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Texas Department of Housing and Community Affairs  
Manufactured Housing Board Meeting  
on January 16, 2003

Don Stouder, Chair

Jack Davis, Member

Clement "Pete" Moreno, Member

Joan Tavarez, Member

Cary Yates, Member

**Texas Department of Housing and Community Affairs**  
**Manufactured Housing Board Meeting**  
**January 16, 2003**

**ROLL CALL**

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

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

**MANUFACTURED HOUSING BOARD MEETING  
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
507 Sabine, Room 437, Austin, Texas 78701  
January 16, 2003      10:00 a.m.**

**AGENDA**

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

Don Stouder  
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 November 5, 2002.  | Don Stouder   |
| Item 2. | Presentation, Discussion and Consideration of Possible Approval of the State Office of Administrative Hearings (SOAH) Proposal for Decision:<br>(a) Approval of Manufactured Housing Case:<br>In the Matter of the Complaint of TDHCA vs Clint James Luksa dba Clint J. Luksa Mobile Homes, Docket Number: 332-02-3610, Complaint Nos: MHD2001001076-W and MHD2002000851-W.<br>(b) Approval of Manufactured Housing Case:<br>In the Matter of the Complaint of TDHCA vs David Michael Zarzour dba Great American Homes, Docket Number: 332-02-3842, Complaint No: MHD2002001139-DT.<br>(c) Approval of Manufactured Housing Case:<br>In the Matter of the Complaint of TDHCA vs Kirby Hawkins d/b/a Texan Manufactured Homes, Inc., Docket Number: 332-02-2989, Complaint Nos: MHD2002000835-DT & MHD2002001218-RD. | Don Stouder   |
| Item 3. | Presentation, Discussion and Consideration of Possible Approval of Rules:<br>(a) Site Preparation: Amendments to §80.54(b) & (c)<br>(b) Enforcement Grid: New §80.129<br>(c) HORF: New §80.133<br>(d) Deceptive Practices: New §80.134<br>(e) Homes Acquired on or After January 1, 2002: New §80.136<br>(f) Forms: New §80.137   | Ed Cervenka<br>Jim Hicks<br>Barbara Landreth<br>Jim Hicks<br>Joe Garcia<br>Joe Garcia<br>Tim Irvine |
| Item 4. | Presentation, Discussion and Consideration of Possible Approval of the Manufactured Housing Human Resource Policy.  | Bobbie Hill   |

**REPORT ITEM**

Review of fees.

**EXECUTIVE SESSION**

- |         |  |             |
|---------|--|-------------|
| Item 1. | Litigation and Anticipated Litigation (Potential or Threatened under Sec. 551.071 and 551.103, Texas Government Code Litigation Exception) | Don Stouder |
| Item 2. | Personnel Matters under Sec. 551.074, Texas Government Code  |             |

**PUBLIC COMMENT**

Don Stouder

**ADJOURN**

Don Stouder

*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 Nancy Stone, TDHCA, 507 Sabine, Austin, Texas 78701, 512-475-2894, [nstone@tdhca.state.tx.us](mailto:nstone@tdhca.state.tx.us).*

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

*Agenda Action Item No. 1*

**MINUTES OF THE BOARD OF DIRECTORS**

**DIVISION OF MANUFACTURED HOUSING**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

On Tuesday, November 5, 2002, at 2:00 p.m. a duly called meeting of the Board of Directors of the Division of Manufactured Housing (the "Division") was held in the fourth floor board room of the Texas Department of Housing and Community Affairs ("TDHCA"), 507 Sabine, Austin, Texas. Don Stouder presided, and Tim Irvine recorded the minutes. The following directors, constituting a quorum, were in attendance: Don Stouder, Jack Davis, Clement "Pete" Moreno, Joan Tavarez, and Cary Yates. Bobbie Hill, Executive Director of the Division, was also present.

The following members of Division staff were present: Kassu Asfaw, Sharon Choate, Joe Garcia, James Hicks, Tim Irvine, and Nancy Stone. The following members of the public were present: Jody Anderson, Mike French, and Kevin Jewell.

Chairman Stouder called the meeting to order and called the roll. He asked if the directors had had an opportunity to review the minutes of the previous meeting, and upon motion of Jack Davis, duly seconded by Cary Yates, they were approved as presented.

James Hicks presented to the Board a staff recommendation regarding an administrative actions involving Aus-Tex d/b/a/ Village Homes. The matter involved three violations of the advertising requirements of the Truth in Lending Act. A complete copy of the detailed presentation is in the Board package. The recommendation was unanimously approved upon the motion of Jack Davis, duly seconded by Pete Moreno.

Tim Irvine updated the Board on public comments on proposed 10 TAC Section 80.136 and indicated that the comment period had been extend an additional week due to requests from the public for more time to comment. He indicated that there was at least one member of the public present with testimony to provide.

Jody Anderson, Interim Executive Director of the Texas Manufactured Housing Association, provided several comments. A written summary of his comments was also provided and is in the Board package. He covered the suggestions and requests:

- Conform the language to the statute and define terms not specifically defined, such as "retail sale" and "seller."
- Exempt cash sales from the requirements of third party closings.
- Clarify whether a retailer and a seller are the same.
- Clarify if the requirements apply to sales of both new and used homes.
- Provide more time, perhaps 90 days, for the submission of title work.
- Move any provisions dealing with installations to the portion of the Rules covering installation matters.

Jack Davis asked why Mr. Anderson was opposed to third party closings on cash sales, specifically asking if it was to avoid consumer disclosures, and Mr. Anderson replied that such closings were too cumbersome.

The next meeting of the Board was set for December 11, 2002.

There being no further business to come before the Board, the meeting was adjourned at 2:25 p.m.

/s/  
\_\_\_\_\_  
Tim Irvine  
Acting Secretary

\_\_\_\_\_  
Don Stouder  
Chairman



## DIVISION OF MANUFACTURED HOUSING

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**Rick Perry**  
GOVERNOR

**Bobbie Hill**  
EXECUTIVE DIRECTOR

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

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

**FROM:** Jim R. Hicks, Resolution Supervisor

**THROUGH:** Timothy K. Irvine, Attorney

**SUBJECT:** Summary of Proposal for Decision

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Clint James Luksa dba Clint J. Luksa Mobile Homes, ("Respondent")

License type/number: RBI-2378. Effective dates June 25, 1985 through October 30, 2002.

Docket Number: 332-02-3610

Complaint Numbers: MHD2001001076-W & MHD2002000851-W

### **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 failed to comply with the initial report and Warranty Orders of the Executive Director and provide the Department with corrective action, in a timely manner regarding two (2) manufactured homes (owned by House and Schneider) as required by Sections 14(f) and 14(j) of the Act and Sections 80.131(b) and 80.132(3) of the Rules.

The staff initiated the following administrative actions against Respondent.

After proper notice, an administrative hearing was held on August 28, 2002. 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 October 25, 2002 recommends that Respondent's license be revoked and that Respondent be assessed an administrative penalty of Four Thousand Dollars (\$4,000.00).

## **Recommendation**

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

Respondent be assessed an administrative penalty of Four Thousand Dollars (\$4,000.00).

Additionally, please note that the attached Final Order is in two parts and contains two separate orders. The first part is the order of revocation signed by the Executive Director on October 30, 2002. The Executive Director is authorized to order license sanctions-reprimands, suspensions, and revocations – by TEX GOV'T CODE ANN § 2306.604(a). The second part of the attached order is the Board's order to pay an administrative penalty, which is authorized by TEX GOV'T CODE ANN § 2306.604(b).

**DOCKET NO. 332-02-3610**  
**COMPLAINT NO. MHD2001001076-W & MHD2002000851-W**

THE MANUFACTURED HOUSING	§	BEFORE THE
	§	
DIVISION OF THE TEXAS	§	GOVERNING BOARD OF THE
	§	
DEPARTMENT OF HOUSING AND	§	MANUFACTURED HOUSING DIVISION
	§	
COMMUNITY AFFAIRS	§	OF THE TEXAS DEPARTMENT OF
	§	
VS. CLINT J. LUKSA DBA CLINT J. LUKSA	§	HOUSING AND COMMUNITY AFFAIRS
MOBILE HOMES		

**FINAL ORDER**

**I. PREAMBLE**

**CAME ON TO BE CONSIDERED**, the matter of the enforcement action identified as MHD2001001076-W & MHD2002000851-W, *In the Matter of the Complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Clint J. Luksa dba Clint J. Luksa Mobile Homes*, pursuant to the Texas Manufactured Housing Standards ACT, TEX. REV. CIV. STAT. ANN. art. 5221f (“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 be assessed an administrative penalty of Four Thousand Dollars (\$4,000.00) for violations of the Act and Rules as detailed in the Proposal for Decision;
2. Respondent shall pay the penalty to the Texas Department of Housing and Community Affairs within thirty (30) days of the date of this FINAL ORDER. The penalty payment shall

Page 2  
Final Order  
In the Matter of Clint J. Luksa Mobile Homes  
Docket No. 332-02-3610  
Complaint No. MHD2001001076-W & MHD2002000851-W

be mailed to Texas Department of Housing and Community Affairs, PO Box 12489, Austin, TX 78711-2489;

3. **In the event the final decision is appealed by the Respondent, the full cost of the preparation of the transcript and all administrative costs authorized by Ch. 2001, are hereby assessed against the Respondent; and**
4. The determination of the Texas Department of Housing and Community Affairs in the above-captioned matter is approved. The Respondent **SHALL CEASE AND DESIST** from violating the Act and Rules of the Texas Department of Housing and Community Affairs.

SIGNED AND ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

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Don Stouder, 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 (7001 2510 0007 6864 2836), return receipt requested, to Clint J. Luksa dba Clint J. Luksa Mobile Homes, St. Highway 21 & FM 696, Caldwell, TX 77836 and by U.S. certified mail (7001 2510 0007 6864 2829), return receipt requested, to Clint J. Luksa dba Clint J. Luksa Mobile Homes, P.O. Box 898, Caldwell, TX 77836 on this the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_/s/\_\_\_\_\_  
Joshua Alexander, Administrative Technician

# State Office of Administrative Hearings



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

October 25, 2002

Ms. Edwina Carrington  
Executive Director  
Texas Department of Housing and Community Affairs  
507 Sabine, Suite 400  
Austin, Texas 78701

**HAND DELIVERY**

**RE: Docket No. 332-02-3610; Texas Department of Housing and Community Affairs  
vs. Clint James Luksa dba Clint James Luksa Mobile Homes**

Dear Ms. Carrington:

Enclosed please find the Proposal for Decision in the above-referenced cause for the consideration of the Texas Department of Housing and Community Affairs. Copies of the Proposal are being sent to Jim Hicks and Nancy Stone, Dispute Resolution Managers for the Texas Department of Housing and Community Affairs, and to Clint James Luksa dba Clint James Luksa Mobile Homes, Respondent. For reasons discussed in the proposal, the Administrative Law Judge finds that Respondent's RBI license should be revoked and an administrative penalty of \$5,000 should be assessed.

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

Sincerely,

/s/

Gary W. Elkins  
Administrative Law Judge

GWE/sa  
Enclosure  
xc:

Rommel Corro, Docket Clerk, State Office of Administrative Hearings - **HAND DELIVERY**  
Jim Hicks, Texas Department of Housing and Community Affairs; 507 Sabine, Suite 400, Austin, Texas 78701  
Nancy Stone, Texas Department of Housing and Community Affairs, 507 Sabine, Suite 400, Austin, Texas 78701

Post Office Box 13025     ◆  
(512) 475-4993

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

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



### III. Procedural History

The hearing convened and closed on August 28, 2002, before ALJ Gary Elkins at the Hearings Facility of the State Office of Administrative Hearings, 300 West 15th Street, Austin, Texas. Resolution Supervisor Jim Hicks and Resolution Coordinator Nancy Stone represented Staff. Respondent did not appear and was unrepresented at the hearing. After introducing exhibits related to notice, jurisdiction, and the substantive allegations, Staff moved for a default under 1 TAC § 155.55. Based on the 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 §§ 14(f) and 14(j) of the Act and 10 TEX. ADMIN. CODE (TAC) §§ 80.131(b), and 80.132(3). 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 an administrative penalty of \$4,000 against Respondent for the four violations. Staff cited § 17(a) as authority for assessing an administrative penalty of up to \$4,000 per violation. However, Section 17(a) of the Act is a criminal provision inapplicable to this administrative enforcement case:

**A person, individual, or director, officer, or agent of a corporation who knowingly and willfully violates a provision of this Act or any rule, regulation, or administrative order of the department in a manner that threatens the health or safety of any purchaser or consumer commits a Class A misdemeanor and on conviction shall be fined not more than \$4,000 or shall be confined in the county jail not longer than one year or both. (Emphasis added.)**

Additionally, the ALJ recommends the revocation of Respondent's RBI license pursuant to §§ 7(j) of the Act and 10 TAC §80.127.

### V. Findings of Fact

1. Clint James Luksa, d/b/a Clint James Luksa Mobile Homes (Respondent) holds License Number RBI-2378, effective June 25, 1985, through June 25, 2003, issued by the Texas Department of Housing and Community Affairs (TDHCA).
2. On July 15, 2002, TDHCA Staff sent the original notice of an administrative hearing to Respondent at his last known address of P.O. Box 898, Caldwell, Texas 77836, 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 Wednesday, August 28, 2002, at the State Office of Administrative Hearings, 300 West 15th Street, 4th Floor, Austin, Texas. The notice informed Respondent of Staff's 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).
4. TDHCA later sought to go forward with a second case against Respondent and amended its original notice. A second, amended notice was sent on July 23, 2002 by certified mail, return receipt requested, and by regular mail to Respondent's last known address, P.O. Box 898, Caldwell, Texas 77836.
  5. The amended notice of hearing contained the same information as the original, except it added an additional violation of the Texas Manufactured Housing Standards Act and the Department's rules.
  6. The scheduled hearing convened on August 28, 2002. 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.
  8. Respondent did not submit the proper written warranty within a reasonable period of time on homes owned by Beverly Newman and Stanley Schneider.
  9. Respondent did not file completed work orders in a timely manner or any other documentation to establish the completion of warranty service for the homes of Beverly Newman House and Stanley Schneider.

## **VI. Conclusions of Law**

- 1) TDHCA has jurisdiction over this matter pursuant to the Texas Manufactured Housing Standards Act (the Act), TEX. REV. CIV. STAT. ANN. art. 5221f, and has authority to discipline and penalize Respondent pursuant to § 7(j) 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 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.





## DIVISION OF MANUFACTURED HOUSING

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**Rick Perry**  
GOVERNOR

**Bobbie Hill**  
EXECUTIVE DIRECTOR

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

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

**FROM:** Jim R. Hicks, Resolution Supervisor

**THROUGH:** Timothy K. Irvine, Attorney

**SUBJECT:** Summary of Proposal for Decision

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David Michael Zarzour dba Great American Homes, (“Respondent”)

**License type/number: RBI-33294. Effective dates December 14, 1996 through August 7, 2002.**

Docket Number: 332-02-3842

Complaint Number: MHD2002001139-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 Rules:

1. Respondent sold a new manufactured home without the appropriate, timely transfer of a good and marketable title in violation of Sections 7(j)(3) and 19(c) of the Act.
2. Respondent also sold a home without providing the consumer with a manufacturer’s warranty and the warranties for all appliances and equipment given by the manufacturers of the appliances and equipment included with or installed in the home. This is a deceptive trade practice in violation of Sections 7(j)(5) and 18(b) of the Act.
3. Respondent also sold a manufactured home without delivering the Formaldehyde Health Notice to consumer prior to the execution of any mutually binding sales agreement and failed to have consumer sign the Formaldehyde Health Notice or give

a copy of the signed notice to consumer, a violation of Section 20(a) of the Act and Section 80.108(b)(1) of the Rules.

4. Respondent also violated Section 80.64(d) of the Rules by not maintaining in the sales files a record of the name and license number of the air conditioning contractor which installed the air conditioning in a manufactured home.
5. Respondent misrepresented to consumer that all items noted in the “Manufactured Home Cash Sale Contract and Deposit Agreement” would be provided to the consumer in violation of Section 7(j)(2) of the Act.
6. Respondent also violated Section 7(j)(6) of the Act and Sections 80.119(f)(1) of the Rules by not submitting the Form T/Installation Report for a manufactured home.

The staff initiated the following administrative actions against Respondent.

After proper notice, an administrative hearing was held on September 5, 2002. 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 October 25, 2002 recommends that Respondent be assessed an administrative penalty of Six Thousand Dollars (\$6,000.00).

### **Recommendation**

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

Respondent be assessed an administrative penalty of Six Thousand Dollars (\$6,000.00) by the Board.

**DOCKET NO. 332-02-3842**  
**COMPLAINT NO. MHD2002001139-DT**

THE MANUFACTURED HOUSING	§	BEFORE THE
	§	
DIVISION OF THE TEXAS	§	GOVERNING BOARD OF THE
	§	
DEPARTMENT OF HOUSING AND	§	MANUFACTURED HOUSING DIVISION
	§	
COMMUNITY AFFAIRS	§	OF THE TEXAS DEPARTMENT OF
	§	
Vs. DAVID MICHAEL ZARZOUR DBA	§	HOUSING AND COMMUNITY AFFAIRS
	§	
GREAT AMERICAN HOMES		

**FINAL ORDER**

**I. PREAMBLE**

**CAME ON TO BE CONSIDERED**, the matter of the enforcement action identified as MHD2002001139-DT, *In the Matter of the Complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. David Michael Zarzour dba Great American Homes*, pursuant to the Texas Manufactured Housing Standards ACT, TEX. REV. CIV. STAT. ANN. art. 5221f (“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 be assessed an administrative penalty of \$6,000.00 for violations of the Act and Rules as detailed in the Proposal for Decision;

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Final Order

In the Matter of David Michael Zarzour dba Great American Homes

Docket No. 332-02-3842

Complaint No. MHD2002001139-DT

2. Respondent shall pay the penalty to the Texas Department of Housing and Community Affairs within thirty (30) days of the date of this FINAL ORDER. The penalty payment shall be mailed to Texas Department of Housing and Community Affairs, PO Box 12489, Austin, TX 78711-2489;
3. **In the event the final decision is appealed by the Respondent, the full cost of the preparation of the transcript and all administrative costs authorized by Ch. 2001, are hereby assessed against the Respondent; and**
4. The determination of the Texas Department of Housing and Community Affairs in the above-captioned matter is approved. The Respondent **SHALL CEASE AND DESIST** from violating the Act and Rules of the Texas Department of Housing and Community Affairs.

SIGNED AND ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

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Don Stouder, 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 7002 0860 0001 0643 3390), return receipt requested, to David Michael Zarzour dba Great American Homes, 12770 I-45 North, Willis TX 77378 on this the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_/s/\_\_\_\_\_  
Joshua Alexander, Administrative Technician

# State Office of Administrative Hearings



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

October 25, 2002

Edwina P. Carrington  
Executive Director  
Texas Department of Housing and Community Affairs  
507 Sabine, Ste. 400  
Austin, Texas 78701

**VIA HAND DELIVERY**

**RE: Docket No. 332-02-3842; Texas Department of Housing and Community Affairs vs. David Michael Zarzour d/b/a Great American Homes**

Dear Ms. Carrington:

Enclosed please find the Proposal for Decision in the above-referenced cause for the consideration of the Texas Department of Housing and Community Affairs. A copy of the Proposal is being sent to Jim R. Hicks, Resolution Supervisor, for the Texas Department of Housing and Community Affairs, and to David Michael Zarzour, Respondent in this matter.

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

Sincerely,

/s/

Georgie B. Cunningham  
Administrative Law Judge

GBC/vg  
Enclosure

xc: Rommel Corro, Docket Clerk, State Office of Administrative Hearings - **VIA HAND DELIVERY**  
Jim R. Hicks, Resolution Supervisor, Texas Department of Housing and Community Affairs - **VIA HAND DELIVERY**  
David M. Zarzour d/b/a Great American Homes, 12770 I-45 North, Willis, TX 77378 - **VIA REGULAR MAIL**

Post Office Box 13025     ◆  
(512) 475-4993

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

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

**SOAH DOCKET NO. 332-02-3842**

<b>MANUFACTURED HOUSING DIVISION,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>TEXAS DEPARTMENT OF HOUSING</b>	§	
<b>AND COMMUNITY AFFAIRS,</b>	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>DAVID MICHAEL ZARZOUR d/b/a</b>	§	
<b>GREAT AMERICAN HOMES</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

Staff of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (TDHCA) brought this action against David Michael Zarzour d/b/a Great American Homes (Respondent) for alleged violations of the Texas Manufactured Housing Standards Act (the Act) and related rules. Despite proper notice, Respondent did not appear to contest the allegations. The Administrative Law Judge (ALJ) recommends that TDHCA assess an administrative penalty of \$6,000.

On September 5, 2002, ALJ Georgie B. Cunningham convened the hearing at the State Office of Administrative Hearings, 300 West 15th Street, Austin, Texas. Resolution Supervisor Jim R. Hicks represented Staff.<sup>1</sup> Respondent did not appear and was not represented at the hearing. After Staff established that TDHCA had sent notice properly and had jurisdiction, the hearing proceeded on a default basis. The ALJ deemed the factual allegations as true and the basis for the findings of fact. The conclusions of law are the ones cited in the notice. The ALJ closed the hearing on September 5, 2002.

**I. Findings of Fact**

1. David Michael Zarzour d/b/a Great American Homes (Respondent) held License Number RBI-33294, effective December 14, 1996, through August 7, 2002, issued by the Texas Department of Housing and Community Affairs (TDHCA).
2. On August 2, 2002, TDHCA Staff sent the original notice of an administrative hearing to Respondent at his last known address of 12770 I-45 North, Willis, Texas 77378, by regular mail and by certified mail, return receipt requested.

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<sup>1</sup> When the hearing convened, Staff withdrew its previously filed motion for a continuance and motion to withdraw the matter from the docket.

3. The hearing notice informed Respondent of the date, time and place of the hearing; the legal authority and jurisdiction for the hearing; the allegations against him, and the particular statutes and rules violated.
4. The hearing notice advised Respondent in 12-point bold-face type that failure to appear at the hearing might result in the factual allegations in the notice being admitted as true, and the relief sought in the notice being granted by default.
5. The notice sent by certified mail, return receipt requested, was returned to TDHCA unclaimed after the United States postal service made three attempts to deliver it on August 9, 15, and 23, 2002. The notice sent by regular mail was not returned by the postal service.
6. On August 16, 2002, the *Texas Register* published notice of the hearing.
7. Respondent did not appear and was not represented at the hearing on September 5, 2002.
8. TDHCA was represented by its Resolution Supervisor, who requested that a default be entered and that an administrative penalty of \$6,000 be assessed.
9. On November 6, 2001, Respondent sold a new manufactured home, HUD Label Number NTA1082104, to Bessie Christian for \$25,000 cash.
10. Respondent failed to deliver the manufactured home's title to Bessie Christian.
11. Respondent failed to provide Bessie Christian with the manufacturer's warranty for her new manufactured home.
12. Respondent failed to provide Bessie Christian with the manufacturer's warranties for all appliances and equipment included with or installed in the home.
13. Prior to having Bessie Christian execute the sales agreement to purchase the manufactured home, Respondent did not provide her a formaldehyde health notice, have her sign the notice, or provide her a copy of a signed notice.
14. Respondent sold Bessie Christian a manufactured home which included an air conditioning system.
15. Respondent did not maintain a record in its sales files of the name and license number of the air conditioning contractor scheduled to install the air conditioning system in Bessie Christian's manufactured home.
16. Respondent did not provide the air conditioning system for the manufactured home Bessie Christian purchased.

17. On March 15, 2002, Bessie Christian incurred an additional expense of \$1,490 to have air conditioning installed in her manufactured home.
18. On November 6, 2001, Respondent had Bessie Christian execute a *Manufactured Home Cash Sale Contract and Deposit Agreement* (the *Agreement*).
19. Respondent prepared the *Agreement*, which represented to Bessie Christian that the following items would be provided:
  - (a) a *Warranty Guard* extended protection policy;
  - (b) a replacement for the missing factory-installed refrigerator; and
  - (c) skirting for the manufactured home.
20. Respondent collected \$440 from Bessie Christian for a *Warranty Guard* extended protection policy for her manufactured home.
21. Respondent failed to secure the *Warranty Guard* extended protection policy or refund the \$440 to Bessie Christian.
22. Respondent failed to install the refrigerator and skirting referenced in Finding of Fact No. 19.
23. Respondent failed to submit the *Form T/Installation Report* for the manufactured home purchased by Bessie Christian.

## **II. Conclusions of Law**

1. TDHCA has jurisdiction over this matter pursuant to the Texas Manufactured Housing Standards Act (the Act), TEX. REV. CIV. STAT. ANN. art. 5221f, § 7(j) 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, a motion for default was granted

pursuant to 1 TAC § 155.55, and the factual allegations contained in the Notice of Hearing were deemed admitted.

5. Based on Finding of Fact Nos. 8 and 9, Respondent violated §§ 7(j) (3) and 19(c) of the Act and 10 TAC § 80.204.
6. Based on Finding of Fact Nos. 10 and 11, Respondent violated §§ 7(j)(5), 14(d), and 18(b) of the Act.
7. Based on Finding of Fact No. 12, Respondent violated § 20(a) of the Act and 10 TAC § 80.180(b)(1).
8. Based on Finding of Fact Nos. 13 - 16, Respondent violated 10 TAC § 80.64(d).
9. Based on Finding of Fact Nos. 17 - 22, Respondent violated § 7(j)(2) of the Act.
10. Based on Finding of Fact No. 23, Respondent violated § 7(j)(6) of the Act and 10 TAC § 80.119(f)(1).
11. Based on the foregoing Findings of Fact and Conclusions of Law and pursuant to TEX. GOV'T CODE ANN. § 2306.6023(b) and 10 TAC §§ 80.127(a)(4), TDHCA should assess an administrative penalty of \$6,000 against Respondent.

**SIGNED this 25<sup>th</sup> day of October, 2002**

/s/  
**GEORGIE B. CUNNINGHAM**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**



## DIVISION OF MANUFACTURED HOUSING

---

**Rick Perry**  
GOVERNOR

**Bobbie Hill**  
EXECUTIVE DIRECTOR

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

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

**FROM:** Jim R. Hicks, Resolution Supervisor

**THROUGH:** Timothy K. Irvine, Attorney

**SUBJECT:** Summary of Proposal for Decision

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Texan Manufactured Homes, Inc. ("Respondent")

**License type/number: RBI-34860. Effective dates June 25, 2001 through June 7, 2002.**

Docket Number: 332-02-2989

Complaint Number: MHD2002000835-DT & MHD2002001218-RD

### **Background**

It was found and determined by the staff of the Manufactured Housing Division that Respondent had committed the following violations of the Act and the Rules:

1. Respondent sold a used manufactured home without the appropriate, timely transfer of a good and marketable title in violation of Section 8(d) of the Act and also required Section 7(j)(3) of the Act.
2. Respondent also sold the aforementioned manufactured home without providing a written warranty that the manufactured home was habitable a violation of Section 8(b) of the Act.
3. Respondent also sold the aforementioned manufactured home without giving the homeowner a written warranty that the installation of the home was done in accordance with all standards, rules, regulations, administrative orders, and requirements of the Department, a violation of Section 14(m) of the Act and also required Section 7(j)(5) of the Act.

4. Respondent also sold the aforementioned manufactured home without delivering the Formaldehyde Health Notice to consumer prior to the execution of any mutually binding sales agreement and failed to have consumer sign the Formaldehyde Health Notice or give a copy of the signed notice to consumer, a violation of Section 20(a) of the Act and Sections 80.108(b) and 80.180(b)(1) of the Rules.
5. Respondent also sold the aforementioned manufactured home from a location where he was not licensed or bonded to sell from and the location was not contiguous to, or located within 300 feet of a bonded location owned or controlled by Respondent, a violation of Sections 7(b) and 13(e) of the Act and Section 80.123(b) of the Rules.
6. Respondent also sold the aforementioned manufactured home without retaining and maintaining in the retailer's sales files, for a period of not less than six (6) years from the date of sale, verification that the consumer received the Formaldehyde Health Notice, the Wind Zone Notice, the Site Preparation Notice, verification that the consumer was advised of the two (2) year limitation of notice for filing a claim with the Department, verification that the consumer received the written 60-day habitability warranty, or verification that the consumer received the retailer's installation warranty, a violation of Section 80.121(a) of the Rules.
7. Respondent also violated Sections 17.46(b)(1), (5), (12), (14), and (23) of the Business and Commerce Code by misrepresenting to consumer of the aforementioned manufactured home that a "Manufactured Home Cash Sale Contract & Deposit Agreement," prepared by Respondent constituted a legitimate sales agreement between the parties. Respondent violated Section 17.46(b)(14) of the Business and Commerce Code by misrepresenting the authority of a salesman, representative, or agent to negotiate the final terms of a consumer transaction for a home the Respondent did not possess or own at the time of sale. Respondent also violated Section 17.46(b)(23) of the Business and Commerce Code, by failing to disclose to the consumer that until such time as legal title and physical possession of the home had passed to Respondent, it was prohibited by law to proceed with the sale. The 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.

The staff initiated the following administrative actions against Respondent.

After proper notice, an administrative hearing was held on September 18, 2002. 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 October 30, 2002, recommends that Respondent be assessed an administrative penalty of Twenty Thousand Dollars (\$20,000.00).

**Recommendation**

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

Respondent be assessed an administrative penalty of Twenty Thousand Dollars (\$20,000.00).

**DOCKET NO. 332-02-2989**  
**COMPLAINT NO. MHD2002000835-DT and MHD2002001218-RD**

THE MANUFACTURED HOUSING DIVISION	§	BEFORE THE
	§	
OF THE TEXAS	§	GOVERNING BOARD OF THE
	§	
DEPARTMENT OF HOUSING AND	§	MANUFACTURED HOUSING DIVISION
	§	
COMMUNITY AFFAIRS	§	OF THE TEXAS DEPARTMENT OF
	§	
Vs. TEXAN MANUFACTURED HOMES, INC.	§	HOUSING AND COMMUNITY AFFAIRS

**FINAL ORDER**

**I. PREAMBLE**

**CAME ON TO BE CONSIDERED**, the matter of the enforcement action identified as MHD2002000835-DT and MHD2002001218-RD, *In the Matter of the Complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Texan Manufactured Homes, Inc.*, pursuant to the Texas Manufactured Housing Standards ACT, TEX. REV. CIV. STAT. ANN. art. 5221f (“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 be assessed an administrative penalty of \$10,000.00 for violations of the Act and Rules as detailed in the Proposal for Decision;
2. Respondent shall pay the penalty to the Texas Department of Housing and Community Affairs within thirty (30) days of the date of this FINAL ORDER. The penalty payment shall

Page 2  
Final Order  
In the Matter of Texan Manufactured Homes  
Docket No. 332-02-2989  
Complaint No. MHD2002000835-DT & MHD 2002001218-RD

be mailed to Texas Department of Housing and Community Affairs, PO Box 12489, Austin, TX 78711-2489;

3. **In the event the final decision is appealed by the Respondent, the full cost of the preparation of the transcript and all administrative costs authorized by Ch. 2001, are hereby assessed against the Respondent; and**
4. The determination of the Texas Department of Housing and Community Affairs in the above-captioned matter is approved. The Respondent **SHALL CEASE AND DESIST** from violating the Act and Rules of the Texas Department of Housing and Community Affairs.

SIGNED AND ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Don Stouder, 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 7002 0860 0001 0643 3413), return receipt requested, to Texan Manufactured Homes, Inc., 4913 I-35 South, Georgetown, TX 78626 on this the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
/s/  
Joshua Alexander, Administrative Technician

# State Office of Administrative Hearings



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

October 30, 2002

Ms. Edwina Carrington  
Executive Director  
Texas Department of Housing and Community Affairs  
507 Sabine  
Austin, Texas 78701

**HAND DELIVERY**

**RE: Docket No. 332-02-2989; Texas Department of Housing and Community Affairs  
vs. Kirby Hawkins d/b/a Texan Manufactured Homes, Inc.**

Dear Ms. Carrington:

Enclosed please find the Proposal for Decision(s) in the above-referenced cause for the consideration of the Texas Department of Housing and Community Affairs. Copies of the Proposal are being sent to Jim Hicks, Resolution Supervisor for the Texas Department of Housing and Community Affairs, and to Kirby Hawkins d/b/a Texan Manufactured Homes, Inc., Respondent. For reasons discussed in the proposal, the Administrative Law Judge concurs with Staff's recommendation that the Texas Department of Housing and Community Affairs, (Department) should assess an administrative penalty of \$2,000.

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

Sincerely,

/s/

Stephen J. Pacey  
Administrative Law Judge

SJP/.tl  
Enclosure  
xc:

Rommel Corro, Docket Clerk, State Office of Administrative Hearings - **HAND DELIVERY**  
Jim Hicks, Resolution Supervisor, Texas Department of Housing and Community Affairs - **HAND DELIVERY**  
Kirby Hawkins, c/o Texan Manufactured Homes, Inc. 4913 IH-35 South, Georgetown, Texas 78626- **VIA REGULAR MAIL**

Post Office Box 13025     ◆  
(512) 475-4993

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

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

**SOAH DOCKET NO. 332-02-2989**

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

**PROPOSAL FOR DECISION**

**I. Introduction**

The Staff of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Staff) brought this action against Texan Manufactured Homes, Inc. (Respondent) for alleged violations of the Texas Manufactured Housing Standards Act (Act) and the Business and Commerce Code. The allegations include failure to deliver title, failure to give proper warranties, failure to deliver a Formaldehyde Health Notice, unlicensed sale of a manufactured home, and misrepresenting the right to sell. Despite proper notice, Respondent did not appear to contest the allegations. Based on Respondent’s failure to appear, the Administrative Law Judge granted Staff’s motion for default relief under 1 TEX. ADMIN. CODE (TAC) § 155.55, and Staff’s allegations were deemed admitted by Respondent. Based on the admissions, the Administrative Law Judge (ALJ) finds that an administrative penalty of \$20,000 should be assessed.

**II. Notice and Jurisdiction**

The Texas Department of Housing and Community Affairs has jurisdiction over this matter pursuant to § 7 of the Texas Manufactured Housing Standards Act (Act), TEX. REV. CIV. STAT. ANN. art. 5221f, 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 on September 18, 2002 before Administrative Law Judge (ALJ) Stephen Pacey at the Hearings Facility of the State Office of Administrative Hearings, 300 West 15th Street, Austin, Texas. Resolution Supervisor Jim Hicks represented staff. Respondent did not appear at the hearing. After introducing exhibits related to notice, jurisdiction, substantive allegations, and testimony as to the appropriate penalties, Staff moved for a default under 1 TAC § 155.55. Based on the Respondent's failure to appear, the ALJ deemed the factual allegations admitted by Respondent. The hearing concluded and the record was closed on the same date.

### **IV. Recommendation**

Based on the deemed admissions, the ALJ concludes that Respondent violated the Texas Manufactured Housing Standards Act (Act), TEX. REV. CIV. STAT. ANN. art. 5221f §§ 7(b) and (j)(3); 8(b) and (d); 13(e); 14(m); 18(b); and 20(a); 10 TAC §§ 80.121(a), 80.123(b), and 80.180(b); and the Business and Commerce Code, TEX. BUS. & COM. CODE ANN. §§ 17.46(b)(1), (5), (12), (14), and (23). The ALJ concludes, based on the criteria in TEX. GOV'T CODE ANN. § 2306.6023, § 17(b) of the Act, and § 80.127 of the Rules, that Respondent should be fined \$20,000.

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

1. Texan Manufactured Homes, Inc. (Respondent), Kirby Hawkins, President, held License Number RBI-34860, effective June 25, 2001, through June 7, 2002, issued by the Texas Department of Housing and Community Affairs (Staff, TDHCA).
2. The bond for License Number RBI-34860 was canceled on June 7, 2002.
3. On August 21, 2002, Staff sent the original notice of an administrative hearing to Respondent at its last known address of 4913 I-35 South, Georgetown, Texas 78626, by regular mail and certified mail, return receipt requested.
4. At the hearing, Staff presented evidence, in the form of a computer printout from the United States Postal Service web site, that notice had been served on Respondent. After delivery was attempted at 2:25 p.m. on August 26, 2002, in Georgetown, Texas, Respondent was left a notice.
5. The original notice of hearing informed Respondent that the hearing would begin at 1:00 p.m. on Wednesday, September 18, 2002, at the State Office of Administrative Hearings, 300 West 15th Street, 4th Floor, Austin, Texas. The notice informed Respondent of Staff's intention to take action against him, the legal authority and jurisdiction under which the hearing would be held, the specific language of the rules allegedly violated. The notice also

- included the default warning language stated in 1 TEX. ADMIN. CODE (TAC) § 155.55(c).
6. The scheduled hearing convened on September 18, 2002. Resolution Supervisor Jim Hicks represented Staff. Respondent did not appear.
  7. Jerry Jensen, Senior Investigator for TDHCA's Manufactured Housing Division, testified at the hearing concerning the amount and the allocation of the administrative penalty.
  8. Due to Respondent's failure to appear, Staff moved for a default judgment under 1 TEX. ADMIN. CODE § 155.55. The ALJ granted Staff's request.
  9. Respondent sold a used manufactured home to Juanita Pedraza, HUD Label Humber NTA0522586/7, on or about October 10, 2001, without the appropriate, timely transfer of a good and marketable title.
  10. Respondent sold a used manufactured home to Juanita Pedraza, on or about October 10, 2001, without giving a written warranty that the home was habitable.
  11. Respondent sold a used manufactured home to Juanita Pedraza, on or about October 10, 2001, without giving a written warranty that the installation of the home was done in accordance with all standards, rules, regulations, administrative orders, and requirements of TDHCA.
  12. Respondent failed to deliver the Formaldehyde Health Notice to consumer Juanita Pedraza, on or about October 10, 2001, prior to the execution of any mutually binding sales agreement. Respondent also failed to have Mrs. Pedraza sign the Formaldehyde Health Notice and give her a signed copy.
  13. Respondent showed Juanita Pedraza the home at 14703 Rhone St., Del Calle, Texas 78724, and offered it for sale at the site. As of October 10, 2001, Respondent was only authorized to sell manufactured homes from their business location at 17500 South I-35, Buda, Texas 78610. Respondent did not have the authority to show the home because the location of the home on Rhone Street was not licensed or bonded to Respondent at the time of sale and is not contiguous to, or located within 300 feet of a bonded location owned or controlled by Respondent.
  14. Respondent sold a used manufactured home to Juanita Pedraza, on or about October 10, 2001, and did not maintain as part of the sales record, verification that the purchaser received the Formaldehyde Health Notice, the Wind Zone Notice, or the Site Preparation Notice. Furthermore, Respondent did not maintain verification that the purchaser was advised of the two-year limitation of notice for filing a claim with the department; verification that the purchaser received the written 60-day habitability warranty; or verification that the purchaser received the retailer's installation warranty since the retailer contracted for the installation as part of the sales agreement.

15. In the sale of the used manufactured home to Juanita Pedraza, on or about October 10, 2001, Respondent “misrepresent[ed] the authority of a salesman, representative, or agent to negotiate the final terms of a consumer transaction” for a home Respondent did not possess or own at the time of sale. TEX. BUS. & COM. CODE ANN. § 17.46(b)(14).

## **VI. Conclusions of Law**

1. The Texas Department of Housing and Community Affairs (Staff, TDHCA) has jurisdiction over this matter pursuant to the Texas Manufactured Housing Standards Act (Act), TEX. REV. CIV. STAT. ANN. art. 5221f, and has authority to discipline and penalize Respondent pursuant to § 7(j) 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. chs. 2001 and 2306; 1 TEX. ADMIN. CODE § 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, a motion for default judgment was granted against Respondent pursuant to 1 TAC § 155.55, and the factual allegations contained in the Notice of Hearing were deemed admitted.
5. Based on Finding of Fact No. 9, Respondent violated §§ 7(j)(3) and 8(d) of the Act.
6. Based on Finding of Fact No. 10, Respondent violated § 8(b) of the Act.
7. Based on Finding of Fact No. 11, Respondent violated §§ 7(j)(5), 14(m), and 18(b) of the Act.
8. Based on Finding of Fact No. 12, Respondent violated § 20(a) of the Act and the Texas Manufactured Housing Rules (Rules), 10 TAC § 80.180(b).
9. Based on Finding of Fact No. 13, Respondent violated §§ 7(b) and 13(e) of the Act and § 80.123(b) of the Rules.
10. Based on Finding of Fact No. 14, Respondent violated § 80.121(a) of the Rules.
11. Based on Finding of Fact No. 15, Respondent violated TEX. BUS. & COM. CODE ANN. §§

17.46(b)(1), (5), (12), (14), and (23).

12. Based on Finding of Fact No. 7, § 17(b) of the Act, and the criteria in TEX. GOV'T CODE ANN. § 2306.6023, an administrative penalty of \$20,000 should be assessed against Respondent.

**SIGNED this 30<sup>th</sup> day of October 2002.**

*/s/*

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**STEPHEN PACEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

*Agenda Action Item No. 3(a)*

**Proposed Amendments to §80.54(b) & (c)**

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

- (b) Site Preparation Responsibilities and Requirements:
  - (1) The purchaser of a manufactured home, new or used, is responsible for the proper preparation of the site where the manufactured home will be installed except as set forth below:
    - (A) In the case of a manufactured home that is to be installed in a manufactured home rental community (as defined in Local Government Code Section 232.007), the purchaser may not have the ability to control the preparation of the site. Therefore, the purchaser should confirm with the person who owns, leases, or manages the rental community that the site has been properly prepared as required by Property Code, Section 94.151.
    - (B) When a manufactured home is sold already installed it is not possible for the purchaser to prepare the site. Therefore, it is the responsibility of seller, if the seller is a licensed retailer, to ensure that the site has been properly prepared.
  - (2) Whenever a licensed retailer intends to sell a manufactured home, regardless of where it is located or is to be located, the retailer is required to give the proposed purchaser the Site Preparation Notice, for signature by the consumer, in the form set forth below PRIOR to the execution of any binding sales agreement.
  - (3) Whenever a licensed installer proposes to move a used manufactured home, the installer is required to give the proposed purchaser the Site Preparation Notice, for signature by the consumer, in the form set forth below PRIOR to entering into a binding agreement to move that home.
- (c) Notice: The site preparation notice to be given to the consumer shall be as follows:

## SITE PREPARATION NOTICE

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

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

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

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

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

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

\_\_\_\_\_  
purchaser/homeowner signature

\_\_\_\_\_  
purchaser/homeowner signature

\_\_\_\_\_  
type or print name

\_\_\_\_\_  
type or print name

\_\_\_\_\_  
date

\_\_\_\_\_  
date

*Agenda Action Item No. 3(b)*

**Proposed New §80.129**

The proposed §80.129 will set forth guidelines for the Division of Manufactured Housing, Texas Department of Housing and Community Affairs (the “Department”) to use in determining the appropriate administrative penalty(ies) to pursue when a licensee is believed to have violated the Texas Manufactured Housing Standards Act (the “Act”), the rules (the “Rules”) of the Department that implement the Act, or any order issued under the Act or the Rules.

Bobbie Hill, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that these sections as proposed are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections.

Ms. Hill also has determined that for each year of the first five years the sections as proposed are in effect the public benefit as a result of enforcing the sections will be: clarification of rules that will increase compliance; improved quality of home installation; and improved gathering of data to facilitate the administration of the Act.

The proposed new §80.129 is expected to have no material economic costs to persons/businesses who are required to comply with these sections as proposed.

Comments may be submitted to Ms. Bobbie Hill, 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 at the following address [bhill@tdhca.state.tx.us](mailto:bhill@tdhca.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The new section is proposed under the Texas Manufactured Housing Standards Act, Texas Civil Statutes, Article 5221f, §9, 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 proposed new section and amendments 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 proposed new rule.

***New §80.129. Determinations regarding the pursuit of Administrative Penalties and Enforcement Actions.***

When the Department has reason to believe that a violation of the Act, these Rules, or an administrative order has occurred, the Department shall determine what, if any,

administrative action or actions may be appropriate to see that the purposes of the Act are carried out. In that regard, in order to promote the uniform application of the Act, the Department will follow these guidelines. The only time that the Department will deviate from these guidelines is when with either the Executive Director or the Board determines, for documented *bona fide* reasons, that some other course of action, consistent with the Act and any other applicable legal requirements, would be more appropriate.

As used herein, “dangerous conditions” means any condition which, if present, would constitute an imminent threat to health or safety, and “loss” means actual financial loss or damage, not including exemplary, punitive, special, or consequential damages. “Significant” means significant in relationship to the financial resources of the person who incurs a loss. “Promptly” means within the time prescribed by the Act, these Rules, and any administrative order (including any properly granted extension) or, in the case of a matter that constitutes an imminent threat to health or safety, as quickly as reasonably possible.

Any exceptionally flagrant, willful violation that constitutes an imminent threat to health or safety may be a basis for pursuit of maximum statutory penalties and/or suspension or revocation.

Anytime the record indicates that there is a high likelihood that a licensee’s violation is a direct result of a systemic problem, it is appropriate to request the licensee to develop a plan to prevent future occurrences. Undertaking to develop such a system is an appropriate factor to be taken into account in determining what penalty to pursue.

Any and all penalties are IN ADDITION to full compliance with the Act and Rules (*i.e.*, full, prompt corrective action, restitution, or whatever else the Act and rules would have required in the first place). Failure to provide such compliance on a timely basis, as specified in the applicable order, will be deemed to be a violation of the order and serve as a basis for pursuing additional administrative action, including the assessing of additional penalties and the pursuit of suspension or revocation of licensees.

In determining the appropriate amount of a penalty or other action, all relevant factors shall be considered, including, but not limited to: the resources of the licensee and their ability to pay fines, efforts to achieve compliance, the nature and frequency of recurring violations, and monetary impact on consumers.

<u>Nature of violation</u>	<u>Range of recommended actions</u>
1 <sup>st</sup> time – no dangerous conditions or loss to consumers – addressed promptly	1 <sup>st</sup> time violator letter
1 <sup>st</sup> time – no dangerous conditions or loss to consumers – not addressed promptly	Up to \$250 fine
1 <sup>st</sup> time – danger to consumer and/or significant loss to consumer – addressed promptly	Up to \$500 fine
1 <sup>st</sup> time – danger to consumer and/or significant loss to	\$500 - \$1,000 fine

consumer – not addressed promptly	
recurring – no dangerous conditions or loss to consumers – addressed promptly	Up to \$250 fine for 1 <sup>st</sup> recurrence; up to \$500 for 2 <sup>nd</sup> , up to \$1,000 PLUS a written plan to prevent additional violations for 3 <sup>rd</sup>
recurring – no dangerous conditions or loss to consumers – not addressed promptly	Up to \$500 fine for 1 <sup>st</sup> recurrence; up to \$1,000 for 2 <sup>nd</sup> , up to \$1,000 and/or seek suspension
recurring – danger to consumer and/or significant loss to consumer – addressed promptly	\$500 - \$1,000 for first recurrence; seek suspension (may be probated) for 2 <sup>nd</sup> recurrence; revocation for 3 <sup>rd</sup> recurrence
recurring – danger to consumer and/or significant loss to consumer – not addressed promptly	Up to \$4,000 for 1 <sup>st</sup> recurrence; seek suspension (may be(probated) for 2 <sup>nd</sup> recurrence; revocation for 3 <sup>rd</sup> recurrence
unlicensed activity – unintentional and no apparent injury or loss to consumers	up to \$5,000 per occurrence; up to \$10,000 in the aggregate
unlicensed activity – intentional and/or possible injury or loss to consumers	up to \$10,000 per occurrence; up to \$10,000 in the aggregate

*Agenda Action Item No. 3(c)*

**Proposed New §80.133**

The proposed Section 80.133 will set forth the procedural requirements for the handling of claims that are subject to reimbursement or payment from the Homeowners' Recovery Fund (the "HORF"), administered by the Division of Manufactured Housing, Texas Department of Housing and Community Affairs (the "Department"). The HORF is established under Section 13A of the Texas Manufactured Housing Standards Act (the "Act").

Bobbie Hill, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that these sections as proposed are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections.

Ms. Hill also has determined that for each year of the first five years the sections as proposed are in effect the public benefit as a result of enforcing the sections will be: clarification of rules that will increase compliance; improved quality of home installation; and improved gathering of data to facilitate the administration of the Act.

The adoption of §80.133 is expected to have no material economic costs to persons/businesses who are required to comply with these sections as proposed.

Comments may be submitted to Ms. Bobbie Hill, 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 at the following address [bhill@tdhca.state.tx.us](mailto:bhill@tdhca.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The new and amended sections are proposed under the Texas Manufactured Housing Standards Act, Texas Civil Statutes, Article 5221f, §9, 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 proposed new section and amendments 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 and proposed amendments.

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

- (a) The Homeowners' Recovery Fund (the "HORF") is established to reimburse consumers for actual unsatisfied claims against licensed manufacturers, retailers,

brokers, and installers for violations of the Standards Act, these rules, the FMHCSS and its implementing regulations, and the Texas Deceptive Trade Practices-Consumer Protection Act. Payments from the HORF are subject to limitations, as set forth in Section 13A of the Standards Act.

- (b) Documentation of a claim by a Licensee who is deemed to be a “consumer” under Section 14(k) of the Standards Act – When either a manufacturer or a retailer has their license revoked or goes out of business and the party that went out of business or had its license revoked has failed to perform required warranty work on a timely basis, the Director may direct the licensee that is still in business to perform the warranty work. The licensee so directed will be deemed to be a “consumer” under Section 14(k) of the Standards Act and entitled to be reimbursed from the HORF for the costs of performing such re-assigned warranty work.
  - (1) The Director, before authorizing any party performing re-assigned warranty work to proceed, will require that an estimate be submitted, itemizing the hourly cost of labor required, the estimated time to complete the work, the itemized costs of any material, equipment, and supplies, and such additional out-of-pocket expenses as the licensee believes it will incur. Overhead costs may be included, not to exceed 20% of the cost of labor and materials. If the required estimate is not submitted and approved prior to the commencement of re-assigned warranty work, the party performing the work may not be reimbursed for that work until the Director has been provided with evidence establishing that the amount billed was justifiable in all respects. The estimate must be on the form prescribed by the Department, properly completed and executed.
  - (2) An order by the Director authorizing re-assigned warranty work to be performed will specify that:
    - (A) the amount billed shall not exceed the actual hours required and the actual out-of-pocket expenses incurred;
    - (B) the licensee should keep complete records, subject to audit by the Department for three years;
    - (C) the re-assigned warranty work should be performed within forty (40) days;
    - (D) the required evidence that the re-assigned warranty work was performed should be supplied to the Department within ten (10) days of completion; and
    - (E) re-assigned warranty work, once completed, is subject to being re-inspected.
  - (3) An order re-assigning warranty work and designating the party responsible for the re-assigned warranty work as a “consumer” under Section 14(k) of the Standards Act becomes final if not appealed within thirty (30) days.

- (4) Failure to provide a required estimate in connection with an order to perform re-assigned warranty work, once that order has become final, may serve as grounds for an administrative action against the licensee.
  - (5) Claims by a consumer who is not a licensee and documentation of HORF claims -- when a consumer has a covered claim against a licensee and the licensee has not satisfied the claim, the Department shall take appropriate steps to make sure that the claim is proper and that all reasonable steps to satisfy the claim have been exhausted.
  - (6) The Department, working with the consumer, shall identify the specific section(s) of law or rule that gave rise to the damages.
  - (7) If the damages arose as a result of a violation Texas Deceptive Trade Practice – Consumer Protection Act, the specific violation must be adequately documented. Acceptable documentation would include a court order finding that such a violation had occurred or the establishing of confirmed facts that would specifically constitute such a violation. The specific violation must relate directly to the manufactured home or the sale transaction regarding the manufactured home. Tangentially related matters, such as deception in connection with actions as a mortgage broker or real estate broker, are generally not covered and the person responsible should be pursued in the other capacity through appropriate means.
- (c) Attorneys’ fees are subject to reimbursement from the HORF, subject to certain limitations. Before reimbursing a consumer for attorneys’ fees, the Department shall review the fee statement(s), which must indicate the specific services performed, the amount of work required, and the hourly rate(s) charged. Fees not directly relating to efforts to recover the unsatisfied claims which are subject to reimbursement from the HORF will not be reimbursed.
- (d) Notification of warranty work orders, inspections, and re-assigned warranty work
- (1) When an inspection is to be conducted, other than an initial installation inspection, such as a follow-up installation inspection or a complaint inspection, the Department shall notify each licensee that has been assigned responsibility for warranty items, provided that the licensee still holds an active license, by notifying the licensee, by regular mail to the their address of record, as on file with Department. If a party to be notified of an inspection is no longer licensed but has left a mailing address on file with the Department, such party shall be given notice of any such inspection by first class mail to that address.

- (2) When warranty work orders are issued, they will be sent to each licensee to whom responsibility has been assigned. They shall be sent to the licensee by regular mail to their address of record, as on file with Department.
- (3) If a licensee who has been assigned warranty responsibilities is no longer in business, the Department will, in addition to notifying their surety, notify them of the time and place of the inspection. Such notification to the out-of-business licensee shall be sent to them at their latest business address of record on file with the Department. Unless the out-of-business licensee advises the Department, in writing, on or before the date of the inspection or actually attends the inspection, the Department will re-assign the warranty work, if any, arising from the findings of the inspection to the retailer or manufacturer who is not out-of-business. The party to whom the re-warranty work is re-assigned shall perform the warranty work and shall be a consumer, as provided for in Section 14(k) of the Standards Act, entitled to be reimbursed from the HORF.
- (4) Notification of the surety of an out-of-business or no longer licensed licensee is given in order to afford the surety an opportunity, in accordance with Section 13A of the Standards Act, to participate in the informal dispute resolution process.
- (5) The Director shall consider the views of the surety, if any, as expressed in the informal dispute resolution process. However, the ultimate responsibility to determine how best to proceed rests with the Director, who shall make his or her decision based on a consideration of all relevant factors and the need to protect the health and safety of consumers and to carry out the purposes of the Standards Act.
- (6) PROVIDED that an out-of-business licensee has not failed to perform warranty work assigned to it on a timely basis, if the out-of-business licensee notifies the Department, in writing, prior to the inspection or actually attends the inspection and the out-of-business licensee, in the notice or at the inspection, requests that it be allowed to perform any warranty work identified in the inspection, it shall be given a reasonable time, not to exceed forty (40) days or, in the case of a situation which presents a risk of imminent danger to person or property, such shorter period as the Department may specify; and FURTHER PROVIDED, HOWEVER, that if the Director determines that allowing the no longer licensed or out of business licensee to perform such warranty work will pose a threat to the health or safety of a consumer, the Director may deny the no longer licensed or out of business licensee the opportunity and may re-assign the warranty work to the manufacturer or retailer that is still licensed and in business. If the warranty work is not performed within that timeframe and the Department provided proof of the timely and satisfactory completion of such warranty work on or

before the tenth (10<sup>th</sup>) day after it was completed, the Department shall re-assign the warranty work to the retailer or manufacturer that is not out of business.

- (7) Once a payment is made from the HORF, the Department shall file a claim under the bond of the party primarily responsible for the unsatisfied claim. In the case of re-assigned warranty work reimbursed by the HORF, the claim shall be against the bond of the party that is no longer in business or whose license has been revoked.
- (8) A surety bond issued in connection with a person or entity that is a licensee shall remain in effect with respect to that person or entity, even though the surety bond may be amended to cover one or more additional persons or entities or to cover that person operating under one or more different names or identities UNLESS the amendment to the bond specifically terminates the bond with respect to such person or entity.

*Agenda Action Item No. 3(d)*

**Proposed New §80.134**

- (a) The following practices are deemed to be deceptive or abusive practices and are prohibited, except as specifically provided for herein. This section in no way limits or affects whether practices not enumerated or addressed herein are deceptive, abusive, illegal, or the basis for a claim or cause of action.
- (1) Interim lending – To sell a manufactured home in a transaction that utilizes interim financing while an application for permanent financing is pending if the seller has any reason to believe that the purchaser will not qualify for the permanent financing; PROVIDED, however, that such a sale may be made if the seller holds in escrow, until approval of the permanent loan, all proceeds and receipts and undertakes to unwind the transaction and refund all monies paid by the consumer, save and except actual out-of-pocket expenses incurred to unaffiliated third parties for appraisals, surveys, preparation of legal documents, credit reports, and courier fees and to pay off the interim loan, together with all interest, costs, and penalties, if any.
  - (2) Price alterations – To sell a manufactured home at a price in excess of its advertised price or to offer any discount from that price based on whether the sale is for cash or financed.
  - (3) Role in credit transaction – To have a role in the financing of a manufactured home or any interest, direct or indirect, in a party providing such financing or acting as a third party settlement service provider with respect thereto unless that role is disclosed in writing to the consumer and the consumer is advised, in writing, of the right to obtain financing elsewhere without affecting the contractual terms, including price, relating to the purchase of the manufactured home.
  - (4) Making any material representation about a manufactured home and failing to evidence it in a document that the purchaser may enforce.
  - (5) Failure to submit the required forms to enable the purchaser to obtain evidence of good and marketable title within the time required by the Act.
  - (6) Failure to give §21 notice, formaldehyde notice, or any other required notice
  - (7) Misrepresenting the capacity in which a sale is made – If title to the manufactured home is in the name of any party other than the person negotiating and completing the sale transaction or the business on whose behalf he or she is acting, that fact must be disclosed, the identity of the true

owner must be disclosed, and the person acting in that capacity must be acting as a licensed broker with authority to negotiate a sale that will result in the delivery of good and marketable title.

- (8) Improper WZ or thermal zone installation – Installing a manufactured home in a wind zone or thermal zone for which it is not approved or delivering such a home to such a wind zone or thermal zone for installation by someone else.
- (9) Failure to provide a single contractual document that evidences all items to be provided in connection with the M/H and, if any such items are to be provided after the fact, specifying the date by when they will be provided and the identity of any party other than the retailer responsible for any such items.
- (10) Failure to provide detailed specifications of any item to be delivered or provided in connection with the sale of a manufactured home if the item has a retail value in excess of \$250 or, if the consumer requests it, of any value. For example, disclosing that a refrigerator is provided is insufficient. The disclosure must specify the make and model. If any item will not be “new,” this must be disclosed in writing.
- (11) Asking for or accepting any executed document that has not been completed or altering, without all parties’ signed agreement, any executed document.
- (12) Knowingly accepting or issuing any check or other instrument appearing on its face to be a bona fide payment but known not to represent good funds.
- (13) Accepting from a consumer any deposit or down payment, regardless of what it is called, without first giving the consumer a written statement setting forth:
  - (A) The amount of that deposit or down payment;
  - (B) A clear statement as to whether the deposit or down payment is refundable;
  - (C) Any requirements or limitations relating to obtaining such refund;  
AND
  - (D) Providing a written receipt identifying the name and address of the licensee taking the deposit or down payment and describing the manufactured housing transaction to which it relates.
- (14) Negotiating or offering any required refund of less than the full amount the consumer is entitled to receive by law.
- (15) Requiring a purchaser to accept delivery of a manufactured home, whether new or used, without giving them an opportunity to inspect the home to make sure that it conforms to their understanding of what their contract for purchase had specified. When the purchaser signs a document

acknowledging that the home which has been delivered is, in fact, the home that they had agreed to purchase, the sale becomes final, but this in no way affects the operation of any warranty required by law or granted contractually or affects or abridges any rights or obligations of either of the parties to the transaction.

- (16) Failing to disclose in advance, in writing, if the licensee or any person acting on their behalf is acting in any capacity as a lender, mortgage broker or loan officer, real estate broker or agent, or provider of any settlement service in connection with a loan to finance the purchase of a manufactured home.
  - (17) Failing to identify one's self as a licensee by displaying the type and license number on a business card, advertisement, or any of the following documents (list).
- (b) Other disclosures: On the sale of a used home, the retailer or broker must provide the purchaser with a disclosure advising the consumer either that they will be responsible for the installation (which will have a written warranty of not less than one year) or, if they will not be installing the home, a statement that they will not be installing the home and therefore will not be providing any warranty as to installation.

*Agenda Action Item No. 3(e)*

**Proposed Adoption of New §80.136**

When 10 TAC 80.136 was initially proposed for public comment and a hearing was held there were three comments, one in writing and two provided verbally at the public hearing. The written comment expressed concern over a number of the specific things that the section would accomplish if adopted as originally proposed. It raised issues regarding the logistical concerns in surrendering title documents within the proposed time frames, and based on those concerns a non-substantive revision has been prepared to clarify that it is the later of closing or installation that triggers the requirement to file the documents. This is to accommodate the situation where the installation occurs well after the closing, a fairly common occurrence.

In subsection (a) the second word "the" was deleted, which is a non-substantive change.

The two public comments made at the hearing were made by organizations believed to represent larger constituencies. Both the Texas Manufactured Housing Association ("TMHA") and the Consumer's Union expressed support for the rule, as proposed. However, following the hearing the TMHA received additional feedback from its membership indicating that there were additional concerns that they would like to have addressed. The TMHA made additional comments at the November 5, 2002, meeting of the Board of Directors (the "Board") of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Division") and it was announced at that meeting that the public comment period would be held open until November 11, 2002. Additional written comments were provided, and a total of 164 comments, including the three verbal comments (one by Consumer's Union and two by TMHA) were received.

The vast majority of the comments received are directed at the issue of requiring that the closing of a transaction for the acquisition for a manufactured home that would be deemed to be real property under §19A of the Texas Manufactured Housing Standards Act, Texas Revised Civil Statutes, Article 5221f (the "Act") be closed at either a title company, an attorney's office, or an insured financial institution. This was covered in §80.136(a)(1) of the proposed rule. Specific issues raised regarding this section included (1) objecting to the need to add cost, delay, and inconvenience in moving the closing to another site, (2) the high costs associated with such closings, even if the closing does not include the obtaining of any title policy, (3) the purported unwillingness of title companies to close "cash" transactions, and (4) a perception that cash transactions in general are not subject to being viewed as real property and, therefore, should not be subject to these closing requirements. In reviewing the statutory authority for the proposed rule, there does not appear to be a clear exception for cash transactions. Furthermore, there does not appear to be any basis for not treating a manufactured home as real property if it is permanently attached to real estate owned by the same person as the owner of the home, even if it is purchased for cash. While there does not appear to be any statutory basis for treating a cash transaction differently from a financed transaction, there is a concern about adopting any rule that would increase costs to consumers without obtaining any meaningful protections or other benefits, and there is a concern over

promulgating any rule that might create an “impossible” situation for a retailer if they could not find a title company willing to close cash transactions.

One commenter questioned what constituted a “closing,” arguing that if a home was sold for cash there was no “closing.” In looking for authority to support this conclusion, everything that the Division has found indicates that a closing occurs when consideration is exchanged and the ownership of the manufactured home passes to the purchaser.

After receiving these comments the Division began receiving information about situations where licensees were unable to find qualified third parties to conduct closings on cash sales, and after investigating these circumstances, the Division has found that there are, in fact, instances where title companies, financial institutions, and attorneys will not close cash sale transactions. Furthermore, in those situations where title companies have been identified that would close such transactions, the fees charged are significant but no significant services that would promote consumer protection, such as ensuring proper disclosures, providing a policy of title insurance, or providing any advice or guidance to the consumer appeared to be involved. Presumably the same level of services found in a financed transaction could be obtained, but it was viewed as probable that these would entail additional fees.

In light of the foregoing concerns and in light of comments attributed to various legislators that it was never intended that this provision apply to cash transactions, §80.136(a)(1) has been reworded to reflect what is stated in the statute.

A number of commenters objected to the proposed language of §80.136(a)(2), arguing against imposing a compliance responsibility on a party, in this case a retailer, when they are not in a position to comply, since it is a third party, such as a title company, that is in a position to surrender title documents for cancellation. It is not the intention of the Division to pursue enforcement action against retailers who take all reasonable steps to comply but have ultimate compliance thwarted by third parties who do not surrender title documents. Rather, it is the Division’s intent to be sure that retailers have a clear understanding with their third party closers wherein those third parties are instructed, in writing, as to their responsibilities. That way, if a third party, such as a title company, receives document that must be surrendered for cancellation or filing and it fails to do so, the retailer will have a basis for taking action with respect to them to ensure that compliance is achieved. Non-substantive revisions were to §80.136(a)(2).

With respect to §80.136(a)(3), a number of commenters expressed concern over the logistical problem of surrendering documents within 31 days of closing if the installation occurs substantially later. This has been revised to clarify that the transaction that gives rise to the requirement to surrender the documents is the later of the sale or the installation.

There were comments concerning §80.136(a)(4) that centered chiefly on two issues: confusion as to which requirements were applicable and a request that the rule go on to state that a foundation that met the state’s “generic” requirements for installation would satisfy the requirements for FHA Title II. The reference to FHLMC are references to the Federal Home Loan Mortgage Corporation, also known as Freddie Mac. The references to FNMA are to the Federal National Mortgage

Association, also known as Fannie Mae. FHA, the Federal Housing Administration, offers two basic group of mortgage programs known as Title I and Title II. In order to meet the requirements of §19A of the Act, a manufactured home installed as real property must meet any one of these requirements. If the purchase is financed and the lender has other requirements, they, too must be met. It is the Division's understanding that at present FNMA will accept a foundation that meets the state's "generic" installation requirements, but it is not believed appropriate to state this in a rule since FNMA, FHLMC, and FHA may change their requirements at anytime.

Several commenters voiced concern over the documentation requirements set forth in §80.136(a)(5), indicating that in a cash transaction these documents would not be present and it would entail additional expense to produce a third party report to substantiate the method of installation. The documentation listed is illustrative. The rule clearly states this. The requirement is simply that the installer maintain files to show the basis for deciding that the installation, as performed, discharged his or her legal obligations.

Several concerns over §80.136(b) were voiced. There were concerns that installers would be required to conduct title research in order to verify ownership. All that was intended was, in those instances where the documentation already obtained did not address the matter that the installer as the owner, "Do you own the real estate on which I will be installing this home or does someone else own it? If it someone else, who is the owner?" The installer would then record the homeowner's response. No independent research or additional cost would be involved. Non-substantive revisions were to §80.136(b).

Concerns were also expressed over the requirement that a secondary move and installation be handled in the same way. When an installer is installing a manufactured home it is the Division's belief that the installation should be in accordance with all applicable legal requirements. On secondary installations, unless the installer determines whether the home is to be installed as real property, that installer will not know what those requirements are. The Division believes that if a manufactured home is to be moved and re-installed as real property, the installer should verify the applicable requirements and comply with them.

One commenter noted that HB 1869, which amended the Act, applied to situations where "a sale" occurs. Based on that, the Division should not be concerned with secondary moves that do not involve sales. Section 19A(a) of the Act defines those homes that are classified and taxed as real property, and that section does not require that a sale occur. Section 19A(c) describes the installation requirements for all homes meeting the definitional requirements of §19A(a). The Division believes that the requirements of the law apply to both initial and secondary installations and that the rule is appropriate to clarify this.

One commenter objected to the requirement that when a retailer receives a home on trade-in it cannot be moved without checking and paying any real property taxes that are due. The proposed rule does not address this requirement of law. The Division does not believe that it would have any latitude to alter or suspend this requirement of law.

Several commenters expressed overall support for the rule, as proposed. One such commenter asked that the Division consider addressing by rule instances where a consumer and/or licensee takes measures to circumvent the law, such as situations where real estate is transferred out of the home buyer's name, a title to the manufactured home is obtained, and the underlying real estate is conveyed back to the homeowner, leaving a homeowner with a manufactured home that is classified and taxes as real property under §19A of the Act still in possession of a title document rather than evidencing ownership in the county deed records.

The new section is adopted under the Texas Manufactured Housing Standards Act, Texas Civil Statutes, Article 5221f, §9, 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 adopted section has 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 adopted section.

***New §80.136. Homes Acquired on or after January 1, 2002.***

- (a) When a retail sale of a manufactured home occurs and that home will be treated as real property under §19A of the Standards Act:
  - (1) The closing of that sale must occur at either a title company authorized to do business in Texas, an attorneys' office, or an office of a federally insured depository institution, regardless of whether the manufactured home or the real property on which it will be located is or will be the homestead of the purchaser.
  - (2) It is the responsibility of the seller of the home to surrender the document of title or manufacturer's certificate of origin for cancellation in accordance with §19(l) of the Standards Act. If the document of title or manufacturer's certificate of origin has been delivered to a third party, such as an inventory lender or a title company, that third party must be directed, in writing, to act as the retailer's agent and surrender such documents as required by §19(l) of the Standards Act and these rules.
  - (3) If §19(l) of the Standards Act requires a document of title or manufacturer's certificate of origin to be surrendered for cancellation, the surrender is to be effected not later than one calendar month, not to exceed thirty-one (31) days, from the later of the date of the closing of the transaction or the date of actual installation and availability for occupancy that gave rise to the requirement of surrendering for cancellation.

- (4) The installation must occur in a manner that satisfies either:
  - (A) the requirements for FHA Title I mortgage insurance;
  - (B) the requirements for FHA Title II mortgage insurance;
  - (C) the requirements of FHLMC for long term mortgages, or
  - (D) the requirements of FNMA for long term mortgages.
  
- (5) The method or manner of installation must be supported by documentation establishing the particular requirement with which it complies and the basis on which it was concluded that such particular requirement and particular department standard were met, such as a report by:
  - (A) an FHA, FNMA, or FHLMC approved inspector;
  - (B) an engineer, architect, real estate inspector, or appraiser licensed by the state of Texas; or
  - (C) an inspector employed by and inspecting for the state of Texas or a local government in Texas.
  
- (b) When a manufactured home is installed or re-installed, the licensed installer (or, in the case of a retail sale of a new home, the retailer) shall provide to the Department a statement as to whether the name of the legal owner(s) of the home is the same as the legal owner of the property on which such manufactured home is being installed.

*Agenda Action Item No. 3(f)*

**Proposed New §80.137**

The proposed §80.137 will list and provide the format for all forms which the Division of Manufactured Housing, Texas Department of Housing and Community Affairs (the “Department”) requires to be used in connection with the administration of the Texas Manufactured Housing Standards Act (the “Act”). The Department will, from time to time, make available on its website other forms which are suggested or “acceptable” sample forms that do not require the use of a specific format, and those forms are not included in this proposed regulation.

Section 80.137(a) lists those forms that are required forms to be used for the purposes described therein, all in accordance with the Standards Act. The name of each form is set forth at the top of the form and describes its use. The Department may, from time to time, assign form numbers and group the forms on its website for each of use.

Section 80.137(b) provides for the approval of alternative forms.

Bobbie Hill, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that these sections as proposed are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections.

Ms. Hill also has determined that for each year of the first five years the sections as proposed are in effect the public benefit as a result of enforcing the sections will be: clarification of rules that will increase compliance; improved quality of home installation; and improved gathering of data to facilitate the administration of the Act.

The adoption of §80.137 is expected to have no material economic costs to persons/businesses who are required to comply with these sections as proposed.

Comments may be submitted to Ms. Bobbie Hill, 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 at the following address [bhill@tdhca.state.tx.us](mailto:bhill@tdhca.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The new and amended sections are proposed under the Texas Manufactured Housing Standards Act, Texas Civil Statutes, Article 5221f, §9, 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 proposed new section and amendments 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 and proposed amendments.

**§80.137. Required Forms.**

- (a) The following forms are required by the Department to be used for the purposes described therein, as set forth in the Standards Act:
  - (1) Notice of Installation Affidavit/Form T;
  - (2) Down Payment Verification Affidavit;
  - (3) Covenant Disclosure Notice; and
  - (4) Estimate for Reassigned Warranty Work.
  
- (b) Any alternative form or any modification of any of the foregoing forms may be accepted by the Department if the Director determines that all information necessary to the administration of the Act has been provided and that in all other respects the alternative form or modified form is acceptable AND the director has evidenced such approval in writing prior to the acceptance of any such alternative or modified form. The director may require a legal opinion from counsel for the person seeking to use an alternative or modified form that it complies with the Standards Act and addressing such other legal issues as the director may determine. The director may place limitations or conditions on the approval of any alternative or modified form.

**NOTICE OF INSTALLATION AFFIDAVIT (FORM T)**

HUD Label or Texas Seal # (s): \_\_\_\_\_ Serial # (s): \_\_\_\_\_

New: ( ) Used: ( ) Manufacturer Name: \_\_\_\_\_ License No. \_\_\_\_\_

Manufacturer Address, City & State: \_\_\_\_\_

Home Size - Width / Length: \_\_\_\_\_ X \_\_\_\_\_ Weight \_\_\_\_\_ Date of Manufacture: \_\_\_\_/\_\_\_\_/\_\_\_\_ Model / Name: \_\_\_\_\_

Legal Description (use additional page if necessary): \_\_\_\_\_

Lot \_\_\_\_\_ Block \_\_\_\_\_ Survey \_\_\_\_\_ City \_\_\_\_\_ County \_\_\_\_\_ Vol \_\_\_\_\_ Pg \_\_\_\_\_

Name of property owner IF OTHER THAN THE CONSUMER: \_\_\_\_\_

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

Consumer: \_\_\_\_\_ Actual Installation Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Wind Zone on Data Plate: I ( ) II ( ) III ( )

Mailing Address: \_\_\_\_\_ ZIP: \_\_\_\_\_

Site Address: \_\_\_\_\_ Within City Limits of \_\_\_\_\_ ZIP: \_\_\_\_\_

Phone Numbers: Home (\_\_\_\_) \_\_\_\_\_ Work: (\_\_\_\_) \_\_\_\_\_

	Name	Address	License #	Expiration Date	Phone #
<b>Retailer</b>					
<b>Installer</b>					

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

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

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

**INDICATE APPROPRIATE METHOD:**

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

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

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

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

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

\_\_\_\_\_  
 Signature (Retailer/Installer)

\_\_\_\_\_  
 Printed Name and Title

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
 (Signature of Notary)

(seal)

**DRAW MAP BELOW**



**DOWN PAYMENT VERIFICATION AFFIDAVIT (Required)**

**BLOCK 1: Home Information (Must be completed.)**

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

**BLOCK 2: Retailer and Consumer Information**

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

**BLOCK 3: SWORN STATEMENT (Notarization Required)**

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

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

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

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

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

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

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

\_\_\_\_\_  
Consumer

\_\_\_\_\_  
Consumer

\_\_\_\_\_  
Retailer's Authorized Representative

\_\_\_\_\_  
Salesperson

Sworn and subscribed before me this \_\_\_\_ day of \_\_\_\_\_  
(month) (year)

\_\_\_\_\_  
Signature of Notary

**SEAL**

\_\_\_\_\_  
Printed Name of Notary

**COVENANT DISCLOSURE AFFIDAVIT (Required)**

<b>BLOCK 1: Home Information (Must be completed.)</b>							
Manufacturer Name:		License #:					
Manufacturer's Address/City/State/Zip:							
Model:	Total Sq. Ft.:	Date of Manufacture:					
<i>Label/Seal Number</i>	<i>Complete Serial Number</i>	<i>Weight</i>	<i>Size</i>				
Section One:							
Section Two:							
Section Three:							
<b>BLOCK 2: Retailer and Consumer Information</b>							
Retailer Name:		License #:					
Retailer's Address/City/State/Zip:							
Salesperson's Name:		License #:					
Consumer(s) Name:							
Deposit Amount:		Dollars	\$				
<b>BLOCK 3: SWORN STATEMENT (Notarization Required)</b>							
<p>The undersigned, being first duly sworn, does hereby state:</p> <p>1) This Affidavit is given in my capacity as the duly authorized officer or representative of the holder of the following license from the Division of Manufactured Housing of the Texas Department of Housing and Community Affairs (the "Department"):</p> <div style="text-align: center; margin: 10px 0;"> <table style="width: 100%; border: none;"> <tr> <td style="border-top: 1px solid black; width: 60%;"></td> <td style="border-top: 1px solid black; width: 40%;"></td> </tr> <tr> <td style="text-align: center;">License Type</td> <td style="text-align: center;">License Number</td> </tr> </table> </div> <p>2) As required by the Texas Manufactured Housing Standards Act, Texas Rev. Civil Statutes Ann. Art. 5221f (the "Act") and 10 TAC Chapter 80, the rules that implement the Act (the "Rules") I have provided to the above-described consumer, in connection with the above-described transaction, all disclosures required by the Act and the Rules, including:</p> <ul style="list-style-type: none"> <li>( ) The notice required by Section 21(a) of the Act, provided as a single document not attached to or included with any other disclosure;</li> <li>( ) The information required by Section 21(b)(1) of the Act; and</li> <li>( ) A statement of the consumer's responsibilities, if any, as required by Section 21(b)(2) of the Act.</li> </ul> <p>Each of these disclosures was provided to the consumer(s) at the time or times required; specifically, the notice required by Section 21(a) was provided prior to the completion of any credit application, and the disclosures required by Sections 21(b)(1) and (2) were provided prior to the transfer of title (or, if title was not transferred, prior to any other sale, assignment, or conveyance).</p> <p>I certify that the statements set forth herein above are true and correct.</p>						License Type	License Number
License Type	License Number						
<i>Name of duly authorized officer or representative</i>		<i>Signature of duly authorized officer or representative</i>					
Sworn and subscribed before me this _____ day of _____							
(month)		(year)					
<i>Signature of Notary</i>		<b>SEAL</b>					
<i>Printed Name of Notary</i>							

## Attachments to Covenant Disclosure Affidavit

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

### • Property Taxes:

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

### • Paying to maintain nearby private roads:

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

### • Maintaining a contract for an on-site sewage disposal system:

- ( ) The site for your home has an on-site sewage disposal system. It is your responsibility to maintain it.
- ( ) The site for your home utilizes a shared on-site sewage disposal system and you will be billed for your share of the cost of the upkeep and operation of the system.
- ( ) The site for your home does not have an on-site sewage disposal system or share access to one. There is no sewer system available for connection. Therefore, you will need to install and maintain an on-site sewage disposal system.

- ( ) The site for your home has a connection to an off-site sewage system. You will be billed for your usage.

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

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

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

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

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

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

# Estimate for Warranty Work

## Part I – Labor and Materials

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

Estimated time:

Hourly rate:

Itemized cost of materials:

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

Estimated time:

Hourly rate:

Itemized cost of materials:

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

Estimated time:

Hourly rate:

Itemized cost of materials:

The undersigned represents that:

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

## **Part II – Other Costs and Expenses**

### **Travel**

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

Estimated round-trip mileage:

Mileage is reimbursable at the greater of the rate of \$0.345 per mile, not to exceed \$75.00 per day. Or the State of Texas approved rates from time to time in effect for reimbursement of state employees' travel expenses.

Itemized list of any other travel costs:

### **Lodging**

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

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

### **Meals**

*Estimate for Warranty Work*

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

**Administrative and oversight costs**

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

This estimate submitted this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Name of Licensee:\_\_\_\_\_

License number:\_\_\_\_\_

\_\_\_\_\_  
Signature of licensee or duly authorized  
Officer or Representative

*Agenda Action Item No. 4*

## **Manufactured Housing Human Resources Policy D R A F T**

This is the Human Resources Policy (this “policy”) of the Division of Manufactured Housing of the Texas Department of Housing and Community Affairs (this “division”). This policy:

- 1) Does not constitute a contract of employment, express or implied;
- 2) Is subject to change at anytime;
- 3) May be varied at anytime or exceptions made, subject to compliance with applicable legal requirements, upon the approval of the Executive Director;
- 4) Is governed by applicable state and federal laws. Nothing herein shall be deemed to supersede or be controlling in the event of a conflict with a state or federal law. If any portion hereof is found to be illegal or unenforceable, such illegal or unenforceable portion shall be deemed omitted, and the remainder hereof shall remain in full force and effect and construed so as most early to effectuate the policy purposes set forth herein.

It is the policy of this Division that all employees shall conduct themselves at all times while in the workplace or while working elsewhere for the Division or representing this Division in a manner which:

- 1) Reflects well on the Division and the State;
- 2) Demonstrates professionalism and civility; and
- 3) Complies with the letter and the spirit of the laws of the State of Texas and applicable federal laws.

In that regard, the following types of conduct are not tolerated and may serve as grounds for disciplinary action, up to and including immediate termination for cause:

- An act of dishonesty in the workplace or in connection with the carrying out of work responsibilities, such as (by way of example and not by way of limitation):
  - Deliberate falsification of records, such as time records, expense reports, or official records of the Division;
  - Theft or misappropriation of Division assets, such as office supplies or office equipments;
  - Deliberate false statements or omission of truth where such omission creates a false appearance in any matter affecting the rights and responsibilities of another employee, a licensee, another state agency, or any law enforcement authority
- An act of gross insubordination, such as (by way of example and not by way of limitation):
  - Deliberately disobeying a direct order from a person with authority to give that order;
  - Willfully refusing to comply with a request to perform an assigned job responsibility or to comply with a required policy or procedure.
- Use of inflammatory, hostile, or threatening, language or gestures in the workplace (including, by way of example and not be way of limitation):
  - Use of profanity;
  - Threatening violence; or
  - Bringing a weapon to the workplace.
- Use of State property or one’s position with the State to violate a legal requirement or show favoritism,
- Willful disclosure of State or Division information that is confidential;
- Accepting or offering bribes, or

- Any other act that is regarded as clearly and obviously offensive, illegal, or grossly inappropriate in the workplace or any other act not specifically described herein that would generally be regarded as an intolerable act.

Any employee who in good faith has a concern about whether another person in the Division, including his or her supervisors, is violating a legal requirement, is encouraged to contact TDHCA/HR, the staff attorney, their supervisor, the Executive Director, or any appropriate law enforcement or investigative authority, including, but not limited to, the State Auditor's Office to discuss the matter.

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## **1.0 EMPLOYMENT PRACTICES**

### **1.1. Equal Employment Opportunity**

#### **1. Policy**

It is the policy of the Division of Manufactured Housing, Texas Department of Housing and Community Affairs (The “Division”) to comply fully with non-discrimination provisions of all federal and state laws, rules, guidelines, regulations, and executive orders. An employee who violates the Division’s EEO policy is subject to disciplinary action up to and including termination.

The Division is committed to an action oriented program of equal employment opportunity for all individuals regardless of age, race, color, religion, sex, national origin, veteran status, disability (including, but not limited to, AIDS or HIV infection), citizenship, or “intending citizen” status (a person applying for citizenship).

The Division does not discriminate on the basis of disability in the administration of or employment in connection with any of its programs or activities and is committed to comply with all federal and state laws relating to disability rights. The Division does not discriminate on the basis of genetic information.

#### **2. EEO Responsibility**

The Executive Director of the Division (the “Executive Director”) and the management staff, assisted by the Human Resource staff of the Texas Department of Housing and Community Affairs (“TDHCA/HR”), providing services pursuant to an agreement, shall monitor all employee relations activities and shall take such measures as are deemed necessary to attain equality of employment opportunity.

TDHCA/HR is specifically delegated the authority and responsibility for monitoring the personnel, employment, and status change actions for all employment categories to ensure compliance by the Division.

TDHCA/HR shall further recommend undertaking reasonable activities as may be deemed necessary to ensure progress in equality of employment opportunity objectives.

All employees will receive training by TDHCA/HR within 30 days of employment regarding the Division’s policies and procedures relating to employment discrimination and every two years thereafter.

#### **3. Complaint Procedures**

Employees may report an EEO-related complaint without fear of retaliation. All division employees are responsible for immediately reporting discrimination to the Executive Director, TDHCA/HR, the Division’s staff attorney, or anyone in management with whom they feel comfortable.

The staff attorney or his/her designee will be notified immediately of the complaint and will initiate an investigation of the complaint. The investigation should be completed within 30 days from the date the complaint was issued.

Based on written findings, the Executive Director will take immediate and appropriate corrective action if such prohibited conduct occurred. The Executive Director and/or the staff attorney will monitor the circumstances surrounding the complaint to ensure that the situation is remedied, without the employee having to file another complaint.

A log of all formal complaints and the results of such complaints will be maintained by the division through TDHCA/HR.

All EEO related documents will be maintained in accordance with the Division's record retention schedule.

## **1.2. Workforce Diversity/Affirmative Action Policy**

### **1. Preface**

The Division recognizes that full and equal participation of minorities, women, and disabled persons in all employment opportunities is a necessary component of workforce diversity. However, the establishment of goals, objectives, responsibilities, action plans, and timetables to be implemented by management must comply with laws prohibiting employment discrimination.

### **2. Forward**

Equal opportunity is the law of the land. In the public sector of our society this means that all persons, regardless of age, race, color, religion, sex, national origin, veteran status, and disability will have equal access to positions in public service limited only by ability to do the job with, as provided for by law, any reasonable accommodations for disability.

Voluntary Workforce Diversity Policies assure that equal employment opportunities are applicable to a variety of employment processes.

When the Executive Director or TDHCA/HR has reason to believe that a particular personnel policy and procedural system has maintained the current effects of past discrimination, they should take steps to remedy the situation. Such policy will be changed as soon as possible.

### **3. Policy Statement**

The Texas Commission on Human Rights Act (Chapter 21 of the Texas Labor Code) states in Article 1, Section 1.02(2), as one of its general purposes:

...to secure for all persons within the state freedom from discrimination in certain transactions concerning employment, and thereby to protect their interest in personal dignity, and to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health and general welfare, and to promote the interests, rights and privileges of individuals within the state.

In keeping with the spirit of this general purpose of the Act, the Division issues and affirms the following Affirmative Action Policy:

- It is the policy of the division to maintain a commitment to the principles of equal employment for all employees and to applicants for employment.

- In order to fulfill this commitment, the Division has adopted the Workforce Diversity Policy which TDHCA/HR has established and maintains to promote equality of employment treatment that conforms with Federal and State law. This document is a written plan of action documenting the Division's commitment to assure an environment of equal opportunity for public employment. The plan includes goals and specific actions to be taken to reach the overall aim to be mindful of the diversity of the State of Texas. This plan, in no way, should be interpreted to "set-aside" or establish "quotas" for any candidates. The plan will be reviewed annually and updated, as needed, by TDHCA/HR and submitted to the Executive Director for approval.

#### **4. Program Responsibilities**

The Division's Workforce Diversity Policy shall have the support of the Executive Director and other management or supervisory personnel. Therefore, specific responsibilities shall be assigned and delegated to the Division and management personnel to ensure that the necessary authority is available to implement the provisions of the plan.

The Executive Director shall have ongoing responsibility for establishing affirmative action policies and monitoring the implementation of the Workforce Diversity Policy through periodic program reports. Further, the Executive Director assigns responsibility to TDHCA/HR to review annually for purposes of revision or modification the Workforce Diversity Policy, work force analysis, and personnel policy and procedural systems including but not limited to recruitment, selection, promotions, job descriptions, classifications, compensation, discipline or other terms and conditions affecting the equal employment opportunities of applicants for employment or employees because of race, color, national origin, religion, sex, age or disability status. This analysis will be handled on a consolidated basis for all of the Texas Department of Housing and Community Affairs, not for the Division on a stand-alone basis.

TDHCA shall be designated as the Affirmative Action Officer for the Division with the authority for directing the Workforce Diversity Policy. It shall be the responsibility of the staff attorney to ensure that compliance with the Division's workforce diversity policies are implemented in an efficient and effective manner. The Division will, as requested by TDHCA/HR provide the necessary information required by the Executive Director for purposes of the Plan's annual review.

#### **5. Program Goals**

To ensure objectivity, consistency, uniformity, and job-relatedness through design and implementation of appropriate personnel policy and procedural systems that affects the equal employment opportunities of the Division's employees and applicants for employment.

To ensure the elimination of any current effects of past discrimination, the Division's Workforce Diversity Policy shall establish monitoring and reporting systems which shall be administered by TDHCA/HR.

## 6. Action Programs

### a. Policy Dissemination:

The Division shall provide its Workforce Diversity Policy to statewide minority, disability, and female organizations for distribution to their respective members. The Division shall include, in notifications posted for vacant positions, information that it is an equal employment opportunity employer.

As part of an orientation program, each new employee shall receive information on how to review the Division's Workforce Diversity Policy from the Division's intra-net web site.

### b. Recruitment:

To the extent possible, the Division shall utilize a wide range of recruiting sources to secure the maximum number of qualified minority, disabled, and female applicants for available positions within all classifications. Such sources may include statewide minority, disability, and female associated organizations, educational institutions, and newspapers. The Division shall continue to expand and update its list of such recruiting sources including appropriate contact persons.

Notices of vacant positions shall be posted in accordance with the regular posting policies. Such notices may be distributed to all recruitment sources previously identified. Where vacancies occur in classifications which have been identified as being underutilized, the Division shall target for purposes of recruitment minority, disability, and female applicant sources.

An applicant flow record shall be maintained by TDHCA/HR to determine the mix of candidates applying for vacant positions according to race, national origin, and sex.

### c. Selection Procedures:

The selection procedure which is in compliance with the Texas Commission on Human Rights Act should be based on three policy issues:

- Selection of qualified employees based on objective, job-related criteria which can be consistently applied, documented, and measured;
- The employer's work force reflects equitable distribution within all job classification for those classes covered by anti-discrimination laws; and
- A workforce diversity policy is based on sound statutory and constitutional principles as well as judicial interpretations.

### d. **New Employee Selection:** A selection procedure for new employees includes but is not limited to the following elements:

- *Job Qualifications:* Generally, minimum job qualifications incorporate education and experience. When utilizing these two criteria, the employer should be able to demonstrate job relatedness. Also, the employer should be able to demonstrate that neither of these criteria have a statistically measurable disproportionate impact on

covered classes included in laws prohibiting employment discrimination such as age, race, color, religion, sex, national origin, veteran status and disability.

- *Applications:* Applicants applying for a posted job vacancy will submit a State of Texas standard application form (resumes may be attached). The application must be received by the closing date of the job vacancy notice. The accuracy of statements contained in applications or resumes shall be certified by signature of the applicant.
- *Applicant Log:* All applicants applying for the vacant position shall be listed on an applicant log.
- *Screening Applicants:* Each application shall be screened using an applicant rating schedule. This rating schedule shall be based on quantified, job-related experience and educational qualifications as set forth in the job description. Applicants shall be ranked on the basis of their cumulative score. The applicants in the highest numerical scores shall receive an interview.
- *Interviewing Applicants:* Interviews shall be confined to the applicant's responses to job-related questions or by performing job-related practical exercises which can be measured. Such questions or exercises and measured responses should focus exclusively on the applicant's professional and technical ability or knowledge to perform the particular job for which the applicant has applied.
- *Final Selection:* The applicant receiving the highest cumulative score based on the interview, job-related experience, educational qualifications, and positive references shall be selected for the position. In those instances where certain qualifications or work experiences may be preferred and the Division is attempting to maintain work force equity, these factors may be quantified and added to the total cumulative score.
- *Notification of Employment:* Following the selection of the most qualified applicant, he/she shall be notified by telephone and confirmed in writing. Likewise, applicants interviewed and not recommended for the position shall be notified in writing at the earliest opportunity.

**NOTE: Promotion of Current Employees:** The selection process for promoting current employees shall include the procedures identified above except where the vacancy is filled by promotion of an employee within a classification series.

e. Upward Mobility:

TDHCA/HR shall compile reports on promotional opportunities and selection of candidates promoted. The reports shall identify race, national origin and sex of candidates promoted and reason selected.

In-service training programs shall be designed and implemented to increase promotional opportunities for employees. On-the-job training and cross-training programs shall be developed to expose employees to a broad range of job duties and experiences.

## **7. Discipline Procedures**

The Division has instituted a discipline system that is linked to specific policies and procedures with which personnel are expected to comply. This disciplinary system is constructed and is to be implemented in such a way as to ensure uniformity and consistency to conform with Division policies prohibiting discrimination.

## **8. Appeal Procedures**

The Division has provided appeal procedures designed to resolve complaints of employment discrimination alleged by employees. These procedures shall provide aggrieved employees the opportunity to discuss their problems at several levels.

These procedures shall help to protect both the employee and the employer by providing both parties with the opportunity to have their position reviewed and considered by an impartial authority. These procedures shall provide safeguards against any and all occurrences of discrimination or any other preferential treatment which may adversely affect employees of the Division.

## **9. Monitoring the Workforce Diversity Policy Achievement**

TDHCA/HR is assigned responsibility for administering the Division's Workforce Diversity Policy and providing regular reports to the Executive Director. Utilizing such reports, the Executive Director shall monitor the implementation of the plan and identify any revisions necessary to assure effective application. Such reports may include the following:

- Annual Workforce Diversity/EEO Progress Report:

This narrative report shall include an itemized summary of the program's achievements, progress and shortcomings with accompanying recommendations.

- Annual Work Force Analysis by Race, National Origin, Sex and EEO Category

The Division shall review the State of Texas Minority Hiring Reports (New Hire Detail and Work Force Detail) and the annual EEO-4 Report comparing EEO and job categories. These reports will provide a racial, ethnic and gender profile of Division personnel by EEO category. EEO categories where minorities and females are under represented shall be identified. These work force profiles shall be compared to the percentages of otherwise qualified persons available in the relevant labor market (Sec. 21.501, Texas Labor Code). Although Division personnel will be included, actual profiles, analysis, and related data shall be compiled on the basis of TDHCA as a whole.

## **10. Time Frame for Implementation**

The Executive Director shall implement and review the action program previously identified annually.

## **11. Work Force Analysis (TDHCA as a whole)**

The following represents Blacks, Hispanics and females within the civilian labor force by job category (Source Document: Equal Employment Opportunity Commission's National Employment Summary EEO-4 1999 and EEO-1 2000):

	<u>Blacks</u>	<u>Hispanics</u>	<u>Females</u>
Official/Administration	7%	11%	31%
Professional	9%	10%	47%
Technical	14%	18%	39%
Paraprofessional	18%	31%	56%
Administrative Support	19%	27%	80%

TDHCA/HRIS EEO-4 Report as of August 31, 2001 is:

	<u>Blacks</u>	<u>Hispanics</u>	<u>Females</u>
Official/Administration	15.0%	15.0%	45.0%
Professional	11.80%	36.6%	61.8%
Technical	12.5%	16.7%	25.0%
Paraprofessional	21.30%	46.8%	93.6%
Administrative Support	5.3%	52.6%	89.5%

Minority Hiring Detail Report for fiscal year 2001 is:

<u>Blacks</u>	<u>Hispanics</u>	<u>Females</u>
20%	12%	15.3%

### 1.3. Whistle-Blowing

The Division will not suspend or terminate the employment of, or otherwise discriminate against, or take other adverse personnel action against, an employee who reports a violation of the law to the appropriate law enforcement authority, if the employee report is made in good faith.

### 1.4. Nepotism

The Executive Director may not employ any relative of his/hers within the second degree by affinity (marriage) or within the third degree by consanguinity (blood). The Division may employ relatives of other employees.

**The Division will not employ relatives to work in the same section of the Division.** The Division discourages the employment of relatives where the employment might reasonably present a conflict due to the relationship. In no case will an individual be employed in a position over which a member of his/her family has supervisory authority, controls the compensation, work assignments, working conditions, or hours of work of any person related to that individual within the third degree of consanguinity or the second degree of affinity.

The Division will not authorize or approve the transfer or promotion of an employee in any division, or between divisions that would result in a family member having supervisory authority over another family member, either directly or indirectly. **The Division will transfer, if practical, or terminate employees when the marriage of employees results in a violation of this policy.**

All employment decisions will fully comply with state law concerning nepotism, Tex. Gov't Code ANN. Chapter 573. Employees should contact the staff attorney if there is a question as to the degree of relationship covered by state law.

Each employee is required to inform his/her supervisor and TDHCA/HR immediately of any change in marital or other family relationship that might create a violation of this policy. **If they learn of it, an employee is also responsible for immediately notifying TDHCA/HR of a relative who is an applicant for a job with the Division.** Managers and Supervisors will keep the Executive Director and TDHCA/HR informed regarding any potential violations of the policy.

## **1.5. Sexual Harassment**

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

Severe and real penalties may be imposed on individual supervisors as well as the Division for discriminatory actions. Managers and supervisors may be held personally liable for sexual harassment and the Division may not legally be allowed to reimburse the manager or supervisor for damages or the costs of any legal defense.

### **1. Policy**

The Division will not tolerate sexual harassment of any employee by another employee and will also not tolerate sexual harassment by Division employees of any individual with whom the Division conducts business. It is the policy of the Division that:

- All employees shall be provided with a work environment free from sexual harassment;
- All employees will receive a copy of the sexual harassment policy;
- All employees will be required to attend periodic prevention of sexual harassment training to comply with Sec.21.010, Texas Labor Code;

- Documentation of training will be kept in the employee's personnel file;
- Every complaint of sexual harassment shall be thoroughly investigated;
- Each manager and supervisor shall make every effort to ensure that no sexual harassment occurs within his/her area of authority; and
- Appropriate disciplinary action shall be applied to persons who violate this policy.

The Division recognizes the sensitive nature of complaints concerning sexual harassment; therefore, information disclosed in connection with a complaint of sexual harassment shall, to the greatest extent possible, remain confidential. TDHCA/HR shall monitor and coordinate the implementation of this policy.

Sexual harassment shall include, but not be limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is not welcome and personally offensive where:

- Submission to such conduct is either an expressed or implied term or condition of employment;
- Submission to or rejection of such conduct is used as a basis for an employment decision affecting the harassed employee; or
- The conduct has the purpose or effect of substantially interfering with an affected person's work performance or creating an intimidating, hostile, or offensive environment.

## **2. Complaint Procedure**

- a. An employee who believes that he/she has been the subject of discrimination, including sexual harassment, is responsible for immediately reporting the incident without fear of retaliation to his/her Supervisor/Manager, TDHCA/HR, or the staff attorney. Except for the victim of sexual harassment, failure to report such conduct may result in a disciplinary action.
- b. The person so informed shall immediately inform the staff attorney either verbally or in writing describing the allegation. The staff attorney and/or designee will investigate all allegations of sexual harassment. The investigation should be completed within 15 days.
- c. A confidential memorandum to the TDHCA/HR employee relations file will be prepared detailing the action that has been taken or will be taken to resolve the allegation. Based on written findings, the Executive Director will take immediate and appropriate corrective action if such prohibited conduct occurred.
- d. At the conclusion of the investigation, the staff attorney will conduct an exit meeting with the complainant to give the complainant an overview of the results.
- e. It is the employee's responsibility to notify TDHCA/HR or the staff attorney, as appropriate, of any recurrence of the conduct giving rise to the allegation.
- f. If the allegation is not resolved to the satisfaction of the employee through this process, the employee may file a grievance in accordance with the established Division Grievance Procedure.

Retention of EEO and sexual harassment documents will be in accordance with the Division's State Record Retention Schedule.

## **1.6. Retaliation**

The Division prohibits retaliation of any form against any employee for making a complaint about any discriminatory conduct or harassment.

An employer or employee commits unlawful employment practice if the employer or employee retaliates or discriminates against a person who:

- opposes a discriminatory practice,
- makes or files a complaint alleging employment discrimination
- testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.

Retaliatory conduct is prohibited, and any employee who retaliates against another employee who opposes alleged employment discrimination violates the Division's policy and may be subject to disciplinary action up to and including termination.

An employee who believes that he/she has been the subject of retaliation/discrimination is responsible for immediately reporting the incident to his/her Supervisor/Manager, TDHCA/HR, or the staff attorney.

## **1.7. AIDS/HIV Workplace Guidelines**

The Division recognizes its obligation to provide a safe and healthy work environment for all employees and to prohibit all forms of unlawful discrimination in employment matters related to life-threatening illnesses. The Division will further assure that persons infected with the human immunodeficiency virus (HIV), which is the cause of acquired immunodeficiency syndrome (AIDS), have the same rights, privileges and opportunities as any other individual with a communicable disease as long as employee is complying with policy and HIV isn't communicable.

The Division recognizes that employees with life-threatening illnesses, including but not limited to various forms of cancer, heart disease, and HIV infection, may wish to continue to engage in as many of their normal activities, including employment, as their conditions allow. As long as these employees are able to meet job performance standards, and the best available scientific and medical evidence indicates that their conditions are not a threat to others, supervisors shall ensure that they are treated as any other employees. As with other illnesses, once HIV-related symptoms occur, it is the employee's responsibility to provide medically verified information relating to the employee's ability to be available for or to perform job duties.

Based on the federal Privacy Act, the Texas Commission on Human Rights Act, and the Texas Communicable Disease Prevention and Control Act, any medical documentation or information provided by an HIV-infected employee to the Division through TDHCA/HR is considered confidential and private information. As such, the Division will not disclose this information without the employee's knowledge and consent. Anyone who has access to confidential information is charged with maintaining strict confidentiality and privacy. It must be emphasized that any employee who breaches the HIV-infected employee's rights has committed a serious offense. In addition to disciplinary action, this breach may be cause for litigation, resulting in both civil and criminal penalties. In addition, an employee's refusal to work with an

HIV-infected individual may subject the employee to disciplinary action up to and including termination.

## 1. Procedures

- a. Each newly hired employee is to be provided an HIV awareness pamphlet.
- b. The Division will grant requests for reasonable accommodation to employees with life-threatening illnesses unless the request imposes an undue hardship on the Division.
- c. Upon request, the TDHCA/HR will arrange for referrals to organizations and community support groups that offer counseling and supportive services to employees concerning HIV infection if:
  - The employee documents to the Division's satisfaction that the employee may have been exposed to HIV while performing duties of employment with the Division; and
  - The employee was exposed to HIV in a manner that the U.S. Public Health Service and the Texas Department of Health have determined is capable of transmitting HIV.
  - The Division will ensure employees maintain an awareness of nondiscrimination through the use of pamphlets, brochures, video or training sessions on HIV related issues.

## 1.8. Drugs and Alcohol in the Work Place

It is the intent of the Division to comply fully with the Drug-Free Workplace Act of 1988 and Texas Workers' Compensation Commission rules (28 TAC 169.1 and 169.2).

The Division is committed to the safety of its employees and the quality of services delivered to the citizens of Texas. An important step toward this goal is to maintain a drug-free work place. In accordance with the Drug-Free Workplace Act of 1988, the Division hereby establishes a Drug-Free Workplace Policy and states additional federal requirements regarding notification of drug convictions.

### 1. Definitions

*Alcohol* is any beverage that has alcoholic content in excess of 3% by volume.

*Controlled Substance* means a controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation 21 CFR 1300.11 through 1300.15 and under the Texas Controlled Substances Act, Health and Safety Code; a dangerous drug as defined by the Texas Dangerous Drugs Act, Health and Safety Code; an abusable glue or paint, as defined by the Health and Safety Code; and any similar substance regulated under state law.

*Drug* is any chemical substance that produces physical, mental, emotional or behavioral change in the user.

***Illegal Drug*** is any drug or derivative thereof which the use, possession, sale, transfer, attempted sale or transfer, manufacture or storage of is illegal or regulated under any federal, state, or local law or regulation and any other drug, including (but not limited to) a prescription drug used for any reason other than a legitimate medical reason, and inhalants used illegally. Included is marijuana or cannabis in all forms.

***Under the Influence*** is a state of having a blood alcohol concentration of 0.08 or more, where "alcohol concentration" has the meaning assigned to it in Section 49.01, Texas Penal Code; or the state of not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of an alcoholic beverage or a controlled substance.

***Conviction*** means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.

***Drug-free Work Place*** means a site for the performance of work at which employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

***State Premises*** means all Division property, owned or leased, including vehicles, lockers, and parking lots.

***State Property*** means all Division owned or leased property used by employees such as vehicles, lockers, desks, closets, etc.

As part of the Division's drug and alcohol abuse education program, information will be provided on the availability of employee assistance program services.

Alcoholism and other drug addictions are recognized as diseases responsive to proper treatment, and this will be an option as long as the employee cooperates. An employee assistance program will be made available to assist employees.

The unlawful use, manufacturing, distribution, dispensing, or possession of a controlled substance while on the job, or while on/in state property whether on or off duty, or while performing state business is prohibited and may result in termination.

The use of alcoholic beverages or being under the influence of alcohol or illegal drugs while on the job, performing state business, or while on state premises whether on or off duty, is prohibited. Such use may result in termination. No funds appropriated for travel expenses may be expended for alcoholic beverages.

The Division will periodically conduct drug free awareness training for all employees. Attendance is mandatory for all personnel scheduled to attend specific training sessions. Employees will receive written warning about the dangers of drug abuse and will receive information regarding the drug counseling, drug rehabilitation, and employee assistance programs available to employees.

Employees who violate this policy are subject to appropriate disciplinary action, including termination.

This policy applies to all employees of the Division regardless of classification or position and includes full-time, part-time, temporary, seasonal, and contract workforce workers.

## **2. Convictions**

- a. As a condition of employment, every employee will notify his or her manager or supervisor and TDHCA/HR in writing of any criminal drug statute conviction for a violation occurring in the work place no later than 5 days after such conviction.
- b. TDHCA/HR shall, within 10 days after receiving notice from an employee or otherwise receiving actual notice of such conviction, provide written notification to the appropriate federal department of such conviction.
- c. Within 30 days of receiving notice of the conviction, the Division will take appropriate personnel action against such an employee, up to and including termination, or require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program selected by the Division and approved for such purposes by a federal, state, local health, law enforcement, or other appropriate department.

## **1.9. Americans with Disabilities Act (ADA)**

### **1. Policy**

It is the policy of the Division to comply fully with non-discrimination provisions of all federal and state laws, rules, guidelines, regulations, and executive orders. The Division does not discriminate on the basis of disability in the admission or access to, treatment of, or employment in any of its programs or activities and is committed to comply with all federal and state laws relating to disability rights.

### **2. General**

The Division adheres to Title II of the Americans with Disabilities Act which states, in part, that “no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination” in programs or activities sponsored by a public entity.

### **3. Definitions**

#### **Disability means:**

- the individual has a physical or mental impairment that substantially limits one or more of their major life activities;
- the individual has a record of such an impairment; or
- is regarded as having such an impairment.

**Physical or mental impairment means:** (1.) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or (2.) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

**Major life activities means:** functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

**Substantially limits means:** (1.) Unable to perform a major life activity that the average person in the general population can perform; or (2.) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

#### 4. Responsibilities

The **staff attorney** is the designated ADA Responsible Employee for the Division.

**Managers and Supervisors** are responsible for following the requirements of this policy.

The **Executive Director** is responsible for rendering a final decision on all matters related to this policy.

#### 5. Applicant Process for Reasonable Accommodation

- a. All job announcements shall include a statement that all reasonable workplace accommodations are requested by calling the ADA Responsible Employee. At the time an individual with a disability has requested an accommodation, a review will be made to determine the appropriate accommodation that will ensure equal opportunity in the job application process. The review will include:
  - consulting with the individual to ascertain the precise limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation.
  - potential accommodations will be identified; and
  - an accommodation, if any, will be selected that is most appropriate for both the applicant and the employer.
- b. Each person interested in being considered for a position with the Division shall complete a State of Texas application for employment form plus an Equal Employment Opportunity Reporting form (optional). The application should be utilized to the fullest extent during interviews and for background verifications.
- c. The hiring supervisor will review applications to determine whether or not the applicants meet the minimum qualifications for the job. In determining whether an individual is qualified, the individual must satisfy the prerequisites for the position *e.g.*, employment

experience, educational background, skills, and other job related requirements. Managers may request to review all applications received for a position.

- d. All interviews must be conducted in a fair and equitable manner. TDHCA/HR may be included in the interview team to explain benefits offered by the Division and to ensure that interviews are conducted in accordance with EEO guidelines. Supervisors or managers may decide that TDHCA/HR is not required.
- e. Under no circumstances will a hiring decision be made based on speculation that an individual will become unable to perform the job in the future or may cause increased health insurance or worker's compensation costs.
- f. A determination will be made whether or not the individual can perform the essential tasks of the position, with or without reasonable accommodation. Individuals with disabilities who can perform essential tasks will not be denied employment opportunities because they are not able to perform marginal tasks of the position. Essential tasks are those tasks that the individual who holds the position must be able to perform unaided or with the assistance of a reasonable accommodation.

## **6. Employee Process for Reasonable Accommodations**

- a. Any employee requiring an accommodation shall notify their immediate supervisor of the nature of the disability. A written request for a reasonable workplace accommodation by the employee should include a medical statement provided by the employee to the ADA Coordinator.
  - The medical statement shall contain a diagnosis, prognosis and evaluation as to the effect that the impairment will have on the employee's ability to perform the essential functions associated with the employee's position.
  - The documentation shall include what major life activity is substantially limited as a result of the disability.
- b. A review of each case will be performed within 15 days from receipt of the request by the Executive Director, the staff attorney, TDHCA/HR, and such other persons as they or any of them may seem advisable. The review will include, in part, identifying the cost of accommodation, the availability of funds to provide the accommodation and identifying the essential and marginal tasks of the position. All reasonable accommodations necessary for employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities will be provided.
- c. The process for determining reasonable accommodation will involve an assessment of both the job at issue and the specific physical or mental limitations of the particular individual in need of reasonable accommodation.
- d. The supervisor will consult with the ADA Coordinator on requests for accommodations. Supervisors will discuss with the employee if any reasonable accommodation will be made within 5 days from a decision. In consultation with the employee, all potential and

appropriate modifications or adjustments that overcome the limitations imposed by the disability and enable the individual to perform the essential task(s) of the position will be reviewed.

- e. The ADA Responsible Employee shall periodically confer with the employee to determine continuation or discontinuation of the workplace accommodation.
- f. When the cost of a requested accommodation results in an undue hardship and outside funding is not available, the individual with the disability will be given the option of paying the portion of the cost that constitutes the hardship.
- g. Documentation of decisions not to accommodate an individual due to undue hardships shall be maintained by TDHCA/HR.
- h. The determination of undue hardship will be made by the Executive Director.
- i. The Executive Director shall be responsible for the implementation of this policy.
- j. Retention of work place accommodations documents will be in accordance with the Division's State Record Retention Schedule.

## 7. ADA Grievance Procedure

- a. Grievances alleging a violation of the Americans with Disabilities Act (ADA) shall be filed and handled in accordance with the ADA Grievance Procedure. These procedures are intended to aid in the resolution of ADA related problems which the Division applicants and employees may encounter. A person who files a grievance shall not be treated adversely or otherwise unlawfully discriminated against.
- b. **How to File a Complaint.** A complaint must be filed in writing, contain the name, address, telephone number of the person filing the complaint, and a brief discussion of the alleged violation of the regulations and those actions giving rise to the complaint. The ADA Designated Responsible Employee will provide assistance to a complainant unable to prepare a written complaint.
- c. **Filing Date.** A complaint must be filed within ninety (90) days following the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis.)
- d. **Investigation.** An investigation, as may be appropriate, shall follow a filing of the complaint. The investigation shall be conducted by the ADA Designated Responsible Employee (DRE) or designated representative. An informal but thorough investigation shall be conducted, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to the complaint.
- e. **Resolution.** A Written Determination as to the validity of the complaint and a description of the resolution, if any, shall be issued by the ADA Coordinator or representative and a copy forwarded to the complainant no later than thirty (30) days after

its filing, unless an extension of that time is agreed to by the ADA Coordinator or representative and complainant prior to that date.

- f. **Appeal.** The complainant may request a reconsideration of the case in instances where he or she is dissatisfied with the resolution. The appeal must be made in writing to the Executive Director within thirty (30) days of the delivery to the complainant of the written determination.
- g. **Final Determination.** The Executive Director will review the Written Determination from the DRE and render a Final Determination. The Final Determination shall be issued within sixty (60) days from the date of receipt of the appeal. The Executive Director's decision is final.
- h. **Other Remedies.** Upon filing an ADA complaint with any responsible federal department or Division, the processing of any complaint filed hereunder will cease.

## 1.10. Standards of Conduct

As government employees, our primary objective is to promote the common good, not our own interests. As public servants, we are held to a high standard of conduct.

### 1. Code of Ethics

#### a. Policy

In general, Division employees should avoid any action that might result in or create the appearance of using public office for private gain or converting state property for personal use, giving preferential treatment to any person or organization in exchange for private benefit, or letting one's private interests influence public actions or decisions.

#### b. General

Each employee is responsible for becoming familiar with the ethics standards and principles that govern his or her employment and for refraining from acting in any way that might result in or create the appearance of impropriety. Each employee is also responsible for reporting any apparent violations to the Division's Ethics Advisor.

#### c. Responsibilities

- The Executive Director is responsible for directing changes to this policy, as required, and for appointing the Ethics Advisor.
- The staff attorney is appointed as the Ethics Advisor.
- Managers and supervisors are responsible for ensuring that staff adheres to this policy and for their own compliance with this policy.

d. Discussion

Division employees:

- May not accept or solicit any favor that might influence the discharge of the employee's official duties or that is being offered for that purpose.
- May not accept other employment or engage in a business activity that might induce the employee to disclose confidential information.
- May not accept other employment or compensation that might impair the employee's independence of judgment in the discharge of job responsibilities.
- May not make personal investments that might create a substantial conflict between the employee's private interest and the public interest. A Division employee may not purchase Texas Department of Housing and Community Affairs (TDCHA) bonds in the open secondary market for municipal securities.
- May not knowingly solicit, accept, or agree to accept any benefit for having exercised the employee's job responsibilities in favor of another. An employee whose employment is involved in a competitive program of TDHCA must immediately disclose the acceptance of another job in the same field to either the employee's supervisor or the Executive Director. The Executive Director must be notified in all cases.
- May not use a Division computer for other than Division business. E-Mail is to be used as a business communications tool and may on occasion be used to alert employees to an event planned for the workplace. E-mail may never be used to communicate ideas or statements that a reader might find offensive, such as racist or sexist remarks or references to the abuse of alcohol or illegal drugs. Division e-mail may also not be used for the benefit of the sender, such as a personal want-ads or a business network.
- May not, after leaving Division employment, represent anyone or receive compensation from anyone for services rendered regarding a particular matter in which the employee participated while employed at the Division.

- e. Violation of any provision of this policy may subject the employee to disciplinary action as well as criminal prosecution in some cases. Each situation must necessarily be dealt with on a case-by-case basis. Please direct any questions to the Division's Ethics Advisor.

## **2. Political Influence**

The Appropriations Act prohibits the use of state funds regardless of their source or character for influencing the outcome of any election, or the passage or defeat of any legislative measure.

Employees who wish to participate in political activities may do so and may support the issues and candidates of their choice. Such participation, however, is prohibited during office hours or while employees are representing the Division in an official capacity. Except as expressly prohibited, a state employee has the full rights of freedom of association and political participation guaranteed by the state and federal constitution.

Federal and state law restricts state employees from certain political activities. Prohibited political activities include the following:

- An employee may not use his/her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office;
- An employee may not directly or indirectly coerce, attempt to coerce, command, restrict, attempt to restrict, or prevent the payment, loan, or contribution of anything of value to a person or political organization for a political purpose;
- An employee of the Division may not be a paid lobbyist for any individual, firm, association, or corporation;
- An employee may not use a state owned or leased automobile in connection with any political campaign;
- An employee may not use official authority or influence or permit the use of a program administered by the state to interfere with or affect the result of an election or nomination of a candidate, or to achieve any other political purpose;
- An employee may not be a candidate for a public office in a partisan election if his or her principal job duties are in connection with an activity financed either in whole or in part with federal funds pursuant to the restrictions imposed by the Hatch Act.
- The Division will not pay the membership dues of any employee to organizations who pay all or part of the salaries of lobbyists.

### **3. Outside Employment and Community Service**

The Division wants employees to have the maximum freedom possible to engage in outside employment, business activities, or serve on community boards of directors on their own time. The activity must not create, or appear to create, a conflict of interest. The activity cannot duplicate any Division responsibility of the employee as evidenced in his/her scope of work, and the activity cannot interfere with an employee's ability to perform his/her official duty, nor bring discredit upon the Division.

**Prior** to engagement in any outside employment, consultation, or service the employee must complete an Outside Employment form. Each intermediate supervisory level will indicate approval or disapproval of the request and forward the request, through channels, to the Executive Director for a final decision. The original form should be forwarded to TDHCA/HR to be retained in the employee's personnel file. The disclosure must be made to either the employee's immediate supervisor or to the Executive Director. The Executive Director must be notified in all cases. Failure to make the required disclosure may result in the employee's immediate termination from the Division.

#### 4. Use of State Property

##### a. General Comments

The appropriation of state property for personal use is grounds for termination of employment. In addition, state property must be handled with care and used properly and effectively. **No Division employee has a right or expectation of privacy in the use of any furniture, equipment, or space owned or leased by the Division.**

##### b. Electronic Mail

As with state-occupied facilities, Division documents and records, including electronic communication systems, *i.e.*, E-mail and voice mail are the property of the Division (Also refer to Electronic Mail SOP). The Division reserves the right to access any and all e-mail communications from and to employees. Employees are subject to disciplinary action for inappropriate, unprofessional, or offensive E-mail messages. With the exception of documents intended for public dissemination, Division records may not be released to members of the public without prior authorization of the Executive Director. This policy is to ensure that confidential information is not inadvertently released to the public. **Public information requests must be routed to the appropriate (...).**

##### c. Consumable Supplies

Consumable supplies will be purchased at the Texas Building and Procurement Commission Central Supply Store. Requests for supplies must be approved by the section supervisor prior to ordering. Managers should assign one member of their staff to coordinate the purchase of supplies for their section.

##### d. Postage

**No personal mail is to be mailed through the state mail system.**

##### e. Printing/Photocopying and Computers

The use of any reproduction equipment or computer equipment of the Division is limited to official state business. Personal printing, photocopying or the use of the Division computer is not permitted and will result in the imposition of disciplinary action. Only authorized programs may be installed on a Division computer and only appropriate wallpaper and screensavers used. All employees are required to sign a Computer Security Statement.

##### f. Furniture and Equipment

Every item of furniture and equipment in the Division must be accounted for at all times. Records of such accounting must be updated periodically. To aid in this process, each employee will sign an inventory list on an annual basis. Furniture or equipment shall not be relocated without notifying the Staff Services Officer.

g. Credit Cards

Employees are authorized to use the credit card issued to them through the Division *only* when they are on official travel status for the Division. Employees **may not** use the credit card issued to them through the Division for non-business charges. Employees who do so are subject to disciplinary action up to and including termination of employment. Employees are also responsible for making timely payments, including the payment of any charges, late fees, and interest.

## 1.11. Work Policies

### 1. Parking Regulations

The Support Services Section is responsible for allocating parking spaces to staff based on TDHCA's Parking policy. Employees are responsible for abiding by the rules and regulations applicable to the parking space or areas assigned to them (Also refer to Parking SOP).

Although the Division is not required to furnish parking, it has arranged to have parking available for its employees at various parking facilities. Use of parking facilities is at the employee's own risk. The Division is not responsible for damage to or theft of vehicles.

Parking is assigned in the parking garage based on the following criteria:

- Longevity with the Division (including predecessor agencies)
- Group B13 or above

The Executive Director may make exceptions to the parking criteria.

### 2. State Telephone System

Telephones are furnished to each employee for the express purpose of carrying out State business. TEX-AN (Texas Agency Network) is a state-leased private long distance telecommunications network providing lower cost per minute of service for state government. It is important that Division staff make maximum use of the TEX-AN system, whether at the headquarters or traveling on official Department business.

The following is an overview of the Division policy and procedures regarding telephone operations. Employees shall refer to the appropriate standard operating procedure to be fully informed regarding the authorized/proper use of the Division phone system.

#### a. Personal Calls

Personal calls shall be allowed if they are limited in number and duration so as not to interfere with the employee's work schedule or detract from the official business of the office. Use of Division phones for personal long-distance is allowed only if the call is charged to the employee's home phone number or other non-state account.

#### b. Toll-free Calls

When dialing toll free numbers, first dial 9 to get an outside line, then dial the number desired.

c. Department Business Calls

- Employees authorized to make long distance calls for official business are required to use the TEX-AN system. The TEX-AN system can be used to place both intrastate and interstate official business calls to any phone in the continental United States.
- When making long distance calls from a Capitol Complex telephone, dial "9", area code, and the telephone number.
- Official business calls may be made from a network phone to an off-network phone or from an off-network phone to state offices. Division Standard Operating Procedures explain how this may be accomplished.
- State employees may be held liable for the cost difference between a non-state telecommunications system call and a TEX-AN call, unless:
- The TEX-AN system is not operational when the long distance call needs to be made;
- Department of Information Resources determines the non-TEX-AN call is the most effective; or
- The Executive Director certifies that use of the TEX-AN system would have an adverse impact on Division operations.

### **3. Smoking Policy**

The Division is committed to providing employees with a healthy and productive working environment. To establish a healthy environment, the Department has created a smoke-free work place for the health of its employees.

Unless otherwise notified by facility management, smoking is permitted only in the designated smoking areas outside of the building and at parking facilities. Smoking is prohibited in all other areas occupied by the Division and no smoking is allowed in any office, conference room, or other space leased by the Division.

The Division may provide referrals to an employee assistance program to counsel nicotine addiction if an employee requests such assistance, or if the Division sees such a referral to be in the best interest of the employee or Division.

It shall be the responsibility of the managers and supervisors to ensure the enforcement of this policy.

### **4. Dress Code**

The Division is the state's Division responsible for regulation of the state's manufacturing housing industry. Clients range from industry representatives, local, county and state officials, and board members. As such, employees must present a professional appearance in

their dealings with the citizens and dignitaries visiting the office or with appointments outside the office.

Therefore, the Division requires that all employees, including temporary workers, wear professional business attire during working hours, *generally between 8AM and 5PM*. Business attire means wearing clean appropriate attire, including footwear. Shorts, inappropriate shoes, or revealing clothing are not proper business attire. Managers and supervisors are encouraged to provide a copy of this procedure to their contractors who have employees working in Division offices so that their employees are aware of and comply with this procedure.

All employees and supervisors are required to exercise good judgment to ensure that they present a professional business image to our customers, citizens, and officials visiting the Division in the main office or at a field office or for professional appointments outside the office.

*In rare cases, because of the nature of the work, managers may request a waiver from the Executive Director to allow some employees to wear apparel that is more conducive to their work (i.e., employees in positions that require unboxing and moving equipment, connecting wiring, and other more physical duties. Even though this dress is more casual, it should still be presentable).*

The Executive Director reserves the authority to allow the wearing of casual business attire at specific times and for indefinite durations. At this time, the Executive Director has designated Fridays as a casual dress day ***except for the days on which there is a Division board meeting in the building.***

Supervisors are charged with the responsibility of monitoring and enforcing this policy.

## **5. Voting**

Division rules will not affect employees' rights to vote or employees' rights as private citizens to express opinions on political subjects or candidates. Employees are urged to participate in the election process although all political activities must take place outside of working hours, or while on leave.

On statewide election days employees will be allowed to take sufficient time off to vote without deduction in salary or accrued leave. Ordinarily, this should not exceed one hour. Employees should coordinate voting leave with their immediate supervisor.

## **6. Name, Address, and Telephone Number Change**

It is the responsibility of the employee to ensure that personnel records accurately reflect name, social security number, address, and telephone number, and any other personal data.

An employee's name shall be reflected on personnel and payroll records as it is on his/her social security card.

**When there is a change in a name, address, or telephone number, employees are to immediately notify TDHCA/HR, by completing a personal data change form.** Upon

notification of a change, the TDHCA/HR will make the change in the employee's personnel, payroll and insurance file.

## **7. Public Access to Work Areas**

### **a. Public Access**

The facilities and employees of the Division are for the performance of official state business. As a state Division and as state officials, it is our public duty to protect the integrity of the work place and to be good stewards and custodians of public property. Thus, public access to Division premises must comply the Division's posted requirements and restrictions on visitors.

### **b. Weapon Prohibition**

Carrying a handgun or any sort of weapon on Division premises or while otherwise engaged in Division business, whether or not an employee is licensed to do so, violates Division policies and procedures and will subject the employee to serious disciplinary action including immediate termination. Any person found in violation of this policy will also be reported to law enforcement authorities. If there is a reasonable basis to suspect that a person has brought or is planning to bring a weapon to the workplace, the manager or supervisor should be notified and the Executive Director should be immediately consulted. The Executive Director may report such matters to law enforcement authorities for investigation and/or other appropriate action.

## **2.0 RECORDS ADMINISTRATION**

### **2.1. Inquiries about Present or Past Employees**

1. All requests for information regarding either current or former employees should be directed to TDHCA/HR. No information regarding either current or former employees may be released without authorization by TDHCA/HR.
2. Home address, telephone number, social security number and information which may reveal that the individual has family members living at home will not be released by TDHCA/HR if a directive to withhold such information from disclosure has been signed by the employee.
3. TDHCA/HR will release information regarding a current or former employee's name, salary, title and date of employment.
4. Performance references will only be given in response to a written request if there is a written authorization signed by the employee permitting the release of such information.
5. Statistical information regarding composition of TDHCA work force, including the Division, will be provided to state and federal agencies as may be required.

## 2.2. Public Information

1. All persons are, unless otherwise expressly provided by law, at all times entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.
2. The result of this State law is that most information held by the Division is public information by definition.
3. All requests for written information must be processed in accordance with the Division's Public Information policy. All requests must be date stamped immediately upon receipt. If the information contains confidential information or information that may be withheld under an exception to the Public Information Act, the request and the information responsive to the request must be forwarded that same day to the staff attorney for a determination of whether the information is subject to public disclosure. Public information requests from the media should be routed to the Communications staff in TDHCA. Public information includes all information in any medium, such as, paper; film; a magnetic, optical, or solid state device that can store an electronic signal (e-mail messages); tape; Mylar; liner; silk; and vellum.

## 2.3. Access to Personnel Records

The following individuals shall have access to personnel files:

- the employee or his/her designated representative;
- the Executive Director;
- the employee's supervisor and manager;
- the delegated staff of TDHCA/HR;
- the delegated staff attorney;
- the supervisor and manager for any position for which the employee has applied within the Division;
- auditors and authorized representatives in connection with the performance of their official duties
- any person with a valid court order authorizing inspection of the file or portions thereof;
- representatives of the Equal Employment Opportunity Commission, the Texas Commission on Human Rights or other governmental entities with superior powers in official investigations of charges of discrimination.

The Division will not accept or comply with a request for information from an individual who is imprisoned or confined in a correctional facility.

**Derogatory information concerning an employee will not be placed in the employee's personnel file without the employee's knowledge.**

## 3.0 DISCIPLINARY POLICY

1. The Executive Director delegates to the managers the authority to determine measures necessary to correct below standard employee job performance, job-related conduct, or for actions that are not in the best interest of the Department.

2. Methods used to access employee's performance/conduct include personal observation, written documentation, performance evaluation, or a combination of these.
3. Supervisors/Managers are required to maintain thorough and complete documentation regarding employee performance problems that have occurred. In addition to any documentation that the Supervisor decides is necessary, the Supervisor must complete a Performance Improvement Plan for any employee who receives an overall performance rating of 2.9 or below. The supervisor shall consult with TDHCA/HR and the staff attorney when he/she is recommending any type of disciplinary action for an employee. The Executive Director, TDHCA/HR, and the staff attorney shall review all disciplinary actions prior to their becoming final.
4. Types of disciplinary actions used are reduction in salary, suspension without pay, probation, or involuntary termination. None of these actions may take place without the written approval of the Executive Director.
5. Supervisors who wish to reduce the salary, suspend without pay, put on probation, or terminate an employee shall review any proposed disciplinary actions with their manager. If the manager is in agreement with the recommendation, he or she shall consult with TDHCA/HR and the staff attorney. TDHCA/HR and the staff attorney will review any recommendations with the Executive Director. No disciplinary action is undertaken without this comprehensive review to ensure consistency of application across the Division.
6. The Supervisor/Manager shall prepare a written memorandum to the Executive Director recommending the disciplinary action and describing the circumstances leading up to such action with copies to TDHCA/HR and the staff attorney. After Executive Director approval, the documents will be forwarded to TDHCA/HR for completion of the appropriate forms. Retention of disciplinary action documents will be in accordance with the Division's record retention schedule.
7. It shall be noted that, in cases where a reduction in salary involves moving into a lower salary group, this will be considered a demotion. The General Appropriations Act directs that in case of demotion an employee's new duties must change to those of the position in the lower salary group.

#### **4.0 GRIEVANCE PROCEDURE**

##### **1. Purpose**

These procedures are intended to aid in the resolution of problems which Division employees may encounter in the performance of their job duties. An employee who files a grievance shall not be treated adversely or otherwise unlawfully discriminated against.

##### **2. Limitations**

- a. The time limitations specified in this grievance procedure are intended to ensure prompt resolution of grievances. Failure to observe the time limitations by any party may subject such party to sanctions or dismissal of the grievance. The Executive Director may waive the time limitations or other procedural requirements set forth in this grievance procedure at his/her discretion.

- b. Unless otherwise authorized by the Executive Director, all grievances must be filed within 10 working days after the date of the incident.
- c. Unless otherwise authorized by the Executive Director, all formal grievances must be filed within 10 days after the date of the Informal Grievance Resolution Report. The Informal Grievance Resolution Report will be dated with the same date on which distribution is made to the parties.
- d. This grievance procedure does not constitute all or any part of the terms of an employment agreement. The grievance procedure is subject to change at the discretion of the Executive Director and does not alter or limit the authority of the Executive Director under law to make employment related decisions concerning the Division.
- e. This grievance procedure is only available to current employees of the Division.

### 3. Definitions

For the purpose of this grievance procedure the following definitions shall apply:

***Complaint***- a written statement of the issue and all surrounding circumstances that form the basis of the action complained of. The complaint must be **directly related** to the employee's job duties, the terms and conditions of his or her employment, or the environment in which the employee works.

***Grievance***- the signed written complaint and other written information.

***Grievance Coordinator***- the Division employee designated by the Executive Director. If the Executive Director is a party to the grievance, the staff attorney shall serve as the Grievance Coordinator.

***Grievance Conference***- the conference held by the Grievance Moderator to resolve a formal grievance.

***Grievance Documents***- the grievance, written responses and other documents or records relevant to the grievance.

***Grievance Moderator***- the person designated by the Executive Director to preside at the grievance conference and to prepare a written determination on the formal grievance. Unless otherwise specified by the Executive Director, a Manager/Supervisor in a different division from the parties to the grievance serves as moderator.

***Grievant*** - the party filing the grievance.

***Informal Complaint Resolution***- the informal gathering of facts and the action taken to informally resolve a written complaint.

***Informal Complaint Resolution Report***- the informal report prepared by the manager after attempting to resolve a grievance.

***Other Party (ies)*** - the person(s) allegedly responsible for the action complained of.

***Parties***- the grievant and other party (ies) to the grievance.

#### 4. Procedural Steps

##### a. Informal Resolution

An employee who encounters a problem in the performance of his/her job duties must make reasonable effort to resolve the problem prior to filing a complaint. The employee should attempt to resolve the problem by discussing the problem with his/her immediate supervisor and, when appropriate, with the person(s) allegedly responsible for the action causing the problem. If the problem involves an employee of another section of the Division, the employee should bring the problem to the attention of his/her Manager, who will then attempt to informally resolve the problem by discussing the problem with the appropriate Division Director. **In every instance, a problem should be discussed with the employee's Manager prior to instituting a grievance.** The Manager files an Informal Complaint Resolution Report with the Executive Director with copies to TDHCA/HR and the staff attorney. This report includes the facts of the matter, persons interviewed, action taken to resolve the complaint, and recommendations.

##### b. Preparing the Formal Grievance

If attempts to resolve a complaint are unsuccessful, an employee may wish to proceed by filing a grievance. The grievance must be in writing and signed by the grievant. The grievance need not be in any particular form, but must contain the following information:

- The name and position of the grievant;
- The name and position of the other party(ies) to the grievance, if known to the grievant;
- A detailed description of the situation prompting the complaint;
- A statement describing the efforts made to informally resolve the problem and the result of such informal resolution efforts (if informal resolution has not been attempted, an explanation must be provided);
- A statement of the remedy sought by the grievant; and
- Any documents that are relevant to the grievance.

##### c. Filing the Grievance

The grievance must be filed with the Grievance Coordinator. Upon receipt of the grievance, the Grievance Coordinator shall furnish a copy of the grievance to the other party (ies) to provide written responses, within ten (10) working days of receipt of the grievance. Upon receipt of the other party (ies) written response, the Grievance Coordinator shall furnish copies to the grievant.

##### d. Scheduling the Grievance Conference

The Grievance Coordinator shall coordinate with the appointed Grievance Moderator and schedule a grievance conference to take place within fourteen (14) working days of the date of receipt of the grievance documents. The Grievance Coordinator shall notify each party in writing of the scheduled conference. Such notification shall include:

- The time, date, and location of the conference;
- The name of the Grievance Moderator of the conference;

- A statement that each party may bring to the conference a representative of his/her choice; and
- A statement that each party may bring to the conference any persons having knowledge relevant to the grievance. Before or during the grievance conference, the Grievance Moderator may request the attendance of other persons whom he/she determines may aid in establishing the facts and the resolution of the grievance.

e. Conducting the Grievance Conference

The Grievance Coordinator shall make necessary arrangements for a tape recording of the grievance conference.

The Grievance Moderator shall preside at the grievance conference and shall actively participate in resolving the grievance. At such conference the Grievance Moderator shall afford the parties, or the representatives, an equal opportunity to present fully the respective views and to question all parties and persons having knowledge relevant to the grievance. Insofar as it is possible, the conference shall be conducted in an informal and cooperative manner. The Grievance Moderator shall attempt to arrive at a mutually acceptable resolution of the grievance.

f. Written Determination

Within ten (10) working days after the day of the grievance conference, the Grievance Moderator shall prepare a written determination which shall include:

- The time, date, and location of the conference;
- The names of all persons present at the conference; and the capacity in which such persons were present;
- A synopsis of the issues presented at the conference;
- Conclusions reached by the Grievance Moderator and the basis of such conclusions; and
- The remedies, if any, recommended by the Grievance Moderator.

The Grievance Moderator shall furnish the written determination to the Grievance Coordinator who shall immediately transmit copies to the Executive Director and to all parties either in person or by mail. The written determination will be the final action of the grievance, unless reviewed by the Executive Director.

g. Review of the Written Determination

The Executive Director shall review the written determination upon his/her own motion or upon the written request of any party to the grievance. Any request for review by parties must be filed with the Grievance Coordinator within three (3) working days following the date upon which the party received the written determination. The Executive Director shall review the record and may:

- Accept the written determination by the Grievance Moderator;
- Modify the written determination of the Grievance Moderator in whole or in part; and
- Schedule and conduct another conference or otherwise obtain additional information on which to base his/her decision.

h. Final Decision

In each instance in which the Executive Director reviews the written determination, the Executive Director shall render a decision within 20 working days after the date of commencement of his/her review. The decision shall be in writing and shall be furnished to the Grievance Coordinator who shall immediately transmit copies of the decision to the parties in person or by mail.

**The decision of the Executive Director shall be final.**

**5.0 STAFFING AND ORGANIZATION**

**5.1. Types of Hires**

**1. Regular Full-Time**

Applicants hired to fill a position on a full-time basis (40 hours per workweek) are considered regular full-time employees and are entitled to all vacation, sick leave, and holiday privileges.

**2. Regular Part-Time**

Applicants hired to fill regular budgeted positions on less than a full-time basis (less than 40 hours per workweek) are considered regular part-time employees. Employees in this category receive a proportionate share of the vacation leave and sick leave to which full-time employees are entitled. Holidays will also be observed.

**3. Hourly Appointment**

On occasion, a person may be employed on an hourly wage basis when the nature of the work requirement is of short duration or when the person will be scheduled to work irregular hours.

**4. Temporary Employment**

When employees are needed to fill positions for short, indefinite periods and it is known that the need for the position will not be regular, applicants may work for the Division on a temporary basis, which shall be less than six (6) continuous months.

**5.2. Multiple Employment with the State**

It shall be the policy of the Division to refrain from employing a person who is also working for another state agency or State University. Under unusual circumstances the Executive Director may waive this policy. In that event, the following provisions will apply:

- Completely separate vacation and sick leave records will be maintained for each employment;
- The person accrues state service credit for all purposes as if the employee had only one employment;

- Upon termination of one position, the leave balances may not be transferred to the remaining employment;
- The state contribution toward the employee's benefit replacement pay will be subject to the overall individual limit;
- The total state contribution towards the employee's group insurance is limited to the amount specified for a full-time active employee;
- The person must inform the person's employing state agencies or institutions of higher education before accepting an additional employment with another agency or institution;
- Overtime compensation will accrue to each employment independent of the other except in those instances in which the person is subject to the overtime provisions of FLSA. In these cases, and where the multiple employment is with two separate agencies, the two agencies shall coordinate in order to determine which Division will have the responsibility of ensuring that the employee is properly compensated.
- An employee may not be paid for working over forty (40) hours instead of earning comp time.
- An employee may not be paid at a greater salary than is allowed for either of the employee's position.

Because the U. S. Department of Labor considers the State of Texas as one single employer under the Fair Labor Standards Act (FLSA), employees who are subject to FLSA provisions will have all combined time worked in excess of 40 hours per week counted as overtime.

An employee of the Division who does not inform TDHCA/HR before accepting additional state employment is subject to immediate termination.

### 5.3. New Employees

Employees new to state government are not permitted to utilize vacation leave during the first six months of employment. **New employees and employees transferring from other state agencies may not apply for posted positions for a period of six months.** In addition, current employees of the Division who apply for and are selected for a posted position may not apply for another posted position for a period of six months. New employees of the Division, including employees transferring from another state agency, may not receive a merit salary increase within the first six months. The completion of the employee's first six months of employment is not in any way a guarantee or grant of any kind of employment or property right or interest whatsoever.

#### 1. Requirement for Selective Service Registration or Exemption

The Division may not hire a person as an employee if the person is of the age and gender that would require a person residing in the United States to register with the Selective Service System under federal law, unless the person presents proof of the person's:

- Registration with the Selective Service System as required by federal law; or
- Exemption from registration with the selective service system.

The following persons are exempt from the requirement to register:

- Females
- Lawfully admitted non-immigrant aliens (such as those men on visitor or student visas and members of diplomatic or trade missions and their families) because they are residing in this country temporarily.

## 2. Hiring of Lobbyists

If the Division employs a person who is required to register as a lobbyist, the Division may have its appropriation for administration reduced by an amount not to exceed \$100,000 for each violation.

### 5.4. Use of Contract Workforce Workers

1. It is the Division's policy to use Contract Workforce Workers in instances where 1.) it is most cost effective, 2.) the need for particular skills is not readily available within the Division, 3.) to support an immediate temporary need, or 4.) for other needs as deemed necessary by the Executive Director. All efforts to engage workers that involve entering into contracts either with individuals or companies supplying such skills will be coordinated through the staff attorney in accordance with the Division's contract routing procedures (SOP 101.01, Contract & Transactional Document System), and with Division purchasing function for coordination with the LBB. **(For further information on Contract Workforce go to the Human Resources folder on the TDHCA intranet or refer to SOP 110.06 Contract Workforce Policy.)**

### 5.5. Interagency Transfer

1. If an employee transfers from another state agency to the Division, his/her salary rate will be subject to the following conditions:
  - Where the new position is in a lower designated salary group, the employee shall be paid at a rate determined by the policy on demotion; and
  - Where the new position is in a higher salary group, the employee shall be paid at a rate determined by the policy on promotion.
2. The Executive Director has the option to hire at any rate, up or down, in the posted salary group.
3. An employee leaving employment with this Division and going directly (no break in service) to employment in another state agency will have all accumulated vacation and sick leave transferred to that agency. FLSA hours will be paid according to the employee's base pay plus longevity, divided by the number of working hours in the month the employee separates, times 1-1/2.

## 5.6. Separation from Employment

It is the supervisor's responsibility upon termination of employment (voluntary or involuntary) to ensure that the departing employee's final time sheet is completed and an appointment with TDHCA/HR is made to complete the separation process. Employees are responsible for returning the following items to TDHCA/HR:

- All keys to the building, office, and/or suite;
- Department credit cards;
- Garage/building cardkey;
- Any other property (including records) owned by the Division.

The Employees Retirement System (ERS) will mail the departing employee the COBRA form to continue their insurance. TDHCA/HR is responsible for ensuring the departing employee receives a retirement refund form. If an employee has accrued FLSA overtime that needs to be paid to them they will receive a check within three weeks from the end of the month the employee terminates. Except in cases of lay-off, employees must be separated from state employment for 30 days to be entitled to a vacation lump-sum payment. If an employee is re-employed by the state within 30 days of separation, vacation leave will be restored; **however, all sick leave hours are lost if the employee has less than 30 days break in service.** If the employee is re-employed by the state and has a break in service greater than 30 days but not exceeding one year, the employee regains the balance of their sick leave.

### 1. Resignation

- a. An employee who voluntarily resigns is requested to give two weeks written notice of resignation to his/her Manager and supervisor with a copy to the Executive Director and TDHCA/HR containing the following information:
  - The specific time and effective date of resignation;
  - A statement indicating whether or not the employee is transferring to another state agency; and
  - A statement indicating whether or not the effective time and date of resignation are based on utilization of any accrued vacation, FLSA overtime, or compensatory leave. If vacation and/or state compensatory time is approved to allow a resigning employee to remain on the payroll and this time carries over to subsequent payroll period(s) (months), an employee is not entitled to accrue additional sick and vacation leave.
  - If any such information is omitted, the Executive Director, the Manager, the Supervisor, or TDHCA/HR may determine the missing information and supply it.
  - A resignation, once tendered, may not be withdrawn unless the Executive Director consents thereto, in writing. Such consent may be withheld without need of any reason.

- b. A resigning employee may make a request in writing to their Manager to be allowed to remain on the payroll while using accrued vacation leave, before the effective date of resignation, provided the employee has sufficient vacation leave balances to cover the requested time. ***The maximum time allowed to remain on the payroll will be two weeks.*** The Executive Director will make the final decision and may make exceptions to this policy. Any employee who is allowed to remain on the payroll to utilize vacation leave may not use sick leave during this time. The Division is not required to allow a resigning employee to utilize his/her compensatory time balance(s). Also, the Division is not required to allow employees to remain on the payroll until his/her earned vacation leave balance is exhausted.
- c. Each employee who decides to terminate employment with the Division shall have an exit interview with TDHCA/HR. The employee will be offered the opportunity to complete an on-line exit survey. The objective of the survey is to offer a direct means through which employees can provide information about why they decide to leave state employment.

## **2. Involuntary Separation**

- a. Employees of the Division are subject to involuntary separation from employment. In situations approved by the Executive Director, employees may be separated from employment immediately. Only the Executive Director can approve the involuntary separation of employment of a Division employee.
- b. Notwithstanding Division rules, regulations, personnel policies or handbooks, the Division may institute a reduction in force, mergers, recalls, and transfers occurring as a result of a reorganization or for any other reason. Procedures implemented will be objectively defined, job related, measurable, and consistently applied.
- c. Departing employees that have not completed six continuous months of employment with the state are not eligible to use or be paid for their vacation leave. The use of state compensatory leave and holiday hours is at the discretion of the Executive Director.
- d. Retention of restructuring documents will be in accordance with the Division's State Record Retention Schedule.

## **3. Retirement**

No mandatory retirement age shall apply to any employee of the Division.

## **5.7. Classification Plan**

State law requires that positions within the Division be classified according to the Position Classification Act of 1961. This act created the state classification plan and established first-line responsibility for compliance with the individual agencies. Each position in the Division is designated a classification based on the duties and responsibilities of that position.

State employee positions, except for the Executive Director position, are listed in the Appropriations Act. Exempt positions are not within the Classification Plan. The Division employee classifications are based on job descriptions. The Managers and TDHCA/HR will review on an on-going basis the classifications of Division employees. TDHCA/HR will make reclassification recommendations, through channels, to the Executive Director.

## 1. Reclassification

- a. As provided in the Position Classification Act, a position may be reclassified within the Position Classification Plan as a result of classification audits or program reorganizations by the Executive Director, or to a new class properly established by the Legislature. **Reclassification as defined in Article IX of the General Appropriations Act and as provided in the Position Classification Act, shall mean only the proper definition of duties and classification** of the position based upon duties actually performed by the employee; hence, a position shall be reclassified for the sole purpose of complying with the requirements of the Position Classification Act. **Reclassification shall not be interpreted to mean a change in the employee's duty assignment.** When reclassifications are determined to be appropriate, they may take effect at any time.
- b. When a position is reclassified to a higher salary group, the new salary should be the minimum salary for the higher group or a salary equal to the previous salary, whichever is higher. An additional adjustment may be made to the employee's salary up to two steps (Salary Schedule A) or 6.8 percent (Salary Schedule B) for the purpose of maintaining desirable salary relationships among affected positions.

## 2. Promotions/Demotions

- a. **Promotion** means a **change in duty assignment** of an employee from a position in one classification to a position in another classification in a higher salary group in the same salary schedule or in a different salary schedule with a higher minimum salary rate requiring higher qualifications, such as greater skill or longer experience, and involving a higher level of responsibility.
- b. Employees promoted to positions in Salary Schedule A or B will receive at least a one increment increase in salary (or 3.4%) or the minimum salary rate of their new salary group, whichever is higher. In addition, the Executive Director has the discretion to grant a promoted employee a salary up to and including the maximum rate of the new salary range.
- c. **Demotion** means a **change in duty assignment** of an employee from a position in one classification to a position in another classification in a lower salary group in the same salary schedule or in a different salary schedule with a higher minimum salary rate
- d. The salary of a demoted employee in Schedule A or B will be reduced at least one increment (or 3.4%) below the employee's salary prior to the demotion. However the Division will not reduce an employee's salary if the employee accepts a demotion in lieu of a layoff or is selected for a position in a lower salary group as a result of applying for the position. For the purpose of demotions, "lower salary group," means a salary group with a lower minimum salary rate.

- e. The Executive Director may reduce the salary of employees for disciplinary reasons if their performance so warrants. Employees may have their pay restored to any step rates in the same salary ranges up to and including their prior rates if, and when, their performance improves.

### **3. Temporary Assignments**

To facilitate the work of the Division, any classified employee, during emergencies or other special circumstances, may be assigned during a fiscal year temporarily to other duties which **shall not exceed 6 months**, and during that time, may receive the appropriate rate of pay. During this period, the employee is not eligible to receive a merit salary increase, a promotion or demotion, or a reduction in pay.

## **5.8. Selection and Hiring Guidelines**

### **1. Purpose**

To provide guidelines for selection and hiring which comply with Division personnel policies and procedures and all applicable laws. These guidelines will support recruitment of a diverse and highly qualified workforce and will facilitate hiring based on qualifications and demonstrated performance.

### **2. Job Vacancy Process**

- a. Write or update Job Description.

The job description is divided into three parts:

- **General Description**
- **Specific Job Responsibilities**
- **Knowledge, Skills & Abilities**

### **GENERAL DESCRIPTION**

The general description should briefly summarize the duties of the job.

- Begin the General Description with a sentence stating whom the employee is responsible to, the Division, and the Section. For example, for an investigator in Resolutions, you might write: "The investigator (working title; not classification) is responsible to the Supervisor of Resolutions in the Complaint and Resolution Section."
- A summary of the Work Performed should be included next. This summary should include broad statements that focus on the nature and difficulty (routine, complex, etc.) of the work activities and responsibilities.
- The level of supervision should also be addressed using general terms such as: general, minimum, or close. For example: "Work is performed under general supervision of (immediate supervisor's working job title)."
- If needed, working conditions, requirements for travel, (occasional, frequent, etc.) or other extraordinary conditions associated with the job should be included.

## **SPECIFIC JOB RESPONSIBILITIES**

The Specific Job Responsibilities are the major functional responsibilities or tasks of the employee's job. The following guidelines should be applied to writing each task:

- Tasks may be listed in either of two ways: 1) sequential pattern that indicates the workflow of the position and relationship between tasks; and 2) in order of some predetermined order of importance.
- Tasks should mirror the actual job. The tasks and their characteristics should be as flexible as the job itself. The tasks should be changed as the tasks of the job change. **(However, whenever there is a change in the job description, a revised copy should be submitted to TDHCA/HR for classification review and to update the copy in the employee's personnel file.)**
- Begin with an action verb that clearly describes the activity performed and answers the question: What is done? Example: "Types correspondence and memoranda...", or "Develops and maintains an annual operating budget..."
- Materials, tools, information or procedures should be listed when appropriate. In some cases the how is obvious and not required to be written down. Example: "Types correspondence and memoranda using a word processor," or "Develops and maintains an annual operating budget using budget guidelines." Equipment that the employee must be able to use should be listed: a PC, telephone, calculator, etc.
- Include a statement of the amount of time an individual will spend performing a specific task. The statement may be listed in terms of a percentage ("Lifting 50 lb. boxes repeatedly over 50% of the work day").

## **KNOWLEDGE, SKILLS & ABILITIES**

This section of the job description includes the minimum qualifications required of an applicant for the position.

- Enter the level of education and/or training required for successful performance in the position. Also included here would be statements of specific licenses or certificates required for the position.
- Enter the type and number of years and/or months of experience required to be able to perform the duties of the position at the minimally acceptable level.
- Enter the specific skills required to perform the tasks listed in the job description.
- Preferred qualifications are experience and education desired to accomplish the tasks and responsibilities of the position. When used, preferred qualifications should be objectively defined, job related, measurable, and consistently applied. Additionally, preferred qualifications shall remain secondary focus and shall be able to be justified on the basis of business necessity or legitimate business objectives. Human Resources shall review preferred qualifications to ensure consistency in applications.

- For clerical positions, include typing speed.
- b. Complete the Personnel Requisition Form (PRF).

The first step in the hiring of a new employee is the origination of the PRF. When a Manager determines that a position is needed (to replace an out-going employee, to fill a previously unfilled position, etc.), it is the Manager's responsibility to:

- complete the top portion of the PRF (see Microsoft Word, File, New, PRF);
- write a job description for the function;
- obtain the signature approval of the Executive Director;
- submit the PRF and job description to TDHCA/HR;
- TDHCA/HR will check the job description and salary against the responsibilities and requirements of the State Classification.

TDHCA/HR will post the position when the Executive Director has approved the posting.

### **3. Posting/Advertising the Job Announcement**

#### a. Posting announcements

Job announcements should include the same skill, knowledge, abilities, and qualifications as identified in the job description. TDHCA/HR will send a copy of the PRF with the posting attached to the Executive Director and hiring Manager and notify all employees, including TDHCA employees, via TDHCA-wide e-mail. The job announcement will also be posted on the Division job line, the Division internet web page, and with the Texas Workforce Commission. For additional recruitment efforts, job postings may also be mailed to Minority Recruitment Contacts.

- Job announcements may be advertised externally (open to everyone) or internally (open only to current Division employees).
- Job announcements may be posted with a deadline or for an indefinite period of time provided the announcement remains open for at least 3 working days. The average posting is 10 working days.
- Job announcements will include a statement that all reasonable accommodations are requested by calling the ADA Coordinator.

#### b. Advertising announcement

A decision to spend Division funds for an employment advertisement should only be made if other job posting methods will not be sufficient to ensure an adequate application selection pool. If a decision is made to place an employment advertisement:

- The hiring supervisor should check with Purchasing to determine the cost of placing the desired advertisement(s). The hiring supervisor is responsible for preparing the

purchase requisition and the ad copy per the advertisement example. **This example can be found on the intranet in the Human Resources folder;**

- Contact TDHCA/HR to review the ad;
- Purchasing will assign a purchase order number and fax the ad to the newspaper/publication indicated on the purchase requisition.

c. When do you not have to post a job?

- Emergency situations, as specified by the Executive Director.
- When promoting within the Division or lateral transfers within the Division.

**Note:** If the position is to be filled by a current employee, then a memo should be submitted to TDHCA/HR with the recommended action and salary for the employee. TDHCA/HR will prepare a PAF for approval signatures. The employee should not be notified of the recommended action until after the Executive Director has approved the PAF. You do not need to complete the PRF process.

#### 4. Application Process

a. Applications

To be considered for employment, individuals must complete a State of Texas Application Form. The application may be submitted in person or by mail, and in some cases, by fax. Faxed applications must be followed by an original application. Resumes are not accepted in lieu of an application form.

In-house applicants may complete an in-house application that can be found in **Word/File/New/In-house application.**

Only applications submitted before the deadline will be forwarded to the hiring Manager for consideration.

Applications for posted positions are accepted in TDHCA/HR located on the 4<sup>th</sup> floor at 507 Sabine, Austin, Texas. All applications received are maintained in an applicant tracking log.

In the event a Manager receives applications or resumes that have not been forwarded by TDHCA/HR, the originals should be sent to TDHCA/HR to be included in the job file before closing date of the posting. **All applicants must apply through TDHCA/HR.**

b. The EEO Survey

An EEO survey is included in each application. Applicants are asked to complete the survey, although this is not mandatory at the time of submitting an application. The surveys are separated from the applications before the hiring Manager reviews them. Information on the forms is necessary for record keeping and maintained by TDHCA/HR. If the hiring Manager accidentally receives an EEO survey form, do not consider it and send it to TDHCA/HR immediately.

## 5. Screening Applications

### a. Screening Process

- TDHCA/HR will screen applicants for minimum qualifications using an approved rating schedule based on quantifiable, job-related experience and educational qualifications as set forth in the job description and will provide copies of the screened applications to the hiring Manager.
- If only current employees may apply for a vacant position, additional criteria may include job performance evaluations based on quantifiable measures and length of service with the Division.
- The hiring Manager must rate the remaining applications using minimum and preferred qualifications requested in the job posting using a scoring system they develop which is reviewed by TDHCA/HR prior to interviews being conducted. Applicants are ranked based on their cumulative scores and the top applicant(s) with the highest cumulative score will continue to be the candidate(s) interviewed.
- Applications/resumes of candidates who meet the minimum qualifications should be reviewed by the hiring Manager or selection panel for the following:
  - Conflicting information
  - Career progression (promotions, increases)
  - Length of time on jobs ( stability)
  - Reasons for leaving

#### **TIPS on how to read an application or resume:**

- Focus on demonstrated knowledge, skills, and abilities.
- Look for verifiable facts...positions held, dates, etc.
- Typographical errors, misspellings, and poor grammar may indicate a lack of attention to detail and/or poor writing skills.
- Look for evidence of achievement, career focus, job stability, job content.
- Lateral moves, job changes with a decrease in responsibility, “job hopping” and gaps in employment are issues that should be explored further, if the applicant is selected for an interview.
- In the “reasons for leaving” section of the application, comments such as “discharged” or “terminated” should also be investigated.

## 6. Interviewing

After the most qualified applicants have been identified, the hiring Manager should forward interview questions and schedule to their TDHCA/HR contact person for review before interviews begin. **It is recommended that the job posting be closed once interviewees have been determined.**

**Informal interviews should not be conducted.**

**\*If there is a typing speed requirement, TDHCA/HR will conduct a test before the interview takes place. Testing scores from the Texas Workforce Commission will be accepted if they are current (within six months).**

a. Telephone Interviews

In limited instances, such as when there are a great number of applicants, or for long distance applicants, telephone interviews may be used prior to a decision on whether or not a personal interview would be appropriate. In no case should an applicant be hired based solely on a telephone interview. Telephone interviews should be used only when absolutely necessary.

b. Number of Candidates to Interview

- At least three (3) candidates should be interviewed unless there are insufficient applicants.
- If fewer than three (3) candidates meet the minimum entry requirements for the position, all individuals who qualify should be interviewed.
- The hiring Manager may elect to re-advertise the position if he/she does not believe there are individuals who meet the minimum requirements.

c. Contacting the Candidates for Interview

Candidates should be notified by phone. When notifying candidates, give them the following information:

- The date, time, and location of the interview,
- Anticipated length of the interview,
- Parking availability and building accessibility issues,
- Summary of what the selection process will involve, including tests, demonstrations, etc.,
- Name and phone number of a contact person, and
- Any necessary documents they will need to bring with them to the interview.

d. Conducting Interviews

The interviews should challenge the applicants' knowledge and experience demonstrated on their applications. The interview should consist of some (but not all) questions which have specific answers that can be numerically scored (like an oral exam). Those questions should be assigned a value, with the most important information receiving the highest score.

**Conduct interviews and keep all interview forms and notes. Notes should only be taken on what the applicant says in response to interview questions.**

**NOTE:** The subject of pre-employment questioning is complex, and there are differing and sometimes contradictory interpretations by the courts about what is lawful and unlawful. The Texas Commission on Human Rights recommends that questions be as objective and quantitative as possible.

e. Ground Rules for Employment Interviews

For personnel decisions, policies, procedures, and requirements to meet the test of objectivity, the criteria must be concrete and observable as opposed to subjective and personalized judgment. TDHCA/HR should review all interview questions for vacant positions to ensure they meet the criteria of objectivity, job-relatedness, measurability, and consistent application.

When conducting interviews:

**Standardize questions.** The interview process should be standardized and as objective as possible. The interview questions should cover objective job-related criteria, which should be consistently applied and quantitative. By asking the same questions of all applicants for a particular position, an employer decreases the risk of posing discriminatory or illegal questions.

**Establish the objectives and scope of each interview.** Determine the areas and specific questions to be covered. Review job requirements, application form, test scores, and other available information before seeing the applicant.

**Ask ONLY job-related questions.** It is a good idea to stick to questions about the requirements and essential duties of a job. It is best to focus on the skills, knowledge and experience required to perform these duties.

**Establish and maintain rapport.** This is accomplished by greeting the applicant pleasantly, by displaying sincere interest in the applicant, and by listening carefully.

**Keep careful notes using a standard format.** Notes should only be taken on what applicant says in response to interview questions. **Do not take notes on the application itself.**

**Questions should address the following areas: Remember that questions should relate to the actual skill level required by the position.**

**TECHNICAL KNOWLEDGE:** Relevant course work; understanding of profession/specialization; knowledge of management methodologies; analytical and problem solving skills; unique technical skills relevant to position; knowledge of Texas State government etc.

**EXPERIENCE:** Prior work experience, unique work-related experience, evidence of management skills, experience in teamwork environments, etc.

**COMMUNICATIONS SKILLS:** Ability to express thoughts effectively in a professional manner, ability to write clearly and concisely, skill in making presentations, etc. If the position requires advanced writing skills, a writing sample may be requested.

**INTERPERSONAL SKILLS:** Skill in customer service; ability to work in a team environment; ability to work for more than one person, etc.

**OTHER:** Ability to comply with work hours, travel, etc.

f. Closing the Interview

Supervisors may want to give or ask the applicants the following additional information when closing an interview:

- Give the applicant a timeframe for when a decision will be made.
- **Ask the applicant if we may contact their present employer.**
- Ask the applicant what the best way to contact them will be.
- Ask the applicant when they would be available to start if offered the position.

g. EEO and Interviewing

A general guideline to avoid EEO problems is as follows:

**All questions should be job-related. Never ask direct or indirect questions related to race, color, age, religion, gender, disability, or national origin.**

Questions that reflect on age, race, color, religion, national origin, gender, or disability are not legal even if they are intended to reveal relevant information about job performance. Ask questions that will give you information about whether the individual has the essential knowledge and competencies to perform well in the specific job. Avoid personal questions that are not related to job qualification and performance. Question your own questions as to what information you are seeking and what information you hope to gain. Develop a written format for the interview and use the same format for each person interviewed and then stick to it. Advance preparation is key to avoiding problems later.

h. ADA and Interviewing

The Americans with Disabilities Act prohibits employers from asking health and disability related questions before they make a conditional offer of employment. Employers also are prohibited from asking about an applicant's disability. An applicant may be asked about his or her ability to perform the essential functions of the position.

Under the ADA, interviewers must not ask questions about attendance record with a prior employer. The proper approach to evaluate whether an applicant will meet the employer's attendance standards is to state the employer's regular work hours and then ask if the applicant can meet those attendance requirements.

If an applicant volunteers during the interview that he or she is disabled, the interviewer must avoid asking the applicant anything about the disability, its nature or severity or need for treatment. Instead, the interviewer should ask the applicant whether there is any accommodation that is needed in order to perform the essential functions of the job. For example, if an applicant volunteered in the interview that he or she has a chronic back condition, the interviewer should not ask about the nature of the back condition or whether the applicant receives therapy or treatment. Rather, the interviewer should ask whether any accommodation would be needed to perform the job duties of the position.

## 7. Recommendation for Hire

The candidate receiving the highest cumulative score on an approved rating schedule based on job-related qualifications shall be selected to fill the vacant position. The hiring manager will

forward a memorandum of recommendation to the Executive Director which includes the recommended starting salary and justification for hiring the applicant. Information about other applicants should not be addressed in the memo. The Executive Director then approves or rejects the recommendation and provides the recommendation and accompanying documents to TDHCA/HR. TDHCA/HR will be responsible for all documentation and communication needed to complete the hiring process. The Executive Director retains full authority for hiring candidates to fill vacant positions.

**Note: Forward the memorandum to TDHCA/HR (*do not forward to the Executive Director*). Also forward all interview notes and selection criteria used during interviews to retain in job file. Retention of selection criteria will be in accordance with the Division's State Record Retention Schedule.**

a. Recommending in-house Applicants

As outlined in the State Auditor's Office guidelines, if an in-house applicant is recommended for a position that is posted at the same group of the in-house applicant then there may be no increase in salary for the applicant. **Example:** A job is posted at a B9 range and in-house applicant is currently a B9 with a salary of \$2,000, then the applicant will move at this same level and same salary to the posted position.

The hiring Manager should contact the in-house applicant's current supervisor to let them know that they will be making a recommendation to move the in-house applicant into their vacant position. **This should be done at the time a decision is made to select that applicant and prior to sending the PAF through for signatures.**

b. References/Background Check:

When TDHCA/HR office receives the recommendation memo, the TDHCA/HR staff person assigned to the position checks references and background. This includes calling colleges and universities to verify degrees and verifying professional licenses and certifications if the applicant has listed them on his/her application.

Information obtained through reference checks will be objective, job-related, measurable, and consistently applied and considered in the decision-making process. TDHCA/HR shall verify consistency in application. Any information that is obtained through reference/background checks that may not be accurate with what is listed on the application may disqualify an applicant.

c. Routing the Personnel Action Form (PAF)

Once the background/reference checks have been completed HR will prepare a PAF and route for approval signatures to the Supervising Manager, TDHCA/HR, and the Executive Director.

## 8. Offer of Employment

**Note: The Executive Director is the only person authorized to hire. Be sure that a job offer is made ONLY AFTER TDHCA/HR has notified the supervisor that the Executive Director has signed the PAF.**

- a. Upon receipt of the signed and approved PAF from the Executive Director, TDHCA/HR will notify the hiring Manager that the request for hire has been approved. The Manager should contact the selected applicant and extend the job offer. The Manager should inform the applicant of the starting salary and also negotiate the start date. Start dates should be the first working day of the month or on any Monday except the last one in the month. If some other start date is desired, contact TDHCA/HR staff. The hiring Manager may elect to have TDHCA/HR staff offer a position to a successful applicant and negotiate the start date.
- b. The Manager should instruct the new employee to report to TDHCA/HR at 8:30 a.m. on their first day of employment for New Employee Orientation. The new employee should also be advised to bring two forms of identification for verification of citizenship (*e.g.* Texas Driver's License, Social Security Card, passport). Orientation is normally 2 hours. **Remember to notify TDHCA/HR with the start date for the new employee.**
- c. Applicant declines job offer  

If an applicant declines a job offer, the hiring Manager should submit a recommendation memo with their second choice for hire. If there is no second choice then the posting may be re-posted.
- d. New employees and employees transferring from other state agencies **may not** apply for posted positions within the Division for a period of six months. Current employees of the Division who apply for and are selected for a posted position may not apply for another posted position for a period of six months. Only the Executive Director has the authority to waive this policy.

## 9. Division Orientation

The Supervisor should designate an employee to assist the new employee on their first day of employment. Supervisors and support staff must make every effort to make new employees feel welcome and make them part of the team as soon as possible. A tour of the building, location of break areas, stairs, fire exits and brief instructions on telephone usage, copiers, mailroom procedures, computers, and other pertinent information related to the Division should be discussed with the new employee. TDHCA/HR will provide the Division buddy with a checklist of these items.

### 6.0 WORK HOURS

#### 6.1. Hours and Place of Work

Staff time is a valuable asset that must be managed to achieve the greatest productivity for each dollar spent. All staff members are expected to be productive during the entire workday. Managers are assigned the responsibility to see that staff time is used efficiently and effectively.

## 1. Office Hours

- a. Office Hours at the Division are from 8:00 AM to 5:00 PM Monday through Friday. All sections will remain open during the noon hour of each working day with at least one person on duty to accept calls, receive visitors, and transact business. Where an exception is deemed necessary or advisable, the Executive Director may declare that offices be kept open during other hours and on other days. However, the time worked under this provision will count toward the required 40 hours per week.
- b. All leave (except sick leave) must be requested and approved in advance by an employee's supervisor using the prescribed process. (See Section 9.0 Leaves and Absences, Page 77)
- c. The Division does not schedule formal break periods. Employees may take breaks as needed not to exceed one 15-minute break in the morning and one 15 minute break in the afternoon. Breaks must be coordinated with the employee's direct supervisor to ensure functional areas maintain efficient operations of Division business.
- d. Employees must, during normal office hours, conduct Division business only at their regular place of business or assigned duty point unless they are on travel status or have received prior written authorization from the Executive Director. An employee's personal residence may not be considered to be their **regular** place of business or duty point without the written authorization of the Executive Director. **In no event may an employee accrue state compensatory time while working at home.**

## 6.2. Flex Time (Staggered Work Hours), Compressed Workweek, and Telecommuting

The Executive Director has approved the implementation of Flex Time (Staggered Work Hours), Compressed Workweek, and Tele-commuting work schedules in order to provide flexibility for both employees and management as long as the business of the Division and the needs of the citizens of Texas are being met. It must be noted that not all employees may be eligible for participation in the following work schedules due to the nature of the businesses they support. Management is available to discuss exceptions to these work schedules. The Executive Director reserves the right to cancel or modify these work schedules at any time without notice.

### 1. General Guidelines

- All participation is voluntary
- Employees on any level of corrective action or who have received a performance improvement plan may not be eligible for participation.
- Sick Leave, annual leave, leave without pay, and compensatory time are administered according to existing policy

### 2. Flex Time (Staggered Work Hours)

Employees, with the approval of the appropriate manager, may stagger their work schedule beginning between 7:00 AM to 9:00 AM and ending between 4:00 PM to 6:00 PM as long as the Division remains open between 8:00 AM to 5:00 PM. Employees desiring a work schedule other than 8:00 AM to 5:00 PM must receive written approval from the supervisor. A copy of the written approval is sent to the Time and Leave Administrator at TDHCA/HR and is filed in the employee's time and leave file.

### 3. Compressed Workweek

- Compressed Workweek scheduling does not exempt employees from Division policies regarding habitual, excessive tardiness, or unscheduled leave usage.
- Management and employees must ensure that employees not work more than 40 hours (except on an approved basis) per week in any of these Compressed Workweek options.
- Employees may take a 30-minute lunch break during the day if approved by the supervisor as part of the work schedule.
- In order to plan for work, employees choosing a Compressed Workweek are obligated to work their chosen schedule for a minimum of six (6) months. Exceptions can be made on a case-by-case basis for instances such as grand jury/jury duty, training, travel, hazardous weather, recurring tasks in work scheduling, and holidays.
- Because all employees cannot be off on either Fridays or Mondays, other days during the week may be offered. Managers may decide to rotate these days off on a monthly or quarterly basis.
- Employees requesting a change to these work schedules must fill out the “Request for Flextime Work Schedule” form and receive approval from their supervisor. The completed form is sent to the Time and Leave Administrator in TDHCA/HR and filed in the employee’s time and leave file.

#### **Option A – (4/10+1/8 O = 40)**

- a. Employee works four 10-hour days and one 8-hour day off during the workweek for a total of 40 hours per workweek. The day off may occur at a mutually agreed day of the week.
- b. Holiday calculation formula:  
Number of Hours Worked + Eight Holiday Hours = Hours Earned  
Required Forty Hours – Hours Earned = Hours owed by or to employee

#### **Option B – (4/9+1/4+1/4 O = 40)**

- a. Employee works four 9-hour days plus one 4-hour period plus one 4-hour period off during a workweek for a total of 40 hours per workweek.
- b. Holiday calculation formula:  
Number of Hours Worked + Eight Holiday Hours = Hours Earned  
Required Forty Hours – Hours Earned = Hours owed by or to employee

#### **Option C – (8/9+1/8+ 1/8 O = 80): This option is available only to FLSA exempt employees due to overtime factors.**

- a. Employee works eight 9-hour days plus one 8-hour day and one 8-hour day off every two-week period. Eighty hours worked over a *consecutive* two-week period.
- b. Employees choosing this schedule must work 45 hours on the first week of the schedule (five 9-hour days) and 35 hours on the second week of the schedule (three 9-hour days + one 8-hour day + one 8-hour day off)

- c. Holiday calculation formula:  
Number of Hours Worked + Eight Holiday Hours = Hours Earned

**Required Eighty Hours – Hours Earned = Hours owed by or to employee**

#### **4. Tele-commuting**

Tele-commuting allows employees to work in their homes or in locations other than the Division's physical office location that have been mutually agreed upon. It is to be used sparingly to avoid undue expenses and having to add another task of monitoring an employee away from their normal workgroup. Tele-commuting should be used for one-time projects that require acute concentration, need a fast turnaround, and are critical to the success of key Division programs. Therefore, tele-commuting should be used only for business purposes like accomplishing critical work in a quiet, uninterrupted environment and is not meant to be a substitute for personal accommodation. Please refer to Section 6.1.

##### **General Guidelines:**

- Work being done away from the office does not involve taking confidential or secured information or one-of-a-kind documentation away from the Division work location.
- Employees may be required to attend meetings in a Division work location on an as needed basis.
- The work being done may not require continuous supervision or frequent employee interaction in order to be completed.
- The review, expectations, and evaluation of the work to be performed should be outlined *prior* to the time the employee is allowed to tele-commute.
- In order to be approved for tele-commuting, the employee must have consistently shown the ability to work successfully without supervision.
- The hours an employee will tele-commute will vary depending upon the work to be done and the business supported. A combination of office and tele- commuting must still equal 40 hours worked per week.
- Compensatory time will not be earned in the week that an employee is working a tele-commuting schedule.
- *Necessary equipment will be provided to employees using this program, i.e., computer, printer, modem, fax, telephone and accompanying line, calculator, paper, and miscellaneous office supplies, contingent on availability and funding.*
- Employees wishing to participate in tele-commuting should fill out a "Request for Tele-commuting" form which will need to be approved by the Manager and Executive Director with concurrence by TDHCA/HR.
- This ability to tele-commute is a privilege extended to those employees who have proven to have the ability to work with a minimum of supervision. It may be revoked at any time by the Manager or Executive Director if it is deemed that the employee's situation no longer satisfies the guidelines, or the employee becomes subject to some disciplinary action, or if the Manager or Executive Director deems that tele-commuting is no longer in the best interests of the Division.

#### **6.3. Attendance and Punctuality**

1. Employees are expected to notify their supervisor no later than 8:15 a.m. if they will be late or absent from work on that day. If the immediate supervisor is not available and has not

designated an alternative person to be contacted, the employee should notify the receptionist and request that the message is forwarded to the supervisor. It is the **supervisor's responsibility** to deal with problems of attendance and punctuality. It is each **employee's responsibility** to ensure that the individual's supervisor knows of his/her whereabouts during the workday and approves of his/her absence(s) from the assigned work area. An employee who is absent from work without approval will be subject to disciplinary action.

2. Employees who are absent without authority and who do not notify their supervisor within three workdays will be considered to have abandoned their positions. Abandonment of position is grounds for termination.

#### 6.4. Weekly Time Reports

1. All time worked or leave taken must be recorded by the employee and approved by the employee's supervisor on a weekly basis. Time shall be entered by the employee in the computer, in actual hours to the nearest quarter hour. The procedure for rounding off overtime actually worked and leave time taken is as follows:

0-7 minutes =	Disregard
8-22 minutes =	15 minutes or .25 hour
23-37 minutes =	30 minutes or .5 hour
38-52 minutes =	45 minutes or .75 hour
53-67 minutes (1 hour 7 min.)	1 hour

2. Periods of less than 8 minutes of overtime need not be computed for overtime purposes if they do not occur frequently. The employee should be allowed time off during the same day or workweek. Overtime is limited to only those hours necessary and approved by the Supervisor.
3. Periods of less than 8 minutes of tardiness should not require the use of leave if they do not occur frequently. The employee should make up tardiness the same day or work week. This policy does not excuse excessive tardiness and employees may be disciplined accordingly.
4. The supervisor's prior approval is required for all leave other than sick leave. Employees should use the electronic time and leave system to request all leave other than sick leave. The supervisor will be notified electronically when the employee has requested leave. The supervisor may either deny or approve the leave. All time reports will be stored electronically. The employee and supervisor will certify that the time sheet is correct by entering their respective initials.

#### 6.5. Overtime Work and Compensatory Leave Policy

##### 1. Purpose

To establish the policy of the Division regarding compensatory time/overtime as authorized by the Fair Labor Standards Act (FLSA) and State Law.

##### 2. Definitions

*FLSA employees (non-exempt)* are those employees who are eligible for time and one-half compensation.

**Non-FLSA employees (exempt)** are those employees who are not eligible for time and one-half compensation.

**Workweek** - The workweek for all employees shall begin at 12:01 a.m. on Saturday and end exactly seven consecutive 24-hour periods (168 hours) later (Saturday through Friday). No employee shall accrue compensatory time during any workweek unless the combination of paid leave and hours worked exceeds 40 hours.

**Work day** - The regular work day for all employees is Monday through Friday from 8:00 a.m. to 5:00 p.m. daily, with one hour for lunch unless an employee is on an approved flex time or compressed work week schedule. Employees who desire to work other than 8:00 a.m. - 5:00 p.m. must receive approval from their immediate supervisor.

**Overtime worked** is the time worked (physically on the job) by an employee in excess of 40 hours during the workweek.

### 3. Policy

- a. State employees are covered by the minimum wage and overtime provision of the FLSA; however, certain categories of employees and income levels are exempt from the overtime provisions of the FLSA. An employee's status under FLSA is determined upon employment and each time the employee's job classification or job duties change. A PAF is used to report the employee's FLSA status and any changes to that status.
- b. As with public funds, supervisors are fully accountable for the proper allocation of staff time. Supervisors must ensure that employees are working productively during duty hours. Supervisors are responsible for monitoring and tracking the accrual of subordinate's leave and overtime balance in sufficient detail to prevent abuse of the system.
- c. It is the Division's policy to allow, when feasible, an employee who has worked overtime on one day to take time off during the same work week, thereby eliminating the need for separate documentation in connection with the overtime worked/used. For example, an individual working 12 hours on a Tuesday may request approval of his/her supervisor to take 4 hours on a Wednesday. As long as the weekly work hours total adds up to 40 hours, no overtime will accrue, no compensatory time off would have been taken, and no paperwork is required. In these cases, the supervisor shall approve these arrangements in advance to insure that the work center is properly staffed at all times. The official computer time sheet must reflect the hours worked each day and the amount and type of leave taken. ***Employees and supervisors must also remember that it is important to keep regular hours to the maximum extent possible. Repeated use of this option for personal reasons is not authorized.***
- d. Supervisors must strictly control the accrual of FLSA overtime.
- e. When an employee is physically on the job for less than 40 hours during the work week, but the combination of hours actually worked, plus leave taken, is in excess of 40 hours, the hours in excess of 40 hours are overtime and compensatory time off will be allowed.

- f. Authorized travel away from the office (including driving time) is considered time worked. Such hours worked that exceed the 40-hour work week, hours worked on weekends and hours worked on holidays will be treated as overtime and will be compensated as applicable for FLSA and non-FLSA employees. Advance approval is required for all FLSA employees to accrue FLSA overtime as outlined in this procedure, however, the Department will honor all overtime hours accrued in the event that advance approval was not feasible.
- g. Attendance at conferences, meetings, training programs, etc., outside regular working hours is not considered earned overtime or compensatory time if attendance is voluntary.
- h. All employees (FLSA and non-FLSA) must use the same procedures and practices to take compensatory overtime leave as those followed in granting an employee's request to take vacation leave. **Leave and compensatory time may not be taken in advance of accrual.**
- i. Supervisors are responsible for monitoring FLSA and non-FLSA overtime/compensatory, sick leave, and vacation leave balances and making arrangements for employees to use their FLSA and non-FLSA overtime/compensatory time.
- j. No employee may accrue state compensatory time for work performed at any location other than the employee's regular place of employment or duty point. For compensatory time purposes, the employee's personal residence may not be considered to be their regular place of employment or duty point.
- k. Employees who work overtime are entitled to accrue overtime and be compensated for overtime worked. All full-time employees who exceed a total of 40 hours in one workweek will be compensated with time off for the time in excess of 40 hours.

#### **4. Use of Compensatory Time Before Lapsing**

If an employee wishes to use accrued non-FLSA compensatory time that is subject to lapsing, the employee must submit a written request for permission to use the time not later than the 90<sup>th</sup> day before the time will lapse to their Manager. The Manager will either approve the request in writing or provide an alternate date on which the employee may use the compensatory time. A copy of the written request should be forwarded to the Time and Leave Administrator in TDHCA/HR.

#### **5. FLSA Employees**

- a. The Division has elected to compensate FLSA employees with time off instead of paying employees for overtime worked. The Division does not budget funds to pay employees for overtime worked. "FLSA" overtime creates a potential financial liability for the Division at the following times:
  - Employees must be paid for FLSA overtime worked when the FLSA balance exceeds 160 hours worked (which equals 240 hours of overtime credit), at the rate equal to one and one-half times the employee's regular rate of pay;

- If any employee dies while employed by the Division, all unused FLSA overtime credit shall be paid to the estate of the employee, at a rate of one and one-half times the employee's regular pay, in lump sum after deduction of any taxes or other regulated amounts, as soon as an audit is completed; and
  - If an FLSA employee terminates or transfers to another State agency, the employee must be paid for the FLSA overtime credit balance, at a rate of one and one-half times the employee's regular rate of pay, in lump sum as soon as an audit is completed.
- b. Due to the potential financial liability outlined above, the Division will require non-exempt employee's who have requested leave to exhaust FLSA comp time balances before using annual leave. The Division shall also notify FLSA-covered employees and his or her supervisor when the employee's accumulated FLSA balances begin to approach the maximum amount of 240 hours. The supervisor and employee must work together to arrange sufficient time off in order to reduce the balance of FLSA hours. The employee's FLSA balance must be substantially reduced within 60 days unless the Executive Director grants a waiver of this requirement based on extenuating circumstances.
- c. The Division may make an exception to the above to pay FLSA overtime when:
- An FLSA employee transfers from one section to another and has a balance for FLSA hours;
  - An FLSA employee is promoted or transferred into a position that is a non-FLSA position.
  - Prior to receiving any salary adjustment raising the salary of an FLSA employee.
  - Other circumstances arise, as required by the Executive Director.
- d. Accrual of FLSA overtime must be fully justified and must be approved in advance by the employee's supervisor.
- e. FLSA employees who work overtime in a work week will accrue time as outlined below.
- **FLSA overtime** is accrued when an employee is required to work hours in excess of 40 hours during the workweek, *i.e.* the employee is physically on the job for more than 40 hours during the workweek. One and one-half hours of compensatory time off will be allowed for each FLSA overtime hour worked, on a *pro rata* basis.
  - **Non-FLSA overtime** (also defined as "straight time") is accrued when an employee has **not** worked (been physically on the job) more than 40 hours in a work week, but the total hours worked and hours of paid leave or paid holidays exceeds 40 hours. Non-FLSA overtime for FLSA employees accrues at a "straight" rate of one hour of compensatory time for one hour of non-FLSA overtime worked (*i.e.*, time is accrued on an hour-for-hour basis). Compensatory time under this paragraph may not be carried forward past the end of the 12 month period unless the employee submits to their manager a written request for permission to use the time not later than the 90<sup>th</sup>

day before the time will lapse. Compensatory time is not transferable to another agency, and an employee may not be paid for the unused time in case of death, termination, or transfer. However, employees maintain their compensatory time if the transfer is caused by either the legislative transfer of the employee's duties between agencies or by the employee's position being eliminated so that the work performed can be bid commercially.

## **6. Non-FLSA Employees (Employees Exempt from FLSA)**

- a. Non-FLSA employees will be compensated at a rate of 1 hour of time off for each hour of overtime worked (i.e. on an hour-for-hour basis). Since there is no Division financial liability with the accrual of compensatory overtime by non-FLSA employees, there is no limit to the number of hours a non-FLSA employee may accrue. To be fair to employees and to prevent "burn-out," arrangements shall be made to allow employees time off to rest and relax. In addition, non-FLSA employees will lose any compensatory time that is not used during the 12-month period following the end of the workweek in which overtime was accrued.
- b. Peak workloads and special projects will occasionally require some employees to work overtime to accomplish the assigned work. To facilitate the timely completion of assigned tasks, the Division gives employees and supervisors some flexibility in making the best use of their time, and gives employees full credit for time worked. Overtime for non-FLSA employees does not require approval in advance.
- c. Part-time FLSA exempt employees may accrue compensatory time when the number of hours worked plus holiday or other paid leave during that week exceeds the number of hours that the employee was designated to work.

## **7. Responsibilities**

- a. TDHCA/HR is responsible for maintaining records, monitoring employee's adherence to the policies outlined, and reporting violations, through channels, to the Executive Director.
- b. Each employee is responsible for refraining from:
  - Working and accruing overtime without the knowledge and approval of his/her supervisor; and
  - Taking time off (except sick leave) without advance approval of his/her supervisor.
- c. Each supervisor is responsible for:
  - Arranging sufficient time-off for FLSA employees to reduce FLSA overtime balances.
  - Being aware of and approving the accrual of compensatory overtime for subordinates;

- Arranging time off for employees who accrue compensatory overtime;
- Allowing employees to accrue compensatory overtime only when the workload requires more than 40 hours per week (including credit for holiday and sick/annual leave);and
- Ensuring that all subordinates accurately record all hours worked on weekly time sheets, by Wednesday of the following week, and “sign” subordinates time sheets on a weekly basis.

## **7.0 STAFF DEVELOPMENT AND PERFORMANCE EVALUATIONS**

### **7.1 Continuing Education Financial Assistance Program**

#### **1. Purpose**

The Division recognizes that the accomplishment of its goals and objectives is dependent upon the skills of its personnel, and that the quality and variety of those skills can be significantly enhanced by the provision of appropriate staff development and training.

#### **2. Objectives**

The following statement of policy is issued in compliance with the State Employees Training Act of 1969, and specifically implements the provisions of the Act with regard to employees of the Division.

The primary objective of staff development and training is to ensure that Division employees have the knowledge and skills to perform their official duties effectively and efficiently. This is especially important due to limitations on the quantity of Division staff. A secondary objective is the general development of the individual staff members of the Division based on the recognition that staff productivity and morale are enhanced through the provision of development opportunities.

#### **3. Continuing Education Financial Assistance Program**

- a. The Continuing Education Financial Assistance Program, made possible by funds allocated under the State Employee Training Act, affords employees the opportunity to expand their knowledge and skills through a program of continuing education. The Division will reimburse in whole or in part tuition and compulsory student fees upon the satisfactory completion of college level courses that improve the employee's performance in his/her present job duties or responsibilities.
- b. Employees who are eligible for financial aid under the Federal Veteran's Educational Benefit Program or under the Hazelwood Proviso are prohibited from receiving financial assistance under the Continuing Education Financial Assistance Program.
- c. In addition to financial support for continuing education activities, the Continuing Education Financial Assistance Program can, at the discretion of the Executive Director,

allow employees time off or allow an adjustment to their work schedule to complete such training. Such requests will take into account whether extenuating circumstances prohibit the employee from attending after work hours.

#### 4. Eligibility

These policies apply to all employees of the Division as specified herein. Employees are not eligible to apply for financial assistance from the Division until they have completed one year as a full-time Division employee. Any continuing education completed before the first year anniversary of the individuals employment date will not be considered. Further eligibility requirements are as follows:

- a. The employee must continue employment with the Division for the duration of the course and at least one year thereafter, or repay the financial assistance provided for the course, based on the following scale:
  - Less than 120 days of service beyond completion of the training, 100 percent of the cost must be reimbursed by the employee.
  - 120 to 240 days of service beyond completion of the training, 75 percent of the cost must be reimbursed by the employee.
  - 241 to 300 days of service beyond completion of the training, 50 percent of the cost must be reimbursed by the employee.
  - More than 300 days, but less than 360 days of service beyond completion of the training, 25 percent of the cost must be reimbursed by the employee.
- b. The course work **must be job-related** or preparatory for a position the employee is being promoted into. **Introductory college courses that fulfill degree requirements, if not job-related, are not eligible courses.**
- c. An employee may seek reimbursement for qualified expenses in an amount not to exceed three hundred dollars (\$300) per semester.

Note: Employees who satisfy the requirements of the Division and the entrance requirements of the educational institution to which they apply are eligible to participate in the Continuing Education Financial Assistance Program only when funding and/or available time permits.

#### 5. Process for Requesting Continuing Education Reimbursement

In order to be reimbursed for educational expenses, the employee must:

- a. Establish eligibility
- b. Complete the "Continuing Education Financial Assistance Program Reimbursement Request Form" **prior** to registering for a course. The form is available on the computer system network in **Word/File/New/Continuing Ed**. The form will be used to obtain **advance approval** for reimbursement and for the actual reimbursement documentation. A Purchase Requisition or Purchase Order is **not** required. Instead, the documentation

will be reviewed and approved by TDHCA/HR prior to submission to Accounting for payment.

- c. Submit the request form to the Manager through such intermediate supervisory levels as appropriate. Each intermediate supervisory level will approve or deny the request with a written statement justifying the recommendation prior to forwarding to the next level. All requests submitted under these provisions must be forwarded to the Manager within thirty (30) days of employee submission.
- d. In order to be considered eligible for reimbursement, the employee must have the written approval of the Manager prior to actual registration for the course.
- e. Employees initially pay the tuition and fees and are later reimbursed if they pass the course.
- f. Once the course has been completed the employee should bring the following information to TDCHA/HR:
  - An official slip or statement of satisfactory completion from the educational institution attended; and
  - A receipt that verifies educational expenses have been paid.
- g. The Continuing Education Financial Assistance Program will not reimburse the employee for any expense unless the employee satisfactorily completes the course(s) with a:
  - C or Above for Undergraduate Work; and/or
  - B or Above for Graduate Work
- h. If the course is a pass/fail course (for which no letter grade is given), the Division will reimburse for a "pass" grade only.
- i. After TDHCA/HR completes a review of the documentation and approves the reimbursement, Human Resources will submit all required documentation to Accounting for payment.
- j. If the request is not approved, the employee will be notified of the reason(s) in writing and be given an opportunity to contest the decision.

## **6. Allowable Reimbursements**

- a. Tuition, Student Service Fees, Building Use Fees, and Lab Fees are reimbursable expenses.
- b. The following is a partial listing of expenses that ***are not*** reimbursable: Late Fees, Parking Fees, Deposits, Textbooks, Supplies, and Travel.

## 7. Additional Staff Development Training

### a. In-Service Training

In-service training is job and task oriented training that is provided generally within the context of the performance of assigned duties at the primary work site. It may include traditional on-the-job training and training in preparation for a specific job assignment, and may be delivered in formal or informal mode. It is the responsibility of the supervisor of the employee receiving the in-service training to provide documentation to the employee's personnel file of training received, whether in the formal or informal mode.

### b. External Developmental Activities

This category of developmental activity includes all workshops, seminars, institutes, and other special programs or activities that are not provided by the Division staff. These activities must be of a precise content and designed to improve the technical or professional knowledge of the employee.

The appropriate Manager is the approving official for this level of training. In determining the appropriateness of external staff development activities, consideration must be given to time available to attend training and the cost effectiveness of the proposed activity.

An employee must complete a Purchase Requisition on the proper form before registering for a seminar.

### c. Eligibility

Employees may participate in Division staff development in-service training and external development activities when:

- The training or education is job-related or preparatory for a position the employee is being promoted into;
- The employee's supervisor agrees that the training is of a concentrated precise content and designed to improve the individual's professionalism or technical knowledge in the performance of prospective duties and responsibilities, and is warranted; and
- The employee holds a full-time position with the Division. **Temporary or consulting employees of the Division shall not be eligible for training under the provisions of the State Employee's Training Act**, except on-the-job in-service training conducted by the Division personnel in the regular course of office operations.

### d. Approval Process

Employees can apply for permission to participate in external development activities by completing a purchase requisition and attaching the following information:

- Description of the training program, course or seminar;
- Location, time, and cost; and

- Justification of the relevance of the training experience relative to current or prospective job assignments.

e. Payment

Cost of training incurred under authority of the Employee's Training Act will be paid **in whole or in part** by the Division as determined by the Executive Director.

## **7.2. Career Pathing Program**

1. The Career Pathing Program is established following the requirements set forth in Section 2306.062, of the Texas Government Code. The purpose of the program is to utilize financial resources effectively to facilitate career advancement within budgeted positions.
2. As part of the Career Pathing Program, hiring supervisors are encouraged to review positions and, where possible, post vacant positions at entry levels, thereby, providing career path movement for selected candidates. Employees hired at entry levels whose positions are career pathed are afforded the opportunity to be considered for advancement within the budgeted position. Recommendations for advancement will be based on funding availability, above-standard performance evaluations, the level of skills demonstrated in the current position, as appropriate, the completion of required training and recommendations from the immediate supervisor and manager.
3. TDHCA/HR will review positions and assist hiring supervisors in determining the feasibility of career pathing a position.
4. TDHCA/HR will prepare an annual report to the Executive Director detailing the total number of new hires within the state fiscal year and the percentage of those new hires that were placed in selected career path positions.
5. The Division supports the development and advancement of its employees, in part, by providing the opportunity to attend specialized training programs, conferences and seminars, subject to budgetary constraints and the requirements of staffing operations adequately.

## **7.3. Performance Evaluation**

### **1. Purpose**

The primary purpose of the performance evaluation is to document the degree to which employees are meeting job performance standards and job-related conduct standards so that employees may know the areas of performance requiring improvement. Performance evaluations encourage communication and also require that supervisors provide feedback to their employees on the expected levels of job performance. The evaluation process allows employees the opportunity to express their views about their jobs, their sections, and the Division.

Methods used to evaluate employees are personal observation, written documentation, statistical data, or a combination thereof.

## 2. Evaluation Process

- a. The Manager's and the Executive Director's signature, if not the direct supervisor of the employee being evaluated, are for review purposes only and may not be interpreted as either agreement or disagreement with the rating given by the direct supervisor.
- b. The Manager and the Executive Director should review and confer with the supervisor during the rating period, as necessary, should there be differing viewpoints regarding an employee's performance **before** the evaluation is submitted to the employee to review and sign.
- c. In cases where the supervisor, the Manager and/or the Executive Director cannot agree on an employee's performance, the Manager or Executive Director may write a memorandum to the supervisor and the employee, outlining his/her assessment of the situation and keep a file record of the correspondence.
- d. Supervisors are required to document above and below standard performance and job-related conduct.

## 3. Evaluation Cycle

- a. **Six Month Evaluations** - New employees will be evaluated upon completion of six months of employment with the Division.
- b. **Annual Evaluation** - All employees will be evaluated on their anniversary date of employment with the Division. This schedule may be altered due to job changes.
- c. **Other** - Whenever there is a change in an employee's position, (*e.g.*, promotion to a different position, lateral transfer), a performance evaluation is completed and turned in to TDHCA/HR on the 6-month anniversary date of the change. An annual evaluation will be due each anniversary date of the job change.

## 4. Performance Evaluation Form

The Performance Evaluation Form is available on the computer system for Division-wide use. The instructions for accessing the form are listed below. The computer will automatically calculate the overall rating.

- Open **Word** and then go to **File**, then **New**;
- Select template name "Per\_eval";
- Once in the document you will get a dialog box in the middle of your screen that will tell you to "click on the C button" to fill out the cover page and then "click on the P button" to fill out the Performance Evaluation form; and
- When you have completed the form, send it to print and then save it to your "P" drive, complete the Employees Comments" section, obtain the proper signatures, and then forward to TDHCA/HR.

## 5. Transmittal of Forms

Upon completion of the 6-month or annual performance review, the original form is sent to TDHCA/HR. TDHCA/HR is responsible for reviewing all evaluations to ensure compliance with EEO laws and TCHR Act and for consistency of application. Issues and questions arising from these reviews are brought to the attention of the appropriate manager/director and settled before the review is officially filed in the employee's personnel file.

The original evaluation form is filed in the employee's personnel file. The supervisor is responsible for retaining and distributing copies of the evaluation to the employee, manager, and the Executive Director. Retention of evaluation documents will be in accordance with the Division's State Record Retention Schedule.

## 6. Documenting Below Standard Performance

- **Performance Improvement Plan** - For employees who receive a performance evaluation overall rating of ("PIP") or below "needs to improve", the supervisor must complete a Performance Improvement Plan. This form is located on the network in Word under File/New. Select the template "PIP" and follow instructions to fill out the form. The TDHCA/HR staff is available to assist supervisors in the preparation of the PIP and to ensure consistent application. The improvement plan should be mutually agreeable to the supervisor and the employee. However, if agreement can't be reached the supervisor should prepare the plan based on his/her best judgment. The employee will be required to sign the PIP acknowledging receipt of the plan. Signature does not constitute an agreement or disagreement with the plan provided that the plan indicates that no agreement was reached. The PIP will be filed in the employee personnel file.
- **Follow Up to Performance Improvement Plan** – Supervisors are required to complete this form once the employee's target date for improvement has been met. This form allows the supervisor to inform the employee if he/she has met the requirements of the PIP. This form is located on the network in Word under File/New. Select the template "PIP" and follow instructions to fill out the form. TDHCA/HR staff is available to assist with completion of the form and to ensure consistent application.

## 7. Protests

Each employee has the right to contest the results of a performance review within **30** days of date on which the review was conducted. In cases where an employee indicates only partial agreement, or indicates disagreement with a performance review, that employee shall make the initial protest to his/her immediate supervisor **in writing** for an informal resolution within **30** days from the review date and:

- a. At that time, the supervisor shall make a special effort to determine the cause(s) of disagreement and reach a mutual an agreeable solution with the employee, evidenced in writing, within **10** days of the protest.

- b. If the employee and supervisor cannot reach agreement, the employee may file a protest in writing with the section Manager within **5** days of receipt of proposed solution from the supervisor.
- c. If the employee and section Manager cannot reach an agreement, the employee may file a protest in writing with the Executive Director within **5** days of proposed solution from the Manager. The decision of the Executive Director shall be final.
- d. The whole Protest process should conclude within 60 days.
- e. If the employee has been given a PIP as a result of the written Performance Evaluation, that PIP is still in force until and unless the PIP is removed because of agreement of all management staff that approved it originally.

## **8.0 SALARY AND BENEFITS**

### **8.1. Salary and Payroll**

#### **1. Monthly Salary Rate**

Salaries for all positions in the Division are established by the Legislature in the Appropriations Act. The classification of a position is determined by the job description of the position. All classified positions are assigned to one of the pay groups of the Classification Salary Schedule. The Executive Director may determine the rate within the salary pay group for personnel employed under the Position Classification Plan. The Executive Director may determine the rate in the case of new hires, reinstatements, interagency transfers, salary reductions for disciplinary actions, and temporary assignment to a class in a higher or lower salary group. The Executive Director may move an employee's salary to any rate (up or down) after any of the following cases: for reallocated or reclassified positions, merit salary increases, promotions, demotions, and salary reductions for disciplinary reasons.

Exempt positions are those excluded from the Classification Plan by executive order of the Governor or by direction of the Legislature. Only the Executive Director position is exempt at the Division.

#### **2. Part-Time Salary Rate**

The monthly salary rate for part-time employees is a percentage of the full-time rate for the classified position. The percentage used is the ratio of actual time worked per day to a full day.

#### **3. Salary Rate for Partial Month**

Employees entering or leaving the employment of the Division during the month and those who are approved for leave-without-pay hours will receive a partial salary payment for the partial month's work, determined by a fraction whose numerator is the actual days or hours worked, and whose denominator is the total work days/hours (including holidays) in the particular month.

#### **4. Benefit Replacement Pay**

- a. Effective January 1, 1996, the State of Texas enacted legislation eliminating compensation to state employees for social security taxes and requiring state employees to pay these taxes. To replace this benefit, employees on the payroll August 31, 1995, who were eligible to receive state paid social security, are eligible for the “Benefit Replacement Pay” (BRP). Employees hired after this date are not eligible for this benefit.
- b. The election to level BRP is similar to the leveling that was available for the state paid social security taxes. The State of Texas contributes \$1026.86 per calendar, prorated throughout the year, to eligible employees. The benefit is meant to offset the loss of the state paid social security tax benefit.
- c. For eligible employees, if BRP is leveled, \$1026.86 is equally divided into 12 monthly payments and the employee’s pay check remains the same in this respect throughout the calendar year. If BRP is not leveled, the BRP is based on a percentage of the employee’s monthly pay. Take home pay decreases when the State meets its maximum contribution of \$1026.87 and ceases to pay a BRP for the remainder of the calendar year.

#### **5. Leave-Without-Pay Hours (also referred to as leave of absence)**

- a. Any leave-without-pay must be approved, in advance. Taking leave without pay without prior approval may subject the employee to disciplinary action.
- b. Employees who have exhausted all accrued vacation, sick, compensatory (includes FLSA) and holiday time and fail to report for duty during a pay period will have the option to pay the Division back by personal check or they may have their pay adjusted accordingly. The employee will be notified of this option via memo by the Payroll Office.
- c. An employee who is on a leave of absence the first day of the month is prohibited from using sick leave accrued for that month until the employee returns to duty.
- d. Supervisors shall monitor and reconcile employees leave balances on a regular basis. Supervisors should notify TDHCA/HR by memo or email as soon as they are aware of an employee going into a leave without pay status.
- e. Time sheets must be completed and initialed electronically through the Genesis system on a weekly basis to verify the exact number of hours worked and hours taken without pay (leave-without-pay hours).
- f. The payroll officer will issue a pay warrant **after** TDHCA/HR completes an audit of an employee’s time and leave records verifying the number of leave-without-pay hours. This process generally takes between 2 to 4 working days.

#### **6. Pay Day**

- a. All employees are paid on the first working day of the month (*i.e.* the first of the month falls on a Saturday and Monday is a holiday, payday will then be Tuesday the fourth).

- b. Exceptions may be made to the above are employees who must be placed on a supplemental payroll because they were:
- Hired after the regular payroll was submitted; or
  - Off work for more hours than they were entitled to in the month. In the latter case, the employee's regular warrant must be canceled and a new one requested for a partial month's salary.
- c. Employees may voluntarily elect to have their pay warrant given or mailed to someone else. To do this, the employee must provide the Payroll Office with a written authorization for each pay warrant to be delivered to someone other than the employee.

## 7. Deductions from Gross Pay

- a. Deductions may not be made from an employee's salary unless required by law or authorized by the Legislature.
- b. The following deductions are *required by law*:
- **Federal Income Tax**-Employees will have federal income tax deducted from their gross pay. The amount of deduction is based upon salary, the number of dependents, and the marital status shown on the W-4 Form. Some employees are not subject to federal income tax withholding. Usually these are employees who know they will not have tax liability. An employee who believes he/she is exempt from withholding of federal income tax shall contact the Payroll Office.
  - **State Employees Retirement**-Every employee of this Division is required to participate in the Employee Retirement System. A deduction of 6% of gross salary is made each month and is deposited to each employee's account with the Employees Retirement System. If an employee leaves state service before he/she is eligible for retirement, the employee may apply for and receive a refund of these deductions. In addition to applying for and receiving a refund, employees have the option of rolling over the taxable portion of their retirement account into an eligible qualified retirement plan or an IRA.
  - **Garnishment of Wages** may be ordered by a court for IRS levies, bankruptcy payments, and delinquent student loan payments.
  - **Child Support Payments** – A court can order an employer to withhold child support payments from an employee's wages. *An employee may also voluntarily have such an amount withheld.*
- c. The following *voluntary* deductions have been authorized by the Legislature:
- **Insurance** – Employees may elect, in writing, a variety of insurance and levels of coverage. The State pays a portion of the monthly premium for regular employees. The remainder of the total premium of all coverage chosen is deducted monthly from the employee's pay check.

- **Savings Bonds** – Employees may elect, in writing, to have amounts withheld from gross pay to purchase savings bonds. Deductions from pay are credited to the employee in a trust account. When the employee has accumulated enough to purchase the denomination bond indicated, a bond is purchased in the employee’s name. Bonds are mailed to employees from the Federal Reserve Bank of Kansas City. If after the initial application is made, an employee wants a savings bond mailed to an address other than what is on their personnel master record, they must notify Payroll and Personnel of the address.
- **Deferred Income** – The State offers both a Deferred Compensation 457k plan and TexaSaver 401k plan. State employees may elect to defer a part of their monthly earnings. This provides for a tax break and additional resources at retirement. The deduction from gross pay is made only after written authorization from the employee. The employee’s taxable income is reduced by the amount of money put into the program.
- **TexaSaver** - Participation in the TexaSaver 401k, and the Deferred Compensation 457 program is strictly voluntary. Deferrals can begin and stop at any time during the Fiscal Year. For information on the deferred income plans, contact the Benefits Coordinator.
- **.TexFlex** – All benefits paid through the TexFlex Plan (as authorized by Section 125(d) of the Internal Revenue Code of 1986) are deducted from the employee’s gross pay on a pre-tax basis.
- **Union Dues** – Employees may have deductions made for state employee union dues.
- **Other** – Credit Union payments and charitable organization contributions are authorized payroll deductions.

## 8.2. Merit Salary Increases and One Time Merit Payments

1. As funds are available, the Division may grant merit salary increases and one-time merit payments to employees whose job performance and productivity are consistently above what is normally expected or required. Merit salary increases or one-time merit payments are never given automatically to any Division employee.
  - **Merit raises** – are to recognize outstanding service on the job and result in a higher rate of pay for doing the same job.
  - **One-time Merit Payment** – is a single payment that does not increase an employee’s monthly salary rate or step.

### 2. Eligibility of Employees for Merit Salary Increases

Employees eligible for a merit salary increase must meet each of the following criteria:

- a. New or transferred employees must have been employed by the Division for six continuous months prior to the merit salary increase. Any full months of leave without

pay are deducted from the period of employment. A leave without pay of less than a full month is not deducted.

- b. At least 6 months must have elapsed since the employee's last promotion, demotion, one-time merit payment or merit salary increase; and
- c. Current employees must have a consistently high job performance record for the past 12 months, and must have a current Performance Evaluation form completed and filed in the employee's personnel file.

### **3. Eligibility of Employees for One-Time Merit Payments**

Employees eligible for a one-time merit payment must meet each of the criteria listed in 8.2.1, as well as at least one additional criterion from this section. The additional criteria, in priority order from highest to lowest priority, are as follows:

- a. employees who worked on special projects, and
  - b. employees currently at the highest step in their salary group.
4. For classified employees in Salary Schedule A, a merit increase involves an increase in an employee's salary to a higher increment rate in the same salary group. For classified employees in Salary Schedule B, a merit increase involves an increase in an employee's salary to a higher rate within the range of the same salary group.
  5. Managers will provide a separate memo that includes the recommended rate of increase, to the Executive Director, of employees within their section to be considered for a merit salary increase or one-time merit payment.
  6. The Executive Director will review the employee's performance evaluation and salary records with TDHCA/HR to determine eligibility for a merit increase/one-time merit payment. If in compliance, TDHCA/HR will prepare a PAF which reflects the action requested by the Manager.
  7. Merit salary increases and/or one-time merit payments will be effective on the date specified in the Personnel Action Form signed by the Executive Director. Merit salary increases and/or one-time merit payments are announced by the direct supervisor to the employee, **only** after the Executive Director has signed the PAF.
  8. All merit increases and one-time merit payments must be supported by the Division's Board-approved budget.

### **8.3. Longevity Pay**

Each regular employee of this Division is entitled to longevity pay of \$20 per month for every three years service as an employee of the state up to and including 42 years of service. An employee is eligible to receive longevity pay beginning at the end of the third year of service with the state and this pay increases at the end of each third year thereafter. An employee's status on the first workday of the month determines the longevity pay for that month. According to state law, an employee who is on leave without pay on the first working day of the month is not entitled to longevity pay for that month.

## **8.4. Employees Retirement System**

Complete retirement information is printed in the ERS publication "Summary of Benefit Programs" available in the TDHCA/HR office.

### **1. Membership**

Employees of the Division are required to be members of and contribute to the Employees Retirement System. Membership begins on the first day of employment and terminates upon withdrawal of contributions, death, or retirement. Independent contractors and consultants are excluded from membership.

### **2. Designation of Beneficiary**

New employees will complete an "Employee Retirement System Retirement Beneficiary Designation Form" which designates their beneficiary. It is the employee's responsibility to keep beneficiary information current. If the beneficiary dies, marital status changes, or other circumstances require a change in beneficiary designation, the employee shall complete a beneficiary change form available from TDHCA/HR. Separate forms are required to change beneficiaries for both retirement benefits and life insurance. A change in beneficiary in one program does not change the beneficiary in the other program.

### **3. Contributions**

A contribution at the rate of 6 percent is deducted each payroll period from each employee's gross salary including longevity pay. Overtime pay and/or lump sum payments for accrued leave upon resignation or retirement are not subject to retirement contributions.

### **4. Refund of Contributions**

- a. Employees may receive a refund of retirement contributions plus accrued interest if off the state payroll for a full calendar month following the month in which employment was terminated.
- b. An "Application for Refund" form must be completed which includes certification by this Division of the employee's termination and final contribution amount.
- c. Employees are not eligible for a refund if they are:
  - On leave without pay status;
  - Transferring to another state agency within ERS;
  - Returning to state employment within the month following the month in which they terminated employment; or
  - Filing an application for refund after re-employment with the state.
- d. Upon withdrawal of contributions, the interest portion of the account and any contributions made after December 31, 1987, are subject to federal income tax. Refund of contributions cancels membership in the system and terminates an employee's rights to benefits.
- e. The employee has the option of "rolling over" their non-taxable contributions.

## 8.5. Group Insurance

### 1. Group Insurance Coverage

- a. A uniform group insurance program containing options for insurance and dental coverage is available to employees of the Division on a payroll deduction basis.
- b. The **basic coverage** includes health, term life, and accidental death and dismemberment insurance (AD & D).
- c. Optional plans include additional term life insurance, short term and long term disability income, additional accidental death and dismemberment insurance (AD & D), dependent life insurance, and a dental plan.
- d. Employees who are on leave without pay (other than Family and Medical Leave) for a full calendar month must pay the total amount of their insurance premium. Arrangements for payment shall be made with the Payroll Office prior to an employee going on leave without pay.
- e. An employee who has group insurance coverage at the time of termination may be eligible to continue health and dental insurance coverage for up to 18 months by paying the applicable premium unless the employee is terminated for gross misconduct. Such coverage, if elected, could continue until a date:
  - That is 18 months after the date of termination;
  - On which coverage ceases under the plan because of the failure to make timely premium payments as required by the plan;
  - On which the employee is covered under another group health plan; or
  - On which the Uniform Group Insurance Program ceases to provide any group health plan to any employee.
- f. Upon termination, the employee is provided information concerning the Termination/COBRA (Consolidated Omnibus Budget Reconciliation) Election Form (Notice of the Right to Continue Health Insurance). Unless this form is signed, completed and forwarded to the Employees Retirement System within 60 days of "Date Coverage Terminated" or "Date of Notice," whichever is later, the employee forfeits her/his right to elect continuation of health and dental insurance coverage.
- g. In the event of an employee's death, a covered dependent may elect to continue health and dental insurance coverage for up to 36 months under COBRA.
- h. Employees who become disabled and unable to work prior to age 60 may apply for a waiver of their life insurance premium (also called "Extended Life Insurance Benefits"). **Application must be made after the sixth month and not later than the end of the ninth month from the date the employee's disabling condition began.** Please call TDHCA/HR for more details on how to apply.

## **2. State Contribution to Group Insurance**

For each full-time (20 hours or more a week) active and retired employee enrolled in the "Employee Only" category, the state's monthly contribution generally covers that premium. Employees may contact TDHCA/HR for the exact dollar amount of the state contribution.

### **8.6. TexFlex**

The 70th Texas Legislature enacted legislation that required the Employees Retirement System of Texas (ERS) to implement a flexible benefits plan. This program is called "TexFlex." TexFlex is an opportunity for an employee to set up two reimbursement accounts (dependent care assistance and unreimbursed health care expenses) with pre-tax dollars with money that is deducted automatically from their paycheck before federal income and Social Security taxes are calculated. You then file a claim for reimbursement when eligible expenses are incurred. Participation in TexFlex is strictly voluntary. For more information on TexFlex refer to the Summary of Benefits Booklet.

### **8.7. Workers' Compensation**

State employees are covered by Workers' Compensation for injuries sustained on their jobs or in the performance of their duties.

An employee shall immediately report any accident or injury to her/his supervisor and to TDHCA/HR. For additional information, contact TDHCA/HR.

An employee may use annual leave after exhausting sick leave before the employee receives worker's compensation benefits. If the employee makes this election, however, the employee could not receive income benefits and annual leave concurrently.

For filing workers' compensation claims for accidents and/or incidents please refer to the Safety Handbook.

### **8.8. Unemployment Compensation**

The Division reports all employees' wages to the Texas Workforce Commission. If employees become unemployed, they may be eligible for unemployment benefit payments. For more information, employees may contact the Texas Workforce Commission.

### **8.9. Payment of Accrued Leave of Deceased Employees**

The estate, of any employee who dies while employed by the Division, is entitled to payment for all of the employee's accumulated vacation leave and for one-half of accumulated sick leave or for 336 hours, whichever is less. The payment is calculated at the rate paid to the employee at the time of his/her death. If the deceased employee was subject to the FLSA, the estate will also be paid for accumulated FLSA overtime hours.

### **8.10. Workers Assistance Program**

It is the intent of the Division to institute policies and programs that demonstrate a commitment to quality service, professional development, and equal opportunity. This policy reflects the Division's concern for the health and well being of its employees, as well as dedication to the effective accomplishments of its objectives and goals. The Division recognizes that an employee

or a member of an employee's family may have personal problems that may adversely affect the employee's performance.

In response to these potential problems, the Division contracts for the services of an employee assistance program. The contracted entity, the Workers Assistance Program (WAP), is dedicated to serving the needs of employees and their families. The WAP provides confidential counseling and referral services to Division management, eligible employees, and members of the employees' families. The WAP is designed to meet the needs of the individual who comes to the program on a voluntary basis.

The Division will not impose or imply any moral judgment on an employee who may be faced with personal problems.

An employee's job security or promotion opportunities will not be jeopardized by requests for counseling or referral assistance.

When necessary, sick leave may be granted (if available) to allow time for the employee to obtain help through the WAP.

Employees shall follow the policies and procedures outlined in this manual, regarding leaves of absence when all other eligible leave has been utilized.

## **1. Procedures**

- a. The employee has the option to call the WAP directly to seek treatment. **[Workers Assistance Program information is available through the TDHCA/HR office.]** The employee's supervisor need not be told of his/her action. The counseling process and records maintained by the WAP are confidential and do not become part of the personnel file of the employee.
- b. In the case of supervisory referral, a discussion with the employee concerning work performance may be accompanied by a referral to the WAP. If job performance does not improve, the supervisor shall consider other lawful and appropriate measures.
- c. When an employee enters the program, every effort will be made by the WAP staff to assess the nature and severity of the problem and, where possible, to resolve it through short-term counseling. When it is determined that the problem will require long-term treatment or additional professional help, the WAP staff will refer the employee (or patient) to an appropriate professional within the community. **If costs are incurred due to such referrals, these costs will be the responsibility of the employee.** The provisions of the employee's insurance plan will govern the reimbursement by the plan.
- d. The responsibility for accepting or rejecting the referral and for making the final decision on handling the problem shall be solely the decision of the employee (or patient).

## **9.0 LEAVES AND ABSENCES**

### **9.1. Vacation Leave (also sometimes referred to as "annual leave")**

A state employee who has been employed for six continuous months with this Division (or who has six months prior continuous state employment) is entitled to a vacation with pay each fiscal year. Employees earn vacation entitlement beginning with their first day of employment with

the state and terminating on their last day of duty. Part-time employees accrue vacation time at a rate in proportion to that of regular full-time employees and the maximum carryover will also be proportionate.

Employees will accumulate vacation leave credit for each month or fraction of a month of employment with the state; however, an employee who is on leave the first day of the month must return to duty before being eligible to use leave accrued for that month.

Employees may carry the net balance of unused accumulated leave from one fiscal year to the next but may not exceed the maximum cited below. All hours of unused accumulated vacation leave which are lapsed at the end of a fiscal year may be credited to the employee's sick leave balance as of the first day of the next fiscal year.

The table below shows rates of vacation accrual for various lengths of state employment and also the maximum number of hours that may be carried forward each fiscal year. (The state's fiscal year begins on September 1.)

Total State Employment	Hours Accrued Per Month	Maximum* for a Full-Time Employee
Less than 2 years	7	168
At least 2 but less than 5 years	8	232
At least 5 but less than 10 years	9	256
At least 10 but less than 15 years	10	280
At least 15 but less than 20 years	12	328
At least 20 but less than 25 years	14	376
At least 25 but less than 30 years	16	424
At least 30 but less than 35 years	18	474
35 and over	20	520

\*Maximum hours which may be carried forward on September 1

Employees must receive prior approval from their supervisor before taking vacation leave.

A terminating employee may, with the approval of the Executive Director, be allowed to remain on the payroll to utilize a maximum of two weeks of accrued vacation leave. Employees will not be eligible to use paid sick leave prior to final separation from employment unless the employee is actually sick.

An employee is entitled to one month of service credit towards retirement for every 20 days or 160 hours of unused vacation leave on the employee's last day of employment.

## 9.2. Holidays

All state employees, including part-time and hourly workers, are entitled to designated state and federal holidays with pay. Holidays are designated and authorized by the Legislature and may change each year:

<b>Holiday</b>	<b>Date</b>
New Year's Day	January 1
<b>*Confederate Heroes Day</b>	January 19
Martin Luther King, Jr. Day	Third Monday in January
President's Day	Third Monday in February
<b>*Texas Independence Day</b>	March 2
<b>*San Jacinto Day</b>	April 21
Memorial Day	Last Monday in May
<b>*Emancipation Day</b>	June 19
Independence Day	July 4
<b>*Lyndon B. Johnson's Birthday</b>	August 27
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Holidays	Fourth Thursday in November and the following Friday
Christmas Holidays	December 24, 25, and 26

(\*) Employees may observe Rosh Hashanah; Yom Kippur; Cesar Chavez, Good Friday or any other holiday of religious, cultural, or other importance to that employee in lieu of any holiday or holidays on which the Division is required to be open and staffed. The employee observing any such alternative holiday must coordinate the absence in advance with his/her supervisor.

Holidays falling on Saturdays or Sundays are not observed by closing state offices on the preceding or following work days, except when specific additional days are authorized for a holiday period. *Skeleton crews are required for all non-federal holidays. It shall be the responsibility of the Managers and Supervisors to carry on activities for the Division unless another employee is designated.*

All hours worked on an official state or federal holiday will accrue as holiday compensatory time. These holiday hours must be taken within 12 months of accrual or they will be lost. At the discretion of the Executive Director, terminating employees may or may not be granted approval to use holiday compensatory hours.

### **9.3. Sick Leave**

1. A state employee is entitled to sick leave without reduction in salary. Sick leave entitlement shall be earned at the rate of eight (8) hours for each month or fraction of a month of employment with the state. As with vacation leave, sick leave for part-time employees is accrued in proportion to that of full-time employees. Unlike vacation leave, there is no limit to the amount of sick leave that may be accrued or carried forward from one fiscal year to the next. Sick leave accrual will terminate on the last day of duty.
2. An employee who transfers to another state agency with no break in service will transfer unused sick leave. An employee separated from employment with the state under a formal reduction-in-force shall have her/his sick leave balance restored if re-employed by the state within twelve months of termination. An employee separated for other reasons shall also have her/his sick leave balance restored if re-employed by the state within twelve months of

termination, provided there has been a break in service of at least one month (30 days) since termination. **The one-month break in service requirement applies only to reasons other than reduction-in-force.**

3. Sick leave with pay may be taken when sickness, injury or pregnancy and confinement prevent the employee's performance of duty, or when the employee is needed to care and assist a member of her/his immediate family who is actually ill. For purposes relating to regular sick leave, immediate family is defined as those individuals related by kinship, adoption, marriage or foster children who are so certified by the Department of Human Services who are living in the same household. An employee's use of sick leave for immediate family members, not residing in that employee's household, is strictly limited to the time necessary to provide care and assistance to a child or parent of the employee that needs such care and assistance as a direct result of a documented medical condition. An employee may also use up to eight (8) hours of sick leave each calendar year to attend parent-teacher conference sessions for the employee's children who are in pre-kindergarten through 12<sup>th</sup> grade.
4. If employees must be absent from duty because of illness, they are expected to notify their supervisor or such other person as the supervisor may designate no later than 8:15 a.m. or at the earliest practicable time. If the immediate supervisor or such other person as the supervisor may designate is not available, the employee should notify the receptionist and request that the message be forwarded to the supervisor.
5. To be eligible for accumulated sick leave with pay for a continuous period of more than three working days, an employee must provide a medical statement showing the cause or nature of the illness or some other written statement of the facts concerning the illness, to his or her supervisor. The supervisor should forward the documentation to the TDHCA/HR office for inclusion in the employee's time and leave file. If an illness results in the absence of three working days or less, the Executive Director has the discretion to require documentation of the illness.
6. An employee is entitled to one month of service credit towards retirement for 20 days or 160 hours of unused sick leave on the employee's last day of employment.

#### **9.4. Sick Leave Pool**

The Sick Leave Pool is administered on a shared basis for employees of this Division and for employees of TDHCA.

##### **1. Definitions**

**"Catastrophic"** - A severe condition or combination of conditions affecting the mental health or physical health of the employee or the employee's immediate family that requires the services of a licensed practitioner for a prolonged period of time and that forces the employee to exhaust all leave time earned by that employee and to lose compensation from the State for the employee.

**Employee** – An employee of the Division for one year who has exhausted all accrued leave which includes sick, compensatory, holiday and overtime leave to which the employee is otherwise entitled.

**Fiscal Year** – The twelve-month period beginning September 1 and ending August 31 of each year.

**Immediate Family** – Individuals who are related by kinship, adoption, marriage or other close relationship who are living in the same household, or if not in the same household, are totally dependent upon the employee for personal care or services on a continuing basis. This definition also includes foster children who are so certified by the Texas Department of Human Services. The foster child (ren) must be living in the same household as the employee or if not, must be totally dependent upon the employee on a continuing basis.

**Licensed Practitioner** – Physicians, Osteopaths, Chiropractors, Dentists, Psychiatrists or Psychologists certified and licensed to practice in the State of Texas.

## **2. Eligibility**

- a. An employee is entitled to request the use of Sick Leave time accumulated in the Sick Leave Pool if (because of a catastrophic injury or illness or because of a previous contribution of sick leave time to the Sick Leave Pool) the employee has exhausted all sick, overtime, holiday and compensatory leave time which the employee is otherwise entitled.
- b. An employee with a catastrophic illness or injury is not required to contribute to the Sick Leave Pool before he/she can use Sick Leave Pool Time.
- c. An employee who uses Sick Leave Pool Time is not required to reimburse the Sick Leave Pool.
- d. Recommendations to approve Sick leave Pool requests should be reserved only for employees who:
  - are a full-time, regular employee;
  - have been continuously employed with TDHCA for at least one year;
  - have exhausted all accumulated sick, overtime, holiday and compensatory leave
  - a leave utilization history that does not reflect any documented pattern of abuse; and
  - have submitted an original signed statement containing a description of the illness or other incapacitating condition, which should include a prognosis and estimated length of absence.

## **3. Employee Contribution of Time**

- a. Contributions to the Sick Leave Pool are strictly voluntary.
- b. To contribute time to the Sick Leave Pool, an employee must complete a sick leave transfer form that can be obtained from TDHCA/HR.
- c. The employee may contribute to the Sick Leave Pool one or more days of his/her earned accrued Sick Leave Time in eight-hour increments.
- d. The Time/Leave Administrator shall credit the Sick Leave Pool with the amount of time contributed by an employee and shall deduct a corresponding amount of time from the amount to which that employee is entitled as if employee has used the time for his/her personal sick leave.

- e. An employee who makes contributions to the Sick Leave Pool may not stipulate who is to receive his/her contribution.
- f. An employee leaving State employment may contribute one or more days of his/her earned accrued Sick Leave Time.
- g. The estate of a deceased employee is not entitled to payment for unused Sick Leave Pool Time acquired by that employee from the TDHCA Sick Leave Pool.

#### **4. Administration of Sick Leave Pool**

- a. An employee may submit a written memo to TDHCA/HR for approval of a request to draw time from the Sick Leave Pool.
- b. The written memo shall be accompanied by the treating physician's original signed statement containing a description of the illness or other incapacitating condition, which should include a prognosis and estimated length of absence.
- c. TDHCA/HR shall review the request to ensure that the employee meets the eligibility criteria.
- d. Upon a determination by TDHCA/HR that the employee meets all eligibility criteria, the request will be forwarded with a recommendation to the staff attorney for review.
- e. The request will then be forwarded to the Executive Director for approval or denial of the sick leave pool request. The approval or denial will be made based upon the recommendations of TDHCA/HR and the staff attorney and consideration of all other relevant factors including, but not limited to, the balance in the Sick Leave Pool.
- f. Employees may receive up to one-third of the Sick Leave Pool balance of hours or Ninety (90) days, whichever is less.
- g. The employee may use the time in the same manner as Sick Leave Time earned by the employee in the course of employment with the Division.
- h. An employee may use the Sick Leave Pool for his/her own catastrophic illness or injury or for that of his/her immediate family.
- i. An employee may only draw from the Sick Leave Pool one time within a fiscal year. Any unused balance of Sick Leave Pool time granted to an employee will be returned to the Sick Leave Pool.
- j. An employee absent on assigned Sick Leave Pool time is treated for all purposes as if the employee was absent on earned Sick Leave Time.
- k. Requests to use Sick Leave Pool time will be considered on a first-come, first-served basis.
- l. Whenever possible, requests for Sick Leave Pool should be submitted at least 10 days in advance of the exhaustion of all accrued paid leave when it can be anticipated that Sick Leave Pool time will be needed.

The Executive Director is the final authority to approve or deny Sick Leave Pool requests. TDHCA/HR will inform the employee of the Executive Director's decision.

After reviewing the merits of each case, the Executive Director, or designee shall:

- a. approve the request in whole or in part;
- b. approve the request with such stipulations as the Executive Director may consider appropriate;
- c. or deny the request.

## 9.5. Paid Extended Sick Leave

1. Paid Extended Sick Leave *may* be granted on a case by case basis in exceptional circumstances, at the discretion of the Executive Director, for personal illness or injury, or illness or injury of immediate family members (not including pregnancy). Paid Extended Sick Leave may also be considered for illness or injuries that are not catastrophic or severe (thus making the employee ineligible for use of sick leave from the Sick Leave Pool), but will cause the employee to be off from work.
2. Employees must meet the following criteria **before** being awarded Paid Extended Sick Leave:
  - be a full-time regular employee;
  - have been continuously employed with the Division for at least one year;
  - have exhausted all accumulated sick, annual, compensatory, overtime, and Sick Leave Pool leave (if eligible);
  - possess good job performance;
  - possess good leave utilization history; and
  - intend to return to work with the Division.
3. Employees who have less than five years of state service and who meet such criteria will qualify for a number of Paid Extended Sick Leave hours equal to the highest accumulation of sick leave within the past six (6) months of service, not to exceed a maximum of 176 hours of leave.
4. Employees who have five or more years of state service and who meet such criteria will qualify for a number of Paid Extended Sick Leave hours equal to the highest accumulation of sick leave within the past six (6) months of service, not to exceed a maximum of 528 hours of leave.
5. The maximum amount of Paid Extended Sick Leave hours that may be granted to an employee is 528 hours.
6. The request for Paid Extended Sick Leave must be in the form of a memorandum submitted by the employee or the employee's supervisor. The request must be accompanied by an original health provider's certification outlining the injury or illness of the employee or member of the employee's immediate family, the treatment required, expected duration of the injury or illness, and the anticipated date of the employee's return to work. The request must be submitted to the appropriate Manager for review and recommendation. The request shall then be submitted to the Time and Leave Coordinator who will prepare a memo to the staff attorney with information about the employee's most recent evaluation, a statement on the

length of the employee's employment and a copy of the employee's sick leave utilization history. TDHCA/HR and the staff attorney will review this information and make a recommendation to approve or not approve the request.

7. Finally, the request will be submitted to the Executive Director, or designee, to provide the final approving authority as to all requests for Paid Extended Sick Leave. The Executive Director, or designee, shall consider the following criteria in making a decision:
  - a. extent and seriousness of the injury or illness of the employee or immediate family;
  - b. the quality of the employee's work performance as reported on the most recent employee performance evaluation; and
  - c. the employee's sick leave utilization history.
8. After reviewing the merits of each case, the Executive Director, or designee shall:
  - a. approve the request in whole or in part;
  - b. approve the request with such stipulations as the Executive Director may consider appropriate;
  - c. or deny the request.
9. The Time and Leave Coordinator or designee will inform the employee of the Executive Director's decision.
10. The Executive Director may make exceptions to the Paid Extended Sick Leave policy.

#### **9.6. Emergency Leave**

An employee shall be granted up to four (4) days of emergency leave by the Executive Director because of a death in the employee's family. The death of the employee's spouse, or the employee's or spouse's parents, brothers, sisters, grandparents, grandchildren and children.

The Executive Director may also grant emergency leave for other reasons determined as good cause. Emergency leave is not charged to sick, vacation, or other leave balances.

An employee may request emergency leave by completing an "Emergency Leave Request" form. The original approved request must be forwarded to TDHCA/HR for inclusion in the employee time and leave file.

#### **9.7. Military Leave**

Employees, who are members of the National Guard or of a reserve component of one of the Armed Forces, are entitled to a leave of absence not to exceed 15 working days in any one federal fiscal year for authorized training or duty without loss of time, efficiency rating, vacation time or salary. Employees whose military leave of absence exceeds the 15 working days in any one federal fiscal year may elect to choose "leave-without-pay." They will not be required to utilize other leave prior to the "leave-without-pay". The federal fiscal year is from October 1 to September 30.

## 9.8. Family and Medical Leave Act

1. Employees who have worked for the Division or the State for at least 12 months **and** have worked at least 1,250 hours within one year preceding their FMLA leave are eligible for up to 12 weeks of job protected leave during any 12 month period because of the:
  - Birth of a child, and to care for the newborn (an employee who is the father of a child may use sick leave in conjunction with the child's birth only if the child is ill or to care for his spouse while she is recovering from labor and delivery);
  - Adoption of a child (however, sick leave may be used in conjunction with FMLA leave when a child under the age of three is adopted only if the child is actually sick at the time of adoption.)
  - Placement of a foster child;
  - Serious illness of a child, spouse, or parent; or
  - Employee's own serious health condition that makes the employee unable to perform his or her job functions.
2. The 12-month period is a "rolling" period measured backward from the date an employee uses any FMLA leave. For example, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months.
3. An employee must use all vacation, sick, and holiday leave while on FMLA. An employee, at his/her option, may take his/her FLSA overtime prior to the commencement of the 12 weeks of FMLA leave. Employees on paid FMLA leave may not be paid for short or long term disability coverage. FMLA (paid leave) runs concurrently with the employee's vacation, sick, and holiday leave.
4. An employee on FMLA leave is not entitled to accrue state service credit for any minimum number of continuous months of leave without pay while on FMLA and shall not accrue vacation leave, sick leave or credit for state service (longevity). Any full calendar month (*i.e.*, from the first day of a month through the last day of a month, inclusive) in which an employee is on leave without pay, shall not be counted in the calculation of total state service for purposes of longevity pay or vacation leave entitlements. No employee shall accrue vacation or sick leave for such month. Further, any such full calendar month of leave without pay shall not constitute a break in continuity of employment but shall not be included in the calculation of the minimum number of continuous months of employment. Once an employee physically returns to work from an FMLA leave his/her accruals will be reinstated.
5. If the need for FMLA leave is foreseeable, such as for the expected birth or adoption of a child or planned medical treatment for a serious health condition, the employee must give the Division 30 days written notice of the anticipated leave by completing the FMLA Leave Request Form. If 30 days notice is not practicable, the employee must give notice as soon as practicable. **The supervisor is responsible for notifying TDHCA/HR of employees that are on leave due to an FMLA qualifying event.**

6. The employee will receive an FMLA leave notice accompanied by a certification of healthcare provider form. The healthcare provider certification will identify the employee's serious medical condition or the employee's child, spouse or parent's serious medical condition. The healthcare provider certification must be submitted to TDHCA/HR no later than 15 days from the date the FMLA notice is received. The certificate must include:
  - The date on which the serious health condition began;
  - The probable duration of the condition;
  - A statement that the employee is needed to care for the child, spouse, or parent, if applicable;
  - An estimate of the amount of time the employee is needed for such care;
  - The nature of the serious medical condition; and
  - Other appropriate medical facts.
7. If the employee is ill, the certification should state that the employee is unable to perform his or her job. If the certification is for intermittent leave for planned medical treatment, it should include the dates on which the treatment is to begin and the expected duration.
8. Immediately following an absence for an FMLA qualifying event, the employee is responsible for providing documentation to TDHCA/HR, from the health care provider, which is sufficient to show that the absence was for the purpose for which the FMLA leave was approved.
9. For purposes of FMLA leave "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:
  - a. Any period of incapacity or treatment in connection with or consequent to inpatient care (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical care facility;
  - b. Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; or
  - c. Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or for prenatal care.
10. A husband and wife employed by the State are permitted a combined total of 12 weeks of leave during a 12 month period if the leave is for:
  - a. The birth of a son or daughter or to care for the newborn child. The right to take leave under FMLA applies equally to male and female employees. Circumstances may require that FMLA leave begin before the actual date of birth of the child for prenatal care or if the mother's condition makes her unable to work;
  - b. The placement of a child for adoption or foster care, or to care for the child after placement (there is no maximum age). The right to take leave under FMLA applies equally to male or female employees. Family and medical leave can begin before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. The source of an adopted child (*e.g.*,

whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for this purpose; or

- c. The care for a parent with a serious health condition.
- 11. An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during a family and medical leave period.
- 12. While on family and medical leave, employees are entitled to the state contribution for insurance coverage and may keep all the coverages, except disability coverages. As with being on leave without pay, the Employees Retirement System will automatically cancel disability coverage payments for employees reported on FMLA unpaid leave. Upon returning to work, disability coverages will be automatically reinstated without evidence of insurability or additional preexisting condition exclusions.
- 13. Employees on FMLA leave must send payment of out-of-pocket premiums directly to TDHCA/HR, made payable to the Employees Retirement System. Premium payments are due on the first of each month. Premium payments not received within 30 days of the due date will result in cancellation of all optional coverages.
- 14. Employees who have not had their insurance coverages canceled and who terminate employment at the end of FMLA leave are eligible to continue coverage for 18 months under COBRA. If insurance coverages are canceled while under FMLA leave (*e.g.*, non-payment of premium), employees are not eligible for COBRA. COBRA allows for continuation of dental and health coverage only.
- 15. Employees who apply for FMLA leave and are receiving temporary disability benefit payments or worker's compensation benefits cannot be required to use their paid vacation or sick leave prior to taking FMLA leave.

## **9.9. Parental Leave**

### **1. Foster Parent Leave**

A state employee, who is a foster parent to a child under the conservatorship of Child Protective Services, is entitled to a leave of absence with full pay for the purpose of attending staffing meetings held by the Department of Human Services regarding the child under the foster care of the employee, or to attend the Admission, Review and Dismissal (ARD) meeting held by a school district regarding the child under the foster care of the employee.

### **2. State Parental Leave**

Employees with less than 12 months of state service or who have worked less than 1,250 hours in the 12-month period immediately preceding the commencement of leave are eligible to take a parental leave of absence, not to exceed 12 weeks, provided the employee uses all available applicable paid vacation and sick leave while taking leave. The leave authorized by this policy is limited to, and begins with the date of, the birth of a natural child or the adoption or foster care placement of a child under three years of age. Sick leave may only be taken if the child is actually sick.

#### 9.10. Leave-Without-Pay (also known as "leave of absence")

1. Approval for a leave-without-pay may be granted when the leave is in the mutual interest of the Division and the employee. Leave-without-pay must be fully justified. Immediate supervisors may approve leave-without-pay of 3 days or less; however, in all cases the supervisor must brief the Executive Director. **The Executive Director must approve all leave-without-pay absences of more than 3 days.** An employee is not entitled to leave without pay solely due to the employee's use of all paid leave entitlements.
2. Except for disciplinary suspensions, active military duty, and workers compensation situations, all accumulated paid leave entitlements must be exhausted before granting such leaves with additional provision that sick leave must be exhausted in those cases where the employee is eligible to take sick leave, as provided in the sick leave policy. Subject to fiscal constraints, an approval of leave-without-pay guarantees the employee's re-employment at the end of the leave-without-pay status at the same classification but not necessarily the same position.
3. Employees do not earn sick leave and vacation leave for the month when they are on leave-without-pay unless they work any portion of that month. Also, an employee does not accrue state service (longevity) for full calendar leave-without-pay months.
4. Employees taking leave-without-pay (except FMLA, workers' compensation and active duty military leave) are required to pay their entire insurance premiums by the 15th of each month. If insurance premiums are not paid by the end of the month, the employee and dependent insurance coverage and all optional coverage will be canceled. **Cancellation of insurance coverages makes the employee not eligible for insurance continuation under COBRA.**
5. In all instances of leave-without-pay, the immediate supervisor is to inform TDHCA/HR immediately by memorandum when an employee is absent and has no paid leave balances or requests leave-without-pay for another reason. The memorandum is to state the exact date and hour the employee ran out of leave or is to go off the payroll. The Executive Director's written approval of a leave of absence must be granted prior to a supervisor notifying TDHCA/HR and the Executive Director's approval must be attached to the memorandum. TDHCA/HR will prepare a Personnel Action Form and submit it to the Payroll Office.
6. Immediately upon the employee's return to work from leave-without-pay, the immediate supervisor is again to notify TDHCA/HR by memorandum of the employee's return. This memorandum must again state the exact date and hour the employee is to be placed back on the payroll. TDHCA/HR will prepare a Personnel Action Form and submit it to the Payroll Office.

#### 9.11. Volunteer Fireman's Leave

An employee who is a volunteer fireman shall be granted leave up to five working days to attend training schools conducted by state agencies. There shall be no deduction from pay or from leave balances.

### **9.12. Jury Service, Witness Fees, and Court Appearances**

1. An employee is entitled to serve on a jury without any deduction from wages or leave time. Any fee or compensation for jury service need not be accounted for by the employee to the state.
2. Employees called to appear in an official capacity in any judicial action or legislative investigation are not entitled to any witness fees. However, if the appearance is not in an official capacity, but is for the purpose of testifying from personal knowledge, an employee may accept any customary witness fees. In this latter case, the appearance must be made on the employee's own time. The prohibitions relating to witness fees do not extend to any mileage or per diem allowance paid to the state employee or official for expenses incurred while serving as a witness as long as there is no double reimbursement to the employee for expenses.
3. Employees absent from work due to Jury Duty must provide a copy of the Jury Summons to their immediate supervisor for review and a copy to the Time and Leave Administrator to be included in their time and leave file.

### **9.13. Leave for Certified American Red Cross Activities**

A state employee who is a certified disaster service volunteer of the American Red Cross (or who is training to become such as volunteer) will be granted leave of up to ten days each year to participate in specialized disaster relief services. The employee must have supervisory authorization in addition to a request from the American Red Cross and the approval of the Governor's Office. If the above conditions are met, the employee will not lose pay, vacation time, sick leave, earned FLSA overtime, and/or compensatory time during such leave.

### **9.14. Administrative Leave (discretionary Emergency Leave)**

1. An employee may be granted administrative leave for special work-related situations or unique circumstances not covered by other approved leave provisions. Administrative leave may be granted either on an individual or Division-wide basis, depending upon the particular circumstances involved.
2. Granting of administrative leave will be dependent upon the individual merits and worthiness of each situation and may only be granted by the Executive Director. Administrative leave will not be deducted from any other accrued balances (*e.g.* sick or annual leave, or compensatory time).
3. The Executive Director is authorized to grant administrative leave with pay to an employee as an award for outstanding performance as documented on an employee appraisal. The aggregate amount of leave may not exceed 32 hours in a fiscal year.

### **9.15. Parent Teacher Conference Leave**

An employee may use up to eight (8) hours of sick leave each calendar year to attend parent-teacher conference sessions for the employee's children who are in pre-kindergarten through 12<sup>th</sup> grade.

## **10.0 SAFETY**

### **10.1. Safety Policy Statement**

1. The Division recognizes that its employees are its most important asset. It is the policy of the Division that everything possible is done to protect employees and visitors from accidents and injuries while on the job. Each employee is responsible for their own safety and the safety of those around them. Safety shall be an integral part of all Division programs.
2. The Director of Administrative Support of the Texas Department of Housing and Community Affairs is assigned the responsibility for administration of the Safety Program. The Safety Officer is responsible for coordinating the implementation and maintenance of the Safety Program. Managers will assist the Safety Officer to identify and designate departmental Additional Duty Safety Officers (ADSO's). Together they will plan, implement and administer the Division's Safety and Health Program.
3. The goal of this policy statement is to foster a positive attitude regarding accident prevention for all staff members. Administrators and other staff supervisors are responsible for initiating a positive work environment and taking necessary precautions to control hazards in work areas under their control. Safety and Health shall be an integral part of all programs in this Division.

### **10.2. Safety Plan**

The Division's Safety Plan is contained in the Safety Handbook of the Texas Department of Housing and Community Affairs. All employees are responsible for reading the Safety Handbook.