



Texas Department of Housing and Community Affairs
Manufactured Housing Board Meeting
on June 17, 2003

Cary Yates, Chair

Jack Davis, Member

Clement "Pete" Moreno, Member

Joan Tavarez, Member

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

June 17, 2003

ROLL CALL

	<u>Present</u>	<u>Absent</u>
Cary Yates, Chair	_____	_____
Jack Davis, Member	_____	_____
Clement "Pete" Moreno, Member	_____	_____
Joan Tavaréz, Member	_____	_____
Number Present	_____	
Number Absent		_____

_____, Presiding Officer

**MANUFACTURED HOUSING BOARD MEETING
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
507 Sabine, 4th Floor Boardroom, Austin, Texas 78701
June 17, 2003 1:00 p.m.**

AGENDA

**CALL TO ORDER, ROLL CALL
CERTIFICATION OF QUORUM**

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. Presentation, discussion and approval of minutes of board meeting of April 22, 2003.
- Item 2. Presentation, discussion and consideration of possible approval of the State Office of Administrative Hearings (SOAH) Proposal for Decision:
 - Approval of Manufactured Housing Case:
In the Matter of the Complaint of TDHCA vs Mark Collier d/b/a Tucker Extreme Homes, Docket Number: 332-03-2531, Complaint No: MHD2003000297-RD.
- Item 3. Presentation, discussion and consideration of possible approval to adopt rules:
 - (a) Site Preparation: Amendments to §80.54(b) & (c)
 - (b) Enforcement Grid: New §80.129
 - (c) HORF: New §80.133
 - (d) Deceptive Practices: New §80.134
 - (e) Forms: New §80.137
- Item 4. Presentation, discussion and consideration of possible approval to propose and publish new rules for comment:
 - (a) Installer Responsibilities
 - (b) Broker Responsibilities
 - (c) Liquidators' License
- Item 5. Consideration and possible adoption of a Reduction in Force (RIF) plan.

REPORT ITEMS

- Item 1. Budget and Revenue Status
- Item 2. Performance Measures Report
- Item 3. Legislative Report
- Item 4. "Entry into Texas" Fees

EXECUTIVE SESSION

- Item 1. Personnel matters (Executive Director vacancy) to consider under Sec. 551.074, Texas Government Code.

RECONVENE

Reconvene in public session and taking of action on items discussed in Executive Session.

PUBLIC COMMENT

ADJOURN

To access this agenda or request information, please visit our website at www.tdhca.state.tx.us or contact Nancy Stone, TDHCA, 507 Sabine, Austin, Texas 78701, 512-475-2894, nstone@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 BOARD OF DIRECTORS
DIVISION OF MANUFACTURED HOUSING**

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

On Tuesday, April 22, 2003, at 1:00 p.m., a duly called meeting of the Board of Directors (“Board”) of the Division of Manufactured Housing (“Division”) of the Texas Department of Housing and Community Affairs (“Department”) was held in the Department’s board room on the fourth floor of its offices at 507 Sabine, Austin, Texas.

Cary Yates presided, and Tim Irvine served as secretary of the meeting. The following directors, constituting a quorum, were present:

Jack Davis Clement “Pete” Moreno Joan Tavarez Cary Yates

The following members of the Division’s staff were present: Kassu Asfaw, Verna Boswell, Ed Cervenka, Sharon Choate, Jim Hicks, Tim Irvine, and Nancy Stone. David Gaines, the internal auditor for the Department, was also present.

Upon motion of Jack Davis, duly seconded by Joan Tavarez, the minutes of the previous meeting were approved as presented.

Jim Hicks presented a Proposal for Division regarding SOAH Docket Number 332-03-1541, covering MHD2001001994-W, MHD2002000595-W, and MHD2002001323-IV. The proposal for decision was accepted, and upon motion of Jack Davis, duly seconded by Pete Moreno, the entry of the recommended order was unanimously approved.

Tim Irvine represented a staff recommendation to increase certain fees and to effectuate those increases through amendments to 10 TAC 80.20 and 80.202. Upon request of Jack Davis, the board asked that the staff bring to the board at its next meeting a proposal to implement inspections of out-of-state manufactured homes being transported into Texas and to charge appropriate fees in connection therewith. Upon motion of Jack Davis, duly seconded by Pete Moreno, the Board approved the publication of the proposed fee increases in the *Texas Register* for public comment.

David Gaines presented the status of the cash receipts/fee audit.

Kassu Asfaw presented an update of the status of compliance with the Division’s budget.

Tim Irvine provided an update on significant pending legislation affecting the Division and the Department. Jody Anderson, Director of the Texas Manufactured Housing Association, and Bill Beville, President of PSIA, provide testimony in response to Board questions about payment and collection of sales tax on manufactured homes.

The Board determined that the next scheduled meeting would be on June 17th, and thereafter the Board would schedule to meet on the third Tuesday of every other month.

Tim Irvine reported on the status of *Hogstad vs. the Division*, an administrative hearing regarding the interpretation of HB 1869.

The Board invited general public comment. Bill Beville, President of PSIA, advised the Board of the status of a pending request for approval as a provider of required educational courses and asked that the request be approved. The chair advised Mr. Beville that it would consult with the Executive Director and that a response would be forthcoming.

There being no further business to come before the Board, the meeting was adjourned at 2:20 p.m.

Tim Irvine, Acting Secretary

Approved:

Cary Yates, Presiding Officer



DIVISION OF MANUFACTURED HOUSING

Rick Perry
GOVERNOR

Bobbie Hill
EXECUTIVE DIRECTOR

BOARD MEMBERS
Presiding Officer, Don Stouder
Jack Davis
Clement P. Moreno
Joan Tavarez
Cary Yates

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

FROM: Jim R. Hicks, Resolution Section

THROUGH: Timothy K. Irvine, Deputy Executive Director

SUBJECT: Summary of Proposal for Decision

Mark Collie dba Tucker Extreme Homes, ("Respondent")

License type/number: RBI-35082. Effective dates May 8, 2002 through May 8, 2003.

Docket Number: 332-03-2531

Complaint Number: MHD2003000297-RD

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:

1. Respondent refused to refund a deposit from Tracy Lynn Mobley (consumer) in the amount of Two Thousand Dollars (\$2,000) as required by Section 6(m) of the Act. Respondent accepted the deposit from consumer to purchase a manufactured home which was in Respondent's inventory. Because the home was in Respondent's inventory, Respondent is not entitled to retain any part of the deposit pursuant to Section 6(m)(3) of the Act. Respondent did not return the deposit received from consumer within 15 (fifteen) days of receiving written notice from consumer requesting the return of the deposit which is in violation of Section 6(m)(1) of the Act.

The staff initiated the following administrative actions against Respondent.

After proper notice, an administrative hearing was held on May 7, 2003. An Administrative

Page 2
Final Order
In the Matter of Mark Collie dba Tucker Extreme Homes
Docket No. 332-03-2531
Complaint No. MHD2003000297-RD

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 May 16, 2003 recommends that Respondent be assessed an administrative penalty of One Thousand Dollars (\$1,000.00).

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 One Thousand Dollars (\$1,000.00).

DOCKET NO. 332-03-2531
COMPLAINT NO. MHD2003000297-RD

THE MANUFACTURED HOUSING	§	BEFORE THE
	§	
DIVISION OF THE TEXAS	§	GOVERNING BOARD OF THE
	§	
DEPARTMENT OF HOUSING AND	§	MANUFACTURED HOUSING DIVISION
	§	
COMMUNITY AFFAIRS	§	OF THE TEXAS DEPARTMENT OF
	§	
MARK COLLIE dba TUCKER EXTREME	§	HOUSING AND COMMUNITY AFFAIRS
	§	
HOMES		

FINAL ORDER

I. PREAMBLE

CAME ON TO BE CONSIDERED, the matter of the enforcement action identified as MHD2003000297-RD, *In the Matter of the Complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Mark Collie dba Tucker Extreme Homes*, pursuant to the Texas Manufactured Housing Standards ACT, previously TEX. REV. CIV. STAT. ANN. art. 5221f (“Act”) re-codified effective June 1, 2003, under the Occupations Code, Section 1201; Chapter 2306 of the TEX. GOVT. CODE ANN. ch. 2306 (“Ch. 2306”); and the Administrative Procedures Act, TEX. GOVT. CODE ANN. ch. 2001 (“ch. 2001”). The Governing Board issues this Final Order based on the Findings of Fact and Conclusions of Law set forth in the Proposal for Decision of the Administrative Law Judge in this case which is hereby adopted in its entirety (a copy of which is attached). The Board’s vote in this case(s) was _____ for _____ against, and _____ abstention(s).

II. ORDER

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. Respondent be assessed an administrative penalty of \$1000 for violations of the Act and Rules as detailed in the Proposal for Decision;

2. Respondent shall pay the penalty to the Texas Department of Housing and Community Affairs within thirty (30) days of the date of this FINAL ORDER. The penalty payment shall be 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 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 June, 2003.

Cary Yates, Presiding Officer
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. regular mail and U.S. certified mail (Number 7001 2510 0007 6863 7757), return receipt requested, to Mark Collie dba Tucker Extreme Homes, 9142 South U.S. Hwy 79, Palestine, Texas 75801 and sent by U.S. regular mail and U.S. certified mail (Number 7001 2510 0007 6863 7740), return receipt requested, to Mark Collie dba Tucker Extreme Homes, Rt. 11 Box 932 (Hwy 69), Jacksonville, Texas 75766 on this the _____ day of June, 2003.

/s/

Nancy Stone, Complaint Specialist

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

May 16, 2003

Ms. Bobbie Hill
Executive Director-Manufactured Housing Division
Texas Department of Housing and Community Affairs
507 Sabine St.
Austin, Texas 78701

HAND DELIVERY

RE: Docket No. 332-03-2531; Manufactured Housing Division- Texas Department of Housing and Community Affairs vs. Mark Collie d/b/a Tucker Extreme Homes.

Dear Ms. Hill:

Enclosed please find the Proposal for Decision in the above-referenced cause for the consideration of the Texas Department of Housing and Community Affairs. Copies of the Proposal are being sent to Jim Hicks, Resolution Supervisor for the Texas Department of Housing and Community Affairs, and Mark Collie, Respondent. For reasons discussed in the proposal, the Administrative Law Judge concurs with Staff's recommendation that the Texas Department of Housing and Community Affairs, (Department) should deny the issuance of a Salesman's Licence to Respondent.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Director ten days after the party receives the Proposal for Decision. Replies to exceptions should be filed ten days thereafter. A party filing exceptions, replies, and briefs must serve a copy on the State Office of Administrative Hearings and the other party hereto.

Sincerely,

/s/

Mike Rogan
Administrative Law Judge

MR/bbl
Enclosure
xc:

Rommel Corro, Docket Clerk, State Office of Administrative Hearings - **HAND DELIVERY**
Jim Hicks, Resolution Supervisor, Texas Department of Housing and Community Affairs - **HAND DELIVERY**
Mark Collie, d/b/a Tucker Extreme Homes, 9142 So. U.S. Hwy 79, Palestine, TX 75801- **VIA REGULAR MAIL**

Post Office Box 13025 ◆
(512) 475-4993

William P. Clements Building
300 West 15th Street, Suite 052
Docket (512) 475-3445
<http://www.soah.state.tx.us>

◆ Austin, Texas 78711-3025
Fax (512) 475-4994

**SOAH DOCKET NO. 332-03-2531
TDHCA COMPLAINT NO. 2003000297-RD**

**TEXAS DEPARTMENT OF
HOUSING AND COMMUNITY AFFAIRS**
Petitioner

vs.

**MARK COLLIE dba TUCKER
EXTREME HOMES**
Respondent

§
§
§
§
§
§

**BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

The Manufactured Housing Division staff of the Texas Department of Housing and Community Affairs (“Department”) brought this enforcement action alleging that Mark Collie dba Tucker Extreme Homes (“Respondent”) has violated the Texas Manufactured Housing Standards Act (“the Act”), TEX. REV. CIV. STAT. ANN. art. 5221f, by refusing to refund a deposit to a consumer. The staff requests assessment of an administrative penalty of \$1,000.00. The Administrative Law Judge (“ALJ”) recommends that the Department enter a default judgment assessing that penalty.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

Pursuant to proper notice, which presented pertinent details of the staff’s complaint alleging Respondent’s violation of the Act, an administrative hearing on the staff’s action was convened on May 7, 2003, before Mike Rogan, an ALJ with the State Office of Administrative Hearings (“SOAH”). The staff (represented by Jim Hicks, official designee of the Executive Director) appeared and presented evidence relating to notice, jurisdiction, and the appropriate level of penalty for the particular violation alleged.

Respondent did not appear and was not represented at the scheduled hearing, nor did Respondent provide the ALJ with any prior or subsequent explanation for the absence. The staff moved for default judgment, pursuant to 1 TEX.ADMIN.CODE (“TAC”) § 155.55, due to Respondent’s unexplained failure to appear at the hearing. The ALJ granted the motion. The record in the proceeding remained open until May 14, 2003, in order to allow the staff an opportunity to submit proposed findings of fact and conclusions of law.

Because the hearing proceeded on the basis of default, the ALJ deemed as true the factual allegations in the notice of hearing issued by the staff. Accordingly, those allegations and applicable law are set forth in the Findings of Fact and Conclusions of Law herein without further discussion.

II. RECOMMENDATION

The ALJ recommends that the Department enter a default judgment against Respondent and adopt the Findings of Fact and Conclusions of Law, as proposed by the staff and as set forth below, assessing an administrative penalty of \$1,000.00 against Respondent for the violations alleged and established in this proceeding.

III. PROPOSED FINDINGS OF FACT

1. On August 13, 2002, Respondent (Mark Collie dba Tucker Extreme Homes) accepted a deposit of \$2,000.00 from a consumer, Tracy Lynn Mobley, for the purchase of a manufactured home that was in Respondent’s inventory. Respondent failed to return the deposit within 15 days of receiving from the consumer written notice (dated October 7, 2002) that requested the deposit’s refund.

2. During the time period including August 13, 2002, and extending through the time of the hearing in this docket, Respondent has held License No. RB-35082, issued by the Department.
3. On March 21, 2003, Department staff sent a notice of administrative hearing to Respondent at 9142 South U.S. Hwy. 79, Palestine, Texas 75801, and at Rt. 11 Box 932 (Hwy. 69N), Jacksonville, Texas 75766, both by certified mail, return receipt requested, and by regular mail. These addresses are contained in the Department's official records, pursuant to 10 TAC § 1.21(c), as Respondent's business addresses. Subsequently (during March of 2003), Respondent received the notice at the address in Palestine, as evidenced by signature on the certified-mail return receipt.
4. The notice of hearing informed Respondent of the matters asserted (relating to the incident described in Finding of Fact No. 1), the time and place of the hearing, the right to appear and be represented by counsel, the legal authority and jurisdiction under which the hearing would be held, and the statutes and rules involved in the proceeding.
5. The notice of hearing advised Respondent in 12-point bold-face type that failure to appear at the hearing could result in the factual allegations within the notice being deemed true and the granting by default of the relief sought in the notice.
6. The notice of hearing was also published in the Texas Register on April 11, 2003.
7. The hearing was convened before SOAH as scheduled on May 7, 2003, in the William P. Clements Building, 300 W. 15th St., Austin, Texas.
8. The Department staff appeared at the hearing, but Respondent was neither present nor represented. Respondent did not file for a continuance or provide either prior or

subsequent explanation for his failure to appear. The staff moved for default judgment, which was granted, pursuant to 1 TAC § 155.55.

9. The staff considered the factors, as enumerated in 10 TAC § 80.127(b), for determining an appropriate administrative penalty and concluded that Respondent should be assessed a penalty of \$1,000.00, consistent with past Department practice, because the action noted in Finding of Fact No. 1 represents a significant financial imposition upon a consumer.

IV. Proposed Conclusions of Law

1. The Department has jurisdiction in this case pursuant to the Act and has authority to discipline and penalize an owner registered with the Department pursuant to § 7(j) of the Act and TEX. GOV'T CODE ANN. ch. 2306.
2. SOAH has jurisdiction over matters related to the hearing in this action, including the authority to issue a proposal for decision, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing was provided to Respondent pursuant to the Act, TEX. GOV'T CODE ANN. chs. 2001 and 2306, 1 TAC § 155.55, and 10 TAC § 80.126.
4. Based upon Finding of Fact No. 1, Respondent violated § 6(m) of the Act by refusing to refund the deposit given by a consumer. Respondent is not entitled to retain any part of such a deposit, pursuant to § 6(m)(3) of the Act. Respondent also violated § 6(m)(1) of the Act by not returning the deposit within 15 days of receiving written notice from the consumer requesting refund of the deposit.

5. Based upon Finding of Fact No. 9, Conclusion of Law No. 4, and the criteria set forth in TEX. GOV'T CODE ANN. § 2306.604, Respondent should be assessed an administrative penalty of \$1,000.00.

SIGNED May 16th 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

/s/

**MIKE ROGAN
ADMINISTRATIVE LAW JUDGE**

Propose Adoption of Amendments to §80.54

§80.54. *Standards for the Installation of Manufactured Homes.*

- (a) All manufactured homes shall be installed in accordance with one of the following:
 - (1) the home manufacturer's installation instructions;
 - (2) the state's generic standards set forth in this section, §80.55 of this title (relating to Anchoring Systems), §80.56 of this title (relating to Multi-Section Connection Standards), and modified by any appendix filed in accordance with §80.51(a)(2) of this title (relating to Manufactured Home Installation Requirements);
 - (3) a custom designed stabilization system;
 - (4) a stabilization system pre-approved by the department; or
 - (5) on a permanent foundation.
- (b) Site Preparation Responsibilities and Requirements:
 - (1) The purchaser of a manufactured home, new or used, is responsible for the proper preparation of the site where the manufactured home will be installed except as set forth in subsection (g) of this section:
 - (A) In the case of a manufactured home that is to be installed in a manufactured home rental community (as defined in Local Government Code §232.007), the purchaser may not have the ability to control the preparation of the site. Therefore, the purchaser should confirm with the person who owns, leases, or manages the rental community that the site has been properly prepared as required by Property Code, §94.151.
 - (B) When a manufactured home is sold already installed it is not possible for the purchaser to prepare the site. Therefore, it is the responsibility of the seller, if the seller is a licensed retailer, to ensure that the site has been properly prepared.
 - (2) Whenever a licensed retailer intends to sell a manufactured home, regardless of where it is located or is to be located, the retailer is required to give the proposed purchaser the Site Preparation Notice, for signature by the consumer, in the form set forth in subsection (g) of this section PRIOR to the execution of any binding sales agreement.

- (3) Whenever a licensed installer proposes to move a used manufactured home, the installer is required to give the proposed purchaser the Site Preparation Notice, for signature by the consumer, in the form set forth in subsection (g) of this section PRIOR to entering into a binding agreement to move that home.
- (c) If the retailer or installer provides the materials for skirting or contracts for the installation of skirting, the retailer or installer is responsible for the following: The retailer or installer shall install any required moisture and ground vapor control measures in accordance with the home installation instructions, specifications of an approved stabilization system, or the generic standards and shall provide for the proper cross ventilation of the crawl space. If the purchaser or homeowner contracts with a person other than the retailer or installer for the skirting, the purchaser or homeowner is responsible for installing the moisture and ground vapor control measures and for providing for the proper cross ventilation of the crawl space.
- (d) Clearance: If the manufactured home is installed according to the state's generic standards, a minimum clearance of 18 inches between the ground and the bottom of the floor joists must be maintained. In addition, the installer shall be responsible for installing the home with sufficient clearance between the I-Beams and the ground so that after the crossover duct prescribed by the manufacturer is properly installed it will not be in contact with the ground. Refer to §80.56 of this title (relating to Multi-Section Connection Standards) for additional requirements for utility connections. It is strongly recommended that the installer not install the home unless all debris, sod, tree stumps and other organic materials are removed from all areas where footings are to be located.
- (e) Drainage: The purchaser is responsible for proper site drainage where the manufactured home (new or used) is to be installed unless the home is installed in a rental community. It is strongly recommended that the installer not install the home unless the exterior grade is sloped away from the home or another approved method to prohibit surface runoff from draining under the home is provided. Drainage prevents water build-up under the home. Water build-up may cause shifting or settling of the foundation, dampness in the home, damage to siding and bottom board, buckling of walls and floors, delamination of floor decking and problems with the operation of windows and doors.
- (f) Generic Moisture and Ground Vapor Controls:
 - (1) If the manufactured home is installed according to the state's generic standards and the space under the home is to be enclosed with skirting and/or other materials provided by the retailer and/or installer, an access opening not less than 18 inches in any dimension and not less than three square feet in area shall be provided by the installer. The access opening shall be located so that any water supply and sewer drain connections

located under the home are accessible for inspections. If a clothes dryer exhaust duct, air conditioning condensation drain, or combustion air inlet is present, the installer must pass it through the skirting to the outside. In addition, crawl space ventilation must be provided at the rate of minimum 1 square foot of net free area, for every 150 square feet of floor area. At least six openings shall be provided, one at each end of the home and two on each side of the home. The openings shall be screened or otherwise covered to prevent entrance of rodents (note: screening will reduce net free area). For example, a 16'x76' single section home has 1216 square feet of floor area. This 1216 square feet divided by 150 equals 8.1 square feet or 1166 square inches of net free area crawl space ventilation.

- (2) The retailer and/or installer must notify the purchaser that moisture and ground vapor control measures are required if the space under the home is to be enclosed. Water vapor build-up may cause dampness in the home, damage to siding and bottom board, buckling of walls and floors, delamination of floor decking and problems with the operation of windows and doors. The generic ground vapor control measure shall consist of a ground vapor retarder that is minimum 6 mil polyethylene sheeting or its equivalent, installed so that the area under the home is covered with sheeting and overlapped approximately 12 inches at all joints. Any tear larger than 18 inches long or wide must be taped using a material appropriate for the sheeting used. The laps should be weighted down to prevent movement. Any small tears and/or voids around construction (footings, anchor heads, etc.) are acceptable.

- (g) Notice: The site preparation notice to be given to the consumer shall be as follows:

SITE PREPARATION NOTICE

FAILURE TO PREPARE THE SITE PROPERLY BEFORE INSTALLING YOUR MANUFACTURED HOME MAY INVALIDATE YOUR WARRANTY AND MAY CAUSE PROBLEMS WITH YOUR HOME.

IF YOU ARE ACQUIRING LAND FOR A MANUFACTURED HOME AND WILL NOT HAVE THE ABILITY TO OVERSEE SITE PREPARATION YOURSELF, BE SURE THAT YOUR AGREEMENT WITH THE PARTY PROVIDING THE LAND COVERS THEIR RESPONSIBILITIES FOR SITE PREPARATION.

If you are acquiring a manufactured home you need to be sure that the site is properly prepared **BEFORE the home is installed**. If you will be having your home installed in a rental community, you should first be sure that the community has prepared the site properly and assumed that responsibility. If you are acquiring a manufactured home that is already installed, you should satisfy yourself that the site was properly prepared first.

Site Preparation includes AT LEAST the following: (1) selecting a site where the home will not be affected by rising or running water, as in the case of heavy rains, (2) grading the site, as needed, so that the land slopes away from the home, (3) making sure that the site will not create puddles or moisture build-up under the home by filling any depressions and, as needed, providing for drainage, (4) clearing away any plants, stumps, or debris on the site where the home will be placed, and (5) installing any required vapor retarder barrier (and, if such a barrier is to be installed, trimming any grasses or other organic materials to a suitable height, not greater than 8”).

If your retailer is providing skirting, the retailer must also provide and install any required vapor retarder barrier and insure that there is adequate ventilation under the home. If the retailer is not providing these things, you should be sure that you have provided for any required vapor retarder barrier and that you have provided adequately for ventilation under the home.

FAILURE TO PREPARE THE SITE PROPERLY AND/OR FAILURE TO TAKE APPROPRIATE MEASURES TO GUARD AGAINST MOISTURE BUILD-UP MAY CAUSE SERIOUS PROBLEMS WITH YOUR MANUFACTURED HOME INCLUDING, BUT NOT LIMITED TO, MOISTURE IN THE HOME, DE-LAMINATION OF FLOOR DECKING, BUCKLING OF WALLS AND FLOORS, WARPAGE THAT WILL MAKE DOORS AND WINDOWS NOT OPERATE PROPERLY, FAILURE OF ANCHORS TO HOLD THE HOME AS INTENDED, AND EVEN SERIOUS STRUCTURAL DAMAGE.

purchaser/homeowner signature

purchaser/homeowner signature

type or print name

type or print name

date

date

(h) Footers and Piers:

(1) Proper sizing of footings depends on the load carrying capacity of both the piers and the soil. To determine the load bearing capacity of the soil, the installer may use any of the following methods:

(A) Pocket penetrometer:

- (i) Test a typical area adjacent to or within 10 feet of the perimeter of the unit;
- (ii) Dig down to undisturbed soil. This should be a minimum of 1 square foot surface area; and
- (iii) Using the pocket penetrometer take seven (7) readings, eliminate the highest and the lowest and average the remaining five (5).

(B) Soil surveys from the U.S. Department of Agriculture;

(C) Values from tables of allowable or presumptive bearing capacities given in local building codes. Such tables are commonly available from the local authority having jurisdiction; or

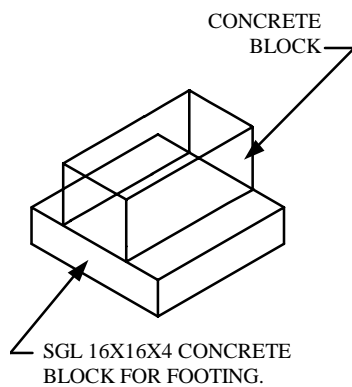
(D) Any other test data from soil analysis reports.

(2) The footing must be placed on firm, undisturbed soil, or fill compacted to at least 90% of its maximum relative density. Installation on loose, noncompacted fill may invalidate the home's limited warranty.

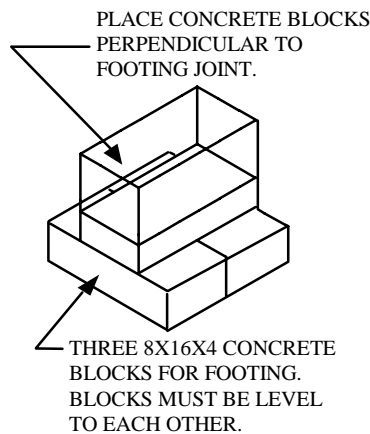
(3) Footer configurations:

FOOTER CONFIGURATIONS

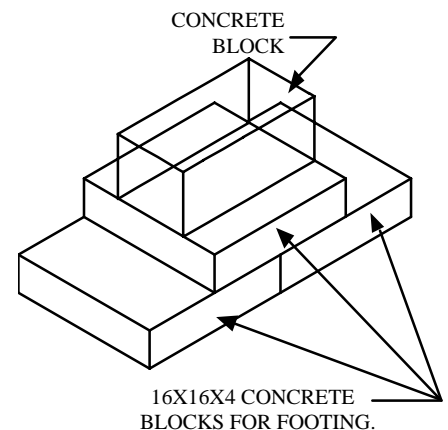
SINGLE 16x16x4



DOUBLE 8x16x4



DOUBLE 16x16x4



- (4) Footer sizing and capacities: The following tables represent maximum loads and spacings based on footer size and soil bearing capacity. Other approved footers may be used if equal or greater in bearing area than those footer sizes tabulated.

TABLE 3A: FOOTER CAPACITIES (LBS)

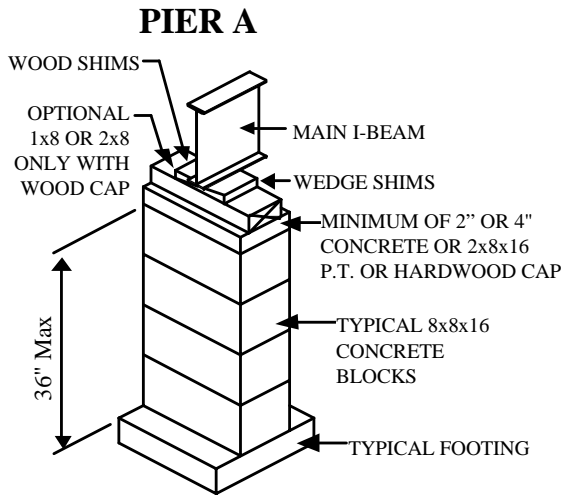
-----Soil Bearing Capacity-----							
Footer size	1000psf	1500psf	2000psf	2500psf	3000psf	3500psf	4000psf
16x16x4	1700	2700	3500	4400	5300	6100	7000
20x20x4	2700	4100	5500	6900	8300	9400	11000
16x32x4	3500	5200	6800	8600	10400	12000	14000
24x24x4	4000	6000	8000	10000	12000	14000	16000
Notes:							
1) 8x16x4 footers may be used for perimeter and/or exterior door supports. Capacity is half that of the tabulated values for a 16x16x4 footer. For double 8x16x4 footers use the 16x16x4 row.							
2) Footers of material other than concrete may be used if approved by the department and the listed capacity and area is equal to or greater than the footer it replaces. Concrete footers of sizes not listed may be used as long as their size is equal to or greater than the size listed.							
3) Footers with loads greater than 10,000 lbs. require a double stacked pier.							
4) All poured concrete is minimum 2500 psi at 28 days.							
5) Actual footer dimensions may be 3/8 inch less than the nominal dimensions for solid concrete footers conforming to the specifications in ASTM C90-99a, Standard Specification for Loadbearing Concrete Masonry Units.							

- (5) Piers and pier spacings: One of the most important parts of home installation is proper pier installation. Incorrect size, location or spacing of piers may cause serious structural damage to the home. Spacing and location of piers shall be in accordance with the tables listed in these standards (Table 3B, without perimeter piers; Table 3C, with perimeter piers).
- (A) Spacing shall be as even as practicable along each main I-Beam. Pier spacing may exceed tabulated values up to 30% so long as the total pier count remains the same. End piers are to be located within 24 inches of the end of the main frame.
- (B) Piers shall extend at least 6 inches from the centerline of the I-Beam or be designed to prevent dislodgment due to horizontal movement of less than 4 inches.
- (C) Load bearing supports or devices shall be listed by an independent testing laboratory, nationally recognized inspection agency, or other nationally recognized organization and approved by the department. Engineers or architects licensed in Texas may design load bearing supports or devices for a single installation. A copy of the design for this particular home and site shall be provided to the department before the home is installed, but department approval is not required.

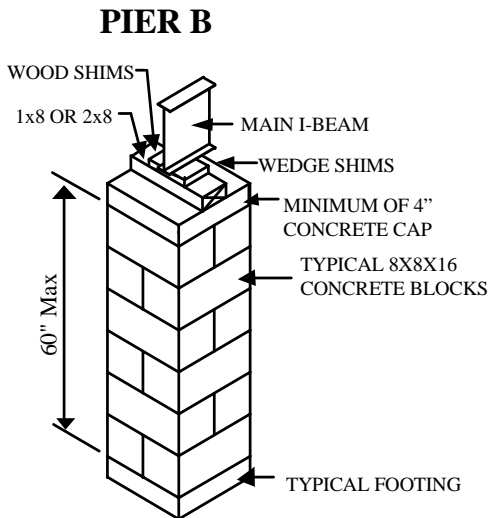
(D) Sidewall openings greater than 4 feet shall have perimeter piers located under each side of the opening, i.e. patio doors, recessed porches/entries, bay windows and porch posts. Perimeter piers for openings are not required for endwalls.

(6) Pier design: Piers shall be constructed per the following details:

PIER DESIGN (SINGLE & MULTI-SECTION STACK)



Pier A: Single stack of open cell, 8x8x16 concrete blocks. Maximum height is 36 inches as measured from the top of the footer to the top of the last concrete block. Concrete blocks are installed with their lengths perpendicular to the main I-Beam. Open cells must be vertical and in alignment.



Pier B: Interlocked double stack of open cell 8x8x16 concrete blocks. The maximum height is 60 inches as measured from the top of the footer to the top of the last concrete block. The pier is capped with a minimum 16x16x4 concrete cap. Open cells must be vertical and in alignment. Each course of open cell blocks must be perpendicular to the previous course.

Note:

- 1) Open cell and solid concrete blocks shall meet ASTM-C90-99a, Standard Specification for Loadbearing Concrete Masonry Units.
- 2) Support system components are to be undamaged and installed in a manner to accomplish the purpose intended.
- 3) Either wood caps or shims must be used between I-Beam and concrete.

- (A) Shimming (if needed): Hardwood shims are commonly used as a means for leveling the home and filling any voids left between the bottom flange of the I-Beam and the top of the pier cap. Wedge shaped shims must be installed from both sides of the I-Beam to provide a level bearing surface. The allowable height must not exceed 1 inch. Shims shall be a minimum of 3 inches wide and 6 inches long. Over shimming should be avoided.
- (B) Table 3B - Pier loads (pounds) at tabulated spacings WITHOUT perimeter supports:

**TABLE 3B: PIER LOADS (LBS) AT TABULATED SPACINGS
(WITHOUT PERIMETER SUPPORTS)**

----- maximum pier spacing -----

Unit Width(ft)	4 ft o.c.	5 ft o.c.	6 ft o.c.	7 ft o.c.	8 ft o.c.
12 Wide	1725	2150	2600	3000	3400
14 wide	2000	2500	3000	3500	4000
16 Wide	2350	2900	3500	4100	4700

Note: 18 ft. wides require perimeter blocking per table 3C.

Example: Determine maximum pier spacing for a 16 ft. wide x 76 ft. long single section with a soil bearing capacity of 1500 psf. Footer size to be used is a single 16x16x4 precast concrete footer.

Step 1: In table 3A look up the maximum load for a single 16x16x4 pad set on 1500 psf soil.
Answer = 2700 psf

Step 2: In table 3B in the column for 16 ft. wide, find the on-center spacing (o.c.) load equal to or less than the footer capacity of 2700 lbs found in table 3A.
The 4ft column shows minimum capacity of 2350 lbs.

Answer: Therefore, for a 16 ft. wide and a soil bearing capacity of 1500 psf using 16x16x4 footers the maximum pier spacing is 4 ft. o.c.

- (C) Table 3C - Pier loads (pounds) at tabulated spacings WITH perimeter supports:

**TABLE 3C: PIER LOADS (LBS) AT TABULATED SPACINGS
(WITH PERIMETER SUPPORTS)**

----- maximum I-Beam pier spacing -----

Unit width (ft)	4 ft o.c.	6 ft o.c.	8 ft o.c.	10 ft o.c.	12 ft o.c.
12 Wide	750	1150	1500	1900	2300
14 Wide	1050	1600	2100	2600	3100
16 Wide	1200	1800	2400	3000	3600
18 Wide	1450	2150	2850	3600	4300

Note: Maximum I-Beam pier spacing is 8 ft. o.c. for 8" I-Beam, 10 ft. o.c. for 10" I-Beam and 12 ft. o.c. for 12" I-Beam or the resultant maximum spacing based on soil bearing and footer size per Table 3A, whichever is less.

----- maximum perimeter pier spacing -----

Unit width (ft)	4 ft o.c.	5 ft o.c.	6 ft o.c.	7 ft o.c.	8 ft o.c.
12 Wide	1000	1200	1500	1700	1900
14 Wide	1100	1400	1650	1900	2200
16 Wide	1300	1600	1900	2250	2500
18 Wide	1600	2000	2300	2700	3000

Example: Determine maximum I-Beam pier spacing for a 16 ft. wide with 12" I-Beam, perimeter blocking and 1500 psf soil bearing capacity.

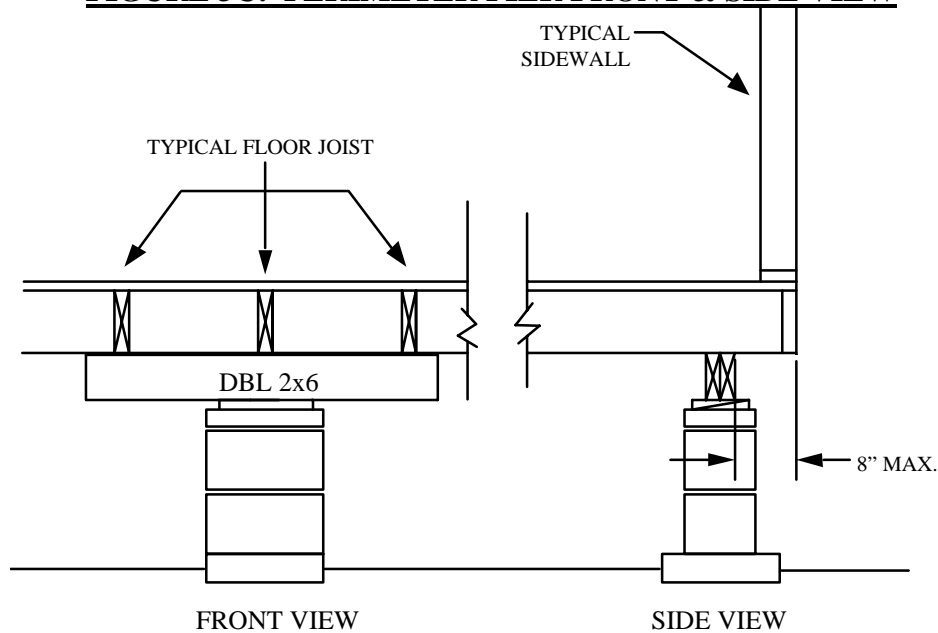
Step 1: From Table 3A, the maximum load for a 16x16x4 at 1500 psf soil is 2700 lbs.

Step 2: From Table 3C, the I-Beam pier load @ 10 ft. o.c. is 3000 lbs ==> no good
the I-Beam pier load @ 8 ft. o.c. is 2400 lbs ==>> ok

I-Beam pier spacing is at 8 ft. o.c.

Step 3: The perimeter pier load @ 8ft. o.c. is 2500 lbs =====> ok
Perimeter pier spacing is at 8 ft. o.c.

FIGURE 3C: PERIMETER PIER FRONT & SIDE VIEW

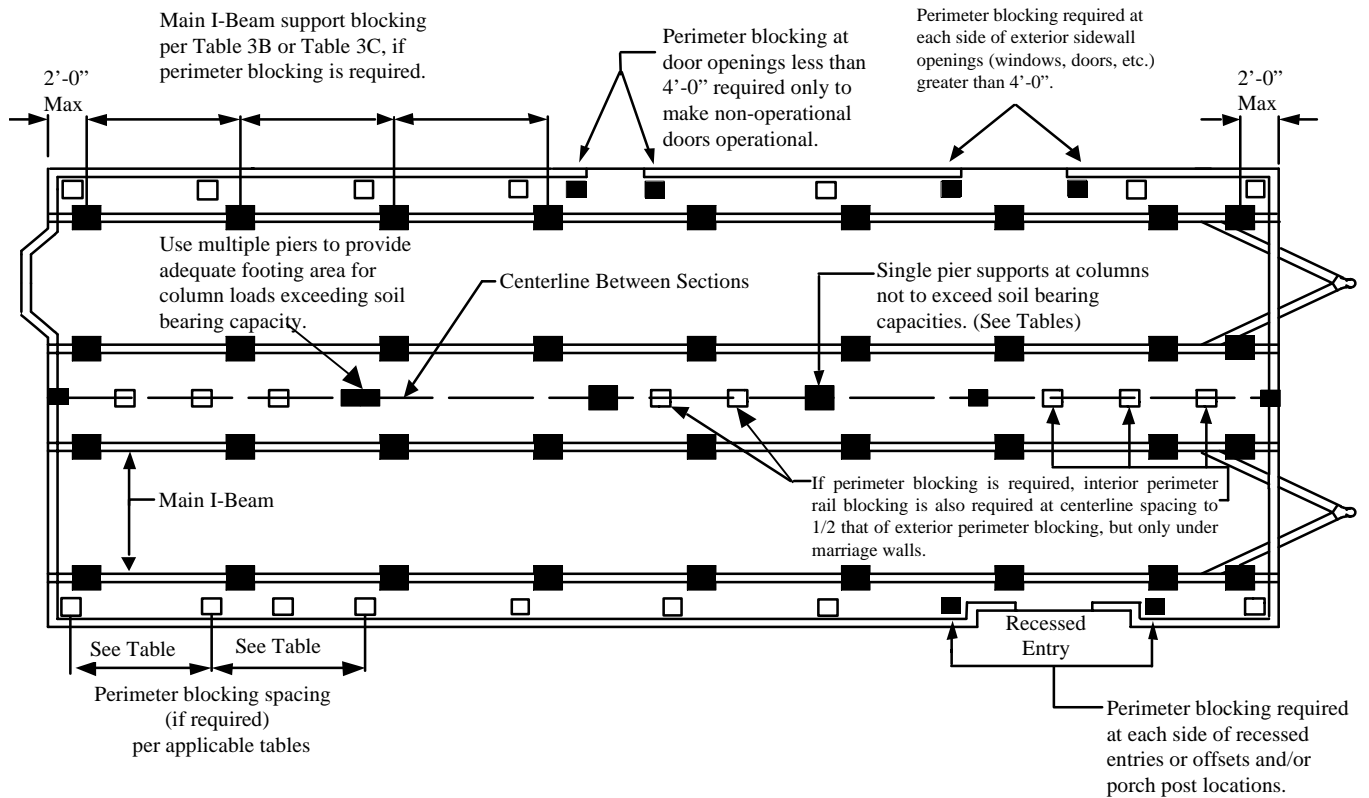


Notes:

- 1) Perimeter pier may be inset from edge of floor up to 8". The 2x6 brace may be omitted if the front face of a perimeter pier is flush with the perimeter joist and the perimeter pier supports the intersection of an interior joist and perimeter joist.
- 2) Dbl 2x6 are min. #3 Yellow Pine or pressure treated Spruce-Pine, nailed together with min. 16d nails 2-rows at maximum 8" o.c.
- 3) 2x6 brace must span at least two (2) but not more than three (3) floor joists.

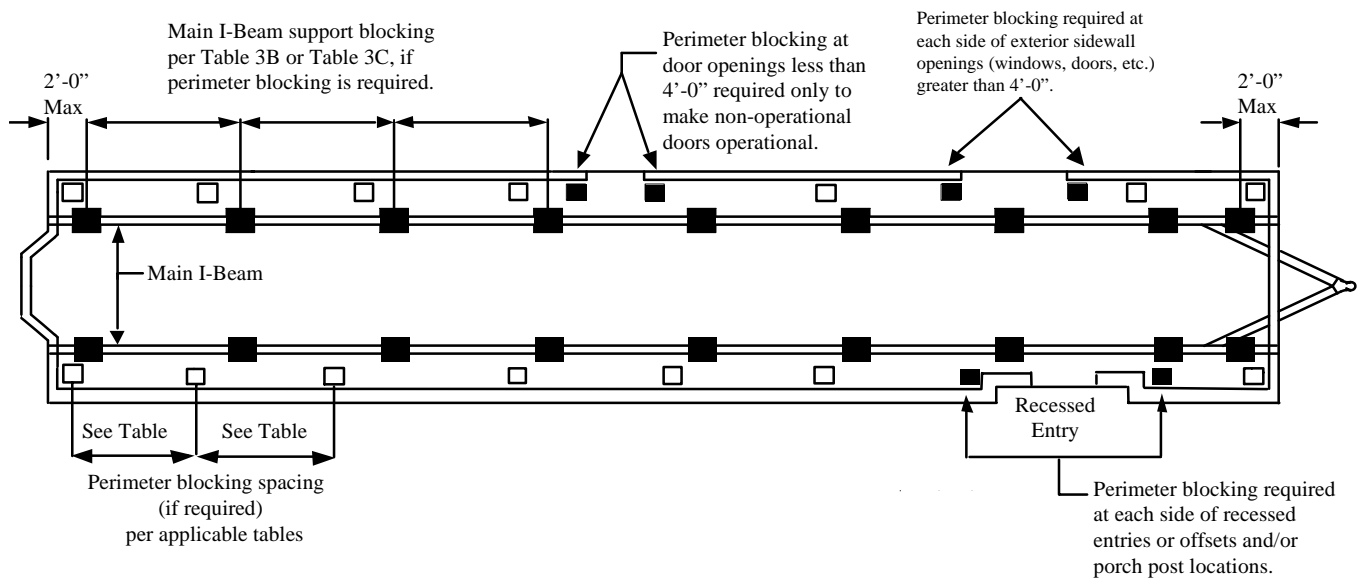
(7) Typical multi-section pier layout:

TYPICAL MULTI-SECTION PIER LAYOUT



(8) Typical single section pier layout:

TYPICAL SINGLE SECTION PIER LAYOUT



(9) Multi-section units mating line column supports:

- (A) On multi-section units, openings larger than 4 feet must have piers installed at each end of the opening. To determine the pier loads, refer to Table 3D in subparagraph (D) of this paragraph.

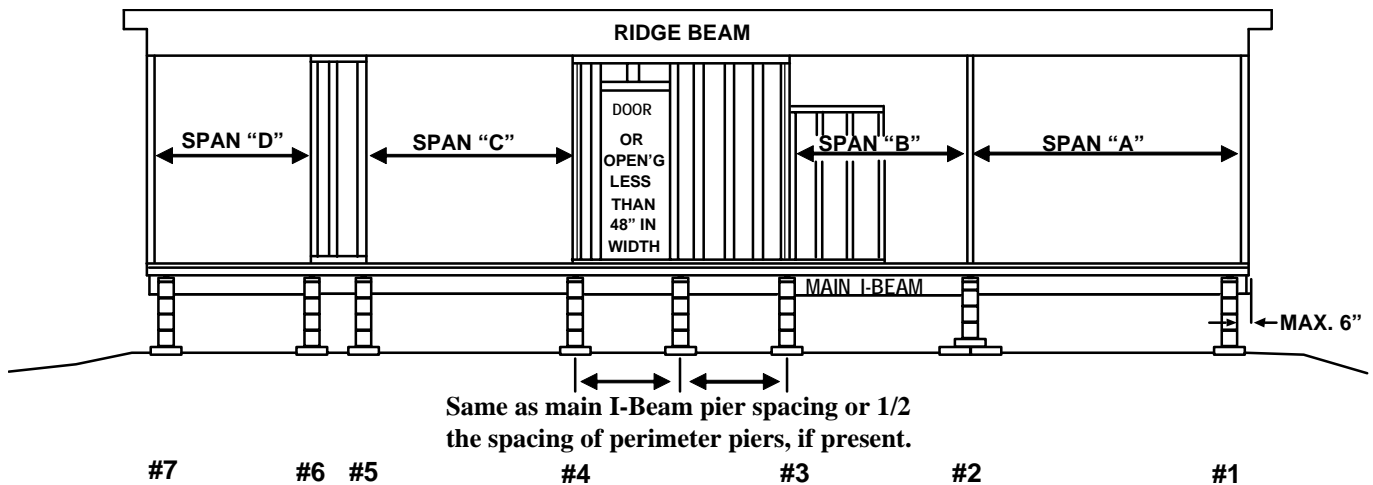
DETERMINING COLUMN LOAD

To determine the column load for Column #1 at the endwall look up Span "A" in Table 3D. To determine the column load for Column #2, look up the combined distance of both Span "A" and Span "B".

To determine the column load for Column #3 look up Span "B" in the table.
(NOTE: Mating line walls not supporting the beam must be included in the span distance.)

To determine the loads for Columns #4 and #5 look up Span "C". For Columns #6 and #7 look up load for span "D".

MARRIAGE LINE ELEVATION



- (B) Column loads for each section may be combined when the columns are opposite each other. The footer must be sized for the combined loading.
- (C) Additional piers are required under marriage walls (see wall between column #3 and #4 in the Marriage Line Elevation drawing in subparagraph (A) of this paragraph). The maximum spacing is the same as the spacing at the main I-Beams, without perimeter piers, and one half the spacing of the perimeter piers, with perimeter piers installed.
- (D) Table 3D: Mating line column loads (pounds).

TABLE 3D: MATING LINE COLUMN LOADS (LBS)

-----Unit width in feet (nominal)-----

Span in feet	12 Wide	14 Wide	16 Wide
4	720	840	960
6	1080	1260	1440
8	1440	1680	1920
10	1800	2100	2400
12	2160	2520	2880
14	2520	2940	3360
16	2880	3360	3840
18	3240	3780	4320
20	3600	4200	4800
22	3960	4620	5280
24	4320	5040	5760
26	4680	5460	6240
28	5040	5880	6720
30	5400	6300	7200
32	5760	6720	7680
34	6120	7140	8160
36	6480	7560	8640

Note: If actual span is not shown use next higher tabulated span.

Propose Adoption of New §80.129

New §80.129. Determinations Regarding the Pursuit of Administrative Penalties and Enforcement Actions.

- (a) When the Department has reason to believe that a violation of the Standards Act, these Rules, or an administrative order has occurred, the Department shall determine what, if any, administrative action or actions may be appropriate to see that the purposes of the Standards Act are carried out. In that regard, in order to promote the uniform application of the Standards Act, the Department will follow these guidelines. The only time that the Department will deviate from these guidelines is when with either the Director or the Board determines, for documented *bona fide* reasons, that some other course of action, consistent with the Standards Act and any other applicable legal requirements would be more appropriate.
- (b) As used herein, “dangerous conditions” means any condition which, if present, would constitute an imminent threat to health or safety, and “loss” means actual financial loss or damage, not including exemplary, punitive, special, or consequential damages. “Significant” means significant in relationship to the financial resources of the person who incurs a loss. “Promptly” means within the time prescribed by the Standards Act, these Rules, and any administrative order (including any properly granted extension) or, in the case of a matter that constitutes an imminent threat to health or safety, as quickly as reasonably possible.
- (c) Any exceptionally flagrant, willful violation that constitutes an imminent threat to health or safety may be a basis for pursuit of maximum statutory penalties and/or suspension or revocation.
- (d) Anytime the record indicates that there is a high likelihood that a licensee’s violation is a direct result of a systemic problem, it is appropriate to request the licensee to develop a plan to prevent future occurrences. Undertaking to develop such a system is an appropriate factor to be taken into account in determining what penalty to pursue.
- (e) Any and all penalties are IN ADDITION to full compliance with the Standards Act and Rules (*i.e.*, full, prompt corrective action, restitution, or whatever else the Standards Act and rules would have required in the first place). Failure to provide such compliance on a timely basis, as specified in the applicable order, will be deemed to be a violation of the order and serve as a basis for pursuing additional administrative action, including the assessing of additional penalties and the pursuit of suspension or revocation of licenses.
- (f) In determining the appropriate amount of a penalty or other action, all relevant factors shall be considered, including, but not limited to: the resources of the

licensee and their ability to pay fines, efforts to achieve compliance, the nature and frequency of recurring violations, and monetary impact on consumers.

(g) Enforcement Matrix.

<u>Nature of violation</u>	<u>Range of recommended actions</u>
1 st time – no dangerous conditions or loss to consumers – addressed promptly	1 st time violator letter
1 st time – no dangerous conditions or loss to consumers – not addressed promptly	Up to \$250 fine
1 st time – danger to consumer and/or significant loss to consumer – addressed promptly	Up to \$500 fine
1 st time – danger to consumer and/or significant loss to consumer – not addressed promptly	\$500-1000 fine
recurring – no dangerous conditions or loss to consumers – addressed promptly	Up to \$250 fine for 1 st recurrence; up to \$500 for 2 nd , up to \$1000 PLUS a written plan to prevent additional violations for 3 rd
recurring – no dangerous conditions or loss to consumers – not addressed promptly	Up to \$500 fine for 1 st recurrence; up to \$1000 for 2 nd , up to \$1000 and/or seek suspension
recurring – danger to consumer and/or significant loss to consumer – addressed promptly	\$500 -1000 for first recurrence; seek suspension (may be probated) for 2 nd recurrence; revocation for 3 rd recurrence
recurring – danger to consumer and/or significant loss to consumer – not addressed promptly	Up to \$4000 for 1 st recurrence; seek suspension (may be probated) for 2 nd recurrence; revocation for 3 rd recurrence
unlicensed activity – unintentional and no apparent injury or loss to consumers	up to \$5,000 per occurrence; up to \$10,000 in the aggregate
unlicensed activity – intentional and/or possible injury or loss to consumers	up to \$10,000 per occurrence; up to \$10,000 in the aggregate

Propose Adoption of New §80.133

New §80.133. Administration of Claims under the Homeowners' Recovery Fund.

- (a) The Homeowners' Recovery Fund (the "HORF") is established to reimburse consumers for actual unsatisfied claims against licensed manufacturers, retailers, brokers, and installers for violations of the Standards Act, these rules, the FMHCSS and its implementing regulations, and the Texas Deceptive Trade Practices-Consumer Protection Act. Payments from the HORF are subject to limitations, as set forth in §13A of the Standards Act.

- (b) Documentation of a claim by a Licensee who is deemed to be a "consumer" under §14(k) of the Standards Act – When either a manufacturer or a retailer has their license revoked or goes out of business and the party that went out of business or had its license revoked has failed to perform required warranty work on a timely basis, the Director may direct the licensee that is still in business to perform the warranty work. The licensee so directed will be deemed to be a "consumer" under §14(k) of the Standards Act and entitled to be reimbursed from the HORF for the costs of performing such re-assigned warranty work.
 - (1) The Director, before authorizing any party performing re-assigned warranty work to proceed, will require that an estimate be submitted, itemizing the hourly cost of labor required, the estimated time to complete the work, the itemized costs of any material, equipment, and supplies, and such additional out-of-pocket expenses as the licensee believes it will incur. Overhead costs may be included, not to exceed 20% of the cost of labor and materials. If the required estimate is not submitted and approved prior to the commencement of re-assigned warranty work, the party performing the work may not be reimbursed for that work until the Director has been provided with evidence establishing that the amount billed was justifiable in all respects. The estimate must be on the form prescribed by the Department, properly completed and executed.

 - (2) An order by the Director authorizing re-assigned warranty work to be performed will specify that:
 - (A) the amount billed shall not exceed the actual hours required and the actual out-of-pocket expenses incurred;
 - (B) the licensee should keep complete records, subject to audit by the Department for three years;
 - (C) the re-assigned warranty work should be performed within forty (40) days;
 - (D) the required evidence that the re-assigned warranty work was performed should be supplied to the Department within ten (10) days of completion; and

- (E) re-assigned warranty work, once completed, is subject to being re-inspected.
- (3) An order re-assigning warranty work and designating the party responsible for the re-assigned warranty work as a “consumer” under §14(k) of the Standards Act becomes final if not appealed within thirty (30) days.
- (4) Failure to provide a required estimate in connection with an order to perform re-assigned warranty work, once that order has become final, may serve as grounds for an administrative action against the licensee.
- (5) Claims by a consumer who is not a licensee and documentation of HORF claims -- when a consumer has a covered claim against a licensee and the licensee has not satisfied the claim, the Department shall take appropriate steps to make sure that the claim is proper and that all reasonable steps to satisfy the claim have been exhausted. In that regard:
- (6) The Department, working with the consumer, shall identify the specific section(s) of law or rule that gave rise to the damages;
- (7) If the damages arose as a result of a violation Texas Deceptive Trade Practice – Consumer Protection Act, the specific violation must be adequately documented. Acceptable documentation would include a court order finding that such a violation had occurred or the establishing of confirmed facts that would specifically constitute such a violation, along with proof that the court order could not be satisfied. The specific violation must relate directly to the manufactured home or the sale transaction regarding the manufactured home. Tangentially related matters, such as deception in connection with actions as a mortgage broker or real estate broker, are generally not covered and the person responsible should be pursued in the other capacity through appropriate means.
- (c) Attorneys’ fees are subject to reimbursement from the HORF, subject to certain limitations. Before reimbursing a consumer for attorneys’ fees, the Department shall review the fee statement(s), which must indicate the specific services performed, the amount of work required, and the hourly rate(s) charged. Fees not directly relating to efforts to recover the unsatisfied claims which are subject to reimbursement from the HORF will not be reimbursed.
- (d) The Department shall require reasonable proof of efforts to collect the damages for which reimbursement from the HORF is sought.
- (e) The Department may require the assignment of claims against licensees for any amounts for which payments are made from the HORF. The Department may re-assign any and all such claims to any bonding company or other surety that reimburses the HORF for such payments.

- (f) If there is no licensee that can be assigned responsibility for warranty work or corrective action, the Department may enter into agreements with one or more licensees to perform such work after requesting bids from the qualified licensee(s) in the immediate area where the work is to be performed or if, because of the scope and nature of the work, there are no qualified local licensees, with such other licensees as may possess the resources and expertise to submit bids and perform the work. If the only acceptable remedy is the replacement of a home, the Department may negotiate with qualified manufacturers to identify the lowest cost acceptable resolution.

- (g) Notification of warranty work orders, inspections, and re-assigned warranty work
 - (1) When an inspection is to be conducted, other than an initial installation inspection, such as a follow-up installation inspection or a complaint inspection, the Department shall notify each licensee that has been assigned responsibility for warranty items, provided that the licensee still holds an active license, by notifying the licensee, by regular mail to their address of record, as on file with Department. If a party to be notified of an inspection is no longer licensed but has left a mailing address on file with the Department, such party shall be given notice of any such inspection by first class mail to that address.
 - (2) When warranty work orders are issued, they will be sent to each licensee to whom responsibility has been assigned. They shall be sent to the licensee by regular mail to their address of record, as on file with Department.
 - (3) If a licensee who has been assigned warranty responsibilities is no longer in business, the Department will, in addition to notifying their surety, notify them of the time and place of the inspection. Such notification to the out-of-business licensee shall be sent to them at their latest business address of record on file with the Department. Unless the out-of-business licensee advises the Department, in writing, on or before the date of the inspection or actually attends the inspection, the Department will re-assign the warranty work, if any, arising from the findings of the inspection to the retailer or manufacturer who is not out-of-business. The party to whom the re-warranty work is re-assigned shall perform the warranty work and shall be a consumer, as provided for in §14(k) of the Standards Act, entitled to be reimbursed from the HORF.
 - (4) Notification of the surety of an out-of-business or no longer licensed licensee is given in order to afford the surety an opportunity, in accordance with §13A of the Standards Act, to participate in the informal dispute resolution process.
 - (5) The Director shall consider the views of the surety, if any, as expressed in the informal dispute resolution process. However, the ultimate responsibility to determine how best to proceed rests with the Director, who shall make his or her decision based on a consideration of all relevant factors and the need to

protect the health and safety of consumers and to carry out the purposes of the Standards Act.

- (6) PROVIDED that an out-of-business licensee has not failed to perform warranty work assigned to it on a timely basis, if the out-of-business licensee notifies the Department, in writing, prior to the inspection or actually attends the inspection and the out-of-business licensee, in the notice or at the inspection, requests that it be allowed to perform any warranty work identified in the inspection, it shall be given a reasonable time, not to exceed forty (40) days or, in the case of a situation which presents a risk of imminent danger to person or property, such shorter period as the Department may specify; and FURTHER PROVIDED, HOWEVER, that if the Director determines that allowing the no longer licensed or out of business licensee to perform such warranty work will pose a threat to the health or safety of a consumer, the Director may deny the no longer licensed or out of business licensee the opportunity and may re-assign the warranty work to the manufacturer or retailer that is still licensed and in business. If the warranty work is not performed within that timeframe and the Department provided proof of the timely and satisfactory completion of such warranty work on or before the tenth (10th) day after it was completed, the Department shall re-assign the warranty work to the retailer or manufacturer that is not out of business.
- (7) Once a payment is made from the HORF, the Department shall file a claim under the bond of the party primarily responsible for the unsatisfied claim. In the case of re-assigned warranty work reimbursed by the HORF, the claim shall be against the bond of the party that is no longer in business or whose license has been revoked.
- (8) A surety bond issued in connection with a person or entity that is a licensee shall remain in effect with respect to that person or entity, even though the surety bond may be amended to cover one or more additional person or entities or to cover that person operating under one or more different names or identities UNLESS the amendment to the bond specifically terminates the bond with respect to such person or entity.

Propose Adoption of New §80.134

New §80.134. Deceptive Practices.

- (a) The following practices are deemed to be deceptive or abusive practices and are prohibited, except as specifically provided for herein. This section in no way limits or affects whether practices not enumerated or addressed herein are deceptive, abusive, illegal, or the basis for a claim or cause of action.
- (1) Interim lending – To sell a manufactured home in a transaction that utilizes interim financing while an application for permanent financing is pending if the seller has participated in the making or arranging of the interim loan and has good reason to believe that the purchaser will not qualify for permanent financing.
 - (2) Price alterations – To sell a manufactured home at a price in excess of its advertised price based on whether the sale is for cash or financed.
 - (3) Role in credit transaction – To have a role in the making or arranging of the financing of a manufactured home or any interest, direct or indirect, in a party providing such financing or acting as a third party settlement service provider with respect thereto unless that role is disclosed in writing to the consumer and the consumer is advised, in writing, of the right to obtain financing elsewhere without affecting the contractual terms, including price, relating to the purchase of the manufactured home.
 - (4) Making any material representation about a manufactured home and failing to evidence it in a document that the purchaser may enforce.
 - (5) Except for good cause shown, failure to submit the required forms to enable the purchaser to obtain evidence of good and marketable title within the time required by the Standards Act.
 - (6) Failure to give §21 notice, formaldehyde notice, or any other required notice.
 - (7) Improper WZ or thermal zone installation – Installing a manufactured home in a wind zone or thermal zone for which it is not approved or delivering such a home to such a wind zone or thermal zone for installation by someone else.
 - (8) Failure to provide a single contractual document that evidences all items to be provided in connection with the manufactured home and, if any such items are to be provided after the fact, specifying the date by when they will be provided (subject to reasonable delay for good cause) and the identity of any party other than the retailer responsible for any such items.

- (9) Failure to provide detailed specifications of any item to be delivered or provided in connection with the sale of a manufactured home if the item has a retail value in excess of \$250 or, if the consumer requests it, of any value. For example, disclosing that a refrigerator is provided is insufficient. The disclosure must specify the size and any features. Make and model will suffice. If any item will not be “new” this must be disclosed in writing.
- (10) Asking for or accepting any executed document that has not been completed or altering, without all parties’ signed agreement, any executed document.
- (11) Knowingly accepting or issuing any check or other instrument appearing on its face to be a *bona fide* payment but known not to represent good funds.
- (12) Accepting from a consumer any deposit or down payment, regardless of what it is called, without first giving the consumer a written statement setting forth:
 - (A) The amount of that deposit or down payment;
 - (B) A clear statement as to whether the deposit or down payment is refundable;
 - (C) Any requirements or limitations relating to obtaining such refund; AND
 - (D) Providing a written receipt identifying the name and address of the licensee taking the deposit or down payment and describing the manufactured housing transaction to which it relates.
- (13) Negotiating or offering any required refund of less than the full amount the consumer is entitled to receive by law.
- (14) Requiring a purchaser to accept delivery of a manufactured home, whether new or used, without giving them an opportunity to inspect the home to make sure that it conforms to their understanding of what their contract for purchase had specified. When the purchaser signs a document acknowledging that the home which has been delivered is, in fact, the home that they had agreed to purchase, the sale becomes final, but this in no way affects the operation of any warranty required by law or granted contractually or affects or abridges any rights or obligations of either of the parties to the transaction.
- (15) Failing to disclose in advance, in writing, if the licensee or any person acting on their behalf is acting in any capacity as a lender, mortgage broker or loan officer, real estate broker or agent, or provider of any settlement service in connection with a loan to finance the purchase of a manufactured home.
- (16) Failing to identify one’s self as a licensee by displaying the type and license number on a business card or advertisement.

- (b) Other disclosures: On the sale of a used home, the retailer or broker must provide the purchaser with a disclosure advising the consumer either that they will be responsible for the installation (which will have a written warranty of not less than one year) or, if they will not be installing the home, a statement that they will not be installing the home and therefore will not be providing any warranty as to installation.

Agenda Action Item No. 3(e)

Propose Adoption of New §80.137

New §80.137. Required Forms.

- (a) The following forms are required by the Department to be used for the purposes described therein, as set forth in the Standards Act:

(1) Notice of Installation Affidavit/Form T;

Texas Department of Housing and Community Affairs
 DIVISION OF MANUFACTURED HOUSING
 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
 Pursuant to the Texas Manufactured Housing Standards Act, Tex. Rev. Civ. Stat. Ann. Article 5221f

NOTICE OF INSTALLATION AFFIDAVIT (FORM T)

HUD Label or Texas Seal # (s): _____ Serial # (s): _____
 New: () Used: () Manufacturer Name: _____ License No. _____
 Manufacturer Address, City & State: _____
 Home Size - Width / Length: _____ X _____ Weight _____ Date of Manufacture: ____/____/____ Model / Name: _____
 Legal Description (use additional page if necessary):
 Lot _____ Block _____ Survey _____ City _____ County _____ Vol _____ Pg _____

Name of property owner IF OTHER THAN THE CONSUMER: _____

Draw A Map To Provide Directions To Home On The Other Side Of This Page

Consumer: _____ Actual Installation Date: ____/____/____ Wind Zone on Data Plate: I () II () III ()
 Mailing Address: _____ ZIP: _____
 Site Address: _____ Within City Limits of _____ ZIP: _____
 Phone Numbers: Home (____) _____ Work: (____) _____

	Name	Address	License #	Expiration Date	Phone #
Retailer					
Installer					

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

Does retailer or installer provide skirting? Yes () No ()

The home has been installed in accordance with: () **1. Manufacturer's Home Installation Instructions**
 () **2. State Generic Standards**
 () **3. State Pre-approved Foundation System** (Provide Reference to DMH Approval Letter)
 () **4. Custom Designed Foundation System** (Provide a copy of the approved drawing for this system and a reference, if applicable, to any drawing previously submitted.)

INDICATE APPROPRIATE METHOD:

() **Method A: INSTALLED ON PROPERTY NOT OWNED BY THE CONSUMER. THE \$20 INSPECTION REPORTING FEE MAY BE COMBINED WITH THE TITLE TRANSACTION FEES TO THE DEPARTMENT.**

() **Method B: INSTALLED AS REAL PROPERTY (re: Vernon's 5221f, sec.19A). THE RETAILER MUST FILE THIS NOTICE IN THE PUBLIC LAND RECORDS OF THE COUNTY IN WHICH THE HOME IS INSTALLED. THE RETAILER MUST PROVIDE A COPY OF THIS NOTICE TO THE DEPARTMENT WITH THE TITLE WORK, OR SEPARATELY IF NO TRANSFER OF OWNERSHIP APPLIES, ALONG WITH THE PAYMENT OF THE \$100 INSPECTION REPORTING FEE.**

This home has been installed in accordance with the standards of the Department, and satisfies the lending requirements of () FHA, () FNMA, or () FHLMC for long term mortgage loans or FHA insurance. As of the date of creation of this form, August 28, 2002, an installation to "State Generic Standards" met the requirements of FNMA.

If the installation is to State Generic Standards and that is the Installer's basis for indicating that the installation met FNMA's long term mortgage loan requirements, the Installer is responsible for making sure that this is still acceptable to FNMA at the time of installation. If the installation is on any other basis than FNMA/State Generic, the Installer must maintain documentation to substantiate the determination that the requirements of the method indicated were, in fact, met, and the Division may require that such documentation be made available for inspection.

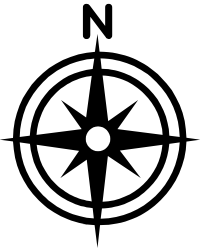
I verify that I am a licensed retailer or installer, that I am responsible for the installation described, and that the information supplied is true and correct.

 Signature (Retailer/Installer) Printed Name and Title

Sworn and subscribed before me this _____ day of _____, 20____

 (Signature of Notary) (seal)

DRAW MAP BELOW



(2) Down Payment Verification Affidavit;

DOWN PAYMENT VERIFICATION AFFIDAVIT (Required)

BLOCK 1: Home Information (Must be completed.)

Manufacturer Name:		License #:	
Manufacturer's Address/City/State/Zip			
Model:		Total Sq. Ft.:	Date of Manufacture:
<i>Label/Seal Number</i>	<i>Complete Serial Number</i>		<i>Weight</i>
Section One:			
Section Two:			
Section Three:			
Wind Zone:	Thermal Zone:	Roof Load Zone:	

BLOCK 2: Retailer and Consumer Information

Retailer Name:		License #:	
Retailer's Address/City/State/Zip			
Salesperson's Name:		License #:	
Consumer(s) Name			
Deposit Amount: \$			

BLOCK 3: SWORN STATEMENT (Notarization Required)

The Retailer, the Salesperson, and the Consumer(s), under being first duly sworn, do hereby state as follows:

The Manufactured Home is to be sold to the Consumer(s) by the Retailer in a transaction that is being handled by the Salesperson and will be subject to financing. Any creditor that will be providing such financing requires that the source of any Down Payment being provided by the Consumer(s) be verified.

1. The Retailer, the Salesperson, and the Consumer(s) have verified that the Down Payment has been actually received by the Retailer and that it came from (check one below):

money on deposit in an account owned by the Consumer(s)
 a *bona fide* gift to the Consumer(s) from _____, with no obligation for the Consumer(s) to repay all or part thereof.
 a loan to the Consumer(s) from _____
 Other (describe): _____

2. The Retailer, the Salesperson, and the Consumer(s) each verify and confirm that no portion of the Down Payment was provided or will be provided by the Retailer or the Manufacturer or by a rebate from either of them.

3. The Consumer hereby verifies that the amount of the down payment is the true amount noted on my retail installment contract.

I (We) certify that the statements set forth herein above are true and correct.

<i>Consumer</i>	<i>Consumer</i>
-----------------	-----------------

Retailer's Authorized Representative	<i>Salesperson</i>
Sworn and subscribed before me this _____ day of _____	
(month)	(year)

<i>Signature of Notary</i>	SEAL
<i>Printed Name of Notary</i>	

(3) Covenant Disclosure Notice; and

COVENANT DISCLOSURE AFFIDAVIT (Required)

BLOCK 1: Home Information (Must be completed.)

Manufacturer Name:		License #:	
Manufacturer's Address/City/State/Zip			
Model:	Total Sq. Ft.:	Date of Manufacture:	
<i>Label/Seal Number</i>	<i>Complete Serial Number</i>	<i>Weight</i>	<i>Size</i>
Section One:			
Section Two:			
Section Three:			

BLOCK 2: Retailer and Consumer Information

Retailer Name:		License #:	
Retailer's Address/City/State/Zip			
Salesperson's Name:		License #:	
Consumer(s) Name			
Deposit Amount:		Dollars	\$

BLOCK 3: SWORN STATEMENT (Notarization Required)

The undersigned, being first duly sworn, does hereby state:

- 1) This Affidavit is given in my capacity as the duly authorized officer or representative of the holder of the following license from the Division of Manufactured Housing of the Texas Department of Housing and Community Affairs (the "Department"):

License Type	License Number
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- 2) As required by the Texas Manufactured Housing Standards Act, Texas Rev. Civil Statutes Ann. Art. 5221f (the "Act") and 10 TAC Chapter 80, the rules that implement the Act (the "Rules") I have provided to the above-described consumer, in connection with the above-described transaction, all disclosures required by the Act and the Rules, including:

- () The notice required by Section 21(a) of the Act, provided as a single document not attached to or included with any other disclosure;
- () The information required by Section 21(b)(1) of the Act; and
- () A statement of the consumer's responsibilities, if any, as required by Section 21(b)(2) of the Act.

Each of these disclosures was provided to the consumer(s) at the time or times required; specifically, the notice required by Section 21(a) was provided prior to the completion of any credit application, and the disclosures required by Sections 21(b)(1) and (2) were provided prior to the transfer of title (or, if title was not transferred, prior to any other sale, assignment, or conveyance).

I certify that the statements set forth herein above are true and correct.

<i>Name of duly authorized officer or representative</i>	<i>Signature of duly authorized officer or representative</i>
Sworn and subscribed before me this _____ day of _____	(month) (year)
<i>Signature of Notary</i>	SEAL
<i>Printed Name of Notary</i>	

Attachments to Covenant Disclosure Affidavit

As required by Section 21(b)(2) of the Texas Manufactured Housing Standards Act (the “Act”), you (the consumer) are hereby advised of the following important matters relating to the purchase of a manufactured home:

▪ **Property Taxes:**

- () Because the home will, in accordance with Section 19A of the Act, be classified and taxed as real property, you will be responsible for the payment of *ad valorem* taxes on the home. If you fail to pay these taxes, you may lose your home. If you do not pay these taxes on a timely basis, you may incur additional interest and/or penalties.
- () Because the home will be installed in a manufactured home park or on property that is owned by someone other than the consumer, it will not be classified and taxed as real property.

▪ **Paying to maintain nearby private roads:**

- () There are private roads near to where your home will be located, and you will be required to pay your assessed share of the costs of maintaining these roads. Failing to pay such assessed costs may result in a lien being placed on your home and if that lien is not satisfied, you may lose your home. Failure to pay these assessed costs on time may result in the incurring of additional interest and/or penalties.
- () There are no private roads near your home for which you will be financially obligated.

▪ **Maintaining a contract for an on-site sewage disposal system:**

- () The site for your home has an on-site sewage disposal system. It is your responsibility to maintain it.
- () The site for your home utilizes a shared on-site sewage disposal system and you will be billed for your share of the cost of the upkeep and operation of the system.

- () The site for your home does not have an on-site sewage disposal system or share access to one. There is no sewer system available for connection. Therefore, you will need to install and maintain an on-site sewage disposal system.
- () The site for your home has a connection to an off-site sewage system. You will be billed for your usage.

▪ **Obtaining property damage insurance as required by a lienholder:**

- () It is our understanding that your purchase of the home is not being financed. Therefore, there will be no lienholder. If you subsequently encumber your home, a new lienholder may require that you maintain property damage insurance.
- () The purchase of your home is being financed by _____. You should review your loan documents and, as necessary, contact them to be sure that you are obtaining all insurance coverages that they may require, including property damage insurance, and that they are provided with any necessary proof of insurance.

▪ **Obtaining mortgage insurance required by a lienholder:**

- () It is our understanding that your purchase of the home is not being financed. Therefore, there will be no lienholder. If you subsequently encumber your home, a new lienholder may require that you maintain mortgage insurance.
- () The purchase of your home is being financed by _____. You should review your loan documents and, as necessary, contact them to be sure that you are obtaining all insurance coverages that they may require, including mortgage insurance, and that they are provided with any necessary proof of insurance.

▪ **Furnishing, PRIOR TO INSTALLATION, a legible copy of your lease or rental agreement and the address where the home will be located:**

- () You own, and therefore will not be leasing, the site on which the home will be installed. Therefore, you do not need to provide a copy of a lease. You do, however, need to confirm, PRIOR TO INSTALLATION, the physical address at which the home will be located.
- () Since you will be leasing or renting the site on which the home will be installed, you will need, PRIOR TO INSTALLATION, to provide a LEGIBLE copy of the entire lease AND you will need to confirm the physical address at which the home will be located.

(4) Estimate for Reassigned Warranty Work.

Estimate for Reassigned Warranty Work

Part I – Labor and Materials

1) Number of item on inspection report and description of proposed correction:

Estimated time:

Hourly rate:

Itemized cost of materials:

2) Number of item on inspection report and proposed correction:

Estimated time:

Hourly rate:

Itemized cost of materials:

3) Number of item on inspection report and proposed correction:

Estimated time:

Hourly rate:

Itemized cost of materials:

The undersigned represents that:

- (1) the actual costs for labor charged to the Texas Department of Housing and Community Affairs, Division of Manufactured Housing and/or the Homeowner's Recovery Fund will not exceed the actual number of hours expended, rounded to the nearest quarter of an hour increment, times the hourly rate specified above;
- (2) the actual costs for materials charged to Texas Department of Housing and Community Affairs, Division of Manufactured Housing and/or the Homeowner's Recovery Fund will not exceed the costs actually charged to the undersigned and such costs do not exceed the costs at which the undersigned is able to obtain such materials for its own account; and
- (3) the hourly rate being charged by the undersigned does not exceed the normal hourly rate at which the specified individuals customarily provide their services.
- (4) If the work to be performed involves any repair or alteration that would require DAPIA approval, such approval has been obtained and a copy of such approval, together with all DAPIA-approved drawings relating thereto, is attached.

Part II – Other Costs and Expenses

Travel

Starting location (must be the closer of the nearest office to the site of the re-assigned warranty work or the in-state service center for the licensee)

Estimated round-trip mileage:

Mileage is reimbursable at the greater of the rate of \$0.35 per mile, not to exceed \$75.00 per day. Or the State of Texas approved rates from time to time in effect for reimbursement of state employees' travel expenses.

Itemized list of any other travel costs:

Lodging

Name, location, and rate (actual cost not to exceed the rate approved for reimbursement of State of Texas employees)

Reimbursement for overnight lodging is to include the actual room rate and any applicable taxes but does not include any long distance telephone calls, entertainment, food, or beverages. Reimbursement may not exceed the State of Texas approved rates for reimbursement of state employees' lodging.

Meals

Reimbursement for meals shall not exceed the greater of \$30.00 per day or the State of Texas approved rate for reimbursement of state employees' meals while traveling. Alcoholic beverages are not subject to reimbursement.

Administrative and oversight costs

Provide an explanation of the necessary administrative services, including the number of hours required and the hourly rate of each person providing such services. Administrative services may not exceed 20% of the total estimate.

This estimate submitted this ____ day of _____, _____.

Name of Licensee: _____

License number: _____

Signature of licensee or duly authorized
Officer or Representative

Printed Name of licensee or duly authorized
Officer or Representative

- (b) Any alternative form or any modification of any of the foregoing forms may be accepted by the Department if the Director determines that all information necessary to the administration of the Standards Act has been provided and that in all other respects the alternative form or modified form is acceptable AND the director has evidenced such approval in writing prior to the acceptance of any such alternative or modified form. The director may require a legal opinion from counsel for the person seeking to use an alternative or modified form that it complies with the Standards Act and addressing such other legal issues as the director may determine. The director may place limitations or conditions on the approval of any alternative or modified form.

Agenda Action Item No. 4(a)

Proposed New Installer Responsibilities Rule

Installer's Responsibilities:

- (a) Before installing a manufactured home, the installer must first determine that the site has been properly prepared and that the home may be installed thereon by:
 - (1) Confirming by means of a visual inspection that:
 - (A) the site has no obvious drainage problems, such as visible depressions, evidence of wet weather creeks or other evidence of run-off in the event of significant rainfall;
 - (B) all inappropriate organic material, refuse, and other items have been cleared from the site;
 - (C) the site does not involve a septic system, well, or other system or improvement that will be beneath the home when it is installed unless it has been first determined that this is an appropriate place for such system or improvement to be located once the home is installed over it;
 - (D) access to the site will enable the home to be brought in and installed without damage to the home from tree limbs, dips, culverts, or other conditions; and
 - (E) that all utilities necessary to render the home habitable are available at the site.
 - (2) Confirming from the party who was responsible for the preparation of the site that:
 - (A) the soil conditions will support the home when installed in the manner specified without further compaction, grading, or other work; and
 - (B) the soil conditions will be compatible with any anchors specified.
- (b) Installers shall maintain for a period of three (3) years a copy of a checklist for each installation performed to document that each and all of the foregoing requirements have been appropriately addressed.
- (c) In addition to the requirements set forth in subsection 1, above, an installation checklist shall show that the installer has properly addressed each and all of the following, as applicable:

- (1) No gaps at the close-up; marriage line is properly sealed;
 - (2) Chassis bonding wire properly connected;
 - (3) All exits, including emergency egress via windows, work properly;
 - (4) All fixtures properly secured and connected;
 - (5) All utilities properly connected (or confirm, if a utility is connected by someone else, such as an electrician, that the person who did it was qualified and that they did, in fact, perform the connection service);
 - (6) No open uncapped water, sewer, or gas lines;
 - (7) All vents working properly, no vents into enclosed spaces above or below the living area;
 - (8) All installed appliances and all related safety features working properly;
 - (9) No holes in bottom board unless properly repaired; and
 - (10) All items specified on sales documents are present and accounted for or noted in writing as missing.
- (d) The foregoing requirements are in addition to the general requirement to complete the installation in accordance with the lawful method specified.

Agenda Action Item No. 4(b)

Proposed New Broker Responsibilities Rule

Broker Responsibilities:

- (a) A broker may not arrange, negotiate, or facilitate the sale of a manufactured home if that home is at a retail location for which they are licensed. If a broker arranges, negotiates, or facilitates the sale of a manufactured home from a retail location licensed under someone else, the selling retailer's responsibilities in the sale may not be disclaimed or transferred to the broker or to anyone else. When a manufactured home is sold at a licensed retail location, the purchaser is entitled to rely on and enforce the purchase as having been made directly from the retailer even though a broker assisted or participated in the transaction.
- (b) The parties to a brokered transaction must participate in the execution of the documents to consummate the transaction, although they may do so by acting through a duly appointed attorney-in-fact or other lawfully authorized agent. If they participate through an attorney in fact or other agent, the actual parties must be provided with executed copies of all such documents.
- (c) A broker must verify that any seller in a transaction in which they are acting as a broker is either duly licensed or exempt from the licensing requirements of the Standards Act.
- (d) A broker, prior to arranging, negotiating, or facilitating a legally binding agreement to purchase a manufactured home, must provide the purchaser with the following disclosure, properly completed:

BROKER DISCLOSURE STATEMENT

TITLE WILL PASS DIRECTLY FROM THE SELLER TO THE BUYER. IT IS THE RESPONSIBILITY OF THE SELLER TO PROVIDE GOOD AND MARKETABLE TITLE. THE BROKER HAS NOT INDEPENDENTLY VERIFIED THE TITLE AND IS NOT RESPONSIBLE FOR THE TITLE. THE BUYER SHOULD SATISFY ITSELF THAT THE SELLER CAN PROVIDE AN ACCEPTABLE TITLE.

THE SELLER [] IS [] IS NOT LICENSED UNDER THE TEXAS MANUFACTURED HOUSING STANDARDS ACT. IF THE SELLER IS NOT LICENSED, THE BROKER HAS CONFIRMED THAT THE SELLER IS NOT REQUIRED TO BE LICENSED.

IF THE SELLER IS NOT LICENSED, THERE MAY BE IMPORTANT THINGS THAT THE STANDARDS ACT WOULD REQUIRE OR PROVIDE TO PROTECT THE BUYER THAT MAY NOT BE PRESENT. THE BUYER SHOULD TAKE STEPS TO BE SURE THAT IT IS RECEIVING ADEQUATE PROTECTION IN SUCH A SITUATION. FOR EXAMPLE, A LICENSED SELLER MUST DELIVER GOOD AND MARKETABLE TITLE AND MAY NOT DISCLAIM A WARRANTY OF HABITABILITY.

- (e) In the event that a broker does not either confirm that the seller is licensed at the time of the sale or provide the disclosure required under subparagraph (d), above, the broker shall be responsible for assuring that the purchaser receives all that he or she would be entitled to in a purchase from a licensed retailer, including the delivery of good and marketable title and the required 60 day habitability warranty.
- (f) It is the broker's responsibility when the seller is a licensed retailer to see that all required disclosures are timely delivered to the buyer and to maintain records to show that this was done.

Agenda Action Item No. 4(c)

Proposed New Liquidator's Rule

Liquidator's License:

- (a) A licensed retailer may obtain one or more additional licenses to be used solely for selling manufactured homes acquired from or sold on behalf of repossessing or foreclosing lenders. Such a license is referred to herein as a "Liquidator's License." The licensed retailer that applies for a Liquidator's License is the sponsor of that license and is responsible for the conduct of all activity under that Liquidator's License.
- (b) Each such Liquidator's License requires that:
 - (1) The licensed location is the location at which the repossessing or foreclosing lender has one or more manufactured homes to be sold, and until each such home is sold, it may not be moved to any other location except for a licensed retail location (not another location licensed under a Liquidator's License).
 - (2) The retailer must obtain a separate bond for each Liquidators License and such bond must specifically state each location covered by that bond. Additional locations may be added under a Liquidator's License. A location may not be used for the sale of a manufactured home until the surety has provided the Division with evidence that the surety bond covers that location. The bond must be available for the full amount for each covered location.
- (c) The fee for each location under a Liquidator's license is \$35.
- (d) A Liquidator's License is valid for each location from the time it becomes effective until all manufactured homes specified as being at that location are sold or moved to a retail location.
- (e) When a manufactured home is sold under a Liquidator's License:
 - (1) The selling retailer must give all required warranties, including the warranty of habitability and the warranty of good and marketable title.
 - (2) A manufactured home may not be sold under a Liquidator's License until and unless all *ad valorem* property taxes have been paid. If a holder of a Liquidator's License sells a manufactured home without confirming that all such taxes have been paid, a claim may be made on the surety bond for the payment of such taxes.
 - (3) Give all required notices and disclosures.

- (4) Advise the consumer of the retailer's licensed retail location that is not licensed under a Liquidator's License. It must notify the consumer of the right to obtain warranty work from that location.

Agenda Action Item No. 5

Proposed Reduction in Force (RIF) Policy



TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS

HUMAN RESOURCES - PERSONNEL PROCEDURES: STAFFING AND ORGANIZATION

Subject: Workforce Restructuring Policy

Original Date: 03/19/03 **Revision Date:** _____ **Procedure #:** Separations from Employment #5.6.4

Policy Reference: Separations from Employment – 5.6

Submitted: Director – Administrative Support: _____ **Date:** _____

Reviewed: Chief – Agency Administration: _____ **Date:** _____

Reviewed: Deputy General Counsel: _____ **Date:** _____

Recommended: Deputy Executive Director: _____ **Date:** _____

Approved: Executive Director: _____ **Date:** _____

General Purpose

In order to accomplish the business of the Texas Department of Housing and Community Affairs (TDHCA) and to comply with limited budgetary constraints, legislative action, or reorganization of the work force, the Executive Director of TDHCA may implement a Restructuring of the agency. When a restructure becomes necessary, TDHCA will attempt to minimize the impact on displaced employees and identify positions within TDHCA and/or other state agencies for which they may qualify. TDHCA employees identified for a Restructuring of the agency will be provided as much advanced notice of the possible actions as soon as may be feasible.

Procedure:

1. As soon as the need is identified to restructure the workforce, the Executive Director (ED), Deputy Executive Director (DED), Chief of Agency Administration (CAA), Deputy General Counsel (DGC), and the Director of Administrative Support (DAS) will meet to discuss the pending reduction in force. This group will be known as the Workforce Review Committee (WRC).
2. Among the issues discussed will be specific organizational units and job classifications to be downsized, consolidated, or deleted in accordance with the agency's business needs. Functions are prioritized based on the effect that restructure or elimination of positions will have on the mission and goals of the agency. In addition, skill needs, adverse impact, ADEA, and EEOC implications will be reviewed.
3. The Directors of those functions which have been deemed to be eligible to be downsized will be advised to develop a list of positions which could be eliminated.

In the case of a group identified that only needs to reduce one or two positions of several, the decision will be based on performance and then on service.

4. The DAS will supply this group will current FTE reports, vacancy status reports, agency EEO diversity status, and any other report or information as deemed necessary by the WRC.
5. The WRC will review the list supplied by Directors and determine which positions can be eliminated.
6. After identifying specific positions, the WRC will conduct an analysis that includes ensuring compliance with the principles of EEO.
7. The WRC will submit their recommendations for restructuring of the workforce to the Executive Director of TDHCA.
8. The TDHCA Executive Director will make the final decision on who is affected by the restructuring of the workforce and will communicate this decision to the WRC.
9. Those positions approved to be eliminated will be communicated to the appropriate Division Director by the Deputy Executive Director
10. The affected Division Director will then meet with the DAS to plan and communicate the decision to the employee.
11. The DAS will provide a written notification of the restructuring of the force decision to the Director who will then provide this notification to the employee. This written notice will contain the last day the employee is to be physically at work and the effective date of separation.
12. A copy of the notification will be attached to the Personnel Action Form (PAF) which is routed for signature and then filed in the employee's personnel file.
13. The employee will meet with the agency's Benefits Coordinator who will conduct the exit interview and inform the employee of their eligibility for benefits.
14. The Human Resources staff will send TDHCA job vacancy notices to employees affected by the restructuring of the workforce for 90 days after the effective date of separation.
15. TDHCA employees separated as a result of a restructuring of the workforce who return to the state employment within twelve months of their effective date of separation will have unused sick leave restored.