session.

ADJOURN Chair

To access this agenda or request information, please visit our website at www.tdhca.state.tx.us or contact Sharon Choate, TDHCA, 221 E. 11th Street, Austin, Texas 78701, 512-475-2206, sharon.choate@tdhca.state.tx.us.

Individuals who require auxiliary aids, services or translators for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Agenda Action Item No. 1

**MINUTES OF THE REGULAR MEETING OF THE
MANUFACTURED HOUSING BOARD**

On Friday, January 18, 2008, at 9:03 a.m., there was a regular meeting of the Manufactured Housing Board (the "Board") in Room 116 of the State Insurance Annex Building, 221 East 11th Street, Austin, Texas. Michael Bray presided. Carlos Amaral, and Kimberly Shambley, constituting a quorum, were in attendance. Valeri Stiers Malone was absent. The following Manufactured Housing Division (the "MHD") staff were present: Joe Garcia, Kassu Asfaw, Cindy Bocz, Jim Hicks, and Sharon Choate. From the Texas Department of Housing and Community Affairs (other than the MHD) Elena Peinado was present and from the Office of Attorney General Amanda Ellis was present.

Michael Bray called the roll, confirmed the presence of a quorum, and asked for a motion to approve the minutes from the board meeting on November 16, 2007. Upon motion of Carlos Amaral, duly seconded by Kimberly Shambley, the minutes of the previous meeting were unanimously approved.

Jim Hicks presented a recommendation to approve extending the Texas Manufactured Housing Association ("TMHA") as a Continuing Education Provider for a two-year period. Upon motion of Carlos Amaral, duly seconded by Kimberly Shambley, the recommendation was unanimously approved.

Mr. Sherman Mayes presented his concern relating to foundation issues to his manufactured home. There was no action taken after discussion of this item. However, there was agreement for the Department to conduct a re-inspection of the home to determine if there are any items that need addressing that are within the Department's jurisdiction to enforce.

Joe Garcia delivered the Executive Director's Report and Kassu Asfaw delivered the Financial Report.

At 10:45 a.m., the Board went into Executive Session to discuss personnel matters relating to the Executive Director's vacated position pursuant to Sec. 551.074, Texas Government Code.

At 11:15 a.m., the board reconvened in open session. Carlos Amaral made a motion to appoint Joe Garcia as the Executive Director of the Manufactured Housing Division and it was duly seconded by Kimberly Shambley, the motion was unanimously approved.

The next board meeting was tentatively set for Wednesday, March 26, 2008.

Items to take up at the next Board meeting:

- Discussion to allow licensees to conduct the 20-hour Licensing Education Course; and

- Discussion to post a General Counsel position for the Manufactured Housing Division.

There being no further business to come before the board, the meeting was adjourned at 11:18 a.m.

Sharon Choate, Secretary

Approved:

Presiding Chair

Agenda Action Item No. 2

Below are the sections from the Standards Act and the Department rules relating to the 20-hour instruction course.

Sec. 1201.104. Qualifications for License.

- (a) Except as provided by Subsection (e), as a requirement for a manufacturer's, retailer's, broker's, installer's, salvage rebuilder's, or salesperson's license, a person who was not licensed or registered with the department or a predecessor agency on September 1, 1987, must, not more than 12 months before applying for the person's first license under this chapter, attend and successfully complete 20 hours of instruction in the law, including instruction in consumer protection regulations. If the applicant is not an individual, the applicant must have at least one related person who meets this requirement.
- (b) Except in the case of an applicant for a salesperson's license, successful completion of the course of instruction is a prerequisite to obtaining the license.
- (c) An applicant for a salesperson's license may apply for a license without having completed the course of instruction provided that the person successfully completes the next scheduled course offered after the date of the person's licensure. If the person fails to complete such course successfully and in a timely manner, the person's license is automatically suspended until the person successfully completes the course.
- (d) The course of instruction must be offered at least quarterly.
- (e) The board shall adopt rules relating to course content and approval. Classes must be live. Online or other electronic classes are not permitted.
- (f) An application for an initial installer's license shall receive a license on a probationary basis. The person's probationary status shall remain in effect until such time as a sufficient number of installations completed by the person have been inspected by the department and found not to have any identified material violations of the department's rules. The board, with the advice of the advisory committee to be established under Section 1201.251, shall adopt rules to establish what constitutes a sufficient number of installations under this subsection.
- (g) Subsection (a) does not apply to a license holder who applies:
 - (1) for a license for an additional business location; or
 - (2) to renew or reinstate a license.
- (h) An examination must be a requirement of successful completion of an initial required course of instruction under this section.

§80.41. License Requirements.

(c) Education.

- (1) The Standards Act requirement for an initial 20 hour course of instruction in the law, including instruction in consumer protection regulations, shall be offered quarterly by the Department. Other instruction providers may offer the course, if they complete and submit the required application, together with the required fee and all required supporting documentation, including any additional documentation requested by the Department, and, based on the recommendation of the Director, they are approved by the Board. Subject to limitations on Department resources, the Department will make special licensing classes available upon written request.
- (2) The test to be administered in connection with the course will consist of a representative selection of questions from an approved set of questions prepared by the Director. The test will be open-book. A score of 70% correct is required to pass the test.
- (3) For initial licensing of a salesperson, if the salesperson does not attend and successfully complete the next initial licensing class provided by the Department, the license will automatically be terminated until the salesperson has attended and successfully completed that class.
- (4) The 20 hour course of instruction must include the following matters in its curriculum.
 - (A) the Standards Act and this Chapter;
 - (B) Texas Finance Code, Chapters 347 and 156;
 - (C) Texas Transportation Code requirements relating to moving manufactured homes;
 - (D) Federal Truth -in-Lending Act and Regulation Z;
 - (E) Installations;
 - (F) Consumer Complaints;
 - (G) Enforcement;
 - (H) Complaint Resolution Process; and
 - (I) The Federal Manufactured Home Construction and Safety Standards (FMHCSS).
- (5) The primary administrator for each approved training program will be notified by the Department of changes to the Law and Rules and the date that the changes will become effective.

- (6) The Department may revoke course approval for failure to comply with the standards or procedures set forth in this Chapter or any conditions of approval. Unless the approval provides otherwise or is revoked for cause, an approval is valid for two (2) years.

Agenda Action Item No. 3

There is no documentation to review for discussion and possible action to post a position for General Counsel.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MANUFACTURED HOUSING DIVISION

Rick Perry
GOVERNOR

Joe A. Garcia
EXECUTIVE DIRECTOR

Board Members
Presiding Officer, Valeri Stiers Malone
Carlos Amaral
Michael H. Bray
Pablo Schneider
Kimberly A. Shambley

TO: Governing Board of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs

FROM: Jim R. Hicks, Consumer Protection Manager

THROUGH: Joe A. Garcia, Executive Director

SUBJECT: Recommendation to Stop Accepting Bonds from Washington International Insurance Company

Background

Washington International Insurance Company (“Washington”) is a surety that provides bond coverage for Manufactured Housing Licensees. When a claim is submitted to the Homeowners Recovery Trust Fund (“HORTF”), the claim is investigated and a preliminary determination is issued, giving the licensee and surety an opportunity to resolve the matter by agreement or to dispute the preliminary determination. If the matter is not resolved or disputed by written notice to the director before the 31st day after the date of the preliminary determination, the preliminary determination becomes final. Per Section 1201.409 of the Manufactured Housing Standards Act (“Act”), the surety must reimburse the HORTF not later than the 30th day after the date of notice from the director that a consumer claim has been paid.

Facts

The department has made 75 claims on the bonds of Washington. Of those 75 claims, Washington paid 14 in a timely manner. As a result of non-payment, the department was forced to refer 61 claims to the Texas Office of the Attorney General (“OAG”) for collection. These 61 claims totaled \$244,571.98. Of the 61 claims referred to the OAG, only five claims, totaling \$15,066.09, have been collected. Washington has an outstanding

balance owing the department \$229,505.86.

There are currently 47 active licensees being bonded with Washington.

Applicable Law

Section 1201.105(c) If the department experiences significant problems in obtaining timely reimbursements from a surety or the surety has experienced a deterioration in its financial condition, the board may direct the director to stop accepting bonds issued by the surety.

Recommendation

Based on the background and facts stated above, the department has experienced significant problems in obtaining timely reimbursements from Washington. Specifically, 89% of reimbursement demands submitted to Washington were not reimbursed in a timely manner. The overdue reimbursements owed to the Department from Washington are substantial. There are 47 active licensees still being bonded by Washington. The potential for greater harm to the department and the HORTF exists if the department continues to accept bonds from Washington.

In conclusion, the department recommends that the board directs the Executive Director to stop accepting bonds issued by Washington International Insurance Company.

CLAIMS REFERRED TO ATTORNEY GENERAL FOR COLLECTION

AS OF: 3/12/2008

Surety: Washington International Insurance Company

Address: 1200 Arlington Heights Road, Suite 400

City, State, ZIP: Itasca, IL 60143

COMPLAINT NO.	CLAIM AMOUNT	DATE REFERRED	OUT OF BUSINESS LICENSEE	CONSUMER'S NAME	BOND NO.	DATE COLLECTED	AMOUNT COLLECTED	COMMENTS
MHD2005000346-LRV	\$4,100.00	8/25/2006	Victoria Home Outlet	Sandra Rae Anderson	S9016301	10/27/2006	\$4,100.00	
MHD2006000633-LRV	\$2,261.78	10/9/2006	Interstate Repos, Inc.	Francisco C. Marin	S9022492			
MHD2006000419-LRV	\$5,647.03	10/30/2006	Harper Enterprises	F. J. Beal	S9021572	5/23/2007 (Comments)	\$4,774.08	Partial Pymt. Ref AG email
MHD2006000565-LRV	\$3,313.45	10/30/2006	Interstate Repos, Inc.	Ryan Stahr	S9032866	5/23/2007 (Comments)	\$2,857.45	Partial Pymt. Ref AG email
MHD2005000744-W	\$2,325.00	2/5/2007	Emerald Manufactured Housing, Inc.	Sam Noke	S9022473			
MHD2005001077-LRV	\$1,994.70	2/5/2007	Harper Enterprises	Anthony Muguerra	S9021572			
MHD2006000019-W	\$6,202.50	2/5/2007	Green Tree Homes	Floyd Hammons	S9027127	DECLARED UNRECOVERABLE BY AG ON 9/21/2007		
MHD2006000275-IL	\$2,193.00	2/5/2007	Interstate Repos, Inc.	Sara Miller	S9032866			
MHD2006000398-LRV	\$1,477.40	2/5/2007	ASAP Mobile Homes	Wilbur & Magdalena Jones	S9025749			
MHD2006000398-LRV	\$205.19	2/5/2007	ASAP Mobile Homes	Wilbur & Magdalena Jones	S9025749			
MHD2006000460-LRV	\$3,567.07	2/5/2007	Interstate Repos, Inc.	Harold J. Smith	S9032866			
MHD2006000552-LRV	\$2,722.67	2/5/2007	Interstate Repos, Inc.	Juan Camacho	S9032866			
MHD2006000606-LRV	\$2,258.99	2/5/2007	Interstate Repos, Inc.	Mancel & Mary Beth May	S9032866			
MHD2006000675-LRV	\$454.52	2/5/2007	Dilley Mobile Home Park, dba: Dilley Mobile Home Sales	Geneva Chalker	S9032856			
MHD2006000680-LRV	\$5,357.05	2/5/2007	Dilley Mobile Home Park, dba: Dilley Mobile Home Sales	Shirley A. Kocurek	S9032856	5/23/2007 (Comments)	\$454.52	Partial Pymt. Ref AG email
MHD2006000695-LRV	\$2,121.40	2/5/2007	Interstate Repos, Inc.	W. Lee & Nancy Brown	S9022492			
MHD2006000703-LRV	\$1,160.37	2/5/2007	Interstate Repos, Inc.	Donovan Dove	S9022492			
MHD2006000716-LRV	\$4,119.93	2/5/2007	Interstate Repos, Inc.	Bonnie Graham	S9032866			
MHD2006000787-LRV	\$5,220.86	2/5/2007	Interstate Repos, Inc.	Elizabeth A. Milligan	S9022492			
MHD2006000884-LRV	\$2,464.49	2/5/2007	Interstate Repos, Inc.	Melody Golden	S9032866			
MHD2006000970-LRV	\$1,558.86	2/5/2007	Ranger Joint Venture, dba: Texas Ranger Homes	Frank & Judy Davidson	S9024445			
MHD2007000032-LRV	\$1,164.13	2/5/2007	Ranger Joint Venture, dba: Texas Ranger Homes	Adam & Jennifer Lovelady	S9024445			
MHD2006000845-LRV	\$6,969.34	2/13/2007	Homes Plus	Thomas C. Turner	S9020755			
MHD2006000743-LRV	\$5,133.51	2/13/2007	Homes Plus	Billy & Amy Usrey	S9020755			
MHD2007000105-LRV	\$6,571.37	2/13/2007	Dilley Mobile Home Park, dba: Dilley Mobile Home Sales	Robert & Barbara Kincaid	S9032856			
MHD2006000234-LRV	\$861.87	2/13/2007	Dilley Mobile Home Park, dba: Dilley Mobile Home Sales	Gloria Elizabeth Rangel Salinas	S9032856			
MHD2006000234-LRV	\$940.35	2/13/2007	Dilley Mobile Home Park, dba: Dilley Mobile Home Sales	Gloria Elizabeth Rangel Salinas	S9032856			
MHD2006000993-LRV	\$4,454.19	2/13/2007	Broker's Direct, Inc.	Patsy J. Pickett	S9018833			
MHD2006000846-LRV	\$616.30	2/22/2007	Homes Plus	Thomas C. Turner	S9020755			
MHD2006000198-LRV	\$5,057.12	2/22/2007	Interstate Repos, Inc.	Maria Villarreal	S9032866			
MHD2006000404-LRV	\$18,400.00	2/22/2007	Interstate Repos, Inc.	Jack Guerra	S9032866			
MHD2006000421-LRV	\$663.24	2/22/2007	Interstate Repos, Inc.	Juan C. Zuniga	S9032866			
MHD2006000570-W	\$2,880.04	3/28/2007	Green Tree Homes	Rose Ann Byrge	S9027127	9/21/2007	\$2,880.04	
MHD2006000938-LRV	\$1,838.96	3/28/2007	Interstate Repos, Inc.	Sue Handley	S9032866			
MHD2006000325-LRV	\$9,000.00	3/28/2007	Dilley Mobile Home Park, dba: Dilley Mobile Home Sales	Felipe A. Baldizon	S9032856			
MHD2006000192-IV	\$853.51	8/31/2007	Dilley Mobile Home Park, dba: Dilley Mobile Home Sales	Betty Rangel	S9032856			
MHD2006000258-LRV	\$945.65	8/31/2007	Interstate Repos, Inc.	Angelica Cruz	S9032866			

COMPLAINT NO.	CLAIM AMOUNT	DATE REFERRED	OUT OF BUSINESS LICENSEE	CONSUMER'S NAME	BOND NO.	DATE COLLECTED	AMOUNT COLLECTED	COMMENTS
MHD2006000463-II	\$5,690.00	8/31/2007	Interstate Repos, Inc.	Felipe De Loera	S9032866			
MHD2006000744-LRV	\$5,354.55	8/31/2007	Ranger Joint Venture, dba: Texas Ranger Homes	Larry & Kathleen Cribbs	S9024445			
MHD2006000802-LRV	\$22,112.44	8/31/2007	Green Tree Homes	Ruth T. Johnson	S9032136			
MHD2006000842-LRV	\$6,762.29	8/31/2007	Interstate Repos, Inc.	Sharon Rethwisch	S9022492			
MHD2006000942-LRV	\$2,929.16	8/31/2007	Homes Plus	Darren De La Cerda	S9020755			
MHD2007000096-LRV	\$3,294.19	8/31/2007	Dilley Mobile Home Park, dba: Dilley Mobile Home Sales	Jerrell & Sharon Fleming	S9032856			
MHD2007000215-IV	\$400.00	8/31/2007	Homes Plus	John & Pamala Thies	S9020755			
MHD2007000509-LRV	\$4,226.50	8/31/2007	Homes Plus	Douglas Todd Busch	S9020755			
MHD2007000089-WU	\$1,447.60	9/28/2007	Dilley Mobile Home Park, dba: Dilley Mobile Home Sales	Fleming	S9032856			
MHD2007000091-WU	\$1,853.60	9/28/2007	Dilley Mobile Home Park, dba: Dilley Mobile Home Sales	Fleming	S9032856			
MHD2007000559-LRV	\$30,240.00	10/9/2007	Dilley Mobile Home Park, dba: Dilley Mobile Home Sales	Leticia Leija	S9032856			
MHD2007000304-LRV	\$3,743.86	10/22/2007	Rocket Homes	Jose Armando Jimenez	S9022464			
MHD2006000215-LRV	\$812.68	10/22/2007	Rocket Homes	Orlando Garza	S9022464			
MHD2007000773-LRV	\$7,613.10	1/13/2008	Francy Ltd.	Carroll Allen & Janice Forehand	S9022452			
MHD2007000774-LRV	\$812.87	1/13/2008	Francy Ltd.	Carroll Allen & Janice Forehand	S9022452			
MHD2007000774-LRV	\$664.57	1/13/2008	Francy Ltd.	Carroll Allen & Janice Forehand	S9022452			
MHD2007000770-LRV	\$2,061.70	1/13/2008	Francy Ltd.	Carroll Allen & Janice Forehand	S9022452			
MHD2007000770-LRV	\$181.00	1/13/2008	Francy Ltd.	Carroll Allen & Janice Forehand	S9022452			
MHD2007000770-LRV	\$2,190.64	1/13/2008	Francy Ltd.	Carroll Allen & Janice Forehand	S9022452			
MHD2007000768-LRV	\$5,093.52	1/13/2008	Francy Ltd.	Carroll Allen & Janice Forehand	S9022452			
MHD2007000769-LRV	\$5,159.84	1/21/2008	Francy Ltd.	Carroll Allen & Janice Forehand	S9022452			
MHD2007000501-LRV	\$2,471.79	1/21/2008	Harper Enterprises	Dorothy Vasquez	S9021572			
MHD2007000662-LRV	\$1,063.71	1/21/2008	Homes Plus	Lakeside MHC, Ltd.	S9020755			
MHD2007000836-LRV	\$1,316.53	1/13/2008	Homes Plus	Linda Cowan	S9020755			
NUMBER REFERRED:	61					TOTAL COLLECTED:	\$15,066.09	

AMOUNT OF CLAIMS: \$244,571.98
ESS AMOUNT COLLECTED: \$15,066.09
BALANCE TO COLLECT: \$229,505.89

Agenda Action Item No. 5



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MANUFACTURED HOUSING DIVISION

Rick Perry
GOVERNOR

Joe A. Garcia
EXECUTIVE DIRECTOR

Board Members
Presiding Officer, Valeri Stiers Malone
Carlos Amaral
Michael H. Bray
Pablo Schneider
Kimberly A. Shambley

TO: Governing Board of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs

FROM: Jim R. Hicks, Consumer Protection Manager

THROUGH: Joe A. Garcia, Executive Director

SUBJECT: Summary of Proposal for Decision

DJ Birdsell, Inc. dba Factory Direct Homes, ("Respondent")

License type/number: RBI-34913. Effective dates September 7, 2001 through September 6, 2006.

Docket Number: 332-06-2936

Complaint Number: MHD2005000580-LRV, MHD2006000382-LRV, MHD2006000785-LRV, MHD2006000612-LRV

Background

It was found and determined by the staff of the Manufactured Housing Division that Respondent had committed the following violations of the Act and the Rules:

MHD2005000580-LRV

On or about March 4, 2004, Respondent sold a used manufactured home, identified by HUD Label Number NTA0995214/5 to Felipe and Gloria Cortes, a consumer under the Act. At the time of sale, there was an outstanding mortgage lien on the home. Therefore, Respondent failed to give good and marketable title as required by Section 1201.451 of the Texas Manufactured Housing Standards Act ("Act").

MHD2006000382-LRV

On or about January 3, 2005, Respondent sold a used manufactured home, identified by HUD Label Number PFS0359330 to Unavesta Robeson, a consumer under the Act. At the time of sale, Respondent did not legally own the manufactured home and was unable to provide Ms. Robeson with a good and marketable title as required by Section 1201.451 of the Act.

MHD2006000785-LRV

On or about October 20, 2005, Respondent accepted a deposit of \$15,000.00 from Louise Lyrock, a consumer under the Act. Ms. Lyrock, through her attorney made a written demand for refund on April 7, 2006. Respondent did not refund the deposit until October 2006. Therefore, Respondent failed to refund the deposit within fifteen (15) days as required by Section 1201.151(a) of the Act.

MHD2006000612-LRV

Respondent's bond cancelled on November 19, 2005. Per Section 1201.109 of the Act, if a bond is cancelled, the license is suspended on the effective date of the cancellation. Respondent continued to offer manufactured homes for sale until the Texas Office of Attorney General served a Cease and Desist Order on March 20, 2006. Respondent filed a new bond on March 21, 2006.

Respondent's bond cancelled again on September 19, 2006. Respondent continued to offer manufactured homes for sale until October 16, 2006 when he filed a new bond.

Therefore, on two separate occasions, Respondent violated Sections 1201.101(b) and (c) of the Act by offering to sell two or more manufactured homes within a consecutive twelve (12) month period, without obtaining, maintaining, or possessing a valid retailer's and/or broker's license.

Complaint History

Respondent has had a total of 28 complaints filed against him since 2002. 11 of those cases were resolved without formal action. The department has taken administrative action against Respondent six (6) times.

Hearing before the State Office of Administrative Hearings

After proper notice, an administrative hearing was held on April 2, 2007. An Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH) issued the attached Proposal for Decision (PFD) as a result of that meeting. The PFD upholds the findings and determinations of the staff.

Proposal for Decision

The Proposal for Decision dated August 23, 2007, recommends that Respondent's license be denied and that Respondent be assessed an administrative penalty of Five Thousand Dollars (\$5,000.00).

Recommendation

It is recommended that the Board approve the following administrative action with respect to the Respondent, as supported by the record and the PFD.

Respondent be assessed an administrative penalty of Five Thousand Dollars (\$5,000.00).

Additionally, please note that the attached Final Order is in two parts and contains two separate orders. The first part is the order of renewal denial signed by the Executive Director. The Executive Director is authorized to order license sanctions-reprimands, suspensions, denials, revocations, and orders to pay administrative penalties by Sections 1201.551 and 1201.605 of the Act. The second part of the attached order is the Board's order to approve the Proposal for Decision, which is authorized by Section 1201.605 of the Act (effective January 1, 2008), formally found at Section 2306.6023 of the Tex. Govt. Code.

DOCKET NO. 332-06-2936

MANUFACTURED HOUSING	§	BEFORE THE GOVERNING
DIVISION OF TEXAS OF THE TEXAS	§	
DEPARTMENT OF HOUSING AND	§	BOARD OF THE MANUFACTURED
COMMUNITY AFFAIRS	§	
Petitioner,	§	HOUSING DIVISION OF THE TEXAS
	§	
v.	§	DEPARTMENT OF HOUSING
	§	
D. J. BIRDSELL d/b/a FACTORY	§	AND COMMUNITY AFFAIRS
DIRECT HOMES,	§	
Respondent.	§	

FINAL ORDER

CAME ON TO BE CONSIDERED, the matter of the enforcement action identified as MHD2005000580-LRV, MHD2006000382-LRV, MHD2006000785-LRV, and MHD2006000612-LRV, *In the Matter of the Complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. D. J. Birdsell d/b/a Factory Direct Homes* pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the TEX. OCCUPATIONS CODE (“Act”); Texas Manufactured Housing Rules, 10 TEX. ADMIN. CODE, § 80.1 et seq. (“Rules”); Chapter 2306 of the TEX. GOVT. CODE ANN. ch. 2306 (“Ch. 2306”); and the Administrative Procedures Act, TEX. GOVT. CODE ANN. ch. 2001 (“APA”). The Governing Board, after review and due consideration, adopts all the findings of fact and conclusions of law numbers 1-10 and 14 of the Administrative Law Judge contained in the Proposal for Decision dated August 23, 2007, into this Order as if such were fully set out and separately contained herein. All proposed findings of fact and conclusions of law submitted by any party which are not specifically adopted herein are denied.

This contested case hearing was provided pursuant to Texas Occupations Code, sections 1201.054 and 1201.060. This Proposal for Decision was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the administrative record.

NOW, THEREFORE, IT IS ORDERED BY THE GOVERNING BOARD OF THE MANUFACTURED HOUSING DIVISION OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

1. The Respondent be assessed an administrative penalty of Five Thousand Dollars (\$5,000.00) for violations of the Act and Rules as detailed in the Proposal for Decision;

Final Order

In the Matter of D. J. BIRDSELL d/b/a FACTORY

DIRECT HOMES

Docket No. 332-06-2936

Complaint No. MHD2005000580-LRV, MHD2006000382-LRV, MHD2006000785-LRV
MHD2006000612-LRV

2. This penalty shall be paid to the Texas Department of Housing and Community Affairs within thirty (30) days of the date of this FINAL ORDER and mailed to Texas Department of Housing and Community Affairs, PO Box 12489, Austin, TX 78711-2489;
3. **In the event the final decision is appealed by the Respondent, the full cost of the preparation of the transcript and all administrative costs authorized by Ch. 2001, are hereby assessed against the Respondent; and**
4. The invalidity of any portion of this FINAL ORDER shall not affect the validity of the remaining portions of the order.
5. The determination of the Texas Department of Housing and Community Affairs in the above-captioned matter is approved. The Respondent **SHALL CEASE AND DESIST** from violating the Act and Rules of the Texas Department of Housing and Community Affairs.

SIGNED AND ENTERED this _____ day of _____, 2008.

Valeri Stiers Malone, Presiding Officer, on behalf of
Governing Board of the Manufactured Housing Division
Texas Department of Housing and Community Affairs

CERTIFICATION

I certify that a true and correct copy of the forgoing has been sent by U.S. certified mail (Number 7006 2760 0004 7905 6296), return receipt requested, to D. J. BIRDSELL d/b/a FACTORY DIRECT HOMES, 21180 US Hwy 59 South, New Caney, TX 77357 on this the _____day of _____, 2008.

Charles Siepert, Jr.

SOAH DOCKET NO. 332-06-2936

MANUFACTURED HOUSING DIVISION	§	BEFORE THE STATE OFFICE
OF THE TEXAS DEPARTMENT OF	§	
HOUSING AND	§	
COMMUNITY AFFAIRS,	§	
 Petitioner	§	
	§	
V.	§	OF
	§	
D. J. BIRDELL	§	
D/B/A FACTORY DIRECT HOMES,	§	
 Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Staff/Department) brought this enforcement action against D. J. Birdsell d/b/a Factory Direct Homes (Respondent)¹ for violating provisions of the Texas Manufactured Housing Standards Act (the Act),² and administrative rules of the Commission.³ Staff alleged that Respondent sold or offered for sale manufactured homes without a current bond, failed to timely return a deposit, and failed to timely transfer titles to two manufactured homes. Staff recommended denial of Respondent's pending application for renewal of his retailer/broker/installer (RBI) license and imposition of a \$5,000.00 administrative penalty.

This PFD recommends that the Commission find that Respondent committed the violations alleged. In regards to sanctions, this PFD recommends that an administrative penalty of \$5,000.00 be assessed against Respondent and further concludes that the multiple violations of the laws relating

¹ The business or person operating as Factory Direct Homes was variously described in the Department's records, and the pleadings in this case, as Doug Birdsell, James Birdsell, and D. J. Birdsell, Inc. In this PFD, the term Respondent will be used, except as it may be necessary to clarify the entities.

² TEX. OCC. CODE ANN. ch. 1201.

³ 10 TEX. ADMIN. CODE ch. 80.

to protection of manufactured home consumers are sufficient to warrant denial of Applicant's license renewal application.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened April 2, 2007, in Austin Texas, before Administrative Law Judge (ALJ) Cassandra J. Church in Austin, Texas. The Department was represented by Nichole Bunker-Henderson, Assistant Attorney General; Respondent was represented by Catherine Tabor, Attorney. The record closed on June 4, 2007, upon receipt of briefing from both parties.

Staff offered competent evidence establishing notice and jurisdiction. Those matters will be set forth in the Findings of Fact.

II. APPLICABLE LAW

A. Licensing and Sales Practices

All allegations in this case concerned retail sales activity governed by the Act. At the times the alleged violations occurred, Respondent held an RBI license, thus is subject to regulation under the Act. Between July 18, 2005, and July 17, 2007, Respondent also held a license to sell modular housing; the sale of modular housing is not regulated under the Act.⁴ Respondent operates a sales lot in New Caney, Texas (the Facility).

A person selling or offering to sell two or more manufactured homes to consumers within a 12-month period must be licensed and bonded.⁵ Under the Act, a consumer is a person, other than

⁴ Respondent's activities under his industrialized builder's registration is under the jurisdiction of the Texas Department of Licensing and Regulation. Resp. Exh. 8.

⁵ TEX. OCC. CODE ANN. §§ 1201.105 and 1201.106

a person licensed under the Act, who seeks to acquire or acquires by purchase, exchange, or lease-purchase a manufactured home.⁶ The provision of the Act that the Department alleged Respondent violated states as follows:

§ 1201.101. LICENSE REQUIRED.

...

(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

A retailer's license is automatically suspended if a valid bond is not in place, thus conducting any of the activities listed in Section 1201.101 during a period of suspension would constitute a violation of the Act's licensing requirement.⁷

A retailer is required to transfer title when he or she sells a home. The applicable statute states as follows:

§ 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.

(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.

⁶ TEX. OCC. CODE ANN. § 1201.003(6).

⁷ TEX. OCC. CODE ANN. § 1201.109.

Neither party presented any rules or Department policy documents that explained or commented on the meaning or application of the title transfer provision. The parties differed on the meaning of this provision. The Department contended that one to two years after the sale date was not compliant or reasonable.⁸ On the other hand, Respondent contended that unforeseen circumstances, arising from actions of third parties or the consumers, may make a title transfer one to two years after the sale reasonable, so not a violation.⁹

The statute regarding refund of a consumer's deposit is very specific. A retailer must refund a consumer's deposit within 15 days of a written request for the deposit, absent the application of certain exceptions provided for by statute.¹⁰ Respondent did not assert that any of the exceptions applied here.

B. Sanctions

The Department has authority to assess monetary penalties and also take disciplinary action against persons regulated by the Department.¹¹ The Department may issue a written reprimand to a licensee, revoke or suspend the license, or place the license holder on probation. The Department may revoke or suspend a license only for multiple, consistent, and/or repeated violations.¹²

The Department has the authority to assess administrative penalties of up to \$1,000.00 per violation. In determining the appropriate penalty, the Department must consider the seriousness of the violation, the history of previous violations, the amount necessary to deter future violations,

⁸ Department's Closing Argument, April 30, 2007.

⁹ Respondent's Closing Argument, May 31, 2007.

¹⁰ TEX. OCC. CODE ANN. §§ 1201.151(a) and 1201.509.

¹¹ TEX. GOV'T CODE ANN. § 2306.6023.

¹² 10 TEX. ADMIN. CODE § 80.127(c).

efforts made to correct the violation, and any other matters that justice may require.¹³ There is no further definition regarding what factors would be considered to be those that “justice may require.” The parties differed on the application of that criterion. The Department asserted that the inquiry may be limited to commission of the violations. Respondent contended that as this provision is discretionary, the Department may take into account additional factors such as the economic impact on Respondent’s business and whether consumers were harmed by the conduct.

The Department seeks to deny Respondent’s application for renewal of his RBI license.¹⁴ Authority for the Department to take the disciplinary action proposed arises under three provisions of the Act, as set out below:

§ 1201.551. DENIAL OF LICENSE; DISCIPLINARY ACTION.

(a) 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; [or]

...

¹³ TEX. GOV’T CODE ANN. § 2306.6023(e), 10 TEX. ADMIN. CODE § 80.127.

¹⁴ In the First Amended Complaint, filed on October 11, 2006, the Department changed the relief sought from revocation of Respondent’s RBI license to denial of the pending application for renewal. The change was requested because Respondent’s license expired on September 7, 2006, after the case had been referred for contested-case hearing. Respondent did not object to the amendment.

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

Counsel for the Department stated that the denial of this license application would not bar Respondent from re-applying for an RBI or other license issued by the Department.

C. Respondent's Status

Whether the RBI license at issue in this case, No. RBI34913, is held by an individual or by a corporation is somewhat unclear, notwithstanding the fact that the parties both asserted the license was held by Respondent personally. Specifically, the license effective September 7, 2003, through September 6, 2004, was issued to D. J. Birdsell, Inc., while the license for the following year, September 7, 2004, through September 7, 2005, was issued to James Birdsell.¹⁵ In September 2005, the license application was in the name of the corporation. Further, in a business records affidavit signed in March 2007, Mr. Birdsell stated that he is the owner and president of D. J. Birdsell, Inc. The surety bond issued on October 17, 2006, was made in favor of the corporation, as were bonds for other time periods.¹⁶ After reviewing the issue, the ALJ concluded that findings as to the identity of the license holder are not required in order to make findings in regard to violations.

III. DISCUSSION OF EVIDENCE

A. Violations Alleged and Responses

The Department alleged that Respondent violated bonding provisions in the Act by failing to maintain a bond during two time periods, November 19, 2005, through March 21, 2006 (first unbonded period), and from September 19, 2006, through October 16, 2006 (second unbonded period). The Department alleged that during the first unbonded period Respondent sold two

¹⁵ Resp. Exh. 1.

¹⁶ Resp. Exh. 1, pp. 13 and 14.

manufactured homes and also offered homes for sale, violating TEX. OCC. CODE ANN. § 1201.101(b). The Department alleged that Respondent offered manufactured homes for sale during the second unbonded period.

Respondent acknowledged that no bond was in place during those two periods. However, he stated that, although the Facility was open, he had not conducted regulated sales activity during either of the two unbonded periods. Respondent asserted that he sold only one manufactured home during the first unbonded period, not two, thus was not subject to regulation. Respondent also asserted that during the second unbonded period he engaged solely in the sale of modular homes.

The Department alleged that Respondent failed to return a deposit to a consumer, Louise Lyrock, within 15 days of receiving a written request for its return, violating TEX. OCC. CODE ANN. §§ 1201.151 and 1201.509. Respondent acknowledged that he did not return the deposit within 15 days, but contended that there were extenuating circumstances, *i.e.*, ongoing negotiations to find more favorable financing for Mrs. Lyrock, that explained the delay. There was no dispute that Respondent refunded her deposit in October 2006.

The Department contended that Respondent failed to timely provide good and marketable title to two consumers who purchased a manufactured home, violating TEX. OCC. CODE ANN. § 1201.451 twice. The Department argued that Respondent's actions in regard to transfer of title were not timely and also that, in each case, there was an outstanding financing lien on the home at the time of the sale. The homes were sold to Unavesta Robeson (Robeson home) and Felipe and Gloria Cortes (the Cortes home). Respondent acknowledged that he did not give good and marketable title to the consumers, but contended that his actions were inadvertent, not willful. Respondent contended that he believed at the time of the sale that he could promptly obtain title to the Cortes home, and that actions by third parties had prevented him from timely transferring title to the Robeson home.

In regard to sanctions, the Department contended that the accumulation of violations, when taken as a whole, constituted knowing and willful violations of the Act. The Department argued that repetition of the same violations were sufficient to warrant denial of his pending RBI license application in order to protect the public.

The Department requested assessment of a \$5,000.00 penalty for the violations. Although the Department submitted evidence of prior violations, Jim Hicks, the Department's Consumer Protection Manager, stated that the Department was relying only on violations asserted in this hearing in determining the appropriate sanction.¹⁷ Mr. Hicks stated that the selling of homes without a bond presented an unacceptable level of risk to consumers, so constituted a serious violation warranting the proposed sanctions.

Respondent contended the proposed sanctions were more severe than warranted by the violations and amounted to an abuse of discretion. Respondent contended his violations were inadvertent, not willful or knowing, and arose out of atypical transactions. Respondent also contended that he would not be able to pay the proposed penalty and that the economic effect of denial of his license on himself, as well as his employees, is a factor that the Department should take into consideration in determining the appropriate penalty.

Respondent further contended that the proposed sanctions were not directed to assuring future compliance, one of the statutory elements. Respondent requested that no administrative penalty be assessed and that Respondent be allowed to pursue his application for renewal of an RBI license.

¹⁷ See Dept. Exhs. 18-20.

B. First Unbonded Period (November 19, 2005, through March 21, 2006)

The Department alleged that Respondent sold manufactured homes to Jack Fox and to Michael Driggers during the first unbonded period. Respondent did not dispute that he sold a home to Mr. Driggers but stated that the sale to Mr. Fox took place earlier, in May 2004. Respondent presented a manufactured home retail sales contract dated May 14, 2004.¹⁸ The Department's record shows a sale date of December 6, 2005, but a lien start date of June 14, 2004. Respondent stated that a bank would not begin a loan before a sales date, so contended the earlier date was the actual date of sale.

The ALJ concluded that the greater weight of credible evidence was in favor of the 2004 sale date. As the Department presented no evidence of sales to persons in addition to Mr. Driggers and Mr. Fox, the ALJ concluded that Respondent only made one sale during the first unbonded period.

However, the evidence also shows that Respondent was offering manufactured homes for sale during the first unbonded period. The sale to Mr. Driggers is evidence of that, as is Respondent's admission that he continued to operate his business during that time. Further, Sergio Salinas, a Department Investigator and Co-manager of Statewide Field Operations, visited the business twice during the unbonded period. On those visits, he observed that the office was open, people were inside the office, banners or flags were flying, vehicles were on the lot, and the lot was open to the public. Mr. Salinas visited the Facility on March 16 and 20, 2006.

The Department contended that evidence of offering homes for sale was sufficient to constitute a violation. Respondent contended that Section 1201.101 should be read narrowly. That is, since Respondent sold only one home during that period, he did not violate the statute. The Department responded that the intent of the two-sale minimum provision was to permit consumer-to-consumer sales.

¹⁸ Resp. Exh. 4.

The ALJ concluded that, notwithstanding the fact that Respondent sold only one home during the first unbonded period, he violated the Act. Respondent was offering manufactured homes for sale and did sell a manufactured home. As such he was conducting the business that, under the Act, requires a license.

C. Second Unbonded Period (September 19, 2006, through October 16, 2006)

The Department contended that Respondent violated the Act because he remained in business during the approximately one-month long period when he had no bond, although he did not sell any manufactured homes. Respondent admitted that he continued to operate during that month, although he contended that he offered only modular, not manufactured, homes for sale. Mr. Salinas visited the Facility on September 18, 2006, and observed flags flying, the lot open to the public, and what appeared to be a work crew on the lot.

Respondent explained that, in some cases, both modular homes and manufactured homes are offered by the same manufacturer. The former has some interior upgrades and is attached to the property differently than is a manufactured home, but both may use the same housing shell. The two types of homes are financed differently. About 60 percent of Respondent's total sales during the period in dispute were manufactured homes.

Notwithstanding Respondent's general assertions, he did not establish that he limited his business during that period to modular homes and did not show or offer for sale manufactured homes. There is nothing to suggest that a consumer approaching Respondent's lot would be informed that he or she could not look at or consider buying or ordering a manufactured home. And, given that manufactured homes constituted the largest percentage of Respondent's business, it is not logical to conclude that he abandoned that portion of his business, even for a brief period.

The ALJ concluded that the greater weight of the credible evidence was that Respondent offered for sale manufactured homes at a time when he was not licensed or bonded to do so.

D. Return of Deposit

All the evidence supports a finding of violation. Mrs. Lyrock's attorney made an unequivocal written demand for refund on April 7, 2006.¹⁹ Respondent did not refund the \$15,000.00 deposit until October 2006. This is a clear violation of the Act.

E. Delivery of Good and Marketable Title

In the case of the Robeson home, Respondent did not have title to the home at the time he sold it to Mrs. Robeson. It was a used home being offered for sale by a bank; Respondent was acting as a broker. Unbeknownst to him, another broker had accepted a lower bid before Respondent sold the home to Mrs. Robeson. On a Saturday morning, Mrs. Robeson relocated the home from the Facility to her property without notice to Respondent. After learning his home had been removed from the sales lot, the low bidder sued for its recovery. At the time of the hearing, this lawsuit was still pending. Under the existing law, Respondent may not enter Mrs. Robeson's property to recover the home without her permission. She had not given that permission at the time of the contested-case hearing, allegedly due to the pendency of another, unrelated action involving ownership of the home.

The Department's records from April 2007 show the owners still to be Frank D. and Tillie A. Snider, with the home sold to them by Oakwood Mobile Homes, Rosenberg, Texas, and still subject to a mortgage lien.²⁰

Respondent stated he had tried, without success, to find an acceptable substitute home for the low bidder in an attempt to resolve the matter. In essence, Respondent asserted that due to the

¹⁹ There was no evidence of a written demand before April 2006, although there apparently had been some discussion concerning a refund before that date. *See* Dept. Exh. 15.

²⁰ Dept. Exhs. 12 and 12A.

unusual legal circumstances, he could neither transfer title to nor recover the manufactured home. Thus, while he did not deny his actions constituted a violation, he asserted that there were mitigating factors that should be taken into consideration in imposing sanctions. He also noted that he had responded to notices from the Department on this case and had kept Department staff informed about it. The Department did not dispute this.

The Cortes home was also a used home. On March 4, 2004, the day it was sold to Mr. and Mrs. Cortes for \$25,000.00, Respondent did not have title to the home because it was subject to a mortgage lien. Respondent paid off that lien for \$18,500.00 on September 20, 2005.²¹ There had been an installation dispute between Respondent and Mr. and Mrs. Cortes in 2004, which apparently ended in settlement in mid-January 2005.²²

In April 2006, the title transfer had not yet taken place. Respondent stated he had twice mailed the necessary documents to Mr. and Mrs. Cortes to enable them to apply for the statement of ownership and location.²³ Respondent sent the set of documents for the second time on October 12, 2006. He sent them an Application for Statement of Ownership and Location.²⁴ Respondent said he also attempted to get Mr. and Mrs. Cortes to come into his office to complete the paperwork after he obtained clear title to the home.

²¹ Resp. Exh. 5A.

²² Dept. Exh. 5 and Resp. Exh. 5. On January 1, 2005, Mrs. Cortes filed a consumer complaint stating the installation dispute was pending, but on January 17, 2005, signed what appears to be a settlement agreement.

²³ Resp. Exh. 5.

²⁴ An undated, partially complete Application for Title and Location for the Cortes home is in the Department's files. (Dept. Exh. 7, pp. 2 and 3. TDHCA MHD Form 1010, revised July 7, 2004.) Neither party was able to establish when the document was filed or who filed it. It recites that there is no mortgage lien on the home. (Resp. Exh. 5. TDHCA Form 1023, revised December 12, 2005). The form on file does not appear to be the form in current use by the Department and was not the same document sent to Mr. and Mrs. Cortes by Respondent.

Notwithstanding the difficulties getting the paperwork completed, Respondent offered no explanation of why he was unable to deliver title to Mr. and Mrs. Cortes until well over a year after he sold the home. The critical period regarding this violation is the 18-month period between March 4, 2004, the sale date, and September 20, 2005, the day the lien was paid off. Regardless of other disputes between the parties, Respondent was not able to perform his obligation to deliver title until that time.

The ALJ concluded that, under the facts in this case, Respondent did not timely deliver good and marketable title to the consumers at the time of the sale, so Respondent violated the Act in regard to timely transfer of title.

F. Application of Sanctions

The Department established that Respondent committed five violations of the Act and rules of the Department. As the Department has authority to impose an administrative penalty of up to \$1,000.00 for each violation, the proposed penalty amount of \$5,000.00 is within the Department's authority. Mr. Hicks testified that the violations in this case were all serious ones and that the amount of penalty proposed was consistent with the Department's practices for assessment of penalties for the same or similar violations.

Respondent did not demonstrate that the economic impact of the penalty on Respondent's business or personal finances was a matter that the Department must consider or had considered in other cases. Respondent said he could not pay a \$5,000.00 penalty. In the case of the title violations, Respondent contended that his ongoing efforts to correct the violations should be considered in lowering the penalty. Respondent also stated that he had corrected two business practices that, in his view, had led to the some of the violations. He stated that he had added an office manager to his staff and had discontinued the sale of used manufactured homes.

In the case of the second unbonded period, Respondent contended that the lapse was due to changes in the underwriting practices of the bond company, rather than his actions or inactions. Respondent stated that it took him one month to arrange a new bond and that, once notified of the bond lapse, he had acted promptly to seek a new bond.

Respondent's arguments against the proposed administrative penalty were not based on factors that the Department has or must consider. Further, the Department's argument that the violations were serious ones that could affect consumers were persuasive and supported by the policies and practices set forth in the Act and Department rules. Further, Respondent's ability to pay a penalty is a separate issue from the appropriateness of the assessment. Ability to pay was not an issue in this case.

The Department's recommendation regarding denial of Respondent's renewal application is within the Department's scope of authority in regulating manufactured home retailers and the violations found, both in severity and number, appear to be sufficient to support a denial. Respondent repeated two offenses, both of which directly affect consumers. However, the Department is the final authority regarding granting of licenses in fulfillment of the purposes of the Act.²⁵ Findings of violation may be relevant factors, but may not be the only factors the Department must or may consider in making its determination.

IV. RECOMMENDATION

The ALJ concluded that Staff established the violations alleged by a preponderance of the evidence. Based on evidence regarding the severity of the sanctions, the Department should assess a \$5,000.00 administrative penalty against Respondent. The ALJ further concluded that denial of Respondent's application for renewal of an RBI license is a sanction within the Department's scope of authority and supported by the violations. However, the granting of a license to conduct business

²⁵ TEX. OCC. CODE ANN. § 1201.002.

under the Act is within the sole discretion of the agency, based on all factors the Department may consider.

V. FINDINGS OF FACT

1. In 2001, the Texas Department of Housing and Community (Department) issued Retailer/Broker/Installer (RBI) License No. RBI-34913 (the License) to D. J. Birdsell d/b/a Factory Direct Homes (Respondent).
2. Respondent is the president and only director of D. J. Birdsell, Inc., the entity to which Texas manufactured housing bonds were issued for periods in 2004 through 2006.
3. For all dates at issue in this case, Respondent operated a retail sales facility located at 21180 U.S. Highway 59 South, in New Caney, Texas (the Facility).
4. In order to conduct business operations permitted by the License, Respondent was required to be bonded.
5. Respondent's bond expired on November 19, 2005.
6. On November 21, 2005, the Department notified Respondent that his bond had been cancelled and that, as a result, the License was suspended by operation of law effective November 19, 2005, and that he must cease selling or offering for sale manufactured homes, pending issuance of a new bond.
7. Respondent renewed his bond on March 21, 2006.
8. In late March 2006, all units on display at the Facility were Housing and Urban Development (HUD) Code manufactured homes and the sales office and lot were open to the public.
9. On February 23, 2006, Respondent sold a new manufactured home, HUD Label No. PFS0942302, to Michael S. Driggers, a consumer within the meaning of the Act.
10. Respondent continued to operate the Facility between November 19, 2005, and March 21, 2006, by offering manufactured homes for sale and by selling one manufactured home during that period.
11. The bond Respondent obtained on March 21, 2006, expired on September 19, 2006. The bond expired because the company that issued the bond changed its underwriting criteria.
12. Respondent obtained a new bond on October 16, 2006.

13. Respondent's RBI license expired on September 7, 2006. Respondent had not filed a timely application for renewal of his RBI license by that date.
14. On September 18, 2006, Respondent submitted an application to renew his RBI license.
15. Between September 19, 2006, and October 16, 2006, the Facility was open to the public.
16. Respondent continued to operate the Facility between September 19, 2006, and October 16, 2006, by offering manufactured homes for sale to consumers.
17. Between 2004 and 2006, Respondent's sales comprised approximately 60 percent HUD Code manufactured homes, regulated by the Department, and 40 percent modular homes.
18. Some models of manufactured homes can also be configured and sold as modular homes upon request of the customer.
19. On March 20, 2006, the Department issued a cease and desist letter to Respondent regarding his ongoing retail sales operations at the Facility.
20. On March 4, 2004, Respondent sold a used manufactured home TXDTCGR001606A/B, HUD Label No. NTA0995214/5 (the Cortes home), to Felipe and Gloria Cortes.
21. On March 4, 2004, Mr. and Mrs. Cortes paid Respondent \$25,000.00 for the Cortes home.
22. On March 4, 2004, there was an outstanding financing or floor planning lien for \$18,500.00 on the Cortes home.
23. At the time of the sale, Respondent did not give Mr. and Mrs. Cortes good and marketable title to the Cortes home.
24. On September 20, 2005, Respondent paid the outstanding financing balance on the Cortes home.
25. On October 10, 2006, Respondent sent paperwork to Mr. and Mrs. Cortes regarding an application for statement of ownership and location. They did not accept delivery of the documents and did not file them with the Department.
26. On January 3, 2005, Respondent sold or brokered the sale of a used manufactured home, Serial No. 12321904, HUD Label No. PFS0358330 (the Robeson home), to Unavesta Robeson.
27. At the time of the sale, Respondent did not give Mrs. Robeson good and marketable title to the Robeson home, and did not hold title to the home.

28. At the time of the sale, the Robeson home was located at the Facility but removed by Mrs. Robeson to property under her control without notice to Respondent.
29. The sale of the Robeson home had been brokered by another retailer to another party and ownership of the Robeson home is the subject of ongoing litigation.
30. The Robeson home is still located on property under Mrs. Robeson's control and she has not given Respondent permission to enter her property to retrieve the home.
31. At the time of the hearing on the merits, the Robeson home remained titled to its previous owner and a mortgage lien was recorded on the Robeson home.
32. Mr. and Mrs. Cortes and Mrs. Robeson were consumers, within the meaning of the Act.
33. In October 2006, Louise Lyrock deposited \$15,000.00 for purchase of a manufactured home in Respondent's inventory. She is a consumer within the meaning of the Act.
34. At some point between October 2006 and April 2006, Ms. Lyrock changed her mind about purchasing the home. On April 7, 2006, she made a written demand, through her attorney, for the refund of her deposit.
35. Respondent refunded Mrs. Lyrock \$15,000.00 deposit in October 2006.
36. On May 10, 2006, and on August 9, 2006, the Department issued notices of violation (NOVs) to Respondent, alleging violations of the Act and Department rules.
37. On July 19, 2006, the Department referred the case to the State Office of Administrative Hearings (SOAH) for a contested-case hearing on all allegations.
38. On September 14, 2006, the Department issued a notice of hearing. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
39. On October 11, 2006, the Department issued its First Amended Formal Complaint. In its amended complaint, the Department amended the relief sought from revocation to denial of Respondent's license renewal application and also added allegations concerning a second unbonded period of operation, between September 19, 2006, and October 16, 2006.
40. On October 17, 2006, the Department issued an amended notice of hearing to include the amendments made in its First Amended Formal Complaint.

41. After several continuances granted on motion of the parties, a hearing on the merits of this case was conducted on April 2, 2007, in Austin Texas, by Administrative Law Judge Cassandra J. Church. The record closed on June 4, 2007, upon receipt of briefing by the parties.

VI. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter under the Texas Manufactured Housing Act, TEX. OCC. CODE ANN. Chapter 1201.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was effected upon Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN ch. 2001.
4. Based on the Findings of Fact, Respondent operated without a license and a bond from November 20, 2005, through March 21, 2006, in violation of TEX. OCC. CODE ANN. §§ 1201.101, 1201.105, 1201.106, and 1201.109, and 10 TEX. ADMIN. CODE § 80.123.
5. Based on the Findings of Fact, Respondent operated without a license and a bond from September 18, 2006, through October 16, 2006, in violation of TEX. OCC. CODE ANN. §§ 1201.101, 1201.105, 1201.106, and 1201.109, and 10 TEX. ADMIN. CODE § 80.123.
6. Based on the Findings of Fact, Respondent's failure on March 4, 2004, the date of the sale of a manufactured home, or within a reasonable time thereafter, to provide the purchasing consumers the necessary information for transfer good and marketable title to the consumers violated TEX. OCC. CODE ANN. § 1201.451.
7. Based on the Findings of Fact, Respondent's failure on January 3, 2005, at the time of the sale of a manufactured home, or within a reasonable time thereafter, to provide the purchasing consumer the necessary information to transfer good and marketable title to the consumer violated TEX. OCC. CODE ANN. § 1201.451.
8. Based on the Findings of Fact, Respondent's failure to return a deposit to a consumer within 15 days of a written demand for its return violated TEX. OCC. CODE ANN. § 1201.151(1).
9. Respondent's violations constituted multiple, consistent, and/or repeated violations, within the meaning of 10 TEX. ADMIN. CODE § 80.127(c).

10. Based on Conclusions of Law Nos. 4 through 9, the Department should assess an administrative penalty of \$5,000.00 against Respondent, pursuant to TEX. OCC. CODE ANN. § 1201.605, TEX. GOV'T CODE ANN. § 2306.6023(b), and 10 TEX. ADMIN. CODE § 80.127.
11. Multiple violations of TEX. OCC. CODE ANN. §1201.451 are sufficient to support the denial of a retailer/broker/installer (RBI) license by the Department, pursuant to TEX. GOV'T CODE ANN. § 2306.6023 and TEX. OCC. CODE ANN. § 1201.551(a)(1) and (3).
12. Multiple violations of TEX. OCC. CODE ANN. §§ 1201.101, 1201.105, 1201.106 and 1201.109, and 10 TEX. ADMIN. CODE § 80.123 are sufficient to support the denial of a RBI license by the Department, pursuant to TEX. GOV'T CODE ANN. § 2306.6023 and TEX. OCC. CODE ANN. § 1201.551(a)(9).
13. Based on the severity of the violations set forth in the Findings of Fact, and the Conclusions of Law based on those Findings, denial of the RBI license application filed by Respondent is within the Commission's scope of authority and would constitute a reasonable exercise of its jurisdiction.
14. Based on the severity of the violations set forth in the Findings of Fact, and the Conclusions of Law based on those Findings, the assessment of an administrative penalty of \$5,000.00 is within the Commission's scope of authority and takes account of the penalty factors set forth in TEX. GOV'T CODE ANN. § 2306.6023(e) and 10 TEX. ADMIN. CODE § 80.127(b).

SIGNED August 23, 2007.

CASSANDRA J. CHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

Agenda Action Item No. 6

Preamble for Proposed Manufactured Housing Rules *Administrative Rules of the Texas Department of Housing and Community Affairs* *10 Texas Administrative Code, Chapter 80*

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes to amend 10 TAC, Chapter 80, §§80.3, 80.90, 80.93, and 80.100 relating to the regulation of the manufactured housing program. The amendments add additional rules and forms to comply with HB 1460 that was passed by the 80th Legislature (2007 Regular Session) and became effective on January 1, 2008.

Section 80.3(m). The subsection is amended relating to fee refunds by the Department to comply with §1201.059(d) of the Standards Act.

Section 80.90(g). The new subsection is for the holder or servicer of loan to elect a home real property when the title company or attorney fails to complete conversion. The new subsection is added to comply with §1201.2055(i)(3) of the Standards Act.

Section 80.90(h). The new subsection is for requiring an affidavit of fact when submitting an application for SOL pursuant to the abandonment provision in §1201.217 of the Standards Act.

Figure: 10 TAC §80.93(b) – The tax lien layout form is revised because the Department cannot accept dummy numbers (999-999-99) in lieu of a taxing entity number or central tax collector number when filing a lien.

Section 80.100(a). Amended the list of forms to revise existing forms and to add new forms to the list.

Figure: 10 TAC §80.100(b)(1) - Revised the Application for Manufacturer's License by adding a column for the date of birth.

Figure: 10 TAC §80.100(b)(2) - Revised the Application for License for a Retailer, Broker, Installer and/or Rebuilder by adding a column for the date of birth.

Figure: 10 TAC §80.100(b)(4) - Revised the Application for Salesperson's License by updating the education requirements information in the certification section.

Figure: 10 TAC §80.100(b)(16) - Revised the Notice of Installation form by removing the Installation Decal Number field because the proposal to issue decal numbers was not implemented when new rules were adopted in December of 2007, corrected the number of days required to submit the form from 15 to 7 days to comply with the Standards Act, and added a section for the Department to report the inspection results.

Figure: 10 TAC §80.100(b)(19) - Revised the Application for Statement of Ownership and Location by adding 2(b), 4(c), 4(d), home identification at the top of the 2nd page, and lienholder contact information in Block 8.

Figure: 10 TAC §80.100(b)(20) - Deleting Application for Correction to a Statement of Ownership and Location and replacing with new Affidavit of Fact for Real Property form.

Figure: 10 TAC §80.100(b)(24) - Replaced the Affidavit of Fact for Incomplete SOL with Addendum to Application for SOL that does not require the form to be notarized.

Figure: 10 TAC §80.100(b)(31) - Revised the Notice of Lien to Perfect a Lien (Other than Tax Lien) by removing the requirement to notarize signatures in Block 3 and adding Block 4 for lien assignments.

Figure: 10 TAC §80.100(b)(32) - Revised Notification of Filing Status as a Central Tax Collector by correcting the block number for Notarized Signature Required from Block 3 to Block 4 and the number on page 2 from Block 2 to Block 3.

Figure: 10 TAC §80.100(b)(35) - Revised form by adding requirement to attach list of related persons as required by §1201.103 of the Standards Act.

Figure: 10 TAC §80.100(b)(38) - New Probationary Installation (Form T) form to comply with §1201.104(f) of the Standards Act.

Figure: 10 TAC §80.100(b)(39) - New Statement from Tax Assessor-Collector form to meet requirements of §1201.206(g) of the Standards Act.

Figure: 10 TAC §80.100(b)(40) - New Notice of Intent to Acquire Ownership of an Abandoned Manufactured Home form to comply with §1201.217 of the Standards Act.

Figure: 10 TAC §80.100(b)(41) - New Affidavit of Fact for Abandonment form to comply with §1201.217 of the Standards Act.

Figure: 10 TAC §80.100(b)(42) - New Disclosure to Consumer relating to occupying a manufactured home before financing is closed required by §1201.513 of the Standards Act.

Figure: 10 TAC §80.100(b)(43) - New Application for Salesperson's License Renewal to comply with §1201.103 of the Standards Act.

Figure: 10 TAC §80.100(b)(44) - New Application for License Instruction Providers to comply with §1201.104(e) of the Standards Act and 10 TAC, Chapter 80, §80.41(c).

Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections. There will be no effect on small or micro-businesses because of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the proposed rules.

Mr. Garcia also has determined that for each year of the first five years that the proposed rules are in effect the public benefit as a result of enforcing the amendments will be to provide clarification of procedures and compliance with the Standards Act.

Mr. Garcia has also determined that for each year of the first five years the proposed rules are in effect there should be no adverse effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

If requested, the Department will conduct a public hearing on this rulemaking, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029. The request for a public hearing must be received by the Department within 15 days after publication.

Comments may be submitted to Mr. Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P. O. Box 12489, Austin, Texas 78711-2489 or by e-mail at the following address joe.garcia@tdhca.state.tx.us. The deadline for comments is no later than 30 days from the date that these proposed rules are published in the *Texas Register*.

The amended sections are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

The agency hereby certifies that the proposed amendments have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

No other statutes, codes, or articles are affected by the proposed rules.

**PROPOSED SUBCHAPTER A. CODES, STANDARDS, TERMS, FEES
AND ADMINISTRATION**

Revised: March 2008

§80.1. Texas Manufactured Housing Standards Code.

(1) - (4) No change.

§80.2. Definitions.

(1) - (25) No change.

§80.3. Fees.

(a) - (l) No change.

(m) The director may approve a refund of all or a portion of any fee collected if he or she makes a documented determination showing that:

(1) The fee was for a service applied for in error based on incorrect advice from the Department; ~~or~~

(2) The fee represented a duplicate payment for a service for which money had already been collected by the Department or a licensee; ~~or~~ ~~+~~

(3) A refund is justified and warranted.

§80.4. Advisory Committee.

No change.

**PROPOSED SUBCHAPTER H. STATEMENTS OF OWNERSHIP AND
LOCATION**

Revised: March 2008

§80.90. *Issuance of Statements of Ownership and Location.*

(a) - (f) No change.

(g) When a title company or attorney's office fails to complete the conversion of a manufactured home to real property, the holder or servicer of the loan may apply for a statement of ownership and location electing real property status after-the-fact, providing that evidence of notice to all parties is sent via certified mail and that proof of such efforts is provided along with an affidavit of fact describing such efforts, pursuant to §1201.2055(i)(3) of the Standards Act.

(h) Submitting an application for Statement of Ownership and Location pursuant to the abandonment provision in §1201.217 of the Standards Act, should include an affidavit of fact, on the prescribed form, attesting to that all statutory notifications have been made to the appropriate parties, including the tax assessor-collector of the county where the home is located, and evidence that all notification was sent via certified mail.

§80.91. *Issuance of a Texas Seal.*

(a) - (c) No change.

§80.92. *Inventory Finance Liens.*

(a) - (b) No change.

§80.93. *Recording Tax Liens on Manufactured Homes.*

(a) No change.

(b) Electronically filed tax liens and tax lien releases shall be filed with the Department using the required format as provided in the following Tax Lien File Layout. No other format will be accepted for electronic filing of tax liens.

Texas Department of Housing and Community Affairs
Tax Lien File Layout

MUST be ASCII Fixed Record Layout (Text Format)				
516 bytes total per each record				
All text fields, addresses, names, etc should be left justified.				
ITEM		PICTURE	OFFSET	Additional Information for Accurate Filing
Home Identification				
Label-No		Alpha 10	1-10	The label number must be exactly 10 characters - anything more or less will be invalid. Also, additional text (<i>i.e.</i> , "Lab#" before the label or "A" or "A/B" after the number) will invalidate the field. If there is no label number, LEAVE SPACES BLANK – DO NOT enter ZEROS, UNKNOWN, NONE or anything else in this field.
Serial-No		Alpha 26	11-36	Serial numbers must only include the number of the first section - and not be prefixed with anything else (<i>i.e.</i> , SER#, #, S#, or using both section letters as A/B). The chances of recording a lien with only a serial number are very slim. Having a label number is the best chance for a successful recording. If there is no serial number, LEAVE SPACES BLANK – DO NOT enter ZEROS, UNKNOWN, NONE or anything else in this field.
FILLER (blank spaces)		Alpha 20	37-56	Model name is no longer required, so leave the 20-spaces originally allocated for this blank.
Taxpayer Identification				
Taxpayer-Name	Left Justified	Alpha 40	57-96	
Taxpayer-Name2	Left Justified	Alpha 40	97-136	
Taxpayer-Addr1	Left Justified	Alpha 30	137-166	
Taxpayer-Addr2	Left Justified	Alpha 30	167-196	
Taxpayer-City	Left Justified	Alpha 20	197-216	
Taxpayer-State	Left Justified	Alpha 2	217-218	
Taxpayer-Zipcode		Alpha 10	219-228	

ITEM		PICTURE	OFFSET	Additional Information for Accurate Filing
Collector Identification				
Collector-Tax-Entity-ID or Central Tax Collector Number		Alpha 10	229-238	The taxing entity id <u>or the Dept. assigned [for]</u> Central Tax Collector number MUST be 10 characters and in the following format XXX-XXX-XX. <u>[If the State Comptroller's Office has not assigned a taxing entity ID to the taxing entity, enter 999-999-99 in this field.]</u>
Collector-Name	Left Justified	Alpha 40	239-278	Enter the name of the taxing jurisdiction.
Collector-Name2	Left Justified	Alpha 40	279-318	Enter the name of the collector.
Collector-Addr1	Left Justified	Alpha 30	319-348	
Collector-Addr2	Left Justified	Alpha 30	349-378	
Collector-City	Left Justified	Alpha 20	379-398	
Collector-State	Left Justified	Alpha 2	399-400	
Collector-Zipcode		Alpha 10	401-410	
Lien Information				
Tax-Roll-Account-No		Alpha 26	411-436	
FILLER (blank spaces)		Alpha 8	437-444	Lien date is the date the lien is received by TDHCA and will be inserted when recorded; so leave the 8-spaces originally allocated for this blank.
Tax-Year - YYYY		Alpha 4	445-448	
Tax Amount		Alpha 8	449-456	The tax amount is required and must be entered without a decimal point (Example: If tax amount is \$300.25, please entered as 00030025).
Release-Date – YYYYMMDD		Alpha 8	457-464	The date MUST be formatted as YYYYMMDD and have no slashes or spaces.
FILLER (blank spaces)		Alpha 49	465-513	
County Code		Alpha 3	514-516	A carriage return after entering the 3-digit County Code is needed after each record for proper formatting.

(c) - (d) No change.

PROPOSED SUBCHAPTER I. FORMS

Revised: March 2008

§80.100. List of Forms.
(Effective: December 30, 2007)

- (a) The following list is in numerical order with the forms located in subsection (b) of this section.
- (1) Application for Manufacturer's License.
 - (2) Application for Retailer, Broker, Installer and/or Rebuilder's License.
 - (3) Application for Retailer with Branch Locations License.
 - (4) Application for Salesperson's License.
 - (5) Licensing Surety Bond.
 - (6) Licensing Security Agreement.
 - (7) Manufacturer's Certificate of Origin (MCO).
 - (8) Consumer Disclosure Statement.
 - (9) Warranty and Disclosure for a Used Manufactured Home.
 - (10) Retail Monitoring Checklist.
 - (11) Consumer Notice of Licensed and Bonded Location.
 - (12) Notice and Informed Consent to Installation on an Improperly Prepared Site.
 - (13) Formaldehyde Notice.
 - (14) Texas Inventory Finance Security Form.
 - (15) Broker Disclosure Form.
 - (16) Notice of Installation (Form T).
 - (17) Installation Checklist.
 - (18) Estimate for Reassigned Warranty Work.
 - (19) Application for Statement of Ownership and Location.
 - (20) [Affidavit of Fact for Real Property.](#) [~~Application for Correction to Statement of Ownership and Location.~~]
 - (21) Affidavit of Fact.
 - (22) Affidavit of Error.
 - (23) Affidavit of Fact for Right of Survivorship.
 - (24) [Addendum to Application for SOL.](#) [~~Affidavit of Fact for Incomplete SOL Application.~~]
 - (25) Release or Foreclosure of Lien (Form B).
 - (26) Statement of Inheritance (Form C).
 - (27) Taxing Entity Application for Texas Seal (Form S).
 - (28) Multiple Application Log (Form M).
 - (29) Instructions to Third Party Closer.
 - (30) Notice of Lien for Tax Lien/Release Form.
 - (31) Notice of Lien to Perfect a Lien (Other than Tax Lien) Form.
 - (32) Notification of filing status as a Central Tax Collector.
 - (33) Site Preparation Notice Form.
 - (34) Sample of Statement of Ownership and Location.
 - (35) Application for License Renewal (other than a salesperson).
 - (36) Right of Rescission Waiver Form.

- (37) List of Unlicensed Installers Form.
- (38) Probationary Notice of Installation (Form T).**
- (39) Statement from Tax Assessor-Collector.**
- (40) Notice of Intent to Acquire Ownership of an Abandoned Home.**
- (41) Affidavit of Fact for Abandonment.**
- (42) Disclosure to Consumer (Possible Need to Vacate Home if Financing does not Close.**
- (43) Application for Salesperson's License Renewal.**
- (44) Application for License Instruction Provider.**

(b) Forms.

- (1) Application for Manufacturer's License.

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489
 (800) 500-7074, (512) 475-2200 FAX (512) 475-3506
 Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR MANUFACTURER'S LICENSE

(Please type or print clearly.)

Check one: <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other				
1. Legal Business Name:				
2. Have you ever been licensed by TDHCA?		<input type="checkbox"/> YES <input type="checkbox"/> NO If yes, provide license number:		
3. Physical Location Address:		City, State, ZIP and County		
4. Phone:		Fax:		
5. Mailing Address:		City, State, ZIP and County		
6. Date applicant became owner, operator (or date incorporated):				
7. Provide list of all trade names and the names of all other business organizations subject to this chapter and the name and address of any such business organization registered with the secretary of state (additional may be listed on a separate sheet).				
Trade Name		Physical Address, City, State, and ZIP		
8. Provide complete information on ALL owners, principals, partners and/or corporate officers (additional may be listed on a separate sheet). <i>NOTE: Providing your social security number is optional, HOWEVER, the processing of your application may be delayed without it.</i>				
Legal Name and Title	Mailing Address, City, State & ZIP	Phone	<u>Date of Birth</u>	SSN
9. Provide complete list of all persons (other than the principals listed above), who directly or indirectly participate in management or policy decisions for this applicant.				
Legal Name and Title	Mailing Address, City, State and ZIP		Phone	
10. Have you, or a corporate officer or partner, been convicted of any felony or misdemeanor offense, OTHER than a Class C misdemeanor for traffic violations, within the five years PRECEDING this application?		<input type="checkbox"/> YES <input type="checkbox"/> NO If YES, complete the required Criminal Conviction Questionnaire ensuring that you provide accurate and thorough details sufficient to persuade the Department that you conviction does not pose a threat to the consumer or the industry. A DPS criminal check will be performed.		

11. Plant Certification Date:			
12. Production Inspection Primary Inspection Agency Label Prefix:			
13. Design Approval Primary Inspection Agency:			
14. Provide physical address, city, state and ZIP, where records will be kept (this can be the principal location or an alternate in-state location):			
15. Will you have a manufacturing plant or service facility in Texas? <input type="checkbox"/> YES <input type="checkbox"/> NO			
<p>If NO, to assure the availability of prompt and satisfactory warranty service, a manufacturer which does not have a licensed manufacturing plant or other facility in Texas from which warranty service and repairs can be provided and made, shall be bonded or post other security in an additional amount of \$100,000.</p> <p>Or, to be exempt from the additional security, you must have a bona fide service facility in Texas, pursuant to Section 80.40(d) of the Administrative Rules.</p> <p>Name of Facility: Address: City/State/ZIP: Phone:</p>			
Certification			
<p>License is subject to revocation, if the Department is NOT notified in writing of any changes in the information given on this application or if there is a violation of the law.</p> <p>With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.</p>			
<i>(Signature of Applicant or President, if incorporated)</i>		<i>(Date)</i>	
<i>(Signature of Secretary, if incorporated)</i>		<i>(Date)</i>	
Department Use Only			
Education: <input type="checkbox"/> 20 hours of Department Education in Austin, Texas	Fees: <input type="checkbox"/> \$250.00 Education Fee <input type="checkbox"/> \$550.00 Retailer Licensing Fee <input type="checkbox"/> \$900.00 Retailer/Broker Licensing Fee <input type="checkbox"/> \$900.00 Ret./Installer Licensing Fee <input type="checkbox"/> \$1250.00 Ret./Brok./Inst. Licensing Fee	Additional Requirements: <input type="checkbox"/> \$50,000 BOND/CD <input type="checkbox"/> Public Liability Insurance <input type="checkbox"/> *Motor Vehicle Liability Insurance <input type="checkbox"/> *Cargo Insurance (*if transporting homes) <input type="checkbox"/> Retailer's Physical Damage	

- (2) Application for Retailer, Broker, Installer and/or Rebuilder's License.

12. As applicable, indicate what function(s) you will be performing:		<input type="checkbox"/> Transporting <input type="checkbox"/> Installation	
13. Are you in arrears on any taxes owed to the State of Texas? Are you in arrears on a guaranteed student loan?		<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> NO If you answered YES to either question, provide proof that you are in good standing with them or that you have made payment arrangements.	
Provide physical address, city, state and ZIP, where records will be kept (this can be the principal location or an alternate in-state location):			
Certification			
License is subject to revocation, if the Department is NOT notified in writing of any changes in the information given on this application or if there is a violation of the law.			
With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.			
_____ <i>(Signature of Applicant or President, if incorporated)</i>		_____ <i>(Signature of Secretary, if incorporated)</i>	
_____ <i>(Date)</i>		_____ <i>(Date)</i>	
Department Use Only			
Education:	Fees:	Additional Requirements:	
<input type="checkbox"/> 20 hours of Department Education in Austin, Texas	<input type="checkbox"/> \$250.00 Education Fee	<input type="checkbox"/> \$50,000 BOND/CD	
	<input type="checkbox"/> \$550.00 Retailer Licensing Fee	<input type="checkbox"/> Public Liability Insurance	
	<input type="checkbox"/> \$350.00 Broker Licensing Fee	<input type="checkbox"/> *Motor Vehicle Liability Insurance	
	<input type="checkbox"/> \$350.00 Installer Licensing Fee	<input type="checkbox"/> *Cargo Insurance (*if transporting homes)	
	<input type="checkbox"/> \$900.00 Retailer/Broker Licensing Fee	<input type="checkbox"/> Retailer's Physical Damage	
	<input type="checkbox"/> \$900.00 Ret./Installer Licensing Fee		
	<input type="checkbox"/> \$1250.00 Ret./Brok./Inst. Licensing Fee		

Form (3).

No change.

(4) Application for Salesperson's License.

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489
 (800) 500-7074, (512) 475-2200 FAX (512) 475-3506
 Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR SALESPERSON'S LICENSE <i>(Please type or print clearly.)</i>			
1. Name of Salesperson:		2. Date of Birth:	/ /
3. Home Address:		4. Social Security #:	- -
City:	State:	Zip:	
5. Telephone: Home ()	Telephone: Work ()	Fax: ()	
6. Sponsoring Retailer:		Sponsoring Retailer's Lic. #:	
7. Business Address:			
City:		State:	Zip:
8. List dates, employer and address for each job or position at which you have worked for the past three years. All gaps in employment must be explained.			
(Dates)		(Employer)	
(Dates)		(Address)	
(Dates)		(Employer)	
(Dates)		(Address)	
9. Have you ever been licensed by TDHCA? YES / NO If so, please provide license number:			
10. Have you been convicted of any felony or misdemeanor offense, other than a Class C misdemeanor for a traffic violation, within the five years PRECEDING this application?			
[] YES [] NO <i>If YES, complete the enclosed Criminal Conviction Questionnaire.</i>			
Are you in arrears on any taxes owed to the State of Texas? [] YES [] NO			
Are you in arrears on a guaranteed student loan? [] YES [] NO			
Certification			
License is subject to revocation, if the Department is NOT notified in writing of any changes in the information given on this application or if there is a violation of the law. License will be suspended if the education requirements of <u>\$1201.104(c)</u> are not <u>successfully</u> completed <u>by the next scheduled course offered after</u> the date the license is issued.			
With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.			
(Signature of Applicant)		(Date)	
(Signature of Sponsoring Retailer)		(Date)	
Payment			
Attach the required license fee of \$200.00 (two hundred dollars) to this application. Payment may be made by company or business firm check, money order or cashier's check. Please make payable to: <i>Texas Department of Housing and Community Affairs</i> . Mail to the address listed at the top of this form.			
Department Use Only			
F	[] \$200.00 License Fee		Date
e			Received:
e			/ /
s			

Forms (5) through (15).

No change.

(16) Notice of Installation (Form T).

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489
 (800) 500-7074, (512) 475-2200 FAX (512) 475-3506
 Internet Address: www.tdhca.state.tx.us/mh/index.htm

Notice of Installation (Form T)

HUD Label or Texas Seal # (s): _____ Serial # (s): _____
 Manufacturer Name: _____ License No. _____
 Home Size - Width / Length: _____ X _____ Weight _____ Date of Manufacture: ____/____/____ Model / Name: _____

Draw A Map To Provide Directions To Home On Page 2

Consumer: _____ Phone Numbers: Home: (____) _____ Work: (____) _____

Mailing Address: _____ City _____ ZIP: _____

Site Address: _____ ~~Within City Limits of~~ _____ ZIP: _____

County Where Home is Installed: _____ **Installation Decal#:** _____

Actual Installation Date: ____/____/____ Wind Zone on Data Plate: I (____) II (____) III (____)

Is the home installed in a Humid & Fringe Climate Yes (____) No (____) Was the home labeled for alternate construction. Yes (____) No (____)

	Name	Address	License #	Expiration Date	Phone #
Retailer					
Installer					

(____) New (____) Used Does retailer or installer provide skirting? Yes (____) No (____)

Is installation part of sales contract of used home? Yes (____) No (____) Not Applicable (____)

The home has been installed in accordance with:

- (____) 1. Manufacturer's Home Installation Instructions (provide page number or option _____).
- (____) 2. State Generic Standards - Title 10 Texas Administrative Code (10 TAC) §§80.22, 80.23, 80.24, and 80.25.
- (____) 3. A stabilization system registered with the Department in accordance with 10 TAC §80.26 - provide name of system or reference to MHD Approval Letter or registration _____.
- (____) 4. A Special Foundation System (attach a copy of the drawing for this system and provide a reference, if applicable, to any drawing previously submitted).

IF NO METHOD IS CHECKED, IT WILL BE PRESUMED THAT OPTION 2 (STATE GENERIC STANDARDS) WAS USED.

To be submitted to the Department along with the required fee no later than the ~~7th~~ **15th** day of the month after which the installation is completed. The Installation Report (Form T) should no longer be submitted with the title documents.

Per §1201.206(i): On secondary moves the notice must be accompanied by either the original notice of installation or a certification that a true and correct copy of the notice of installation has been provided to the chief appraiser of the county where the home is installed. The delivery of the copy of the notice to the chief appraiser may be accomplished by either certified mail or by electronic mailing of the electronically reproduced document in a commonly readable format.

I verify that I am a licensed installer, that I am responsible for the installation described, and that the information supplied is true and correct. Executed this _____ day of _____, _____.

Signature (Retailer/Installer)

Name (print or type)

Department Use Only

- Inspected Without Violations
- Inspected With Violations
- Not Inspected, Unit Skirted

- Not Inspected, Unable to Locate
- Not Inspected, No Unit At Location
- Not Inspected, Unit Not Accessible

Inspection Date: _____ HUD/Seal #: _____

I hereby certify on this _____ day of _____, 20____ that the above inspection results are true and correct to the best of my knowledge and belief.

Inspector Signature: _____ Printed Name: _____

DRAW MAP BELOW



Forms (17) through (18).

No change.

(19) Application for Statement of Ownership and Location.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489
 (800) 500-7074, (512) 475-2200 FAX (512) 475-3506
 Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR STATEMENT OF OWNERSHIP AND LOCATION

The filing of an application for the issuance of a Statement of Ownership and Location, later than sixty (60) days after the date of a sale to a consumer for residential use, may result in a fee of up to one hundred dollars (\$100). Any such application that is submitted late may be delayed until the fee is paid in full.

BLOCK 1: Transaction Identification

This application is for: <input type="checkbox"/> New home application <input type="checkbox"/> Used home application <input type="checkbox"/> Other _____	(For Department Use Only) Coding: Lien on file: Y / N Lienholder Code County Code: Right of Surv.: Y / N Retailer #: Manufacturer #:
--	--

BLOCK 2(a): Home Information (required)

Manufacturer Name:		Model:	
Address:		Date of Manufacture:	
City, State, Zip:		Total Square Feet:	
License Number:		Wind Zone:	

	Label/Seal Number	Complete Serial Number	Weight	Size*	*NOTE: Size must be reported as the outside dimensions (length and width) of the home as measured to the nearest 1/2 foot at the base of the home, exclusive of the tongue or other towing device.
Section 1:				X	
Section 2:				X	
Section 3:				X	
Section 4:				X	

2(b) Is home being sold? No Yes
If yes, and if there is/are no HUD Label(s) or Texas Seal(s) on your home, a Texas Seal will be need to be purchased and will be issued to each section of your home at an additional cost of \$35.00 per section.
 Single - \$35 Double - \$70 Triple - \$105

BLOCK 3: Home Location (required)

Physical Location of Home: <i>(or 911 address)</i>	Physical Address (cannot be a Rt. or P. O. Box)					City	State	ZIP	County
Was home moved for this sale? <input type="checkbox"/> No <input type="checkbox"/> Yes									
Was Home Installed for this sale? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, provide installer information below, if known									
Installer Name, address and phone:									

BLOCK 4: Ownership Information (required)

4(a) Seller(s) or Transferor(s)			4(b) Purchaser(s), Transferee(s), or Owner(s)		
Name	License # if Retailer:		Name	License # if Retailer:	
Name			Name		
Mailing Address			Mailing Address		
City/State/Zip			City/State/Zip		
Daytime Phone Number () -			Daytime Phone Number () -		

4(c) Date of sale, transfer or ownership change

4(d) Did the buyer trade-in a home to purchase this home? No Yes If yes, provide the following:
 HUD Label _____, Serial No. _____

<u>HUD Label #:</u>	<u>Serial #:</u>	<u>GF# (for title co.):</u>
---------------------	------------------	-----------------------------

BLOCK 5: Right of Survivorship (if no box is checked, joint owners will NOT have right of survivorship)

If joint owners desire right of survivorship, check the applicable box below:

Husband and wife will be the only owners and agree that the ownership of the above described manufactured home shall, from this day forward, be held jointly and in the event of death, shall pass to the surviving owner.

Joint owners are other than husband and wife, desire right of survivorship, **and** have attached a completed Affidavit of Fact for Right of Survivorship or other affidavits as necessary to meet the requirements of §1201.213 of the Standards Act.

BLOCK 6: Personal/Real Property Election - Purchaser(s)/Transferee(s)/Owner(s) check one election type:

Personal Property – Applicant elects to treat this home as personal property. All documents affecting title to the home will be filed in the records of the Department.

Real Property – I (we) elect to treat this home as real property and certify that I am (we are) entitled to make this election in accordance with Section 1201.2055 of the Occupations Code because (**one box must** be checked):

I (we) own the real property that the home is attached to. I (we) have a qualifying long-term lease for the land that the home is attached to.

I (We) understand that the home will not be considered to be real property until a certified copy of the SOL has been filed in the real property records of the county in which the home is located AND a copy stamped “Filed” has been submitted to the Department.

Legal description must be provided for real property: _____

If a title company, list your file or GF #: _____

Inventory – (FOR RETAILER USE ONLY) Retailer number must be provided in Block 4b if this election is checked.

BLOCK 7: Designated Use - to be designated by purchaser(s), transferee(s), or owner(s)

Residential Use (as a dwelling) OR

Non-Residential - Check **one** of the following: *Business Use* *Salvage*

BLOCK 8: Liens – To specify any liens on the SOL the NOTICE OF LIEN FORM must be completed and submitted with the application. To prevent an SOL from being issued without a lien, in the event the Notice of Lien is detached, indicate name and phone number of lienholder's contact person and phone number.

Lienholder's Representative: _____ Phone: _____

BLOCK 9: Special Mailing Instructions.

<p>IF a copy of an SOL is to be mailed to anyone other than the owner or lienholder of record (such as a closing agent), please provide that mailing address here and enclose the additional fee.</p>	Name:	
	Company:	
	Street Address:	
	City, State, Zip:	
	Area Code/Phone	

BLOCK 10: Certification and Notarization - The statements set forth herein are made under oath and are true and correct.

Seller certifies that any required habitability warranty has been delivered (consumer to consumer sales are exempt).

Seller certifies that the purchaser has been given a written disclosure on a form prescribed by the Department describing the condition of the home and of any appliances that are included in the home.

10(a) Notarized signature of each seller/transferor	10(b) Notarized signature of each purchaser/transferee or owner
<p>_____</p> <p><i>Signature of owner or authorized seller</i></p> <p>Sworn and subscribed before me this ____ day of _____, 20__</p> <p>_____</p> <p><i>Signature of Notary</i></p> <p>SEAL</p>	<p>_____</p> <p><i>Signature of purchaser/transferee or owner</i></p> <p>Sworn and subscribed before me this ____ day of _____, 20__</p> <p>_____</p> <p><i>Signature of Notary</i></p> <p>SEAL</p>
<p>_____</p> <p><i>Signature of owner or authorized seller</i></p> <p>Sworn and subscribed before me this ____ day of _____, 20__</p> <p>_____</p> <p><i>Signature of Notary</i></p> <p>SEAL</p>	<p>_____</p> <p><i>Signature of purchaser/transferee or owner</i></p> <p>Sworn and subscribed before me this ____ day of _____, 20__</p> <p>_____</p> <p><i>Signature of Notary</i></p> <p>SEAL</p>

- (20) **Affidavit of Fact for Real Property Application for Correction to Statement of Ownership and Location.**

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Internet Address: www.tdhca.state.tx.us/mh/index.htm

AFFIDAVIT OF FACT FOR REAL PROPERTY
(Sworn Statement)

BLOCK 1: Home Information

Manufacturer: Model:
Serial Number: Label # and/or Seal #:
Square Footage: Size:

BLOCK 2: Statement of Facts

The undersigned hereby certifies that the closing of a mortgage loan to be secured by real property including the manufactured home identified herein was held, the loan was funded, and a deed of trust covering the real property and all improvements on the property was recorded (copy attached) and the licensed title company or attorney who closed the loan failed to complete the conversion to real property in accordance with Chapter 1201 of the Occupations Code. In connection with an Application for a Statement of Ownership and Location electing real property status for the purpose of obtaining a certified copy of the Statement of Ownership and Location and making the necessary filings and notifications to complete such conversion, I hereby certify the following:

- (1) the record owner of the home, as reflected on the department's records, has been given at least 60 days' prior written notice by certified mail at:
(A) the location of the home and, if it is different, the mailing address of the owner as specified in the department records; and
(B) any other location the holder or servicer knows or believes, after a reasonable inquiry, to be an address where the owner may have been or is receiving mail or is an address of record.

BLOCK 3: Signature (Notarization is REQUIRED)

(Signature of holder's or servicer's authorized representative)

(Printed name and title of authorized representative)

Before me personally appeared the person (s) whose signature (s) appear above, who by being sworn, upon oath, say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this ___ day of _____ 20 ____.

(Name of Notary)

(Notary Public)

(Commission Expires)

Notary Public State of Texas

SEAL

Forms (21) through (23).

No change.

- (24) Addendum to Application for SOL Affidavit of Fact for Incomplete SOL Application.

Forms (25) through (30).

No change.

(31) Notice of Lien to Perfect a Lien (Other than Tax Lien) Form.

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489
 (800) 500-7074, (512) 475-2200 FAX (512) 475-1109

Internet Address: www.tdhca.state.tx.us/mh/index.htm

**NOTICE OF LIEN
 TO PERFECT A LIEN (OTHER THAN TAX LIEN)**

BLOCK 1: Home Information (required)

	<i>Label/Seal Number</i>	<i>Complete Serial Number</i>
Section 1:		
Section 2:		
Section 3:		
Section 4:		

BLOCK 2: Liens - Specify any liens (other than tax liens), charges, or other encumbrances to be recorded on the SOL

Effective Date of Lien:		Effective Date of Lien:	
Name of First Lienholder:		Name of Second Lienholder:	
Mailing Address:		Mailing Address:	
City/State/ZIP:		City/State/ZIP:	
Daytime Phone Number:	()	Daytime Phone Number:	()
Dollar amount of Lien:	\$	Dollar Amount of Lien:	\$

BLOCK 3: Signature of owner/borrower

<p>_____ <i>Signature of purchaser/transferee or owner</i></p> <p><i>Sworn and subscribed before me this ____ day of _____, 20__</i></p> <p>_____ <i>Signature of Notary</i></p> <p>SEAL</p>	<p>_____ <i>Signature of purchaser/transferee or owner</i></p> <p><i>Sworn and subscribed before me this ____ day of _____, 20__</i></p> <p>_____ <i>Signature of Notary</i></p> <p>SEAL</p>
---	---

BLOCK 4: For Lien Assignments

<p>_____ Name of Former Lienholder</p> <p>_____ Signature of Authorized Representative</p> <p><i>Sworn and subscribed before me this ____ day of _____, 20__</i></p> <p>_____ Signature of Notary</p> <p>SEAL</p>	<p>_____ Name of New Lienholder</p> <p>_____ Signature of Authorized Representative</p> <p><i>Sworn and subscribed before me this ____ day of _____, 20__</i></p> <p>_____ Signature of Notary</p> <p>SEAL</p>
--	---

(32) Notification of filing status as a Central Tax Collector.

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489
 (800) 500-7074, (512) 475-2200 FAX (512) 475-1109
 Internet Address: www.tdhca.state.tx.us/mh/index.htm

NOTIFICATION OF FILING STATUS AS A CENTRAL TAX COLLECTOR

Please type or print clearly.

BLOCK 1: Central Tax Collector Information

Central Collector Name: _____
Central Collector's Address: _____
(Address) (City) (State) (Zip Code)
Phone #: () **FAX #:** () **Email:** _____

BLOCK 2: Assignment of Central Tax Collector Number
(Department Use Only. The Department will notify taxing entity of the assigned number.)

Central Tax Collector Number: CTC-_____

BLOCK 3: Taxing Jurisdiction Information

County Name: _____ **County Code (3 digits):** _____

Complete 8-Digit Taxing Entity ID #	Name of Taxing Entity

Additional taxing entities may be listed on the reverse side of this form.

BLOCK 4: Notarized Signature Required

Until revoked by written notice to the Department, the undersigned will be the sole agent of each taxing entity listed herein for the recordation and release of tax liens on manufactured homes within the county specified herein. The undersigned represents and warrants that it is acting as a centralized collector and that it has legal authority to record and release such liens under the Central Tax Collector number designated herein. A lien filed for a particular year under the designated Central Tax Collector number may be for taxes due to one or more of the entities for which the Central Collection Agent collects, whereas a lien release filed for that year under that same number indicates that ALL taxes due to each entity for which the Agent collects have been discharged. In the event that any of the information provided herein changes, the undersigned agrees and undertakes to provide the Department with written notice of such change at least ten (10) days prior to its taking effect, and until and unless such written notice has been actually received by the Department at least ten (10) days prior to its taking effect, the Department will not be bound by it.

(Central Collector's Signature)

(Date)

Before me personally appeared the person(s) whose signature(s) appear above, who by being sworn, upon oath, say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this ____ day of 20____.

(Name of Notary)

(Notary Public)

(Commission Expires)

Notary Public State of Texas

SEAL

Forms (33) through (34).

No change.

(35) Application for License Renewal (other than a salesperson).

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489
 (800) 500-7074, (512) 475-2200 FAX (512) 475-3506
 Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR LICENSE RENEWAL (OTHER THAN SALESPERSONS)

Renew your license in one of 3 ways:

- **NEW! Renew online using a credit card or electronic check.** For eligibility requirements and other information, visit us on the web at www.tdhca.state.tx.us/mh/industry-info.htm. Please help us improve by completing the survey afterward.
- Complete this application and mail it with the renewal fee and proof that you completed the continuing education to: TDHCA, P.O. Box 12489, Austin, Texas 78711-2489
- Deliver in person this completed application with the fee to MHD on the 1st floor at: 221 East 11th Street, Austin, Texas

BLOCK 1: Applicant Information (Please type or print clearly.)

License Number: _____ Current Business Name: _____
 Expiration Date: ____ / ____ / ____ Current Mailing Address: _____
 City/State/ZIP: _____

Has there been a business name change that you have not yet reported to TDHCA? Yes No
If yes, you must submit acceptable evidence that your bond covers the changes.

Has there been any change in location that you have not yet reported to TDHCA? Yes No
If yes, you must submit acceptable evidence that your bond covers the changes.

Has there been any change in corporate officers that you have not yet reported to TDHCA? Yes No
If yes, please list name(s) and date(s) of birth on the back of this page.

Have you, or a corporate officer or partner, been convicted in Texas or any other state of any felony or misdemeanor offense, other than a class c misdemeanor for a traffic violation, in the last 12 months? Yes No
If yes, please visit our website or contact our office to obtain a *Criminal Conviction Affidavit*, which you must complete and submit with this application.

Are you in arrears on any taxes owed the State of Texas? Yes No
If yes, please call Tax Assistance at (512) 463-4600 or 1-800-252-5555.

Are you in arrears on a guaranteed student loan? Yes No
If yes, please call the Guaranteed Student Loan Corporation at (512) 835-1900.

[Attach a list of all related persons to this application as required by §1201.103 of the Standards Act.](#)

BLOCK 2: License Type and Fees

Please check one:	<input type="checkbox"/> Retailer (R) \$550	<input type="checkbox"/> Retailer/Installer (RI)* \$900	
	<input type="checkbox"/> Broker (B) \$350	<input type="checkbox"/> Retailer/Broker/Installer (RBI)* \$1250	
	<input type="checkbox"/> Installer (I)* \$350	<input type="checkbox"/> Salvage Rebuilder (S) \$550	
	<input type="checkbox"/> Retailer/Broker (RB) \$900	<input type="checkbox"/> Manufacturer (M) \$850	

* Installers must have a current certificate of insurance on file or submit it with this notice.

BLOCK 3: Certification

With knowledge of the penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.

 Printed Name and Title

() - _____
 Signature of Owner or Corporate Officer

 Phone Number

 Date

Department Use Only: License Renewal Fee Received Date Received: ____ / ____ / ____

Forms (36) through (37).

No change.

(38) Probationary Notice of Installation (Form T).

**PROBATIONARY
INSTALLATION**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
 P. O. BOX 12489 Austin, Texas 78711-2489
 (800) 500-7074, (512) 475-2200 FAX (512) 475-3506
 Internet Address: www.tdhca.state.tx.us/mh/index.htm

**Fax this report within 3
 working days from the
 date of installation to your
 assigned field office.
 Mail the original and fee
 by regular mail to the
 address on the letterhead.**

NOTICE OF INSTALLATION (FORM T)

HUD Label or Texas Seal # (s): _____ **Serial # (s):** _____

Manufacturer Name: _____ **License No.** _____

Home Size - Width / Length: _____ X _____ **Weight** _____ **Date of Manufacture:** ____/____/____ **Model / Name:** _____

Draw A Map To Provide Directions To Home On Page 2

Consumer: _____ **Phone Numbers: Home:** (____) _____ **Work:** (____) _____

Mailing Address: _____ **City** _____ **ZIP:** _____

Site Address: _____ **City** _____ **ZIP:** _____

County Where Home is Installed: _____

Actual Installation Date: ____/____/____ **Wind Zone on Data Plate: I** (____) **II** (____) **III** (____)

Is the home installed in a Humid & Fringe Climate Yes (____) No (____) **Was the home labeled for alternate construction.** Yes (____) No (____)

	Name	Address	License #	Expiration Date	Phone #
Retailer					
Installer					

(____) New (____) Used **Does retailer or installer provide skirting?** Yes (____) No (____)

Is installation part of sales contract of used home? Yes (____) No (____) Not Applicable (____)

The home has been installed in accordance with:

- (____) 1. **Manufacturer's Home Installation Instructions** (provide page number or option _____).
- (____) 2. **State Generic Standards - Title 10 Texas Administrative Code (10 TAC) §§80.22, 80.23, 80.24, and 80.25.**
- (____) 3. **A stabilization system registered with the Department in accordance with 10 TAC §80.26 - provide name of system or reference to MHD Approval Letter or registration** _____.
- (____) 4. **A Special Foundation System (attach a copy of the drawing for this system and provide a reference, if applicable, to any drawing previously submitted).**

**IF NO METHOD IS CHECKED, IT WILL BE PRESUMED THAT OPTION 2
 (STATE GENERIC STANDARDS) WAS USED.**

To be submitted to the Department along with the required fee no later than the 7th day after which the installation is completed. The Installation Report (Form T) should no longer be submitted with the title documents.

Per §1201.206(i): On secondary moves the notice must be accompanied by either the original notice of installation or a certification that a true and correct copy of the notice of installation has been provided to the chief appraiser of the county where the home is installed. The delivery of the copy of the notice to the chief appraiser may be accomplished by either certified mail or by electronic mailing of the electronically reproduced document in a commonly readable format.

I verify that I am a licensed installer, that I am responsible for the installation described, and that the information supplied is true and correct. Executed this _____ day of _____, _____.

Signature (Retailer/Installer)

Name (print or type)

NOTE: A minimum of five (5) probationary installations must be inspected without violations for a probationary installer's license to become a full installer's license.

Department Use Only	
<input type="checkbox"/> Inspected Without Violations	<input type="checkbox"/> Not Inspected, Unable to Locate
<input type="checkbox"/> Inspected With Violations	<input type="checkbox"/> Not Inspected, No Unit At Location
<input type="checkbox"/> Not Inspected, Unit Skirted	<input type="checkbox"/> Not Inspected, Unit Not Accessible
Inspection Date: _____ HUD/Seal #: _____	
<i>I hereby certify on this _____ day of _____, 20_____ that the above inspection results are true and correct to the best of my knowledge and belief.</i>	
Inspector Signature: _____ Printed Name: _____	

DRAW MAP BELOW



(39) Statement from Tax Assessor-Collector.

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Internet Address: www.tdhca.state.tx.us/mh/index.htm

STATEMENT FROM TAX ASSESSOR-COLLECTOR
To meet the requirements of Texas Occupations Code 1201.206(g)

BLOCK 1: Home Information

Manufacturer: Model:
Serial Number: Label # and/or Seal #:
Tax Roll Account No.: Physical Address:

BLOCK 2: Statement of Facts

Date of Sale: / /

- There are NO PERSONAL PROPERTY TAXES DUE on the manufactured home that may have accrued on each January 1 that falls within the 18 months before the date of sale specified above.
This home is not on the tax roll for this county.

BLOCK 3: Signature (Notarization is optional)

(Signature of tax assessor-collector's authorized representative)

(County making this statement)

(Printed name and title of authorized representative)

Before me personally appeared the person (s) whose signature (s) appear above, who by being sworn, upon oath, say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this ___ day of ___ 20 ___.

(Name of Notary)

(Notary Public)

(Commission Expires)

Notary Public State of Texas

SEAL

(40) Notice of Intent to Acquire Ownership of Abandoned Manufactured Home.

This notice must be sent by certified mail, return receipt requested, to the owner of record of the manufactured home described below and each lien holder, including any holder of a tax lien, reflected in the official records of the Texas Department of Housing and Community Affairs, Manufactured Housing Division, as of the date that this notice is sent.

**IMPORTANT NOTICE OF INTENT
TO ACQUIRE OWNERSHIP OF AN ABANDONED MANUFACTURED
HOME**

RE: Manufactured Home with HUD label, Texas Seal and/or Serial Number(s) _____
_____ (the "Home")

Name and address of owner(s) of record:

Name and address of 1st lienholder of record:

Name and address of 2nd lienholder of record:

**Name and address of Tax Assessor-Collector
where home is located:**

Dear _____:

The above-referenced Home is on my real property located at _____
_____ and appears to have been abandoned. It has
been continuously unoccupied for at least four months, and the following indebtedness, secured by the
Home, is delinquent (insert description of indebtedness including holder/payee):

It is my INTENT TO DECLARE THE HOME ABDANDONED. It is my intent forty-five (45) days from the date of this letter, to declare the Home to be abandoned and to apply to the Texas Department of Housing and Community Affairs, Manufactured Housing Division, for a Statement of Ownership and Location with respect to the Home, reflecting me to be the owner of the Home, free and clear of any liens, all in accordance with Tex. Occ. Code, §1201.217.

(Printed Name of Real Property Owner)

(Signature of Real Property Owner)

(41) Affidavit of Fact for Abandonment.

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Internet Address: www.tdhca.state.tx.us/mh/index.htm

***Affidavit of Fact for Abandonment
(Sworn Statement)***

BLOCK 1: Home Information

Manufacturer: _____ Model: _____
Serial Number: _____ Label # and/or Seal #: _____

BLOCK 2: Statement of Facts

I own the real property on which the manufactured home identified above is located. Such manufactured home has been continuously unoccupied for at least four (4) months. Any indebtedness secured by the manufactured home is delinquent. I have made reasonable efforts to locate and give notice to all owners and lienholders of record with the Department that I am seeking to acquire ownership of this manufactured home pursuant to Tex. Occ. Code, Section 1201.217, Manufactured Home Abandoned. The manufactured home has remained on the real property for at least forty-five (45) days after the date that each such notice was postmarked. As evidence that all notice requirements have been fulfilled and that I am entitled to a statement of ownership and location reflecting me as the owner of the manufactured home, I have attached a true and correct copy of each of the following documents:

- Each notice and the return receipt for certified mail that was sent to the following:
 - Each owner of the home at the address(es) on the statement of ownership and location records of the Department.
 - Each lienholder, including the county in which the home is located, and each holder of a recorded tax lien, on the statement of ownership and location records of the Department.
- Evidence that any indebtedness secured by the manufactured home is delinquent.
For any certified mail for which the return receipt indicated that such mail was unclaimed or undeliverable, I have made a reasonable effort to determine the location of the party to whom such mail was addressed and, if I could locate an alternative address, I sent them the same notice at the alternative address by certified mail, and copies of the return receipts for such certified mail are attached.

I certify that my ownership of the above-described real property is duly recorded in the deed or real property records for the county where such property is located.

BLOCK 3: Signatures (*Notarization is REQUIRED*)

(Signature)

(Signature)

Before me personally appeared the person(s) whose signature(s) appear above, who by being sworn, upon oath, say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this ____ day of _____ 20 ____.

(Name of Notary)

(Notary Public)

(Commission Expires)

Notary Public State of Texas

SEAL

(42) Disclosure to Consumer of Possible Need to Vacate Home if Financing does not close.

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Internet Address: www.tdhca.state.tx.us/mh/index.htm

Disclosure to Consumer
(Possible Need to Vacate Home if Financing does not Close)

BLOCK 1: Home Information

Manufacturer:_____	Model:_____
Serial Number:_____	Label No. and/or Seal No:_____
Square Footage:_____	Size:_____

BLOCK 2: Occupancy of a Manufactured Home Before Closing

A retailer must provide this disclosure prior to allowing a consumer to occupy a manufactured home before financing is complete, pursuant to Tex. Occ. Code, Section 1201.513(b).

(b) A retailer may not knowingly permit a consumer to occupy a manufactured home that is the subject of a sale, exchange, or lease-purchase to that consumer before the closing of any required financing unless the consumer is first given a form adopted by the board disclosing that if for any reason the financing does not close, the consumer may be required to vacate the home.

BLOCK 3: Signatures

_____ <i>(Signature)</i>	_____ <i>(Printed Name)</i>
_____ <i>(Signature)</i>	_____ <i>(Printed Name)</i>

(43) Application for Salesperson's License Renewal.

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489
 (800) 500-7074, (512) 475-2200 FAX (512) 475-3506
 Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR SALESPERSON'S LICENSE RENEWAL

Renew your license in one of 3 ways:

- Renew online using a credit card or electronic check. For eligibility requirements and other information, visit us on the web at www.tdhca.state.tx.us/mh/industry-info.htm. Please help us improve by completing the survey afterward.
- Complete this application and mail it with the renewal fee to: TDHCA, P.O. Box 12489, Austin, Texas 78711-2489
- Deliver in person this completed application with the fee to MHD on the 1st floor at: 221 East 11th Street, Austin, Texas

Type	Renewal Fee	1 to 90 days late (1 ½ times the renewal)	90 to 364 days late (2 times the renewal fee)
Salesperson	\$200	\$300	\$400

BLOCK 1: Salesperson Information (Please type or print clearly.)

License Number: _____ Expiration Date: ____ / ____ / ____

Name: _____

Current Mailing Address: _____

City/State/ZIP: _____

Home Phone: _____

Work Phone: _____

Have you been convicted in Texas or any other state of a felony or misdemeanor offense, other than a Class C misdemeanor for a traffic violation, in the last 24 months? Yes No

If yes, please visit our website or contact our office to obtain a *Criminal Conviction Affidavit*.

BLOCK 2: Employer Information

Name of Sponsoring Retailer: _____

Sponsoring Retailer's Address: _____

City/State/ZIP: _____

Sponsoring Retailer's License#: _____

BLOCK 3: Certification

License is subject to revocation, if the Department is **NOT** notified in writing of any changes in the information given on this application or if there is a violation of the law. Evidence that the continuing education requirements of §1201.113 have been completed must be received by the Department before the license can be renewed.

With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.

 (Signature of Applicant)

 (Date)

 (Signature of Sponsoring Retailer)

 (Date)

Department Use Only: License Renewal Fee Received Date Received: ____ / ____ / ____

(44) Application for License Instruction Providers.

