



Texas Department of Housing and Community Affairs
Manufactured Housing Board Meeting
on May 5, 2006

Valeri Stiers Malone, Chair

Michael H. Bray, Member

Carlos Amaral, Member

Kimberly A. Shambley, Member

Frances Shannon, Member

Texas Department of Housing and Community Affairs
Manufactured Housing Board Meeting
May 5, 2006

ROLL CALL

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

_____, Presiding Officer

MANUFACTURED HOUSING BOARD MEETING
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
221 E. 11th Street, Room 116, Austin, Texas 78701
May 5, 2006 10:30 a.m.

AGENDA

CALL TO ORDER, ROLL CALL Chair
CERTIFICATION OF QUORUM Chair

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

ACTION ITEMS

- Item 1. Presentation, discussion and consideration to approve minutes of board meeting of February 17, 2006. Chair

- Item 2. Presentation, discussion and possible approval to propose and publish for comment amended rules to 10 TAC, Chapter 80 (§§80.11, 80.119, 80.208, 80.240 & 80.260). Tim Irvine

PUBLIC COMMENT Chair

REPORT ITEMS

Presentation and discussion of licensing review report. Tim Irvine
Executive Director's Report Tim Irvine
Financial Report Kassu Asfaw

ADJOURN Chair

To access this agenda or request information, please visit our website at www.tdhca.state.tx.us or contact Sharon Choate, TDHCA, 507 Sabine, Austin, Texas 78701, 512-475-2206, sharon.choate@tdhca.state.tx.us.

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

Agenda Action Item No. 1

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

On Friday, February 17, 2006, at 11:00 a.m., there was a duly-called and posted meeting of the Manufactured Housing Board, held in Room 116 of the offices of the Texas Department of Housing and Community Affairs at 221 East 11th Street, Austin, Texas. Michael Bray presided. The following Board members, constituting a quorum, were present: Carlos Amaral, Michael Bray, and Kimberly Shambley. Valeri Malone and Frances Shannon were absent. Members of staff of the Texas Department of Housing and Community Affairs, Manufactured Housing Division (the "Division"), including Tim Irvine, Joe Garcia, Cindy Bocz, Heidi Maldonado, Kassu Asfaw, and Sharon Choate, were present. Bobbie Hill and Keith O’Gorman were present.

Upon motion of Kim Shambley, duly seconded by Carlos Amaral, the minutes of the previous meeting were approved as presented.

Upon motion of Carlos Amaral, duly seconded by Kim Shambley, the Board approved the entry of an order consistent with the Proposal for Decision in the Matter of TDHCA vs. Ghengis Khan Investments, Docket No. 332-05-5427.

Upon motion of Kim Shambley, duly seconded by Carlos Amaral, the Board approved the entry of an order consistent with the Proposal for Decision in the Matter of TDHCA vs. Amerihomes of Texas dba Hacienda Homes, Docket No 332-06-0394.

Kassu Asfaw delivered the Financial Report. Joe Garcia delivered the Processing Report. Cindy Bocz delivered the SAA Report. Tim Irvine delivered the Executive Director’s Report. The Board asked that staff prepare an analysis of licensing and present it to the Board at the next meeting. It was tentatively agreed that the Board would set the third Friday of each alternate month, beginning in April, as its schedule for the remainder of the year.

There being no further business to come before the board, the meeting adjourned at 12:17 p.m.

Tim Irvine, Secretary

Approved:

Michael Bray, Chair

Proposed Revisions to §§80.11, 80.119, 80.208, 80.240 & 80.260

§80.11. Definitions.

(1) – (27) No change.

(28) Verified Claim on the HORTF - With respect to the payment of claims from the Texas Manufactured Homeowners' Recovery Trust Fund, a complaint is deemed to be a verified complaint at such time as:

(A) it is in proper form setting forth in a document sworn to before a notary by an injured consumer, claiming actual damages that would be reimbursable from the Fund;

(B) the amount of actual damages to be reimbursed from the Fund has been determined with certainty; and

(C) the claim has been investigated and found in all respects to be properly payable.

§80.119. Installation Responsibilities.

(a) No change.

(b) For used manufactured homes, the person contracting with the consumer for the installation of the home is the installer and must warrant the proper installation of the home. If the contracting installer subcontracts with an independent licensed installer, then the subcontractor is jointly and severally liable for the portion of the installation that the subcontractor performed. The contracting installer is responsible to furnish the consumer with the installation warranty and site preparation notice. All verification and copies of the installation warranty and site preparation notice must be maintained in the installer's installation file for a period of no fewer than six (6) years from the date of installation.

(1) A person contracting directly with the consumer for only the transportation of the used home to a manufactured home site is not the installer if the person does not perform or contract to perform any installation functions. In this case, the installer is the person that performs any aspect of the placement and erection of the used home and its components on the stabilization system, whether temporary or permanent.

(2) The selling retailer may sell a used home and deliver possession to the consumer at the sales location (e.g., F.O.B. the sales location). In this case,

the retailer shall not perform any installation functions nor transport the home to the home site.

(3) A person contracting with a consumer for the delivery and the installation of any used manufactured home, must specify a date by which installation will be provided and the conditions under which this date may be extended.

(c) – (f) No change.

§80.208 *Recording Tax Liens on Manufactured Homes.*

(a) **Manually filed tax [Tax] liens shall be filed with the Department using the form provided in §80.260(a)(14) of this title (relating to Required and Optional Forms) [this section or by an electronic filing providing the same information].** No other form will be accepted for the **manual** filing of tax liens. The form must be properly completed.

(b) **Electronically filed tax liens and tax lien releases shall be filed with the Department using the required file layout as provided in §80.240(a)(13) of this title (relating to Tables and Figures). No other format will be accepted for electronic filing of tax liens.**

(c)(b) For tax liens recorded after June 18, 2005, but prior to the effective date of these rules, those tax liens relating to tax years prior to 2001 will be disregarded and will not be treated as having been recorded.

(d) **If a tax collector wishes, it may file as a central tax collector under a single taxing unit ID number, in which case the liens recorded or released under that taxing unit ID number will extend to all liens created for tax obligations to the taxing units for which the filer collects. In order, however, to file as a central collector, the filer must complete and provide to the Department the form set out in §80.260(a)(15) of this title (relating to Required and Optional Forms).**

§80.240. *Tables and Figures.*

(a) Tables.

(1) – (12) No change.

(13) Tax Lien Layout for Electronically Filed Tax Liens.

Texas Department of Housing and Community Affairs
Tax Lien File Layout

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

ITEM		PICTURE	OFFSET	Additional Information for Accurate Filing
Collector Identification				
Collector-Tax-Unit-ID		Alpha 10	229-238	The taxing unit id number MUST be 10 characters and in the following format XXX-XXX-XX. If the State Comptroller's Office has not assigned a taxing unit ID to the taxing unit, enter 999-999-99 in this field.
Collector-Name	Left Justified	Alpha 40	239-278	Enter the name of the taxing jurisdiction.
Collector-Name2	Left Justified	Alpha 40	279-318	Enter the name of the collector.
Collector-Addr1	Left Justified	Alpha 30	319-348	
Collector-Addr2	Left Justified	Alpha 30	349-378	
Collector-City	Left Justified	Alpha 20	379-398	
Collector-State	Left Justified	Alpha 2	399-400	
Collector-Zipcode		Alpha 10	401-410	
Lien Information				
Tax-Roll-Account-No		Alpha 26	411-436	
FILLER (blank spaces)		Alpha 8	437-444	Lien date is the date the lien is received by TDHCA and will be inserted when recorded; so leave the 8-spaces originally allocated for this blank.
Tax-Year - YYYY		Alpha 4	445-448	
FILLER (blank spaces)		Alpha 8	449-456	Tax amount is no longer required, so leave the 8-spaces originally allocated for this blank.
Release-Date – YYYYMMDD		Alpha 8	457-464	The date MUST be formatted as YYYYMMDD and have no slashes or spaces.
FILLER (blank spaces)		Alpha 49	465-513	
County Code		Alpha 3	514-516	A carriage return after entering the 3-digit County Code is needed after each record for proper formatting.

§80.260. Required and Optional Forms.

(a) Required Forms.

(1) – (13) No change.

(14) Tax Lien Record and Release Form.

TAX LIEN RECORD/RELEASE

Please type or print clearly.

BLOCK 1: Information

Taxpayer Name and Tax Roll Account # are for information purposes only. All other information is REQUIRED.

HUD Label or Texas Seal #: _____ OR Serial #: _____

Tax Roll Account #: _____

Complete 8-Digit Taxing Unit ID #: _____

County Code (3 digits): _____

County Name: _____

Year for which taxes are owed: _____

Taxpayer Name: _____
(Name)

Taxpayer Address: _____
(Address)

(City) (State) (Zip Code)

Collector's Name & Name of Taxing Entity: _____

Collector's Address: _____
(Address)

(City) (State) (Zip Code)

Collector's Phone #: ()

BLOCK 2: Signature REQUIRED for Tax Lien Recording

I hereby certify that the lien being **RECORDED** with this form is in accordance with all applicable provisions of the Tax Code. If this lien recordation is done as a central collector, the undersigned further represents that it is on file as a central collector with the Texas Department of Housing and Community Affairs and that such records are complete and current.

(Collector's Signature) (Date)

BLOCK 3: Signature REQUIRED for Tax Lien Release

I hereby certify that the lien being **RELEASED** with this form has been discharged and should be removed from the records of the Texas Department of Housing and Community Affairs. If this lien release is done as a central collector, the undersigned further represents that it is on file as a central collector with the Texas Department of Housing and Community Affairs and that such records are complete and current.

(Collector's Signature) (Date)

Department Use Only

**Filing Recorded
Date:**

Filing NOT Recorded because:

- No manufactured home ID#(s) provided.
- Our records indicate that this home is real property. No lien can be recorded.
- Received after the filing deadline.
- Required Information not provided.

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

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489

(800) 500-7074, (512) 475-2200 FAX (512) 475-1109

Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code

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

NOTIFICATION OF FILING STATUS AS A CENTRAL TAX COLLECTOR

Please type or print clearly.

BLOCK 1: Central Tax Collector Information

Central Collector Name: _____

Central Collector's Address: _____
(Address) (City) (State) (Zip Code)

Primary Taxing Unit ID#: _____ - _____ - _____ Central Collector's Phone #: (_____) _____

BLOCK 2: Taxing Jurisdiction Information

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

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

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

BLOCK 3: Notarized Signature Required

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

(Central Collector's Signature)

(Date)

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

(Name of Notary)

(Notary Public)

(Commission Expires)

Notary Public State of Texas

SEAL

BLOCK 2: Taxing Jurisdiction Information (Continued From Front)

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

Report Item

To: Manufactured Housing Board

Valeri Stiers Malone, Presiding Office
Carlos Amaral
Michael Bray
Kim Shambley
Frances Shannon

From: Tim Irvine

Re: Licensing under the Manufactured Housing Standards Act, TEX. OCC. CODE, Chapter 1201 (the "Act")

Date: April 24, 2006

Basic Licensing Structure

Under the Act the following types of licenses may be issued (TEX. OCC. CODE, §1201.101), and as of the date hereof the numbers in parentheses reflect the number of that type of license currently issued. The required security for each type of license is also indicated:

License Type (Number issued as of 02/28/2006)	Required Bond or Security
Manufacturer (49)	\$100,000*
Retailer <ul style="list-style-type: none">• Retailer only (114)• Retailer and Broker only (83)• Retailer, broker, and installer (654)• Retailer and Installer only (102)	\$50,000
Installer (238)	\$10,000
Broker (19)	\$50,000
Salesperson (1724)	none
Salvage Rebuilder (1)	\$30,000
* If a manufacturer does not have a plant or other facility in the state from which warranty service and repairs can be provided, an additional \$100,000 is required.	

Retailer, broker, and installer licenses are often combined, the most common being an "RBI." In order to purchase and sell new manufactured homes, one must be licensed both as a retailer and as an installer because the initial sale of a new home is not complete until it is installed.

An employee acting as an agent of a licensee is covered by the holder's license and is not required to be separately licensed (TEX. OCC. CODE, §1201.102(a)). The exception is that a salesperson must be individually licensed (TEX. OCC. CODE, §1201.101(f)).

Term

All licenses except for salesperson licenses are issued for a period of one year. Salespersons are licensed for two years.

Education Requirements

For all licenses other than a salesperson's license, attendance at a 20 hour licensing class conducted by the Manufactured Housing Division (the "Division") is required (TEX. OCC. CODE, §1201.104). For salespersons, it is required that they attend eight hours of approved continuing education within 90 days of their becoming licensed (TEX. OCC. CODE, §1201.113(e)), and they must obtain additional continuing education in order to renew their license.

Special Licensing Issues Encountered by the Division

Education Issues

The 20 hour licensing class has several issues. First and foremost, as a classroom type of activity, it is not a comprehensive form of training for an installer. Actual installation training in the field would be very useful.

Given that owners, partners, and officers of a licensee (retailer or broker) do not need to be separately licensed as salespeople, it is possible for individuals active in the operation of a licensee, such as principals of a licensed partnership or corporation, to operate without having ever had any formal training in such things as consumer protection laws. Since they are not required to be licensed as salespersons, they are not required to get continuing education either.

Given that employee agents are not required to be trained it is common that crews working on manufactured home installations utilize unskilled laborers without thorough training in manufactured home installations. This is a very serious issue because of the problems encountered that resulted from improper installation.

Surety Issues

We have encountered recently several instances where a retailer engaged in a lot of deposit taking activity and/or sold homes that were subject to unpaid taxes and then went out of business. The resulting claims on the Homeowners' Recovery Trust Fund were far in excess of what that fund could recover from the security or bond which, for a retailer, was \$50,000.

General Licensing Standards

Because the Act allows the licensing of business entities based on the training and other fulfillment of licensure requirements by their principal(s), it is possible for a licensee to lose or forfeit its license then for the principal(s) to create a new corporation which meets the qualifications for licensure. Although the Act does provide (TEX. OCC. CODE, §1201.551(a)(1)) that the director may deny a license if the applicant has knowingly violated the Act or the rules that implement the Act, the ability to deny the license where the applicant is a newly-formed corporate entity and one or more of the principals were involved in another entity that had violated the Act and/or rules is not

so clear-cut. Other similar licensing structures, such as those for real estate professionals and mortgage brokers, require the individual to be licensed and then permit them to operate through a business entity if they wish. That makes it very easy to determine when a licensee or applicant has a prior history of being involved in violations.

Special Issues About the Structure of Retail Operations

First, there are two provisions of the Act which, although they may be technically consistent, present a practical conflict.

- A salesperson may not participate in a sale of a manufactured home unless the sale is through his or her sponsoring retailer (TEX. OCC. CODE, §1201.101(f)).
- A salesperson may work for more than one retailer or broker or at more than one sales location (TEX. OCC. CODE, §1201.158)..

The practical conflict is that although a salesperson may work for multiple brokers and retailers, they may only be sponsored by a retailer and any sales in which they participate must be through that sponsoring retailer.

TEX. OCC. CODE, §1201.107(b) provides that each sales location requires a separate bond. 10 TAC §80.123(a)(2) provides that each sales location must have a separate license and bond. It might be simpler to provide that each sales location be separately bonded but that multiple locations could be under a single license (a main license for the principal location and a branch license for each additional location). We believe this would be consistent with the law and easy to administer for both the Division and for licensees.