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Texas Department of Housing and Community Affairs  
Manufactured Housing Board Meeting  
on May 18, 2004

Cary Yates, Chair

Jack Davis, Member

Valeri Stiers Malone, Member

Clement "Pete" Moreno, Member

**Texas Department of Housing and Community Affairs**  
**Manufactured Housing Board Meeting**  
**May 18, 2004**

**ROLL CALL**

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

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

**MANUFACTURED HOUSING BOARD MEETING  
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
507 Sabine, 4<sup>th</sup> Floor Boardroom, Austin, Texas 78701  
May 18, 2004                      9:00 a.m.**

**AGENDA**

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

Chair  
Chair

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

**ACTION ITEMS**

- Item 1. Presentation, discussion and consideration of possible approval of minutes of board meeting of March 15, 2004. Chair
- Item 2. Presentation, discussion and consideration of possible approval of the State Office of Administrative Hearings (SOAH) Proposal for Decision:
- (a) Approval of Manufactured Housing Case:  
In the Matter of the Complaint of TDHCA vs Barbara's Berry Best Buy, Inc., dba Longhorn Manufactured Homes, Docket Number: 332-03-3405. Jim Hicks
  - (b) Approval of Manufactured Housing Case:  
In the Matter of the Complaint of TDHCA vs DJ Birdsell, Inc. dba Factory Direct Homes, Docket Number: 332-04-2331. Jim Hicks
- Item 3. Presentation, discussion and consideration to approve proposed rules regarding provisions for correcting Statements of Ownership and Location and to revise Box 3 and 6 on the SOL application form to allow retailers to report homes that are in inventory. Tim Irvine

**REPORT ITEMS**

- Item 1. Executive Director's Report Tim Irvine

**PUBLIC COMMENT**

Chair

**ADJOURN**

Chair

*To access this agenda or request information, please visit our website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) or contact Sharon Choate, TDHCA, 507 Sabine, Austin, Texas 78701, 512-475-2206, [sharon.choate@tdhca.state.tx.us](mailto:sharon.choate@tdhca.state.tx.us).*

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

*Agenda Action Item No. 1*

**MINUTES OF THE BOARD OF DIRECTORS**

**MANUFACTURED HOUSING DIVISION**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

On Monday, March 15 2004, at 9:00 a.m. the Department held the regular meeting of the Board of Directors (the "Board") of the Manufactured Housing Division ("MHD") of the Texas Department of Housing and Community Affairs ("TDHCA") in the TDHCA board room on the 4<sup>th</sup> floor at 507 Sabine, Austin, Texas. Cary Yates presided. The following directors, constituting a quorum, were present: Cary Yates, Presiding Officer, Jack Davis, Valeri Malone, and Pete Moreno. The following members of MHD staff were present: Tim Irvine, Cindy Bocz, Joe Garcia, Kassu Asfaw, James Hicks, Heidi Maldonado, Piper Smith, and Sharon Choate. The following Information Systems staff were present: Curtis Howe and Roger Wilson.

The chairman called roll and declared the presence of a quorum. The minutes of the previous meeting were approved unanimously upon motion by Pete Moreno and second by Jack Davis.

Jim Hicks, Senior Investigator for Consumer Protection, presented a proposed order to be entered in the matter of TDHCA vs. Sunriver Homes, Inc. Docket No. 332-04-0997, Case No. MHD2002001160-WHR. SOAH's Proposal for Decision was approved unanimously upon motion by Jack Davis and second by Valeri Malone.

Tim Irvine presented to the Board for discussion and possible approval the Living Singles/Texas Manufactured Housing Association request for approval as a Continuing Education Provider. Valeri Malone made a motion to approve and Pete Moreno seconded. The motion passed with Cary Yates, Valeri Malone, and Pete Moreno in favor and Jack Davis opposed.

Tim Irvine presented to the Board for discussion and possible approval the implementation of license renewals via Texas Online. The service will allow eligible manufactured housing licensees to renew their licenses online and pay via credit card or electronic check. This will simplify and reduce the volume of the Department's cash and check handling. Unanimously approved upon motion by Jack Davis and second by Valeri Malone.

Tim Irvine presented to the Board for discussion and consideration to approve the remaining proposed Manufactured Housing Rules not approved at the last meeting. Mr. Irvine requested that the board adopt a resolution approving the rules as presented with the following changes:

- Revert back to original language in §80.52 (relating to Permanent Foundation Criteria) and propose new revisions at a later time.
- Include in §80.121 (relating to Retailer's Responsibilities) the 163 Disclosure Statement in the list of records that must be retained as part of the sales record.
- Add new subsection (c) to §80.124 (relating to Deposits and Down Payments) to provide a provision in certain situations where the retailer may require an earnest money deposit on a specially ordered manufactured home.

Mr. Irvine presented the following recommended revisions that need to be published as proposed and go through the complete rulemaking process required by the Texas Register prior to adoption.

- Add an exemption for licensees with 20 years or more experience under Covered Persons in §80.123(o), relating to Continuing Education Requirements.
- Revise language in the 163 Notice located in §80.182 to clarify that any additional disclosures that are attached to the form must be attached to the back.
- Delete §80.200(a)(1) so that the retailer is required to file the SOL application and documentation with the department rather than allowing the retailer to deliver the documentation to the consumer.
- Add provisions in the rules for correcting SOLs.
- Update the SOL application form to allow retailers to report homes that are in inventory.
- Change the word “titling” in 80.204(b) to "Statement of Ownership and Location."

The recommendations as presented above were unanimously approved and the rules presented were adopted with those non-substantive changes upon motion by Jack Davis and second by Pete Moreno.

Tim Irvine presented the executive director’s report: informed the Board of an upcoming routine audit by HUD to review activities required under the State Administrative Agency function; advised of HUD’s proposed rule that will change their payment method to SAAs; informed of ongoing meetings with managers to look for more efficient methods of operation and review of our resources for processing, consumer protection, and inspection activities; and reported all activity continues to be high.

There being no further business to come before the Board, the meeting was adjourned at 11:46 a.m.

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Sharon Choate  
Acting Secretary

Approved:

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Cary Yates, Presiding Officer

*Agenda Action Item No. 2(a)*



**MANUFACTURED HOUSING DIVISION**

**Rick Perry**  
GOVERNOR

**Timothy K. Irvine**  
EXECUTIVE DIRECTOR

**Board Members**  
*Presiding Officer*, Cary P. Yates  
Jack Davis  
Valeri Stiers Malone  
Clement P. Moreno  
*Vacant*

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

FROM: Jim Hicks, Senior Investigator

THROUGH: Timothy K. Irvine, Executive Director

SUBJECT: Summary of Proposal for Decision

Barbara's Berry Best Buy, Inc. dba Longhorn Manufactured Homes ("Respondent")

Docket Number: 332-03-3405

Complaint Number: MHD2002001301-HB, MHD2002001442-RD, MHD2003000215-RD,  
MHD2003000679-RD, MHD2003001005-UR, MHD2003001017-UR,  
MHD2003001272-UR, & MHD2003001333-DT

**Background**

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

1. MHD2002001301-HB  
On or about January 3, 2002, Respondent sold a used manufactured home identified by HUD Label NTA1016580-851 to Debbie Standridge. Respondent failed to give Debbie Standridge a copy of the Formaldehyde Health Notice. Respondent failed to deliver the Site Preparation Notice prior to the execution of the sales agreement and failed to have Debbie Standridge sign the Site Preparation Notice and give a copy of the signed notice to her. Respondent failed to deliver to Debbie Standridge a written warranty that the manufactured home was habitable. Respondent failed to provide conspicuous notice to Debbie Standridge at the time of sale about the two year limitation of filing a bond claim with the Division. Respondent sold an uninhabitable used manufactured home to Debbie Standridge. Respondent sold Ms. Standridge a used manufactured home without the appropriate, timely transfer of a good and marketable title. Respondent also did not properly comply with the initial report and warranty order of the Director and provide this

Division with copies of completed work orders, in a timely manner, on the home sold to Debbie Standridge to make it habitable or to replace it with a suitable manufactured home.

2. MHD2002001442-RD  
Respondent accepted a deposit of \$1,500.00 on August 16, 2001, \$500.00 on September 8, 2001, and \$650.00 on September 22, 2001, for a total deposit of \$2,650.00 from Angel T. Rangel, to purchase a home which was in Respondent's inventory. Respondent has refused to return \$800.00 of the \$2,650.00 received as a deposit within 15 days of receiving written notice requesting the refund.
3. MHD2003000215-RD  
Respondent did not return the deposit given by consumer Ray G. Hurtado within 15 (fifteen) days of receiving written notice from the consumer requesting the refund. The consumer requested a return of their deposit, in writing, on November 3, 2002. Respondent did return the deposit on April 14, 2003; however, this was 147 (one hundred forty-seven) days after the 15 (fifteen) day time period expired.
4. MHD2003000679-RD  
Respondent did not return the deposit given by consumer Frank Carranza within 15 (fifteen) days of receiving written notice from the consumer requesting the refund. The consumer requested a return of their deposit, in writing, on June 3, 2002. Respondent did return the deposit on February 15, 2003; however, this was 220 (two hundred twenty) days after the 15 (fifteen) day time period expired.
5. MHD2003001005-UR, MHD2003001017-UR, MHD2003001272-UR, and MHD2003001333-DT  
Respondent violated the Act and the Rules by selling/negotiating to sell two or more manufactured homes within a consecutive twelve (12) month period, without obtaining, maintaining, or possessing a valid retailer's and/or broker's license. Specifically, Respondent negotiated to sell a manufactured home to Monica E. Cuevas, on or about March 20, 2003 at 2711 E. Hwy 71, Del Valle, Texas. Respondent sold a manufactured home to Blanca Valencia, on or about March 25, 2003 at 2711 E. Hwy 71, Del Valle, Texas. Respondent sold/negotiated to sell a used manufactured home, identified as HUD Label Number NTA1016702, to Santiago Jimenez, on or about April 14, 2003. Respondent sold/negotiated to sell a used manufactured home to W. A. Denton, on or about April 25, 2003. Respondent, RBI-34760, was licensed at 7100 N. Interstate 35, Georgetown, Texas.
6. On March 21, 2003, Respondent applied to renew license number RBI-34760 for the 7100 N. Interstate 35, Georgetown, Texas location. On March 27, 2003, notice was given to Respondent that the Division opposed the issuance of a license.

After proper notice, an administrative hearing was held on December 2, 2003. An Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH) issued the attached Proposal for Decision (PFD) as a result of that meeting.

## **Proposal for Decision**

The Proposal for Decision dated February 3, 2004, recommends that the Respondent be assessed an administrative penalty of Twenty-six Thousand Dollars (\$26,000), of which Six Thousand Dollars (\$6,000) is for violations involved while the Respondent was licensed and Twenty Thousand Dollars (\$20,000) are from violations involved from an unlicensed location. The Proposal for Decision also recommends that the Respondent's application to renew license number RBI-34760 be denied.

## **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).

Additionally, please note that the attached Final Order is in two parts and contains two separate orders. The first part is the order of assessing an administrative penalty of Twenty Thousand Dollars (\$20,000.00) and denial of the application for renewal of Retailer/Broker/Installer License (RBI-34760) signed by the Executive Director. The Executive Director is authorized to assess penalty pursuant to Section 1201.605(a) of the Act. Also, the Executive Director is authorized to deny the application for renewal of a license pursuant to Section 1201.551 of the Act. 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. 332-03-3405**  
**COMPLAINT NO. MHD2002001301-HB, MHD2002001442-RD, MHD2003000215-RD,**  
**MHD2003000679-RD, MHD2003001005-UR, MHD2003001017-UR, MHD2003001272-UR, &**  
**MHD2003001333-DT**

THE MANUFACTURED HOUSING DIVISION	§	BEFORE THE
	§	
OF THE TEXAS	§	GOVERNING BOARD OF THE
	§	
DEPARTMENT OF HOUSING AND	§	MANUFACTURED HOUSING DIVISION
	§	
COMMUNITY AFFAIRS	§	
	§	
VS. BARBARA’S BERRY BEST BUY, INC. dba	§	OF THE TEXAS DEPARTMENT OF
	§	
LONGHORN MANUFACTURED HOMES	§	HOUSING AND COMMUNITY AFFAIRS

**FINAL ORDER**

**I. PREAMBLE**

**CAME ON TO BE CONSIDERED**, the matter of the enforcement action identified as MHD2002001301-HB, MHD2002001442-RD, MHD200300215-RD, MHD2003000679-RD, MHD2003001005-UR, MHD2003001017-UR, MHD2003001272-UR, and MHD2003001333-DT, *In the Matter of the Complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Barbara’s Berry Best Buy, Inc. dba Longhorn Manufactured Homes*, pursuant to the Texas Manufactured Housing Standards ACT, TEX. REV. CIV. STAT. ANN. art. 5221f re-codified effective June 1, 2003, under the Occupations Code Chapter 1201 (“Act”); Chapter 2306 of the TEX. GOVT. CODE ANN. ch. 2306 (“Ch. 2306”); and the Administrative Procedures Act, TEX. GOVT. CODE ANN. ch. 2001 (“ch. 2001”). The Governing Board issues this Final Order based on the Findings of Fact and Conclusions of Law set forth in the Proposal for Decision of the Administrative Law Judge in this case which is hereby adopted in its entirety (a copy of which is attached). The Board’s vote in this case(s) was \_\_\_\_\_ for \_\_\_\_\_ against, and \_\_\_\_\_ abstention(s).

**II. ORDER**

**NOW, THEREFORE, IT IS ORDERED BY THE GOVERNING BOARD OF THE MANUFACTURED HOUSING DIVISION OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:**

1. Respondent be assessed an administrative penalty of Six Thousand Dollars (\$6,000.00) for violations of the Act and Rules as detailed in the Proposal for Decision;

Final Order

In the Matter of Barbara's Berry Best Buy, Inc.  
dba Longhorn Manufactured Homes

Complaint No.: MHD2002001301-HB, MHD2002001442-RD,  
MHD2003000215-RD, MHD2003000679-RD, MHD2003001005-UR,  
MHD2003001017-UR, MHD2003001272-UR, & MHD2003001333-DT

Docket No.332-03-3405

Page 2 of 2

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 \_\_\_\_\_, 2004.

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Cary P. Yates, Presiding Officer  
Governing Board of the Manufactured Housing Division  
Texas Department of Housing and Community Affairs

### CERTIFICATION

I certify that a true and correct copy of the forgoing has been sent by U.S. certified mail (7003 1010 0002 5166 0732), return receipt requested, to Barbara's Berry Best Buy, Inc. dba Longhorn Manufactured Homes, 2711 Hwy 71, Del Valle, TX 78617 and by U.S. certified mail (7003 1010 0002 5166 0749), return receipt requested, to Barbara's Berry Best Buy, Inc. dba Longhorn Manufactured Homes, 7100 N. IH-35, Georgetown, TX 78628 on this the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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Nancy Stone, Complaint Specialist

# State Office of Administrative Hearings



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

February 3, 2004

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

**VIA HAND DELIVERY**

**RE: Docket No. 332-03-3405; In the Matter of Barbara's Berry Best Buy, Inc.**

Dear Mr. Irvine:

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

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

Sincerely,

/s/

Catherine C. Egan  
Administrative Law Judge

CCE/tll  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings - **VIA HAND DELIVERY**  
Jason Ray Staff Attorney TDHCA, Office of the Attorney General-Administrative Law Division, 12<sup>th</sup> Floor William P. Clements Bldg. - **VIA HAND DELIVERY**  
Michael Davis, Attorney at Law, 5766 Balcones Drive, Ste 205, Austin, Texas 78731 - **VIA REGULAR MAIL**

Post Office Box 13025 ◆  
(512) 475-4993

William P. Clements Building  
300 West 15th Street, Suite 502  
Docket (512) 475-3445

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



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

### **III. PROCEDURAL HISTORY**

The hearing convened and closed on December 2, 2003, before ALJ Catherine C. Egan at the Hearings Facility of the State Office of Administrative Hearings, 300 West 15th Street, Austin, Texas. Jason Ray, Assistant Attorney with the Office of Attorney General, represented Staff. Mike Davis, attorney, appeared briefly to advise the ALJ that although the Respondent's motion for continuance was denied, Respondent would not be participating in the hearing.<sup>2</sup>

Respondent had not filed an answer denying the allegations and Mr. Davis stated that he knew a default would probably be entered if he left before the hearing on the merits began. Mr. Davis still left. After introducing exhibits related to notice, jurisdiction, and the substantive allegations, Staff moved for a default. Based on Respondent's failure to appear and the deemed admissions, the ALJ granted the motion.

### **IV. RECOMMENDATION**

Based on the deemed admissions, the ALJ concludes that Respondent violated numerous statutes and rules as set out in the Conclusions of Law. The ALJ also concludes, based on a maximum penalty of \$1,000 per violation as provided in TEX. GOV'T CODE ANN. §2306.6023(b), that TDCHA should assess a total administrative penalty of \$26,000 against Respondent for multiple violations of the Act and TDCHA's rules and deny Respondent's application for renewal of license number RBI-34760.

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<sup>2</sup> Order No. 9 denied Respondent's request for a continuance.

**V. FINDINGS OF FACT**

1. Barbara Berg dba Barbara's Berry Best Buy, Inc. dba Longhorn Manufactured Homes Trucking (Respondent) holds License Number RBI-34760, effective March 21, 2001, through March 21, 2003, issued by the Texas Department of Housing and Community Affairs (TDHCA).
2. On June 10, 2003, TDHCA Staff sent the original notice of hearing to Respondent at her last known address of 7100 N. Interstate 35, Georgetown, Texas 78628, and also to 2711 Hwy 71, Del Valle, Texas 78617, by regular mail and certified mail, return receipt requested. Respondent received the notice as indicated by Ms Berg's signature of the green return receipt card.
3. On June 10, 2003, TDHCA Staff also sent the original notice of hearing to Respondent's attorney, Michael Davis, by facsimile to 512-342-2150.
4. The notice of hearing informed Respondent of the date, time and place of the hearing.
5. The notice informed Respondent of Staff's intention to take action against Respondent, the legal authority and jurisdiction under which the hearing would be held, and the rules allegedly violated. The notice also included the default warning language of 1 TEX. ADMIN. CODE §155.55(c).
6. The hearing convened on December 2, 2003. Staff appeared and represented TDHCA. Respondent counsel appeared and reurged the continuance previously denied by Order No. 9, which the Administrative Law Judge (ALJ) denied. Respondent did not appear and Respondent's counsel left after being advised that if he left a default judgment would probably be entered against Respondent.
- 4
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.

**MHD2002001301-HB**

8. On or about January 3, 2002, Respondent sold a used manufactured home, identified by HUD Label Number NTA1016850/851, to Debbie Standridge.
9. Respondent failed to give Debbie Standridge a copy of the Formaldehyde Health Notice.
10. Respondent failed to deliver the Site Preparation Notice to Debbie Standridge prior to the execution of the sales agreement.
11. Respondent failed to provide a signed copy of the Site Preparation Notice to Ms. Standridge.

12. Respondent failed to deliver to Ms. Standridge a written warranty that the used manufactured home was habitable.
13. Respondent failed to provide conspicuous notice to Ms. Standridge at the time of sale about the two-year limitation for filing a bond claim with the TDHCA.
14. Respondent sold an uninhabitable, used manufactured home to Ms. Standridge.
15. Respondent sold Ms. Standridge a used manufactured home without the appropriate, timely, transfer of a good and marketable title.
16. Respondent did not comply with the initial report and warranty order of TDHCA's Director to provide TDHCA with copies of completed work orders on the manufactured home sold to Ms. Standridge to make it habitable or to replace it with a suitable manufactured home.

**MHD2002001442-RD**

17. On August 16, 2001, and September 8 and 22, 2001, Respondent received a deposit totaling \$2650 from Angel T. Rangel to purchase a manufactured home in Respondent's inventory.
18. Respondent failed to refund \$800 of the deposit to Ms. Rangel within fifteen days of receiving written notice from her requesting the refund.

**MHD2003000215-RD**

19. On November 3, 2002, Ray G. Hurtado, Respondent's customer, requested in writing that Respondent return his deposit.
20. Respondent did not return the deposit within fifteen days, but instead returned it on April 14, 2003.

**MHD2003000679-RD**

21. On June 3, 2002, Frank Carranza, Respondent's customer, requested in writing that Respondent return his deposit.
22. Respondent did not return the deposit with fifteen days, but instead returned it on February 15, 2003.

**MHD2003001005-UR, MHD2003001017-UR, MHD2003001272-UR, and MHD20003001333-DT**

23. Respondent is licensed to sell manufactured housing at 7100 N. Interstate 35, Georgetown, Texas.

24. Respondent sold or negotiated to sell the following manufactured homes at 2711 E. Hwy 71, Del Valle, Texas, although Respondent is not licensed to sell manufactured homes at this location:
- A. Respondent sold a manufactured home to Blanca Valencias on March 25, 2003, at 2711 E. Hwy 71, Del Valles, Texas.
  - B. Respondent sold a used manufactured home to Santiago Jimenez on April 14, 2003, at 2711 E. Hwy 71, Del Valles, Texas.
  - C. Respondent sold a used manufactured home to W. A. Denton on April 25, 2003, at 2711 E. Hwy 71, Del Valles, Texas.
25. Respondent applied to renew license RBI-34760 for the 7100 N. Interstate 35, Georgetown, Texas location.
26. On March 27, 2003, Staff notified Respondent of its opposition to the issuance of a Retailer's license.

## VI. CONCLUSIONS OF LAW

1. TDHCA has jurisdiction over this matter pursuant to the Texas Manufactured Housing Standards Act (the Act), TEX. OCC. CODE ANN. ch. 1201,<sup>3</sup> and has authority to discipline and penalize Respondent pursuant to chapter 1201.551 of the Act and TEX. GOV'T CODE ANN. ch. 2306.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing was provided to Respondent pursuant to the Act; TEX. GOV'T CODE ANN. ch. 2001 and ch. 2306; 1 TEX. ADMIN. CODE (TAC) §155.55; and 10 TAC §80.126. TDHCA's rules, as reflected by 10 TAC §1.21(c), provide for notice to be sent to Respondent's last known address as shown by TDHCA's records.
4. Based on Respondent's failure to appear at the hearing, Staff's motion for default relief was granted pursuant to 1 TAC §155.55, and the factual allegations contained in the Notice of Hearing were deemed admitted.

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<sup>3</sup> Recodified effective June 1, 2003. Previously found at TEX. REV. CIV. STAT. ANN. art. 5221f.



5. Based on Findings 8 and 9, Respondent violated §1201.153(a) and (b) of the Act and 10 TAC §80.180.
6. Based on Findings 10 and 11, Respondent violated 10 TAC §80.54(b).
7. Based on Finding 12, Respondent violated §1201.455 of the Act.
8. Based on Finding 13, Respondent violated 10 TAC §80.121(a)(1)(F).
9. Based on Finding 14, Respondent violated §§1201.455 and 1201.453 of the Act.
10. Based on Finding 15, Respondent violated §§1201.551(a)(3) and 1201.451.
11. Based on Finding 16, Respondent violated §§1201.358, 1201.354, and 1201.354 of the Act and 10 TAC §§80.131(b) and 80.132(3).
12. Based on Findings 17-22, Respondent violated §1201.151(a) of the Act.
13. Based on Findings 23 and 24, Respondent violated §§1201.101(b) and (c) of the Act and 10 TAC §§80.123(b) and (c)
14. Pursuant to TEX. GOV'T CODE ANN. §2306.6023(b) and 10 TAC §80.127(a)(4) and based on the above violations, Respondent should be assessed an administrative penalty of \$26,000.
15. Pursuant to §§1201.551(a)(1)(2) and (9) of the Act and 10 TAC §80.127(a), and based on the above Findings of Fact and Conclusions of Law, Respondent's application to renew license number RBI-34760 should be denied.

**SIGNED this 3<sup>rd</sup> day of February 2003.**

/s/

**CATHERINE C. EGAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

*Agenda Action Item No. 2(b)*



**MANUFACTURED HOUSING DIVISION**

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**Rick Perry**  
GOVERNOR

**Timothy K. Irvine**  
EXECUTIVE DIRECTOR

**Board Members**  
*Presiding Officer, Cary P. Yates*  
Jack Davis  
Valeri Stiers Malone  
Clement P. Moreno  
*Vacant*

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

FROM: Jim R. Hicks, Senior Investigator

THROUGH: Timothy K. Irvine, Executive Director

SUBJECT: Summary of Proposal for Decision

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DJ Birdsell, Inc. dba Factory Direct Homes, ("Respondent")

License type/number: RBI-34913. Effective dates September 7, 2001 through September 6, 2004.

Docket Number: 332-04-2331

Complaint Number: MHD2003000351-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 the home owned by Michael T. Rogillio, HUD Label PFS755976/977 as required by Sections 14(f) (currently found at Sections 1201.357 and 1201.358 of the Occupations Code) and 14(j) (currently found at Sections 1201.354 and 1201.356 of the Occupations Code) 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 February 26, 2004. 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 April 19, 2004 recommends that Respondent's license be revoked and that Respondent be assessed an administrative penalty of Five Hundred Dollars (\$500.00).

### **Recommendation**

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

Respondent be assessed an administrative penalty of Five Hundred Dollars (\$500.00).

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. 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. 332-04-2331**  
**COMPLAINT NO. MHD2003000351-W**

THE MANUFACTURED HOUSING DIVISION	§	BEFORE THE
	§	
OF THE TEXAS	§	GOVERNING BOARD OF THE
	§	
DEPARTMENT OF HOUSING AND	§	
	§	MANUFACTURED HOUSING DIVISION
COMMUNITY AFFAIRS	§	
	§	
VS. DJ BIRDSELL INC. dba	§	OF THE TEXAS DEPARTMENT OF
	§	
FACTORY DIRECT HOMES	§	HOUSING AND COMMUNITY AFFAIRS

**FINAL ORDER**

**I. PREAMBLE**

**CAME ON TO BE CONSIDERED**, the matter of the enforcement action identified as MHD2003000351-W, *In the Matter of the Complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. DJ Birdsell, Inc. dba Factory Direct Homes*, pursuant to the Texas Manufactured Housing Standards ACT, TEX. REV. CIV. STAT. ANN. art. 5221f re-codified effective June 1, 2003, under the Occupations Code Chapter 1201 (“Act”); Chapter 2306 of the TEX. GOVT. CODE ANN. ch. 2306 (“Ch. 2306”); and the Administrative Procedures Act, TEX. GOVT. CODE ANN. ch. 2001 (“ch. 2001”). The Governing Board issues this Final Order based on the Findings of Fact and Conclusions of Law set forth in the Proposal for Decision of the Administrative Law Judge in this case which is hereby adopted in its entirety (a copy of which is attached). The Board’s vote in this case(s) was \_\_\_\_\_ for \_\_\_\_\_ against, and \_\_\_\_\_ abstention(s).

**II. ORDER**

**NOW, THEREFORE, IT IS ORDERED BY THE GOVERNING BOARD OF THE MANUFACTURED HOUSING DIVISION OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:**

1. Respondent be assessed an administrative penalty of Five Hundred Dollars (\$500.00) for violations of the Act and Rules as detailed in the Proposal for Decision;

Final Order  
In the Matter of DJ Birdsell, Inc. dba Factory Direct Homes  
Complaint No.: MHD2003000351-W  
Docket No. 332-04-2331  
Page 2 of 2

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 May, 2004.

\_\_\_\_\_  
Cary Yates, Presiding Officer  
Governing Board of the Manufactured Housing Division  
Texas Department of Housing and Community Affairs

#### **CERTIFICATION**

I certify that a true and correct copy of the forgoing has been sent by U.S. certified mail (7003 1010 0002 5166 1821), return receipt requested, to DJ Birdsell, Inc. dba Factory Direct Homes, 21180 US Hwy 59 South, New Caney, TX 77357 and by U.S. certified mail (7003 1010 0002 5166 1838), return receipt requested, to DJ Birdsell, Inc. dba Factory Direct Homes, 11455 Out Post Cove, Willis, TX 77318 on this the \_\_\_\_\_ day of May, 2004.

\_\_\_\_\_  
Nancy Stone  
Complaint Specialist

# State Office of Administrative Hearings



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

April 19, 2004

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

**VIA HAND DELIVERY**

**RE: Docket No. 332-04-2331; In the Matter of DJ Birdsell, Inc. d/b/a Factory Direct Homes.**

Dear Ms. Carrington:

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

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59 (c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

/s/

James W. Norman  
Administrative Law Judge

JWN/tll  
Enclosure  
xc:

Docket Clerk, State Office of Administrative Hearings - **VIA HAND DELIVERY**  
Jim Hicks, Staff Attorney, - **VIA HAND DELIVERY**  
DJ Birdsell, Inc., d/b/a Factory Direct Homes, 21180 Hwy 69 South, New Caney, Texas 77357 - **VIA REGULAR MAIL**  
DJ Birdsell, Inc., d/b/a Factory Direct Homes, 11455 Out Post, Willis, Texas 77318 - **VIA REGULAR MAIL**

**William P. Clements Building**  
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin, Texas 78711-3025  
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

**DOCKET NO. 332-04-2331**

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

**PROPOSAL FOR DECISION**

The Texas Department of Housing and Community Affairs (TDHCA) Manufactured Housing Division staff (Staff) brought this action against DJ Birdsell, Inc., dba Factory Direct Homes (Respondent), alleging that Respondent failed to provide warranty service in accordance with an order issued under § 1201.357(b) of the Texas Occupations Code. The Administrative Law Judge (ALJ) recommends that TDHCA revoke Respondent's license and assess an administrative penalty of \$500.00.

On February 26, 2004, the undersigned ALJ convened a hearing in this matter at the State Office of Administrative Hearings, 300 West 15th Street, Austin, Texas. Senior Investigator Jim R. Hicks represented Staff. Respondent did not appear and was not represented. Staff proved that notice was received by Respondent by introduction of a United States Post Office return receipt green card signed by Respondent. Thereafter, the hearing proceeded on a default basis. The ALJ deemed the factual allegations admitted as true. Staff adduced additional evidence to support its allegations and to justify the penalty it is seeking. The hearing closed on February 27, 2004, after Staff submitted legal authority supporting its position.

Staff requested that Respondent's license be revoked, that it be ordered to pay a \$500 administrative penalty, and that it be ordered to comply with all statutes and rules of the TDHCA Manufactured Housing Division. The ALJ recommends the requested revocation and administrative

penalty. However, he does not recommend that Respondent be ordered to comply with the statutes and rules of the Manufactured Housing Division because he did not find any statute or rule authorizing that as a type of disciplinary action.<sup>1</sup>

### I. FINDINGS OF FACT

1. DJ Birdsell, Inc. dba Factory Direct Homes (Respondent) holds License No. RBI-34913, issued by the Texas Department of Housing and Community Affairs (TDHCA), effective September 7, 2001, through September 7, 2004.
2. The TDHCA Manufactured Housing Division staff (Staff) alleged that Respondent did not properly comply with the initial report and warranty orders and provide TDHCA with copies of completed work orders in a timely manner on the home owned by Michael T. Rogillio, HUD Label PFS755976/77. Staff specifically alleged the following:
  - a. the home owned by Michael T. Rogillio was inspected by TDHCA on December 16, 2002, and a Warranty Order was issued, outlining corrective action required;
  - b. Respondent received the Warranty Order on December 19, 2002. The deadline for warranty service work to be performed was January 27, 2003. The deadline for submitting warranty service orders to TDHCA was February 6, 2003;
  - c. Respondent did not fully comply with the Warranty Order by January 27, 2003, and did not submit warranty service orders by February 6, 2003;
  - d. TDHCA performed a re-inspection on March 28, 2003, and determined that violations still existed. Specifically, item numbers three through twenty-five from the original inspection of December 16, 2002, still required corrective action; and
  - e. TDHCA had not received warranty service orders from Respondent as of January 26, 2004, the date of the notice of hearing.
3. On February 24, 2004, Mr. Rogillio's home was reinspected with the following results:
  - a. many of the problems requiring correction were not corrected;
  - b. some of the problems for which corrections were ordered had additional damage; and

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<sup>1</sup> However, like other persons, Respondent obviously must follow all applicable laws.



- c. some of the problems were not corrected properly.
4. Respondent made twenty to twenty-five mistakes in setting up Mr. Rogillio's home.
5. TDHCA inspectors have been to Mr. Rogillio's home at least three times.
6. Respondent told TDHCA that it had fixed all the problems, but it failed to do so.
7. Water is now entering the walls of Mr. Rogillio's home.
8. Mr. Rogillio's home was a brand new home, but it has significant problems now.
9. Staff has requested that Respondent's license be revoked, that it be ordered to pay a \$500.00 administrative penalty, and that it be ordered to comply with the statutes and rules of the Manufactured Housing Division.
10. The penalty requested is consistent with what Staff would request against another licensee under similar circumstances.
11. On January 26, 2004, Staff sent a notice of hearing to Respondent at Respondent's address of record. A United States Post Office return receipt green card, showing receipt of the notice, was signed by Mr. Birdsell.
12. The hearing notice informed Respondent of the time, place, and nature of the hearing; the legal authority and jurisdiction for the hearing; the particular sections of the statutes and rules violated; and a short, plain statement of the matters asserted.
13. The hearing notice advised Respondent in 12-point bold-face type that a failure to appear at the hearing would result in the factual allegations in the notice of hearing being admitted as true and the relief sought in the notice being granted by default.
14. Respondent did not appear and was not represented at the hearing.
15. Staff appeared at the hearing.
16. Staff requested that a default be entered against Respondent, in which the factual allegations in the notice of hearing would be deemed admitted as true.

## II. CONCLUSIONS OF LAW

1. TDHCA has jurisdiction over this matter pursuant to the Texas Manufactured Housing Standards Act (the Act), TEX. OCC. CODE ANN. § 1201.001 *et seq.*

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 TEX. GOV'T CODE ANN. ch. 2001; 1 TEX. ADMIN. CODE (TAC) § 155.55; and 10 TAC § 1.12(c).
4. Based on Respondent's failure to appear at the hearing, Staff's motion for default should be granted, and the factual allegations contained in the notice of hearing, and stated in Finding of Fact No. 2, are deemed admitted. 1 TAC § 155.55; and 10 TAC § 1.12(c).
5. Based on Findings of Fact Nos. 2 through 8 and Conclusion of Law No. 5, Respondent violated §§ 1201.356 and 1201.357 of the Act and 10 TAC §§ 80.131(b) and 80.132(3).
6. Based on Findings of Fact Nos. 2 through 8 and Conclusion of Law No. 5, Respondent's license should be revoked and Respondent should be ordered to pay an administrative penalty of \$500. §§ 1201.358(a) of the Act; TEX. GOV'T CODE ANN. 2306.6023(b).

**SIGNED April 19, 2004**

/s/

**JAMES W. NORMAN**

**ADMINISTRATIVE LAW JUDGE**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

*Agenda Action Item No. 3*

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

**(e) Corrections to Statements of Ownership and Location.**

- (1) If a correction is required as a result of a department error, it will be corrected at no charge.**
- (2) If an error was made for another reason, it will be corrected upon receipt of all documentation needed to support the correction.**
- (3) If a correction is requested because of an error made by a party other than the department, the correction will not be made until the department receives the following:**
  - (A) A complete corrected application for Statement of Ownership and Location,**
  - (B) Any necessary supporting documentation, and**
  - (C) The required fee of \$25, which can be reduced or waived by the director for good cause.**

*§80.209. Statement of Ownership and Location Forms.*

- (a) Application for Statement of Ownership and Location:

# Texas Department of Housing and Community Affairs

## MANUFACTURED HOUSING DIVISION

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

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

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

Internet Address: [www.tdhca.state.tx.us/mh/index.htm](http://www.tdhca.state.tx.us/mh/index.htm)

### APPLICATION FOR STATEMENT OF OWNERSHIP AND LOCATION

#### BLOCK 1: Transaction Identification

This application is for:

- First time issuance of an SOL for a new home (first retail sale)
- Revised SOL to reflect changes in (check **all** that apply and complete the applicable blocks):
  - Location (Blocks 2, 3, 4b, 6, 7, and 10)
  - Ownership (Blocks 2, 3, 4a, 4b, 5, 6, 7, 8, 9, 10a, and 10b)
  - Personal/real property election (Blocks 2, 3, 4b, 6, 7, and 10b)
  - Residential/non-residential use (Blocks 2, 3, 4b, and 10b)
  - Lien information (Blocks 2, 3, 4b, 10b, and if **adding** a lien, Block 8)
- Correction (Blocks 2 and 10b **and** specify corrections to be made in other Blocks as appropriate)
- Quick Processing (requires additional fee **and** completed Quick Processing Form)
- Other \_\_\_\_\_

**For Department Use Only**  
Codes:

Form T: Y / N  
County Code:  
Right of Surv.: Y / N  
Wind Zone: I / II  
Retailer #:  
Manufacturer #:

#### BLOCK 2: Home Information

Manufacturer Name:		Model:	
Address:		Date of Manufacture:	
City, State, Zip:		Total Square Feet:	
License Number:		Wind Zone:	

	Label/Seal Number	Serial Number	Weight	Size*	
Section 1:				X	*NOTE: Size must be reported as the outside dimensions ( <b>length and width</b> ) of the home as measured to the nearest 1/2 foot at the base of the home, exclusive of the tongue or other towing device.
Section 2:				X	
Section 3:				X	
Section 4:				X	

#### BLOCK 3: Home Location

Was Home Moved?  Yes  No If yes, attach copy of moving permit.

Was Home Installed?  Yes  No If yes, attach Form T – Notice of Installation and copy of moving permit.

Physical Location:					
	Address	City	State	ZIP	County

#### BLOCK 4: Ownership Information

**IF ownership changed, date of transfer:**

(4a) Seller(s) or Transferor(s)		(4b) Purchaser(s), Transferee(s), or Owner(s)	
Name	License # if Retailer:	Name	License # if Retailer:
Name		Name	
Mailing Address		Mailing Address	
City/State/Zip		City/State/Zip	
Daytime Phone Number ( ) -		Daytime Phone Number ( ) -	

#### BLOCK 5: Right of Survivorship (if no box is checked, joint owners will NOT have right of survivorship)

*If joint owners desire right of survivorship, check the applicable box below:*

- Husband and wife will be the only owners and agree that the ownership of the above described manufactured home shall, from this day forward, be held jointly and in the event of death, shall pass to the surviving owner.
- Joint owners are other than husband and wife, desire right of survivorship, **and** have attached a completed Affidavit of Fact for Right of Survivorship or other affidavits as necessary to meet the requirements of §1201.213 of the Standards Act.

- Personal Property – Applicant elects to treat this home as personal property. All documents affecting title to the home will be filed in the records of the department.
- Real Property – I (we) elect to treat this home as real property and certify that I am (we are) entitled to make this election in accordance with Section 1201.2055 of the Occupations Code because (**one** box **must** be checked):
  - I (we) own the real property that the home is attached to.
  - I (we) have a qualifying long-term lease for the land that the home is attached to.

I (We) understand that the home will not be considered to be real property until a certified copy of the SOL has been filed in the real property records of the county in which the home is located.

**Legal description must be provided for real property:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- Inventory – Retailer number must be provided in Block 4b. (FOR RETAILER USE ONLY)

**BLOCK 7: Designated Use - to be designated by purchaser(s), transferee(s), or owner(s)**

- Residential Use (as a dwelling)
- Non-Residential - Check **one** of the following:
  - Business Use
  - Salvage

**BLOCK 8: Personal Property Liens - Specify any liens, charges, or other encumbrances to be recorded on the SOL**

Date of First Lien: _____ _____ Mailing Address: _____ City/State/ZIP: _____ (        )        -	Date of Second Lien: _____ _____ Mailing Address: _____ City/State/ZIP: _____ Daytime Phone Number: (        )        -
--------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------

**IF** a certified copy of an SOL is to be mailed to anyone other than the owner or lienholder of record (such as a closing agent), please provide that mailing address here.

Name: \_\_\_\_\_  
 Company: \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_

**BLOCK 10: Certification and Notarization - The statements set forth herein are made under oath and are true and correct.**

(10a) Each seller/transferor must sign, and notary signature and seal are required.	(10b) Each purchaser/transferee or owner must sign, and notary signature and seal are required.
_____ <i>Signature of seller/transferor</i>  Sworn and subscribed before me this ____ day of _____, 20____  _____ <i>Signature of Notary</i>  SEAL	_____ <i>Signature of purchaser/transferee or owner</i>  Sworn and subscribed before me this ____ day of _____, 20____  _____ <i>Signature of Notary</i>  SEAL
_____ <i>Signature of seller/transferor</i>  Sworn and subscribed before me this ____ day of _____, 20____  _____ <i>Signature of Notary</i>  SEAL	_____ <i>Signature of purchaser/transferee or owner</i>  Sworn and subscribed before me this ____ day of _____, 20____  _____ <i>Signature of Notary</i>  SEAL