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Texas Department of Housing and Community Affairs  
Manufactured Housing Board Meeting  
on October 21, 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**

**October 21, 2003**

**ROLL CALL**

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

\_\_\_\_\_, Presiding Officer

**MANUFACTURED HOUSING BOARD MEETING  
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
507 Sabine, 4<sup>th</sup> Floor Boardroom, Austin, Texas 78701  
October 21, 2003                      9:00 a.m.**

**AGENDA**

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

Chair  
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. | Presentation, discussion and consideration of possible approval of minutes of board meeting of August 19, 2003.  | Chair      |
| Item 2. | Presentation, discussion and possible action on settlement and compromise of claims on surety bonds.   | Tim Irvine |
| Item 3. | Presentation, discussion and possible action on approval of PSIA as a third party provider of continuing education for licensees.  | Tim Irvine |
| Item 4. | Presentation, discussion and possible action regarding proposed adoption of §80.116 (Liquidator's License), §80.117 (Broker's Responsibilities), and §80.118 (Installer's Responsibilities). | Tim Irvine |

**REPORT ITEMS**

- |         |  |                                   |
|---------|--|-----------------------------------|
| Item 1. | Executive Director's Report                          | Tim Irvine                        |
| Item 2. | Report on Internal Audit of Fee Collections Controls | Sam Ramsey (TDHCA Internal Audit) |

**EXECUTIVE SESSION**

Chair

- Item 1. Personnel Matters under Sec. 551.074, Texas Government Code

**RECONVENE**

Chair

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

**PUBLIC COMMENT**

Chair

**ADJOURN**

Chair

*To access this agenda or request information, please visit our website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) or contact Piper Smith, TDHCA, 507 Sabine, Austin, Texas 78701, 512-475-3845, [psmith@tdhca.state.tx.us](mailto:psmith@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**

**MANUFACTURED HOUSING DIVISION**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

On Tuesday, August 19, 2003, at 9:00 a.m. the regular meeting of the Board of Directors (the "Board") of the Manufactured Housing Division ("MHD") of the Texas Department of Housing and Community Affairs ("TDHCA") was held in the TDHCA board room on the 4<sup>th</sup> floor at 507 Sabine, Austin, Texas. Cary Yates presided, and Piper Smith recorded the minutes. The following directors, constituting a quorum, were present: Cary Yates, Presiding Officer, Jack Davis, Pete Moreno, and Joan Tavarez. The following members of MHD staff were present: Kassu Asfaw, Sharon Choate, Tim Irvine, and Piper Smith. The following members of the TDHCA staff were present: Sam Ramsey and Bill Dally. The following members of the public were present: Jody Anderson, Bill Beville, and Mike French.

The chairman called the roll and declared the presence of a quorum. Upon motion of Pete Moreno, duly seconded by Joan Tavarez, the minutes of the previous meeting were approved as presented.

Kassu Asfaw provided the Board with copies of the final draft of fiscal year 2004 operating budget and explained adjustments made after the last presentation on July 22, 2003. The Board approved the finalized version.

Tim Irvine delivered to the Board for possible approval the amendment to the administrative agreement between MHD and TDHCA in the amount of \$500,000.00 for the sharing of operating services to promote efficiency and reduce overall cost. Upon motion of Jack Davis, duly seconded by Ms. Tavarez, the Board authorized the Executive Director to execute and deliver the amendment.

Tim Irvine provided the Board with an update regarding how MHD is addressing its statutory requirements to provide effective consumer remedies and promote industry stability. Information about orders issued for violations is now being posted on the MHD website. Titling and Customer Service have been combined to improve efficiency. A similar change to combine Complaints and Resolutions into Consumer Protection is underway. Regarding the recovery trust fund, MHD is focusing on managing the numbers more closely and processing the resolution of these complaints by referring those complaints on for payment. Therefore, MHD is referring to the Attorney General's Office for collection any claims that are not promptly reimbursed. By referring such files to processing them through the Attorney General's Office, MHD has been able to reduce the number of pending claims and lower the collection backlog.

Tim Irvine advised the Board of a report by Internal Audit, received too late to be included in the agenda. Copies of the audit and responses will be provided to Board members and a more detailed report will be provided at the next board meeting.

At 9:30 a. m. the Board, along with Tim Irvine, went into Executive Session to discuss personnel issues.

At 9:40 a.m. the Board reconvened in open session and with no action to be taken on those issues discussed in closed session. Mr. Yates asked for any public comment. Mr. Davis stated that he would like to have an item added to the next Board meeting agenda regarding the pending proposal of a liquidator's license.

The next Board meeting is set for October 21, 2003, at 9:00 a.m.

There being no further business to come before the Board the meeting was adjourned at 9:42 a.m.

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Piper Smith  
Acting Secretary

Approved:

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Cary Yates, Presiding Officer

*Agenda Action Item No. 2*

To: Board of Directors, Manufactured Housing Division  
Cary Yates  
Jack Davis  
Pete Moreno  
Joan Tavarez

From: Tim Irvine

**Re: Settlement and Compromise of Bond Claims**

Date: October 13, 2003

When the Texas Manufactured Homeowners' Recovery Trust Fund (the "Fund") makes a payment to a consumer it files a claim with the surety for the licensee whose actions were the basis for the claim. The Fund had a number of claims against First Indemnity of America Insurance Company and has been working to resolve those claims. First Indemnity, through its counsel, has proposed a settlement of four of these claims. A copy of the proposal is attached.

<b><u>Consumer</u></b>	<b><u>Claim Amount</u></b>
LaFuente	\$5,048.95
Vazquez	\$17,966.00
Robinson	\$10,000.00
Rucker	\$28,288.00

Management requests Board approval to enter into a settlement and compromise of the Vazquez, Robinson, and Rucker claims for a total amount of \$31,000. The LaFuente claim would be paid in full.

**WELLS & HENRY**  
**ATTORNEYS AT LAW**

**A Professional Corporation**

**440 LOUISIANA, SUITE 718  
HOUSTON, TEXAS 77002  
TELEPHONE (713) 222-1281  
FAX (713) 237-0570**

September 24, 2003

CERTIFIED/RRR  
and FACSIMILE

Texas Department of Housing and Community Affairs (TDHCA)  
Manufactured Housing Division  
507 Sabine - Suite 1000  
P.O. Box 12489  
Austin, Texas 78711-2489

Attention: Mr. Timothy K. Irvine, Director

Re: TDHCA Demands upon Retailers' Surety Bonds; Consumers Benny Rucker,  
Salvador Vasquez, Esteban LaFuente, and Pamela Robinson.

Dear Tim:

I appreciate your discussing the above-referenced matters with Brent Wells and myself recently and providing us with documentation concerning the second claim for Esteban LaFuente. Pursuant to our previous conversation, First Indemnity of America Insurance Company ("First Indemnity") proposes the following compromise settlement offers:

- Esteban LaFuente Bond XTM03358

First Indemnity paid the initial claim on June 20, 2003. After having reviewed the additional documentation you provided concerning the second claim First Indemnity has agreed to pay the second claim in full in the amount of \$5,048.95.

- Pamela Robinson Bond XTM04263

As you know, First Indemnity has already paid \$10,000.00 of the initial \$20,026.30 claim. It is still First Indemnity's position that it should only be liable to the Home Owners Recovery Fund for the portion of the consumer's loss which was intended for the manufactured home. Additionally, we contend that an accord and satisfaction occurred when TDHCA accepted the \$10,000.00 check. Nonetheless, to settle the remainder of this claim, First Indemnity is willing to offer an additional \$3,500.00.

Timothy K. Irvine, Director  
Texas Department of Housing and Community Affairs  
September 24, 2003

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- Benny Rucker: Bond XTM03305

It is First Indemnity's position that the manufactured home was in fact delivered and was Mr. Rucker's to own and control, that it was inexcusably abandoned by him and/or that Homes Across America, Inc. converted the manufactured home by selling it to another consumer. First Indemnity nevertheless is willing to offer \$10,000.00 simply to avoid the expense of contesting this matter further.

- Salvador Vasquez Bond XTM04198

First Indemnity has questions concerning where the sale of the manufactured home allegedly occurred as our file has evidence of pertaining to both Liberty and Dayton. First Indemnity also has concerns regarding the veracity of Brent Claiborne's account of ownership of the manufactured home. First Indemnity is willing to offer \$12,500.00 to settle this claim.

I hope these offers seem reasonable in light of First Indemnity's concerns and I invite your response on each of these matters. If our offers are acceptable, please advise and we can have the funds (\$31,048.95) to you within twenty (20) days.

Sincerely,

WELLS & HENRY, P.C.

/s/

Christopher P. Craven



*Agenda Action Item No. 3*

To: Board of Directors, Manufactured Housing Division  
Cary Yates  
Jack Davis  
Pete Moreno  
Joan Tavarez

From: Tim Irvine

**Re: PSIA Request for Approval as a Continuing Education Provider**

Date: October 13, 2003

Texas Manufactured Housing School, A division of Private Schools Interscholastic Association, Inc. ("PSIA") has requested approval as a provider of continuing education programs for licensees involved in the sale of manufactured homes. PSIA, which is operated primarily by Bill Beville, has provided a request that includes PSIA's proposed curriculum and course materials, schedule and locations of planned classes, fee structure, and biographies of instructors. PSIA is a qualified non-profit, eligible for consideration as a provider of continuing education.

Management has reviewed PSIA's submission and recommends that its request be approved. It should be noted that if approved, PSIA will make its offerings available at a number of locations around the state, including Dallas/Fort Worth, Houston, Austin, San Antonio, Abilene, Midland, Lubbock, Amarillo, El Paso, Tyler, Lufkin, Beaumont Victoria, Corpus Christi, McAllen, and Harlingen. This geographic distribution of approved classes will be of benefit to the industry, reducing the need for incurring the time and cost of travel to major cities.

Although final rules to specify the requirements for approval of education providers have not yet been adopted, PSIA has addressed in its proposal all of the items set out in the proposed rules (except, of course, the fee for reviewing the proposal since there is no rule in place to require such a fee).

*Agenda Action Item No. 4*

**Proposed Adoption of New §§80.116, 80.117, and 80.118**

**THE EDITS REFLECT STAFF'S RECOMMENDED CHANGES TO THE ORIGINAL PROPOSED RULES, BASED ON COMMENTS RECEIVED FROM THE PUBLIC.**

**MANUFACTURED HOUSING DIVISION OF THE  
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

*New §80.116. 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) **Each The** licensed location is **a the** location at which **a the** repossessing or foreclosing lender has one or more manufactured homes to be sold, and until each **such** home **at the licensed location** 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 **\$50,000** bond for each Liquidators License. **Additional locations may be added under a Liquidator's License. and such The** 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 **the initial Liquidator's License and** each **additional** location under **that a**-Liquidator's License is \$100.
- (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.

***New §80.117. Broker's 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**

**The broker is not the seller. The seller is:**

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.**

Broker's Signature	Lic. No.	Purchaser/Homeowner's Signature
Type or Print Name		Type or Print Name
Date		Date

- (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 subsection (d) of this section, 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 a good and marketable title and the required sixty (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.

*New §80.118. 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 confirming by means of a visual inspection that:
- ~~(1) — confirming by means of a visual inspection that:~~
- ~~(1)(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;~~
- ~~(2)(B) all inappropriate organic material, refuse, and other items have been cleared from the site;~~
- ~~(3)(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~~ The installer's warranty shall be deemed to include an implied warranty that each and all of the foregoing requirements have been appropriately addressed.
- (c) In addition to the requirements set forth in subsection (a) of this section, an installation checklist, a copy of which shall be provided to the consumer/buyer and a copy of which shall be retained in the installer's record for a period of the warranty period plus ninety (90) calendar days, which 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 is wire properly connected;
  - (3) All exits, including emergency egress via windows, work properly;
  - (4) All plumbing fixtures are properly secured and connected;
  - ~~(5) — All utilities are 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);~~
  - ~~(5)(6)~~ No ~~open uncapped~~ water, sewer, or gas lines, if present, are open and uncapped;
  - ~~(6)(7)~~ ~~All vents are working properly~~; No vents into enclosed spaces above or below the living area; and
  - ~~(8) — All installed appliances and all related safety features are working properly;~~
  - ~~(7)(9)~~ No holes are 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.