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Texas Department of Housing and Community Affairs  
Manufactured Housing Board Meeting  
on January 12, 2005

Cary Yates, Chair

Michael H. Bray, Member

Valeri Stiers Malone, Member

Clement "Pete" Moreno, Member

Frances Shannon, Member

**Texas Department of Housing and Community Affairs**  
**Manufactured Housing Board Meeting**  
**January 12, 2005**

**ROLL CALL**

	<u>Present</u>	<u>Absent</u>
Cary Yates, Chair	_____	_____
Michael H. Bray, Member	_____	_____
Valeri Stiers Malone, Member	_____	_____
Clement "Pete" Moreno, Member	_____	_____
Frances Shannon, Member	_____	_____
Number Present	_____	
Number Absent		_____

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

**MANUFACTURED HOUSING BOARD MEETING**  
**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**Fort Worth State Office Building**  
**1501 Circle Drive, Room 160, Fort Worth, Texas 76119-8119**  
**January 12, 2005      10:30 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 to approve minutes of board meeting of November 16, 2004.  | Chair      |
| Item 2. | Presentation, discussion and consideration to approve adoption of §80.201(e).   | Tim Irvine |
| Item 3. | Presentation, discussion and possible approval to propose review of existing rules for public comment.  | Tim Irvine |
| Item 4. | Presentation, discussion and possible approval to propose and publish for comment new and amended rules to 10 TAC, Chapter 80.<br>(a) Additional new rules: §80.20(k) relating to assessing a \$30 fee on dishonored checks; §80.116 relating to Liquidator's License; §80.117 relating to Broker's Responsibilities; and §80.118 relating to Installer's Responsibilities.<br>(b) Latest Revision of Rules dated 11/04/04. | Tim Irvine |

**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 Sharon Choate, TDHCA, 507 Sabine, Austin, Texas 78701, 512-475-2206, [sharon.choate@tdhca.state.tx.us](mailto:sharon.choate@tdhca.state.tx.us).*

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

*Agenda Action Item No. 1*

**MINUTES OF THE BOARD OF DIRECTORS**

**MANUFACTURED HOUSING DIVISION**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

On Tuesday, November 16, 2004, at 9:00 a.m. the Department held 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") in the TDHCA board room on the 4<sup>th</sup> floor at 507 Sabine, Austin, Texas. Cary Yates presided. The following members, constituting a quorum, were present: Cary Yates, Presiding Officer, Michael Bray, Pete Moreno, and Frances Shannon. Valeri Malone was absent. The following members of MHD staff were present: Tim Irvine, Cindy Bocz, Joe Garcia, Kassu Asfaw, Heidi Maldonado, Jim Hicks, Piper Smith, and Sharon Choate.

The chairman called roll and declared the presence of a quorum. The minutes of the previous meeting were approved unanimously upon motion by Michael Bray and second by Frances Shannon.

Jim Hicks, Consumer Protection Supervisor, presented a proposed order to be entered in the matter of TDHCA vs. Honey Homes of Texas, Inc. Docket No. 332-04-2717. SOAH's Proposal for Decision was approved unanimously upon motion by Michael Bray and second by Francis Shannon.

Heidi Maldonado, Administration Supervisor, presented to the Board for discussion and consideration to approve All Star Professional Training, Inc. as a Continuing Education Provider. This was unanimously approved upon motion by Pete Moreno and second by Michael Bray.

Tim Irvine presented action items 4 and 5 relating to proposing review of existing rules for public comment and to propose and publish rule amendments for public comment. The Board has deferred action on these items to allow additional time for review and consideration.

Tim Irvine presented the Executive Director's report, which covered the following subjects:

- The level of staffing.
- Status of the State Administrative Agency (SAA) function.
- The status and activity in the Division's functional areas: Processing; Customer Service; Consumer Protection; Document Control; and field activity.

There being no further business to come before the Board, the meeting was adjourned at 10:41 a.m.

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Sharon Choate  
Secretary

Approved:

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Cary Yates, Presiding Officer

*Agenda Action Item No. 2*

## **Adoption of Manufactured Housing Rule - §80.201(e)**

**Texas Register Publication Date: October 29, 2004**

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") adopts with non-substantive changes §80.201(e); therefore, the text will be republished. The proposal was published in the October 29, 2004 issue of the *Texas Register* (Volume 29, Number 44, TexReg 9952).

The effective date of the adoption is thirty (30) days following the date of publication with the *Texas Register* of notice that the rule has been adopted.

A public hearing was held on November 30, 2004. The following interested groups or associations presented comments either at the hearing or in writing: Texas Manufactured Housing Association ("TMHA").

Set forth below are comments from TMHA and the analysis and recommendations of staff.

One commenter responded, both in writing and with oral testimony at the public hearing on November 30, 2004. The commenter pointed out that the proposed rule overlapped with a portion of the existing rule, 10 TAC §80.207, dealing with conversion of manufactured homes documented as real property back into manufactured homes documented as personal property. In connection with a comprehensive review and proposed revisions to all aspects of these rules, the staff of the Division will be proposing that §80.207 be deleted. However, the overlap is noted, and in the event that §80.207 is not deleted, it will be proposed that this §80.201(e), as amended, be revised consistent with §80.207 and that §80.207 be revised as appropriate.

Other aspects of the comment focused on the substance of the proposed rule change, albeit couched in terms of proposed amendments to §80.207(a). The first comment was to add a provision to §80.207(a)(1) to provide for a statement by a lender that it consented. The second was to expand §80.207(a)(4) to require confirmation of a clear chain of title. The third was to require under a new §80.207(a)(6) that the newly issued Statement of Ownership and Location, reflecting personal property status, be recorded in the county real property records, presumably in the county where the home was located at the time that it was real property. All of these comments make good sense, and, though already addressed in the proposed language of amended 10 TAC §80.201(e), have been more clearly stated therein through some additional non-substantive changes.

Except as noted below, the rules as proposed on October 29, 2004, are adopted as final rules with the following non-substantive changes.

New subsection (e) is reworded for clarification.

The following is a restatement of the rules' factual basis:

New subsection (e) explains that an owner acquiring a manufactured home that is and will remain real property is not required to apply for an updated Statement of Ownership and Location unless the owner desires a change to personal property status; the home no longer meets the requirements as real property; or the home is being moved.

The new rules are adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

No other statute, code, or article is affected by the new rules.

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

(a)      Initial Statements.

- (1)      The Department will issue an initial Statement of Ownership and Location within ten (10) working days after receipt of a complete application, accompanied by all documentation necessary to support the application.
- (2)      In order to be deemed complete, an application for a Statement of Ownership and Location must include, as applicable:
  - (A)      A completed and fully executed Application for Statement of Ownership and Location on the Department's prescribed form;
  - (B)      The required fee;
  - (C)      If one or more liens are to be reflected on the Statement of Ownership and Location, copies of documentation establishing the creation, existence, and priority of each such lien;
  - (D)      If a manufactured home is relocated, satisfactory evidence that there are no property tax liens on the home or that provision has been made for them. Satisfactory evidence would include, but would not be limited to, evidence that the relocation was effected with a TxDOT approved move or a statement from a title company, lender, or escrow agent, executed by a person purporting to be its duly authorized officer or representative, that money sufficient to pay the taxes was being held by them and would be applied to the payment of those taxes.

(b) Revised Statements.

- (1) The Department will issue a revised Statement of Ownership and Location within ten (10) working days after receipt of a complete application, accompanied by all documentation necessary to support the application.
- (2) In order to be deemed complete, an application for a revised Statement of Ownership and Location must include, as applicable:
  - (A) A completed and fully executed Application for Statement of Ownership and Location on the Department's prescribed form;
  - (B) The required fee;
  - (C) If one or more liens are to be reflect on the Statement of Ownership and Location, copies of documentation establishing the creation, existence, and priority of each such lien;
  - (D) If one or more existing liens are to be released or transferred, appropriate supporting documentation, including a properly executed and completed release of lien form;
  - (E) If a manufactured home is to be designated for use as a dwelling after the home has been designated for business use only or salvage, evidence of a satisfactory habitability inspection by the Department, accompanied by the required fee;
  - (F) If a manufactured home is relocated, satisfactory evidence that there are no property tax liens on the home or that provision has been made for them. Satisfactory evidence would include but would not be limited to, evidence that the relocation was effected with a TxDOT approved move, a paid taxes certificate from the county tax assessor for the county where the home was located prior to the move, or an original, signed statement from a title company, lender, or escrow agent, executed by a person purporting to be its duly authorized officer or representative, that money sufficient to pay the taxes was being held by them and would be applied to the payment of those taxes;
  - (G) In instances where title to a manufactured home is conveyed in a transaction other than a transaction requiring a license under the Standards Act, such as testamentary and non-testamentary transfers, private sales not requiring a license, voluntary or court-ordered partitions, etc, originals or certified copies of appropriate documentation to support any such transfer, as required by the Department; and

- (3) Any change in a Statement of Ownership and Location shall result in a new Statement of Ownership and Location being issued, and the new Statement of Ownership and Location shall specify the effective date which shall be either the date of the submission of the completed application or such other date as the Director may determine is appropriately supported by the information provided.
- (c) Replacing a Document of Title.
- (1) Upon receipt of a written request, applicable fee(s), and any necessary additional information, including a notarized statement of election of real or personal property status, the Department will replace a document of title with a Statement of Ownership and Location.
  - (2) If a manufactured home title showed that it was personal property, that will be presumed to be its status until and unless a revised Statement of Ownership and Location is applied for and issued. Likewise, if a manufactured home has had a certificate of attachment issued and had title cancelled to real property, that shall be presumed to be its status until and unless a revised Statement of Ownership and Location is applied for and issued.
- (d) Corrections to Statements of Ownership and Location.
- (1) If a correction is required as a result of a department error, it will be corrected at no charge.
  - (2) If an error was made for another reason, it will be corrected upon receipt of all documentation needed to support the correction.
  - (3) If a correction is requested because of an error made by a party other than the department, the correction will not be made until the department receives the following:
    - (A) A complete corrected application for Statement of Ownership and Location,
    - (B) Any necessary supporting documentation, and
    - (C) The required fee of \$25, which can be reduced or waived by the director for good cause.
- (e) Updating of Statements of Ownership and Location on Manufactured Homes Transferred as Real Property.
- (1) When a manufactured home has become real property because the owner elected real property status and their Statement of Ownership and Location was recorded in the appropriate county records, the home may be sold or

transferred as real property by the customary means used for real property transactions. As long as the home remains real property at the same location, ownership of the home is confirmed in the same manner as any other real property, rather than by verifying Department records. Any buyer or transferee is not required to apply for a new Statement of Ownership and Location until and unless:

- (A) the manufactured home is moved to a new location;
  - (B) the current owner of the manufactured home wishes to convert it to personal property status; or
  - (C) the manufactured home no longer meets the requirements to be classified as real property (such as the home being on property subject to a long term lease which is not assignable to the buyer or transferee).
- (2) To convert the manufactured home back from real property to personal property, the owner of the home must submit a completed Application for Statement of Ownership and Location to the Department with supporting documentation as follows:
- (A) If the applicant is not the owner of record with the Department, satisfactory proof of ownership under a complete chain of title. Acceptable evidence would include, but not be limited to, authenticated copies of all intervening transfer documents, a court order confirming ownership, or a commitment for title insurance in such owner's name issued by a title insurance company licensed to do business in Texas.
  - (B) Satisfactory evidence that any liens on the manufactured home have been discharged or that all lienholders have consented to the change.
- (3) Upon receipt of the certified copy of the new Statement of Ownership of Location that reflects the personal property election of the home, the owner shall file that certified copy in the county real property records, at which time the personal property election will take effect.

*Agenda Action Item No. 3*

**Proposed Rule Review**

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Department) proposes the review of 10 TAC Chapter 80, Manufactured Housing, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the Department will accept comments as to whether the reasons for adopting 10 TAC Chapter 80 continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Mr. Timothy K. Irvine, Executive Director of the Manufactured Housing Division, of the Texas Department of Housing and Community Affairs, P. O. Box 12489, Austin, Texas 78711-2489 or by e-mail to [tim.irvine@tdhca.state.tx.us](mailto:tim.irvine@tdhca.state.tx.us).

*Agenda Action Item No. 4(a)*

**Additional Proposals - §§80.20(k), 80.116, 80.117, and 80.118**

**§80.20 Fees.**

- (k) A fee of \$30 will be charged to seek collection of the face value of a dishonored check.

**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 licensed location is a location at which a repossessing or foreclosing lender has one or more manufactured homes to be sold, and until each home at the licensed location is sold, it may not be moved to any other location, except for a licensed retail location.
- (2) The retailer must obtain a separate \$50,000 bond for each Liquidators License. Additional locations may be added under a Liquidator's License. The bond must specifically state each location covered by that bond. 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 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.
- (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 or through the retailer licensed at that location 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. The broker may rely on the Division's records as to the status of licenses and may rely on a written statement of a party claiming an exemption establishing facts that would support the exemption.
- (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) 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) inappropriate organic material, refuse, and other items have been cleared from the site;
  - (3) 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;
- (b) 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) No water, sewer, or gas lines, if present, are open and uncapped;
  - (6) No vents into enclosed spaces above or below the living area; and
  - (7) No holes are in bottom board unless properly repaired.
- (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 Manufactured Housing Rules**

**Latest Revision : 11/04/04**

**Due to the document size, these rules are posted separately.**