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FILE # ML-41335-00
I.D. # 41335

RQ-0208-JC

March 22, 2000

The Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Attorney General Opinion

Dear General Cornyn:

The Texas Department of Housing and Community Affairs (Department) is requesting an Attorney General opinion concerning the proper interpretation of House Bill 1193, which was enacted by the 76th Legislature. Among other changes, House Bill 1193 added Section 6A to the Texas Manufactured Housing Standards Act (Act) (TEX. REV. CIV. STAT. ANN. art. 5221f). The Act is administered by the Department's Manufactured Housing Division.

The Department is interested in an opinion addressing two issues relating to Section 6A:

- (1) Does the addition of Section 6A to the Act grant new regulatory authority to the Department over unlicensed real estate brokers and salespersons (brokers)?
- (2) If the Department now has additional regulatory authority under Section 6A, under what statutory authority is the Department able to pursue disciplinary action against unlicensed brokers?

I. Issue 1 – Regulatory Authority – Discussion

As added by House Bill 1193, Section 6A of the Act reiterates existing law regarding unlicensed real estate brokerage and applies the law specifically to manufactured housing retailers (retailers). Before the addition of Section 6A, regulation of unlicensed brokers was the exclusive province of the Texas Real Estate Commission (TREC). It has been suggested that Section 6A grants the Department new regulatory authority over unlicensed real estate brokers if the broker is a retailer and the unlicensed brokerage is in conjunction with the sale of a manufactured home. If new Section 6A does grant such regulatory authority, would this new authority be in addition to and concurrent with TREC's primary authority to regulate brokers under the Real Estate License Act, or would the Department have exclusive authority as to all sales involving manufactured homes?

II. Issue 2 – Administrative Penalties – Discussion

Assuming Section 6A does provide the Department with new regulatory authority, the Department seeks an opinion concerning interpretation of a second issue. What type of administrative penalties are available to discipline retailers who violate the Real Estate License Act? Ordinarily, when the Department is faced with a violation of the Act, it relies on the penalties provided either in Section 2306.604 of the Government Code or in Section 17(b) of the Act.

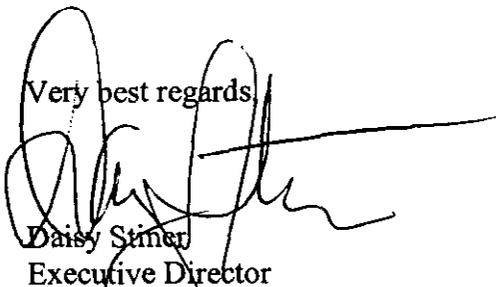
Section 2306.604 allows both administrative penalties and suspension or revocation of existing licenses. Section 2306.604, however, only applies to a person who “violates a law relating to the regulation of manufactured housing.” TEX. GOV’T CODE ANN. § 2306.604(a). In order for the Department to pursue administrative penalties or license sanctions for a violation of Section 6A, one would have to conclude that Section 6A is a “law relating to the regulation of manufactured housing.” Section 6A, however, has very little to do with the other protections included in the Act which all relate to the proper manufacture, installation, sale, and service of manufactured homes. Following this rationale, Section 6A, while targeted to retailers, is actually a law relating to regulation of real estate sales, not manufactured housing.

When the Department pursues an unlicensed retailer, it draws its punishment authority from Section 17(b) of the Act, which provides up to \$10,000.00 in penalties for a “person who fails to obtain or maintain a license as required by this Act.” Section 6A, however, does not require retailers to obtain or maintain a real estate license. It simply reiterates that actions taken by retailers in violation of the Real Estate License Act are prohibited. Section 17(b) is directed to licenses related to the manufacture, sale, and installation of manufactured homes, just as the Real Estate License Act is directed to licenses relating to the sale of real estate.

Although House Bill 1193 added new Section 6A to the Act, it is unclear in what manner the new section affects the Department’s authority to regulate its retailers. The Department is requesting this opinion in order to clarify the operation of Section 6A within the Department’s existing regulatory scheme.

Thank you for your attention to this request. Please address any questions concerning the request to Douglas Huth at (512) 475-4752.

Very best regards,



Daisy Stiner
Executive Director

cc: Betty J. Marks, General Counsel
Anne O. Paddock, Deputy General Counsel