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OPINION COMMITTEE



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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MANUFACTURED HOUSING DIVISION

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November 27, 2017

The Honorable Ken Paxton  
Office of the Attorney General  
Attention Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

Sent Via E-mail:  
opinion.committee@oag.texas.gov

Re: Request for Opinion Regarding Whether a Federal Informational Bulletin Trumps a State Statute.

Dear General Paxton:

The Texas Department of Housing and Community Affairs, Manufactured Housing Division (Department) respectfully requests the Attorney General's opinion on the following matter:

I. Issue

The Department is seeking clarification on when there is a state statute, and no conflicting federal statute or rule, but there is a federal informational bulletin from 1977 that has a procedure that conflicts with the state statute in question, does that informational bulletin trump state law?

II. Applicable Law

**Tex. Occ. Code § 1201.461. Salvaged Manufactured Home; Criminal Penalty.** (a) For the purposes of this chapter, a manufactured home is salvaged if the home is scrapped, dismantled, or destroyed or if an insurance company pays the full insured value of the home. The reasonableness of

the insurer's judgment that the cost of repairing the home would exceed the full insured value of the home does not affect whether the home is salvaged.

(b) A person who owns a used manufactured home that is salvaged shall apply to the director for the issuance of a new statement of ownership that indicates that the home is salvaged.

*(c) If a new manufactured home is salvaged, the retailer shall remove the label and surrender the label and the manufacturer's certificate under Section 1201.204 to the director for issuance of a statement of ownership that indicates that the home is salvaged.*

(d) A person may not sell, convey, or otherwise transfer to a consumer in this state a manufactured home that is salvaged. A salvaged manufactured home may be sold only to a licensed retailer.

### III. Background:

The Texas Manufactured Housing Division issued an industry bulletin on how retailers should handle salvaged manufactured homes after hurricane Harvey. This bulletin was based on the Texas Occupations Code § 1201.461 which requires the retailer to remove the HUD Label and submit it to the Manufactured Housing Division with an application for Statement of Ownership to classify the manufactured home as salvaged. Shortly after this bulletin was issued, the Department received an e-mail from HUD advising us that there was a conflict with their procedure as the Production Inspection Primary Inspection Agencies (IPIA) are to remove all HUD Labels from manufactured homes. They referred us to 24 CFR § 3282.362(c)(2)(i) and (ii), informational Bulletin 2-77, and another memo that could not be located by the Department.

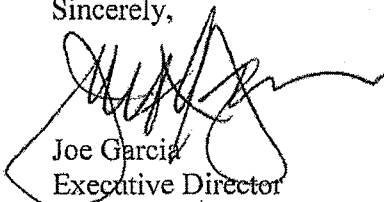
Based on this request the Department began researching the issue to identify how the bulletin should be amended. IPIA's are third party inspector's and the Department was concerned they would not have the time or resources to complete this task of removing the labels of the salvaged manufactured homes in Texas. However; the Department also wanted to ensure state procedure and law was not conflicting with HUD regulation. Upon an in depth reading of 24 CFR § 3282.362 the Department could not identify a conflict between our statute and the federal regulations. When we reviewed the HUD website the Department found forms that provided different methods of how to handle salvaged manufactured homes that varied from the e-mailed procedure. When clarification was requested from HUD via the attached e-mail, we were again referred to the HUD regulation in question. HUD has not yet identified a conflict between the state statute and the federal regulation, but instead referred the Department to an informational bulletin 2-77, issued in 1977 regarding manufactured homes that are damaged during transport.

The Department is concerned if the IPIA's fail to remove the labels from the salvaged manufactured homes, these dangerous homes may be sold to unknowing consumers. The Department has the ability to enforce the state statute to help protect consumers, but would have no authority to force the IPIAs to remove labels. The Department is also concerned that enforcing the federal procedure without a regulation or statute to back it up could prove very difficult.

The Manufactured Housing Division is not opposed to changing their bulletin or procedure, we just want to ensure it is consistent with HUD's actual procedure, and ensure the Texas consumer's are properly protected. If we will not be enforcing Texas statute we would like to back up that decision with a solid reason, such as a conflicting federal statute, rule, or the knowledge that the 1977 informational bulletin trumps state statute. We have provided copies of

relevant information. Please let me know if you require additional information and thank you for your assistance.

Sincerely,



Joe Garcia  
Executive Director

Texas Department of Housing and Community Affairs,  
Manufactured Housing Division  
512-475-4999 (Phone)  
512-475-0495 (Fax)

Attached:

Texas Manufactured Housing Division Industry Bulletin.

Tex. Occ. Code 1201.461 (This was not attached to the bulletin, but I have included it to reference our source for the bulletin)

E-mail From Pamela Danner from HUD requesting Changed Bulletin

HUD Law referenced in Pamela's E-mail

HUD Bulletin written in 1977 referenced in e-mail

Form for Lost Label Report found on HUD website

Dealer/Distributor Responsibilities found on HUD website

E-mail from MHD General Counsel (me) seeking clarification from HUD

E-mails between Joe and Pamela- when no response was received

E-mail from James Martin with HUD