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Texas Department of Housing and Community Affairs  
Manufactured Housing Board Meeting  
on February 6, 2004

Cary Yates, Chair

Jack Davis, Member

Valeri Stiers Malone

Clement "Pete" Moreno, Member

**Texas Department of Housing and Community Affairs**  
**Manufactured Housing Board Meeting**  
**February 6, 2004**

**ROLL CALL**

	<u>Present</u>	<u>Absent</u>
Cary Yates, Chair	_____	_____
Jack Davis, Member	_____	_____
Valeri Stiers Malone, Member	_____	_____
Clement "Pete" Moreno, Member	_____	_____
Number Present	_____	
Number Absent		_____

**MANUFACTURED HOUSING BOARD MEETING & RULES WORKSHOP**  
**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**507 Sabine, 4<sup>th</sup> Floor Boardroom, Austin, Texas 78701**  
**February 6, 2004                      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 October 21, 2003. Chair
- Item 2. Presentation, discussion and consideration of possible approval of the State Office of Administrative Hearings (SOAH) Proposal for Decision:
- (a) Approval of Manufactured Housing Case:  
In the Matter of the Complaint of TDHCA vs Robert Joe and Jana Coke, Docket Number: 332-03-3518, Complaint No: MHD2003001405-RH. Joe Garcia
  - (b) Approval of Manufactured Housing Case:  
In the Matter of the Complaint of TDHCA vs Buda Housing, Inc. dba Premier Homes, Docket Number: 332-03-3676, Complaint Nos: MHD2003000537-DT and MHD2003001184-DT. Jim Hicks
- Item 3. Presentation, discussion and possible approval of settlement offer with Wells & Henry. Request for settlement authority, with Office of the Attorney General concurrence, on similar claims in the future. Tim Irvine
- Item 4. Workshop to discuss and possibly act on proposed Manufactured Housing Rules.

**REPORT ITEMS**

- Item 1. Executive Director's Report Tim Irvine

**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, [piper.smith@tdhca.state.tx.us](mailto:piper.smith@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, October 21, 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: Sharon Choate, Tim Irvine, Cindy Bocz, Joe Garcia, 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 Joan Tavarez, duly seconded by Jack Davis, the minutes of the previous meeting were approved as presented.

Tim Irvine presented to the Board for discussion and possible approval a settlement and compromise of several bond claims with First Indemnity. MHD engaged the Office of the Attorney General, Bankruptcy and Collections Division, to assist with the collection of these claims. Since then MHD has collected in full one of these claims, and MHD has prepared to proceed with litigation to collect on the remaining claims, but First Indemnity has proposed a settlement in the aggregate amount of \$31,000.00. The Attorney General's Office recommends this settlement. Upon motion by Jack Davis, duly seconded by Joan Tavarez, this settlement was approved.

Tim Irvine presented to the Board for discussion and possible approval, the application of Private Schools Interscholastic Association, Inc. (or "PSIA") as a third party provider for continuing education for licensees. PSIA has provided MHD with their course material and fee schedule. Not only will PSIA provide current material that is consistent with the Manufactured Housing Standards Act and Rules, they will offer the course in various locations around the State, not only in major metropolitan areas, but rural locations as well.

Mr. Yates inquired as to the staff of PSIA, Mr. Bill Beville, President of PSIA stated their will be three instructors teaching the courses. Mr. Davis also had a question regarding the prospect of how MHD could benefit financially from the course offered by PSIA. Mr. Irvine stated that while he did not object to the possibility of fees from PSIA, he wanted to have the Office of the Attorney General review any such proposal for legality. Upon motion by Jack Davis, duly seconded by Pete Moreno, the Board approved the recommendation that PSIA provide the continuing education course along with the proposal of an additional \$15.00 per licensee, subject to review by the Attorney General.

Tim Irvine presented to the Board for discussion and possible action proposed 10 TAC §80.116 (Liquidator's License), 10 TAC §80.117 (Broker's Responsibilities), and 10 TAC §80.118 (Installer's Responsibilities). It was proposed by Mr. Davis that before the Board take action on any rules, that there be a workshop that would include representation from the legislators responsible for the bills and

people from the industry. So, before moving forward on any approvals regarding these rules, a working session will be held to provide the Board with a thorough understanding of these rules and what is required of them. Mr. Irvine stated that since the Board was to be present it would be a called Board Meeting.

Mr. Yates stated that Item 4, for the purpose of protocol, would be a presentation and discussion only regarding these rules. Mr. Irvine, for the benefit of the Board and the people in the audience, provided a brief description of the rules with the majority of the discussion centered around 10 TAC §80.116, Liquidator's License.

Sam Ramsey, an internal auditor with TDHCA, provided the Board with a report regarding the Internal Audit of Fee Collections Control in MHD. He indicated that since the report was published management has put together a good course of action to correct the issues identified with the majority of them already being addressed.

Mr. Yates asked for public comment. Mr. Holladay a representative for the Consumers Union questioned the language for the proposed rule 10 TAC §80.118 (Installers Responsibilities). They believe that it is important to clarify and make sure that the language does not shift the responsibility of the installer to the consumer and urged the Board to reinstate the original language in order to protect consumers.

The next Board meeting, to be scheduled in December, will be a working session to be coordinated with every ones schedule.

There being no further business to come before the Board, the meeting was adjourned at 10:40 a.m.

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Piper Smith  
Acting Secretary

Approved:

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Cary Yates, Presiding Officer

*Agenda Action Item No. 2(a)*



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## MANUFACTURED HOUSING DIVISION

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**Rick Perry**  
GOVERNOR

**TIM IRVINE**  
EXECUTIVE DIRECTOR

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

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

**FROM:** Joe A. Garcia, Manager of Processing and Licensing

**THROUGH:** Timothy K. Irvine, Executive Director

**SUBJECT:** Summary of Proposal for Decision

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Robert Joe and Jana Coke ("Petitioners")

Docket Number: 332-03-3518

Complaint Number: MHD2003001405-RH

### **Background**

It was found and determined by the staff of the Manufactured Housing Division that:

1. The Department had revoked a Certificate of Attachment, CN00031398, in the name of Robert Joe and Jana Coke for the manufactured home, HUD Label RAD0167107, which was titled to Hal W. Coke. After receiving an Affidavit from Cathy Coke Gibbons contending that the prior Affidavit given in connection with the application and cancellation was not accurate and that the title to the manufactured home was in the name of her father, Hal W. Coke, that it was not an improvement to the property on which it was situated, that she, as an heir of her father, had an ownership interest in the home, and that her consent to any conveyance was necessary and was not given. The Department believed that Ms. Gibbons' consent was required and was not given, which would render the affidavit accompanying the application of Robert Joe and Jana Coke inaccurate. The Department revoked the certificate of cancellation and reinstated the title showing Hal W. Coke as the owner of record.

After proper notice, an administrative hearing was held on August 11, 2003. An Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH) issued the attached Proposal for Decision (PFD) as a result of that meeting.

### **Proposal for Decision**

The Proposal for Decision dated November 5, 2003, finds that the Department properly issued Petitioners the Certificate and that revocation at this time is unwarranted. The Certificate of Attachment previously issued to Robert Joe and Jana Coke should not be revoked and that the Department should reinstate the Certificate of Attachment in the name of Robert Joe and Jana Coke.

### **Recommendation**

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

Petitioners should be issued a Certificate of Attachment for the manufactured home, HUD Label RAD0167107 as detailed in the Proposal for Decision.

**DOCKET NO. 332-03-3518**  
**COMPLAINT NO. MHD2003001405-RH**

THE MANUFACTURED HOUSING	§	BEFORE THE
	§	
DIVISION OF THE TEXAS DEPARTMENT	§	GOVERNING BOARD OF THE
	§	
OF HOUSING AND COMMUNITY AFFAIRS	§	MANUFACTURED HOUSING DIVISION
	§	
Vs. ROBERT JOE and JANA COKE,	§	OF THE TEXAS DEPARTMENT OF
	§	
(RESPONDENT)	§	HOUSING AND COMMUNITY AFFAIRS

**FINAL ORDER**

**I. PREAMBLE**

**CAME ON TO BE CONSIDERED**, the matter of the enforcement action identified as MHD2003001405-RH, *In the Matter of the Complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Robert Joe and Jana Coke, (Respondent)*, pursuant to the Texas Manufactured Housing Standards ACT, TEX. previously TEX. REV. CIV. STAT. ANN. ART. 5221f re-codified effective June 1, 2003, under the Occupations Code Chapter 1201 (“Act”); 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 should be issued a Certificate of Attachment for the manufactured home, HUD Label RAD0167107, as detailed in the Proposal for Decision;
2. The Manufactured Housing Division of the Texas Department of Housing and Community Affairs shall within thirty (30) days of the date of this FINAL ORDER issue the Certificate of



Page 2  
Final Order  
In the Matter of Robert Joe and Jana Coke  
Docket No. 332-03-3518  
Complaint No. MHD2003001405-RH

Attachment to the home which lists Robert Joe and Jana Coke owners of the home, HUD Label RAD0167107;

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.

SIGNED AND ENTERED this \_\_\_\_\_ day of December, 2003.

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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. certified mail (Number 7001 2510 0007 8865 9715), return receipt requested, to Robert Joe and Jana Coke, 22125 Brierwood Drive, Frankston, Texas 75763 on this the \_\_\_\_\_ day of December, 2003.

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Nancy Stone, Complaint Specialist

# State Office of Administrative Hearings



**Shelia Bailey Taylor**  
**Chief Administrative Law Judge**

November 5, 2003

Timothy K. Irvine  
Executive Director  
Manufactured Housing Division  
Texas Department of Housing and Community Affairs  
507 Sabine, Ste. 400  
Austin, Texas 78711-3941

**VIA HAND DELIVERY**

**RE: Docket No. 332-03-3518; Robert Joe and Jana Coke v. Manufactured Housing Division of the Texas Department of Housing and Community Affairs**

Dear Mr. Irvine:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

By copy of this letter, I am informing the parties that under TEX. GOV'T CODE ANN. §2001.062, each party has the right to file exceptions and present briefs with respect to the Proposal for Decision. If a party files exceptions or briefs, all other parties may file replies. A copy of any exceptions, briefs, or replies must be filed with the State Office of Administrative Hearings and served on all parties.

Sincerely,

/s/

Tommy L. Broyles  
Administrative Law Judge

TLB/lb  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings - **VIA HAND DELIVERY**  
Jason Ray, Assistant Attorney General, P. O. Box 12548, Capitol Station, Austin, Texas 78711-2548 - **VIA HAND DELIVERY**  
Scott A. Ritcheson, Ritcheson, Dollahite & Lauffer, Bank of America Southeast Center, 3301 Golden Road, Suite 400, Tyler, Texas 75701 - **VIA REGULAR MAIL**

Post Office Box 13025 ◆  
(512) 475-4993

William P. Clements Building  
300 West 15th Street, Suite 502  
Docket (512) 475-3445  
<http://www.soah.state.tx.us>

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



Housing Standards Act, TEX. OCC. CODE ANN §1201 (the Act).<sup>2</sup> The State Office of Administrative Hearings (SOAH) has jurisdiction over matters relating to the hearing in this proceeding, including authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX GOVT. CODE ANN. ch. 2001. Notice and jurisdiction were not contested by the parties and are addressed in the proposed findings of fact and conclusion of law, set out below.

### III. PROCEDURAL HISTORY

ALJ Tommy L. Broyles convened the hearing on August 11, 2003, in the William P. Clements State Office Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Petitioners were represented by Scott Ritcheson, attorney, who appeared by telephone. Assistant Attorney General Jason Ray represented the Department. The record was left open until September 8, 2003, for the filing of briefs and reply briefs. The Department did not file any closing briefs; Petitioners filed a brief on August 29, 2003. The ALJ closed the record on September 8, 2003.

### IV. DISCUSSION

At the hearing, the ALJ admitted Petitioners Exhibits 1-11 and Respondent Exhibit 1. Both Petitioners testified, as did Michael Nelson Coke, one of Robert's brothers. Joe Garcia, Manager of Processing and Licensing, testified on behalf of the Department. Catherine Bell Coke Gibbons did not appear and was not represented at the hearing. She did receive notice of the hearing.

#### A. Issues

At issue is whether the Department should revoke Certificate No. CN00031398 in the name of Robert Joe and Jana Coke, located at 22125 Brierwood Drive, Frankston, Henderson County,

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<sup>2</sup>Recodified effective June 1, 2003. Formerly found at TEX REV. CIV. STAT. ANN. Article 5221f §19.

Texas. Underlying this issue is whether the home is considered to be permanently attached to the real estate; whether the home was included in property purchased by Petitioners on March 4, 1994; and whether Ms. Gibbons presently retains an ownership interest in the home as an heir of her father's estate.

### **1. Background**

On July 15, 1983, Hal W. Coke (Mr. Coke) bought the home<sup>3</sup> and moved it to the property known as Lot 92 of the Briarwood Bay Subdivision in Henderson County, Texas. The home was set on a concrete pad brick foundation and other improvements were made. At the time of Mr. Coke's death in 1988, the home was his residence. He was survived by his wife, Evelyn Sue Coke Webb.

In 1994, Ms. Webb wanted to sell the property. Petitioners made an offer to purchase. To preclude any title issues arising from the death of Mr. Coke,<sup>4</sup> three of Mr. Coke's four children--Jon Marc Coke, Michael Nelson Coke, and Catherine Bell Coke Gibbons--conveyed their interests in the property to Ms. Webb by executing warranty deeds on March 4, 1994.<sup>5</sup> Also on March 4, 1994, Petitioners purchased the property from Ms. Webb for \$15,000 in cash and other valuables. Both parties signed a Seller's Disclosure Notice<sup>6</sup> describing the home's improvements and attached equipment and executed a warranty deed<sup>7</sup> conveying the property to Petitioners. Petitioners believed that they had purchased the property and all of its improvements, including the mobile home. After purchasing the property, Petitioners moved into the home and have resided there since.

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<sup>3</sup> Petitioners Exhibit 1, Label No. RAD0167107.

<sup>4</sup> Mr. Coke left a will but it was never probated.

<sup>5</sup> Petitioners Exhibits 2, 4, and 5.

<sup>6</sup> Petitioners Exhibit 6.

<sup>7</sup> Petitioners Exhibit 3.

In early 2003, Petitioners applied for a home equity loan to be secured by the property. They were asked by the lender to request a cancellation of the certificate of title for the home from the Department. By requesting a cancellation of the certificate of title, the home would be transferred from personal to real property on the Department's records. However, the home still remained in the name of Hal W. Coke, so Petitioners filed an application to transfer title to their name on April 7, 2003. On the same date, Petitioners filed a notice of improvement attachment to real property along with a sworn affidavit and accompanying documents, stating that they were the sole owners. The Department issued the Certificate of Attachment (Certificate), and the loan closed.

On April 30, 2003, Catherine Bell Coke Gibbons spoke with Mr. Garcia and contested title to the home. On May 14, 2003, the Department sent a letter to Petitioners informing them that the Certificate would be revoked as a result of Ms. Gibbons' allegations. Petitioners requested hearing to contest the proposed revocation.

**2. Is the home an improvement to the property and is it considered permanently attached to the real estate?**

**a. The Department's Position**

Mr. Garcia testified that the Department does not take a position as to whether the mobile home should be considered personal or real property. Rather, the Department simply looks at the status of the property as reflected by its records on file. Mr. Garcia stated that the Department does not investigate or verify the information provided in applications or notices of improvement attachment. In accordance with these procedures, the Department issued a Certificate to Petitioners after receiving their application and affidavit stating they were the sole owners. However, once the information provided by Petitioners was challenged, the Department planned to revoke the Certificate and notified Petitioners they would need to seek a hearing to determine the status of

the home if they wanted to keep the Certificate.<sup>8</sup>

Mr. Garcia stated that the Department considers a mobile home personal property until such time as an application is filed for a Certificate. Mr. Garcia opined that just because a mobile home is attached to the lot a certain way or that it has been added to or improved upon does not make the mobile home real property in the eyes of the Department. He added that unless a title is canceled prior to a sale, the Department considers the property personal, regardless of what the real estate purchase documents state. The Department's policy, then, is that the mobile home was still considered personal property at the date of the application process by Petitioners. And, now that Petitioners' application is challenged the Department will revoke the Certificate, pending the outcome of this proceeding.

**b. Petitioners' Position**

Petitioners testified that they consider their home an improvement to the property and that it has also become permanently affixed to the real property. Furthermore, they maintain that Mr. Coke intended for the home to become permanently affixed as early as 1983 when he purchased the home, moved it to the property, removed the wheels and set it on a brick foundation, added a room extension, built a deck on three sides of the home, constructed a carport, and cut off the "tongue."<sup>9</sup> Petitioners testified that when they bought the property from Ms. Webb on March 4, 1994, they believed that the property came with the home. Michael Nelson Coke, brother of Robert, also testified at the hearing that when he signed the warranty deed, he believed that he was signing over the property and all of the improvements including the mobile home. Furthermore, Petitioners said that they would not have been willing to pay \$15,000 plus other valuable consideration (a travel trailer they owned worth \$7,000) if they had thought they were buying only the land without the mobile home.

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<sup>8</sup> Mr. Garcia explained that because the Certificate was initially issued, the title was recorded as real estate in the county deed records. It remains as so titled today.

<sup>9</sup> Petitioners Exhibits 10 - 11.

**c.      Application of Legal Standards**

In instances when a manufactured home is permanently attached to real property, the Act provides for the cancellation of the title and the issuance of a Certificate of Attachment to the owner who surrenders the manufacturer's certificate or document of title.<sup>10</sup> The Department also refers to TEX. PROP. CODE ANN. §2.001 as the statute they now use to determine whether a manufactured home is real property. However, the statute states specifically at section (d) that "[t]his section does not affect or change the classification of a manufactured home as personal or real property if the manufactured home was permanently affixed to real property before January 1, 2002." The mobile home in issue was purchased in 1983 and was permanently attached as early as 1988, clearly making section 2.001 inapplicable. In addition, the Department did not include this statute in its notice of hearing as one that would be relied upon by them in prosecuting this case.

Pursuant to common law principles, three factors are relevant in determining whether personalty has become a fixture: (1) the mode and sufficiency of annexation, either real or constructive; (2) the adaptation of the article to the use or purpose of the realty; and (3) the intention of the party who annexed the chattel to the realty. *Logan v. Mullis*, 686 S.W.2d 605 (Tex. 1985).<sup>11</sup> Of the three factors above, the most important is intention.<sup>12</sup> Under *Logan*, intent is made apparent by objective manifestations. The Court held that "... even testimony of intention that the chattel was not meant to become a fixture will not prevail in the face of undisputed evidence to the

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<sup>10</sup>TEX. OCC. CODE ANN. §1201 217; previously found at Art. 5221f §19(1).

<sup>11</sup> *Logan v. Mullis* involves a suit for damages and an injunction for interference with an easement. The essential liability issue is whether culvert made out of a railroad tank car and put into a creek bed by Logan so that he could build a gravel road over the creek was permanently attached to the realty. The Court held that it was permanently attached, even though Logan testified that he had never meant it to be permanent when he constructed it.

<sup>12</sup> *W.H.V., Inc. v. Associates Housing Finance. LLC.*, 43 S.W.3d 83, (Tex. App.—Dallas 2001. *review denied*). In this declaratory judgment suit involving whether a mobile home was permanently attached to realty, the Court of Appeals reaffirms that intention is the most important factor in the test to determine whether chattel annexed to real property has become a fixture.



contrary.” Thus, one further test often applied as evidence of whether personalty has become a fixture is whether items can be removed or destroyed without injury to the real property.<sup>13</sup>

**d. Analysis**

The testimony in this case is not conflicting. In fact, the Department presented no evidence which would refute Petitioners’ contention that the manufactured home is part of the real property and permanently attached to the real property. Indeed, the evidence presented at the hearing confirms that the mobile home is permanently attached to the real property.

When Ms. Coke sold the home to Petitioners, both parties signed a Seller’s Disclosure Notice<sup>14</sup> pursuant to TEX. PROP. CODE ANN. §5.008. This statute applies to a seller of “residential real property comprising not more than one dwelling unit...” and requires buyer and seller to agree on the condition of the property. The walkthrough to complete the disclosure notice form and inventory the condition of the property and its contents included the mobile home. Additionally, the 1993 tax statement from the Henderson County Tax Assessor Collector<sup>15</sup> shows no entries for personal property value but has two entries for real property market value, one listed as building value and the other as land value.

There was no dispute that Hal W. Coke intended the home to become permanently affixed as soon as he bought the home in 1983 and placed it on the lot and began making the improvements previously discussed. The improvements to the home were made specifically to better adapt the

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<sup>13</sup> *Ruby v. Cambridge Mutual Fire Insurance Co.*, 358 S.W. 2d943, 946 (Tex. Civ. App—Dallas 1962, no writ). For instance, in *Logan* the Supreme Court found that Logan had expended great effort in not only constructing the tank car and embedding it, but also in dismantling it, and that when it had been destroyed, “... the road was impassable and the stream eroded the creek banks considerably.”

<sup>14</sup> Petitioners Exhibit 6.

<sup>15</sup> Petitioners Exhibit 8.

home to the purpose for which it was intended, that of being a permanent residence. Petitioners and Michael Nelson Coke testified that there was no way to remove the home or the improvements to it that would not destroy it and the realty to which the home was attached.

Although not entirely clear, the ALJ understands the Department's position to be that it will not change the status of a mobile home absent clear and convincing evidence in its records or by determination in an evidentiary hearing. Because TEX. PROP. CODE ANN. §2.001 is inapplicable to this case and the common law principles determining when personal property becomes a fixture to the realty do apply, the ALJ concludes that the home is an improvement to the property; that it was intended by Hal Coke to become a part of the real property from the time he bought the home in 1983; and that Petitioners and two of Robert Coke's siblings believe the warranty deeds they signed included the home. The ALJ finds that the home and its improvements are permanent improvements, are part of the real property, and were conveyed to Petitioners when they purchased the property in 1994.

#### **V. RECOMMENDATION**

Based on the evidence received, testimony offered, and an analysis of the law, the ALJ finds that the Department properly issued Petitioners the Certificate and that revocation at this time is unwarranted.

#### **VI. PROPOSED FINDINGS OF FACT**

1. On July 15, 1983, Hal W. Coke bought a manufactured home-- HUD Label RAD0167107- and moved it to the property known as Lot 92 of the Briarwood Bay Subdivision in the J.M. Acosta Survey, A-1, Henderson County, Texas, as shown on a plat recorded in Volume 8, Page 4 of the Plat Records of Henderson County, Texas.
2. Mr. Coke removed the wheels and set it on a concrete pad and brick foundation; added a room extension; built a deck on three sides of the home; constructed a carport; and cut off the "tongue."

3. Mr. Coke intended the home and all the added improvements to become permanently affixed to the real estate and for it to be his permanent residence.
4. Mr. Coke and his wife Evelyn lived in the home until he died in 1988.
5. Mr. Coke left a will but it was never probated. He was survived by his wife, Evelyn Sue Coke (now Webb), and four children, Robert Joe Coke, Jon Marc Coke, Michael Nelson Coke, and Catherine Bell Coke Gibbons.
6. In 1994, Ms. Webb wanted to sell the property. Robert Joe and Jana Coke (Petitioners) offered to purchase the home.
7. Three of Mr. Coke's four children—Jon Marc Coke, Michael Nelson Coke, and Catherine Bell Coke Gibbons--conveyed their interests in the property, including the home, to Ms. Webb by executing warranty deeds on March 4, 1994.
8. On March 4, 1994, Petitioners purchased the property from Ms. Webb for \$15,000 in cash and other valuables. Petitioners and Ms. Webb executed a warranty deed conveying the home from Ms. Webb to Petitioners.
9. After purchasing the property, Petitioners moved into the home and have resided there since.
10. In early 2003, Petitioners applied for a home equity loan to be secured by the property.
11. Their lender asked Petitioners to request a cancellation of the certificate of title for the home from the Department.
12. Petitioners submitted their application on April 10, 2003, with a sworn affidavit and accompanying documents, stating that they were the sole owners.
13. The Department issued the Certificate, and the loan closed.
14. On April 30, 2003. Catherine Bell Coke Gibbons made a complaint to the Department, alleging that it had processed a fraudulent title transfer to the home because she retained an ownership interest in the home as an heir to her father's estate.

## VII. PROPOSED CONCLUSIONS OF LAW

1. The Texas Department of Housing and Community Development (the Department) has jurisdiction to decide the issues presented in this case, pursuant to the Texas Manufactured

Housing Standards Act., TEX. REV. CIV. STAT. ANN. art. 5221f re-codified effective June 1, 2003, under TEX. OCC. CODE ANN. chapter 1201 (the Act); TEX. GOV'T CODE ANN. chapters 2001 and 2306; and 10 TEX. ADMIN. CODE (TAC} §80.1 *et. seq.*

2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this case, including authority to issue a proposal for decision, pursuant to TEX. GOV'T CODE ANN. ch. 2003 and in accordance with 10 TAC §80.126.
3. Petitioner timely filed notice of appeal of the Department's decision in accordance with TEX. GOV'T CODE ANN. ch. 1201.210(c).
4. Proper and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052, and 1 TAC §155.27.
5. Based on the above Findings of Fact, controlling case law, and pursuant to Chapter 1201 of the Act, the manufactured home and its improvements are permanent improvements, are part of the real property, and were conveyed to Petitioners when they purchased the property in 1994. Accordingly, the title for the home was appropriately transferred to Petitioners.
6. Based on the above Findings of Fact and Conclusions of Law, and pursuant to Section 1201.217 of the Act, the Department should not revoke the certificate of attachment previously issued regarding the home.

**SIGNED November 5, 2003.**

/s/

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**TOMMY L. BROYLES  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**



## MANUFACTURED HOUSING DIVISION

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**Rick Perry**  
GOVERNOR

**TIM IRVINE**  
EXECUTIVE DIRECTOR

**BOARD MEMBERS**  
*Presiding Officer*, Cary Yates  
Jack Davis  
Clement P. Moreno  
Joan Tavaréz

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

**FROM:** Jim R. Hicks, Senior Investigator

**THROUGH:** Timothy K. Irvine, Executive Director

**SUBJECT:** Summary of Proposal for Decision

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Buda Housing, Inc. dba Premier Homes, ("Respondent")

License type/number: RBI-34851. Effective dates June 7, 2001 through June 7, 2003.

Docket Number: 332-03-3676

Complaint Number: MHD2003000537-DT & MHD2003001184-DT

### **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 violated the Act, Section 7(j)(6) (currently found at Chapter 1201.551(a)(6) of the Occupations Code) and the Administrative Rules, Section 80.119(f), by selling 2 (two) new manufactured homes without properly submitting the Form T/Installation Report.
2. Respondent also violated Sections 6B(d) and 6B(e) (currently found at Chapter 1201.256(d)) of the Act and Section 80.50(e) of the Rules by not delivering the Wind Zone Notice to the consumers. Respondent also failed to have the consumers sign the Wind Zone Notice and give a copy of the signed notice to the consumers which is in violation of Section 80.50(e) of the Rules.
3. Furthermore, Respondent also violated the Rules, Section 80.54(c), by not providing the Site Preparation Notices for the aforementioned manufactured homes as required.

4. Respondent also violated Sections 7(j)(4) (currently found at Chapter 1201.551(a)(4) of the Occupations Code), 14(d)(1), 14(d)(2), 14(d)(3), 14(d)(4) (currently found at Chapter 1201.351 of the Occupations Code), and 18(b) (currently found at Chapter 1201.603 of the Occupations Code) of the Act and Section 80.50(e) of the Rules by not delivering to the consumers the installation warranty and “(1) the manufacturer’s warranty; (2) the retailer’s warranty; (3) the warranty for all appliances and equipment given by the manufacturers of the appliances and equipment included with, or installed in, the home and (4) the name and address of the manufacturer and retailer to which the consumer are to give notice of warranty service requests,” for the aforementioned manufactured homes. Section 18 (b) states “The failure to give warranties and notices required by the provisions of Section 8 and Section 14 of this Act is a deceptive trade practice in addition to those set forth in Section 17.50, Business and Commerce Code.”
5. Respondent also violated Section 80.123(b) of the rules by selling/negotiating to sell 2 (two) manufactured homes which were situated and installed on property located at 16380 Crockett Bend Drive, Conroe, Texas. Section 80.123(b) of the rules states, “Each separate sales location which is not on property which is contiguous to or located within 300 feet of a licensed sales location requires a separate license and security.” Section 18(d) (currently found at Chapter 1201.152 of the Occupations Code) of the Act states “If a retailer, broker, or installer does not possess a valid license at the time of entering into any contract with a consumer, the contract between the consumer and the retailer, broker, or installer is voidable within two years from the date of the purchase of the manufactured home at the option of the consumer.”
6. Respondent also violated Section 21(a) (currently found at Chapter 1201.162 of the Occupations Code) of the Act by not delivering the “Zoning and Restrictive Covenants” disclosure statement to the consumers.
7. Respondent also violated Sections 17.46(b)(5), 17.46(b)(7), and 17(b)(23) of the Business and Commerce Code by misrepresenting to a consumer that a manufactured home was a brand new home. The manufacturer provided the service history for the home showing two service calls had been made to the home. “The failure to disclose this information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed” is a violation of the Deceptive Trade Act.
8. Respondent violated Sections 7(j)(3) (currently found at Chapter 1201.551(a)(3) of the Occupations Code) and 19(c) (currently found at Chapter 1201.206 of the Occupations Code) of the Act, by selling a new manufactured home without surrendering the original manufacturer’s certificate and applying for the issuance of a document of title.
9. Respondent also violated Sections 19A(b) (currently found at Chapter 1201.222(b) of the Occupations Code) and 19A(c) (currently found at Chapter 1201.222(c) of the Occupations Code) requirement for closing of a transaction for the acquisition of a manufactured home considered real property under this

section must occur at the office of a federally insured financial institution, a title company, or an attorney at law.

10. Respondent violated Section 20(a) (currently found at Chapter 1201.153 of the Occupations Code) of the Act and Section 80.180(b)(1) of the Rules by not delivering the Formaldehyde Health Notice to the consumer. Respondent also failed to have the consumer sign the Formaldehyde Health Notice and give a copy of the signed notice to the consumer in violation of Section 80.180(b)(1) of the Rules.

The staff initiated the following administrative actions against Respondent.

After proper notice, an administrative hearing was held on August 6, 2003. An Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH) issued the attached Proposal for Decision (PFD) as a result of that meeting. The PFD upholds the findings and determinations of the staff.

### **Proposal for Decision**

The Proposal for Decision dated September 25, 2003 recommends that Respondent be assessed an administrative penalty of Twelve Thousand Five Hundred Dollars (\$12,500.00).

### **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 \$2,000.00 for violations of the Act and Rules of which \$1200.00 has been paid leaving a balance of \$800.00. The Proposal for Decision recommends an administrative penalty of \$12,500.00, but the Division has come to an agreement with the Respondent for a lesser amount of \$2,000.00. Respondent shall continue to pay the administrative penalty to the Texas Department of Housing and Community Affairs monthly installments of \$300.00 by the 15<sup>th</sup> of each month, with the final payment being \$200.00 until paid in full.

**DOCKET NO. 332-03-3676**  
**COMPLAINT NO. MHD2003000537-DT & MHD2003001184-DT**

THE MANUFACTURED HOUSING DIVISION	§	BEFORE THE
	§	
OF THE TEXAS	§	GOVERNING BOARD OF THE
	§	
DEPARTMENT OF HOUSING AND	§	MANUFACTURED HOUSING DIVISION
	§	
COMMUNITY AFFAIRS vs.	§	OF THE TEXAS DEPARTMENT OF
	§	
BUDA HOUSING, INC. dba PREMIER HOMES	§	HOUSING AND COMMUNITY AFFAIRS

**FINAL ORDER**

**I. PREAMBLE**

**CAME ON TO BE CONSIDERED**, the matter of the enforcement action identified as MHD2003000537-DT & MHD2003001184-DT, *In the Matter of the Complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Buda Housing, Inc. dba Premier Homes*, pursuant to the Texas Manufactured Housing Standards ACT, previously TEX. REV. CIV. STAT. ANN. art. 5221f (“Act”) re-codified effective June 1, 2003, as 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 \$2,000.00 for violations of the Act and Rules of which \$1200.00 has been paid leaving a balance of \$800.00. The Proposal for Decision recommends an administrative penalty of \$12,500.00, but the Division has come to an agreement with the Respondent for a lesser amount of \$2,000.00.



Final Order

In the Matter of Buda Housing, Inc. dba Premier Homes

Complaint no.: MHD2003000537-DT & MHD2003001184-DT

Docket No.: 332-03-3676

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2. Respondent shall continue to pay the administrative penalty to the Texas Department of Housing and Community Affairs monthly installments of \$300.00 by the 15<sup>th</sup> of each month, with the final payment being \$200.00 until paid in full. 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, will be 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 December, 2003.

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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. certified mail (Number 7001 2510 0007 8865 9739), return receipt requested, to Buda Housing, Inc. dba Premier Homes, 25930 London Town Drive #94, Spring, Texas 77379 and by U.S. certified mail (Number 7001 2510 0007 8865 9722), return receipt requested, to Buda Housing, Inc. dba Premier Homes, 2539 Spring Cypress Road, Spring, Texas 77388 on this the \_\_\_\_\_ day of December, 2003.

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Nancy Stone, Complaint Specialist

# State Office of Administrative Hearings



**Shelia Bailey Taylor**  
**Chief Administrative Law Judge**

September 25, 2003

Edwina P. Carrington  
Executive Director  
Texas Department of Housing and Community Affairs  
507 Sabine, Ste. 400  
Austin, Texas 78711-3941

**VIA HAND DELIVERY**

**RE: Docket No. 332-03-3676; Texas Department of Housing and Community Affairs v. Buda Housing, Inc., dba Premier Homes**

Dear Ms. Carrington:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

By copy of this letter, I am informing the parties that under TEX. GOV'T CODE ANN. §2001.062, each party has the right to file exceptions and present briefs with respect to the Proposal for Decision. If a party files exceptions or briefs, all other parties may file replies. A copy of any exceptions, briefs, or replies must be filed with the State Office of Administrative Hearings and served on all parties.

Sincerely,

/s/

Gary W. Elkins  
Administrative Law Judge

GWE/sa  
Enclosure  
xc:

Docket Clerk, State Office of Administrative Hearings - **VIA HAND DELIVERY**  
Jim Hicks, Consumer Protection Team Leader, TDHCA, 507 Sabine, Suite 400, Austin, Texas **VIA HAND DELIVERY**  
Buda Housing, Inc., dba Premier Homes, 25930 London Town Drive, #94, Spring, Texas 77379 **VIA REGULAR MAIL**

Post Office Box 13025 ◆  
(512) 475-4993

William P. Clements Building  
300 West 15th Street, Suite 502  
Docket (512) 475-3445  
<http://www.soah.state.tx.us>

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

**DOCKET NO. 332-03-3676**

<b>TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, Petitioner</b>	§ § § § § § § § § § §	<b>BEFORE THE STATE OFFICE</b>
<b>V.</b>		<b>OF</b>
<b>BUDA HOUSING, INC. dba PREMIER HOMES, Respondent</b>		<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

**I. Introduction**

The Staff of the Texas Department of Housing and Community Affairs (Staff) brought this action against Buda Housing, Inc. dba Premier Homes (Respondent) for alleged violations of section 1201.551 of the Texas Manufactured Housing Standards Act (the Act). Despite proper notice, Respondent did not appear to contest the allegations. The Administrative Law Judge (ALJ) granted Staff's motion for default under 1 TEX. ADMIN. CODE §155.55 and recommends Respondent be assessed an administrative penalty of \$12,500.

**II. Notice and Jurisdiction**

The Texas Department of Housing and Community Affairs has jurisdiction over this matter pursuant to the Texas Manufactured Housing Standards Act (the Act), TEX. OCC. CODE ANN. ch. 1201<sup>1</sup>, and TEX. GOV'T CODE ANN. §2306.6023. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

The notice of intention to institute disciplinary action and of the hearing met the notice requirements imposed by statute and rule. The details about notice to Respondent are set forth in the findings of fact and conclusions of law without further discussion here.

**III. Procedural History**

The hearing convened and closed on August 6, 2003, before ALJ Gary Elkins at the Hearings Facility of the State Office of Administrative Hearings, 300 West 15th Street, Austin, Texas. Jim Hicks, Consumer Protection Team Leader, represented Staff. Respondent did not appear at the

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<sup>1</sup>Recodified effective June 1, 2003. Previously found at TEX. REV. CIV. STAT. ANN. art. 5221f.

hearing. After introducing exhibits related to notice, jurisdiction, and the substantive allegations, Staff moved for a default under 1 TAC §155.55. Based on Respondent's failure to appear, the ALJ granted the motion and deemed the factual allegations admitted by Respondent.

#### **IV. Recommendation**

Based on the deemed admissions, the ALJ concludes that Respondent violated numerous statutes and rules as set out in the Conclusions of Law. The ALJ also concludes, based on a maximum penalty of \$1,000 per violation as provided in TEX. GOV'T CODE ANN. §2306.6023(b), that the Department should assess a total administrative penalty of \$12,500 against Respondent for multiple violations.

#### **V. Findings of Fact**

1. Buda Housing, Inc. dba Premier Homes (Respondent) holds License Number RBI-34851, effective June 7, 2001, through June 7, 2003, issued by the Texas Department of Housing and Community Affairs (TDHCA).
2. On July 3, 2003, TDHCA Staff sent the original notice of an administrative hearing to Respondent at his last known address of 2539 Spring Cypress Road, Spring, Texas 77388 and also to 25930 London Town Drive, #94, Spring, Texas 77379 by regular mail and certified mail, return receipt requested.
3. The original notice of hearing informed Respondent that the hearing would begin at 1:00 p.m. on August 8, 2003, at the State Office of Administrative Hearings, 300 West 15th Street, 4th Floor, Austin, Texas.
4. TDHCA later sent a second, amended notice on July 14, 2003 by certified mail, return receipt requested to the addresses listed in Finding of Fact No. 2, correcting the date for the hearing included in the first notice to August 6, 2003.
5. Both notices informed Respondent of Staffs intention to take action against him, the legal authority and jurisdiction under which the hearing would be held, and the rules allegedly violated. The notice also included the default warning language of 1 TEX. ADMIN. CODE §155.55(c).
6. The scheduled hearing convened on August 6, 2003. Staff appeared and represented TDHCA. Respondent did not appear.
7. Due to Respondent's failure to appear, Staff moved for a default under 1 TEX. ADMIN. CODE (TAC) §155.55. The ALJ granted Staff's request.

**MHD2003000537-DT**

8. On or about May 1, 2002, Respondent sold a manufactured home, identified by HUD Label Number PFS508520/21, to Joseph M. and Natalie J. Cataline.
9. Respondent failed to properly submit the Form T/Installation Report within the 10-day deadline after installation of their home.
10. Respondent failed to deliver the Wind Zone Notice to the Catalines and give them a copy of the signed notice.
11. Respondent failed to provide the Site Preparation Notice to the Catalines.
12. Respondent failed to deliver to the Catalines the installation warranty, the manufacturer's warranty, the retailer's warranty, the warranty for all appliances and equipment given by the manufacturers of the appliances and equipment included with the home, and the name and address of the manufacturer and retailer to which the consumer is to give notice of warranty service requests.
13. Respondent failed to have a separate license and security for each separate sales location which is not on property that is contiguous to or located within 300 feet of a licensed sales location.
14. Respondent failed to deliver the Zoning and Restrictive Covenants disclosure statement to the Catalines.
15. Respondent failed to disclose to the Catalines that the manufactured home they purchased was not a new home, inducing them to buy the home, and failed to disclose that two service calls had been made to the home before they purchased it.

**MHD2003001184-DT**

16. On or about January 10, 2003, Respondent sold a manufactured home, identified by HUD Label Number PFS620924/25, to William C. Turner.
17. Respondent sold this new manufactured home without surrendering the original manufacturer's certificate and applying for the issuance of a document of title.
18. Respondent failed to have the closing of this purchase take place at the office of a federally insured financial institution, a title company, or an attorney of law.
19. Respondent failed to deliver the Formaldehyde Health Notice to Mr. Turner and give him a copy of the signed notice.

20. Respondent failed to properly submit the Form T/Installation Report within the 10-day deadline after installation of the home.
21. Respondent failed to deliver the Wind Zone Notice to Mr. Turner and give a copy of the signed notice.
22. Respondent failed to provide the Site Preparation Notice to Mr. Turner.
23. Respondent failed to deliver to Mr. Turner the installation warranty, the manufacturer's warranty, the retailer's warranty, the warranty for all appliances and equipment given by the manufacturers of the appliances and equipment included with the home, and the name and address of the manufacturer and retailer to which the consumer is to give notice of warranty service requests.
24. Respondent failed to have a separate license and security for each separate sales location which is not on property that is contiguous to or located within 300 feet of a licensed sales location.
25. Respondent failed to deliver the Zoning and Restrictive Covenants disclosure statement to Mr. Turner.

## **VI. Conclusions of Law**

1. TDHCA has jurisdiction over this matter pursuant to the Texas Manufactured Housing Standards Act (the Act), TEX. OCC. CODE ANN. ch. 1201,<sup>2</sup> and has authority to discipline and penalize Respondent pursuant to chapter 1201.551 of the Act and TEX. GOV'T CODE ANN. ch. 2306.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law 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. ch. 2001 and ch. 2306; 1 TEX. ADMIN. CODE (TAC) §155.55; and 10 TAC §80.126. TDHCA's rules, as reflected by 10 TAC §1.21(c), provide for notice to be sent to Respondent's last known address as shown by TDHCA's records.
4. Based on Respondent's failure to appear at the hearing, Staff's motion for default relief was granted pursuant to 1 TAC §155.55, and the factual allegations contained in the Notice of Hearing were deemed admitted.

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<sup>2</sup>Recodified effective June 1, 2003. Previously found at TEX. REV. CIV. STAT. ANN. art. 5221f.

5. Based on Findings 9 and 20, Respondent violated §1201.551(a)(6) of the Act and 10 TAC §80.119(f).
6. Based on Findings 10 and 21, Respondent violated §1201.256(d) of the Act and 10 TAC §80.50(e).
7. Based on Findings 11 and 22, Respondent violated 10 TAC §80.54(c).
8. Based on Findings 12 and 23, Respondent violated §§1201.551(a)(4), 1201.351, 1201.603 of the Act, BUS. AND COMM. CODE ANN. §17.50, and 10 TAC §80.50(e).
9. Based on Findings 13 and 24, Respondent violated 10 TAC §80.123(b).
10. Based on Findings 14 and 25, Respondent violated §1201.162 of the Act.
11. Based on Finding 15, Respondent violated TEX. BUS. AND COMM. CODE ANN. §§17.46(b)(5), 17.46(b)(7), and 17.46(b)(24).
12. Based on Finding 17, Respondent violated §§1201.551(a)(3) and 1201.206 of the Act.
13. Based on Finding 18, Respondent violated §§1201.222(b) and (c) of the Act.
14. Based on Finding 19, Respondent violated §1201.153 of the Act and 10 TAC §80.180(b)(1).
15. Pursuant to TEX. GOV'T CODE ANN. §2306.6023(b) and 10 TAC §80.127(a)(4), and based on the sixteen alleged violations, Respondent should be assessed an administrative penalty of \$12,500.

**SIGNED this 25<sup>th</sup> day of September 2003.**

/s/  
**Gary W. Elkins**  
**Administrative Law Judge**  
**State Office of Administrative Hearings**

*Agenda Action Item No. 3*

**RESOLVED**, that the Executive Director of the Division be and he hereby is authorized, empowered and directed to settle and compromise the claim in the amount of \$10,000 against First Indemnity of America, such claim relating to the payment by the Texas Manufactured Homeowner's Recovery Fund in connection with the Sharon Lee consumer complaint and such settlement and compromise to be not less than 60% of the claimed amount.

**FURTHER RESOLVED**, that the Executive Director of the Division be and he hereby is authorized and empowered to settle and compromise claims against surety companies regarding reimbursement for payments made from the Texas Manufactured Homeowners' Recovery Fund; provided, that he must first obtain the concurrence of the appropriate representative of Office of the Attorney General and that all such settlements be reported to this board at the next regular meeting.



*Agenda Action Item No. 4*

<http://www.tdhca.state.tx.us/mh/docs/04-revproprules-040121.pdf>