

D R A F T
FOR DISCUSSION ONLY

MANUFACTURED HOUSING ACT

ONETWO TRACK

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

For February 24-26, 2012 Drafting Committee Meeting

With Prefatory Note and Comments

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By
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February 10, 2012

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MANUFACTURED HOUSING ACT

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MANUFACTURED HOUSING ACT

Prefatory Note

The act's primary focus is the proper classification of manufactured homes (also commonly called mobile homes) as real property or personal property. The act is intended to modernize the law in this area, bring uniformity and clarity into a chaotic area of state law, increase the supply of affordable housing by making manufactured home financing more available and affordable, and provide manufactured homeowners with many of the same legal protections as owners of site-built homes.

Many states' laws concerning manufactured homes have not kept pace with the changes in them over the last 90 years. Based on manufactured homes' earliest ancestor—the travel trailer—state laws classify most of these homes as personal property, though only one percent of them are moved after being sited on a lot. Three-quarters of manufactured homes are sited on the owner's land, and the average lot size is more than twice the average lot size for site-built homes. HUD construction and installation standards have virtually eliminated the differences in construction quality and safety between manufactured and site-built homes. As a result, the life expectancy of and deterioration rate for manufactured homes are now equivalent to those for site-built homes. Moreover, a manufactured home's appearance can be virtually indistinguishable from that of a site-built home. Today's manufactured home is functionally more equivalent to a site-built home than to a travel trailer, but only 28% of manufactured homes are classified as real property.

In addition to being generally outdated, existing state laws vary tremendously from state to state, which creates substantial inefficiencies in the manufactured home sale and finance markets. Depending on the state, manufactured homes are (1) personal property even after they are attached to the land, (2) real property for all purposes, (3) real property for some purposes and personal property for others, or (4) personal property until they become a fixture or until the completion of statutorily specified procedures for “converting” the home from personal property to real property. Additionally, these state laws often are unclear or incomplete concerning matters such as the conversion procedure, the purposes for which the home is to be treated as real or personal property, and whether state statutes in this area preempt the common law. As a result, manufactured home dealers, owners, and lenders must cope with a complex variety of laws.

Modernizing these laws and creating uniformity among the states is particularly important because manufactured housing is the most significant form of unsubsidized housing in this country for low-income households. As a result, 8% of the United States population—more than twenty-four million people—live in manufactured homes. In some states, the percentage is almost 20%. Perversely, existing state laws frequently cause manufactured home buyers to pay more to purchase and to finance their home than buyers of a site-built home.

1 **MANUFACTURED HOUSING ACT**

2
3 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Manufactured Housing
4 Act.

5 **SECTION 2. DEFINITIONS.** In this [act]:

6 (1) “Affidavit of affixation” is an instrument in recordable form that includes the
7 following:

8 (A) the affiant’s name;

9 (B) the legal description of the manufactured home that is the subject of the
10 affidavit;

11 (C) a legally sufficient description of the land on which the home is or will be
12 affixed;

13 (D) if the affiant does not own the land on which the home is or will be affixed,
14 the landowner’s name;

15 (E) the affiant’s representations that:

16 (i) the affiant owns the home;

17 (ii) the home is or will be affixed on the land described in the affidavit;

18 and

19 (iii) the affiant owns the land on which the home is or will be affixed or
20 has the landowner’s permission to affix the home on the land;

21 (F) the date of the affidavit; and

22 (G) the signature of the affiant or the affiant’s representative.

23 (2) “Affixed” means that the towing hitch, wheels, and axles to a manufactured home

1 have been removed and the home has electricity supplied by a utility or by other means. A home
2 is affixed even if the electric supply is stopped subsequently.

3 (3) “Electronic” means relating to technology having electrical, digital, magnetic,
4 wireless, optical, electromagnetic, or similar capabilities.

5 (4) “Legal description of the manufactured home” is the home’s manufacturer, make,
6 model designation, model year, and any serial numbers.

7 (5) “Manufactured home” or “manufactured housing” means a structure, including the
8 plumbing, heating, air-conditioning, and electrical systems contained in the structure, that is
9 transportable in one or more sections and (A) in the traveling mode, is eight body feet or more in
10 width or 40 body feet or more in length; (B) is built on a permanent chassis and is designed to be
11 used as a dwelling with or without a permanent foundation when connected to the required
12 utilities; and (C) is not a self-propelled recreational vehicle.

13 ~~6~~ (6) “Manufactured home deed” means a document that satisfies the requirements
14 for a recordable deed and that includes:

15 (A) the retailer’s and buyer’s names;

16 (B) the legal description of the home that is the subject of the deed;

17 (C) if the home is new, the home manufacturer’s address;

18 (D) the retailer’s warranties that its title to the home is good, its transfer rightful,

19 and the home is free from any security interest or other lien or encumbrance that is not listed as

20 an exception on the manufactured home deed;

21 (E) the date of the deed;

22 (F) the signature of the retailer or of the retailer’s representative; and

23 (G) as an attachment, (i) the manufacturer’s certificate or statement of origin if

1 the home is new or (ii) if the home is not new, the document by which the retailer acquired title
2 to the home and every other document that conveyed title to the home since it was severed from
3 the land on which it was last affixed, if any.

4 (7) “Person” means an individual, corporation, business trust, estate, trust, partnership,
5 limited liability company, association, joint venture, public corporation, government or
6 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

7 (78) “Record” means information that is inscribed on a tangible medium or that is stored
8 in an electronic or other medium and is retrievable in perceivable form.

9 (89) “Recorder” means the government official that records documents affecting land
10 titles and makes them available for public inspection.

11 ~~_____ (9)~~ (10) “Retailer” means a person that, in the ordinary course of business, sells
12 manufactured homes to buyers who buy the home for occupancy as a residence.

13 (11) “Security interest” means an interest in real property or in personal property that
14 secures payment or performance of an obligation.

15 ~~(1012)~~ “Sign” means, with present intent to authenticate or adopt a record:

16 (A) to execute or adopt a tangible symbol; or

17 (B) to attach to or logically associate with the record an electronic symbol, sound,
18 or process.

19 ~~(1113)~~ “State” means a state of the United States, the District of Columbia, Puerto Rico,
20 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
21 of the United States.

22 ~~(1214)~~ “Transferee” means a person that acquires title to a manufactured home in any
23 manner, including sale, exchange, gift, or testate or intestate succession.

1 Code § 9-102(53). As stated in comment 5(b) to that section, the definition is intended to have
2 the same meaning as the definition in the federal Manufactured Housing Act, 42 U.S.C.
3 § 5402(6). Using this definition will help harmonize this act with the federal act and with the
4 Uniform Commercial Code. However, this act’s definition differs from the Article 9 definition
5 in two ways:

- 6 • Although the Article 9 definition is based on the federal definition, Article 9 omits a
7 clause that the federal definition includes—“and except that such term shall not
8 include any self-propelled recreational vehicle.” Although that exclusion is
9 appropriate for Article 9, it is inappropriate for purposes of this act. Therefore, that
10 clause is in this act’s definition.
- 11 • The federal and Article 9 definitions of “manufactured home” include only homes
12 built on or after June 15, 1976, which was the effective date of HUD’s construction
13 standards for them. This act’s definition also includes homes built before that date,
14 which technically are called “mobile homes”.

15 Some states permit both manufactured and mobile homes to be classified as real
16 property from the time of retail sale. Other states permit only manufactured homes to
17 be so classified. *E.g.*, Colo. Rev. Stat. § 38-29-102(6) (manufactured and mobile
18 homes); Idaho Code Ann. § 39-4105(8) (manufactured homes only); Mont. Code
19 Ann. § 15-1-101(l) (manufactured homes only); N.H. Rev. Stat. Ann. § 674:31
20 (manufactured and mobile homes); N.D. Cent. Code § 39-05-01 (manufactured
21 homes only); Or. Rev. Stat. § 446.561 (manufactured and mobile homes); Tex. Occ.
22 Code Ann. § 1201.003(18) (manufactured and mobile homes).

23
24 This act’s “manufactured home” definition does not require a minimum square footage
25 because neither the federal definition nor the Article 9 definition requires it.

26
27 ~~Paragraph (6) is the standard Uniform Law Commission definition of “person”.~~
28 ~~Paragraph (6) specifies the requirements for a manufactured home deed, which is the~~
29 ~~document by which a retailer transfers title to a home that will be classified as real property.~~

30
31 ~~Paragraph (7) is the standard Uniform Law Commission definition of “person”.~~

32
33 ~~Paragraph (8) is the standard Uniform Law Commission definition of “record”.~~

34
35 ~~Paragraph (1012) is the standard Uniform Law Commission definition of “sign”.~~

36
37 ~~Paragraph (1113) is the standard Uniform Law Commission definition of “state”.~~

38
39 **SECTION 3. RETAIL SALE OF MANUFACTURED HOME.**

40 ~~(a) In this section, “A retailer” means a person that, in the ordinary course of business,~~
41 ~~sells manufactured homes to buyers who buy the home for occupancy as a residence.~~

1 ~~(b) In this section, “manufactured home deed” means a document that satisfies the~~
2 ~~requirements for a recordable deed and that includes:~~

- 3 ~~(1) the retailer’s and buyer’s names;~~
4 ~~(2) the legal description of the home that is the subject of the deed;~~
5 ~~(3) if the home is new, the home manufacturer’s address;~~
6 ~~(4) the retailer’s warranties that its title to the home is good, its transfer rightful,~~
7 ~~and the home is free from any security interest or other lien or encumbrance that is not listed as~~
8 ~~an exception on the manufactured home deed;~~
9 ~~(5) the date of the deed;~~
10 ~~(6) the signature of the retailer or of the retailer’s representative; and~~
11 ~~(7) as an attachment, (A) the manufacturer’s certificate or statement of origin if~~
12 ~~the home is new or (B) if the home is not new, the document by which the retailer acquired title~~
13 ~~to the home and every other document that conveyed title to the home since it was severed from~~
14 ~~the land on which it was last affixed, if any.~~

15 ~~(a)(e) A retailer that sells a manufactured home shall transfer title to a manufactured~~
16 ~~home by a manufactured home deed if the home is or will be affixed on land that the buyer owns~~
17 ~~in this state.~~

18 ~~(b)(d) The buyer of a manufactured home that is subject to this section If a retailer sells~~
19 ~~a manufactured home that is or will be affixed on land in this state that the buyer does not own,~~
20 ~~the buyer shall elect whether the home will be classified as real or personal property. If the~~
21 ~~buyer elects to classify the home as real property, the retailer shall transfer title to the home by a~~
22 ~~manufactured home deed.~~

23 ~~(c) If the retailer transfers title by a manufactured home deed, the buyer shall record an~~

1 affidavit of affixation, together with the ~~manufactured home~~ deed, in the land records of the
2 [county, municipality, or other recording jurisdiction] in which the home is or will be affixed.

3 (ed) The sale of a manufactured home that is subject to this section also is subject to
4 [state version of Uniform Commercial Code, Article 2]; except that the retailer cannot disclaim
5 the warranties provided in ~~subsection (b)~~Section 2(6)(D).

6 ~~— [(f) If the purchase of a manufactured home that is subject to this section~~[(e) If (1) the
7 manufactured home is or will be affixed on land owned by the buyer in this state or (2) the home
8 will be affixed on land in this state that the buyer does not own and the buyer elects to classify
9 the home as real property and if the purchase of the home is financed in whole or in part with a
10 loan that is secured by the home, the security interest in the home must be conveyed by a
11 (mortgage) (deed of trust) (mortgage or deed of trust). ~~If the home is financed as a~~
12 ~~chattel, Failure to do so will subject~~ the lender ~~shall be subject~~ to all the remedies and penalties
13 available to a consumer and the attorney general under (state consumer protection statute).]

14 **Comment**

15 *When Manufactured Home's Property Classification Changes*

16 While a manufactured home is part of a dealer's inventory, the home is personal property.
17 ~~When the retailer sells the home to a buyer that affixes it on land, the home becomes real~~
18 ~~property pursuant to Section 8(b). Pursuant to this section and Section 8(b), the home becomes~~
19 ~~real property when the buyer affixes it to land the buyer owns. The home also becomes real~~
20 ~~property, at the buyer's election, if it is affixed to land that the buyer does not own. Accord Cal.~~
21 ~~Health & Safety Code § 18551(a)(1)(A); Colo. Rev. Stat. § 38-29-202(1)(d); Conn. Gen. Stat. §~~
22 ~~21-67a; Fla. Stat. § 319.261; Idaho Code § 63-304(1)(b); N.H. Rev. Stat. § 477:44, subp. I; Or.~~
23 ~~Rev. Stat. § 446.626(1); S.C. Code § 56-19-510; Tex. Occ. Code § 1201.2055. Contra Ala. Code~~
24 ~~§ 32-8-30; Ariz. Rev. Stat. § 42-15201(2); Ga. Code § 8-2-181(b)(1); Mich. Comp. Laws §~~
25 ~~125.2330i; Miss. Code § 27-53-15; Vt. Stat. tit. 9, § 2603(b). "Affixed" is defined in Section~~
26 ~~2(2). If the home is subsequently severed from the land, it again becomes personal property. If~~
27 ~~it is later reaffixed on land, it again becomes real property. Section 5 of this act deals with~~
28 ~~severance, and Section 6 deals with reaffixation.~~

29 *Chain of Title to Manufactured Home*

30 In approximately forty-two states, title to a manufactured home is evidenced by a

1 certificate of title that a department of motor vehicles or other government agency issues. In
2 those states that permit a manufactured home to be converted to real property, the owner must go
3 through a cumbersome title conversion process. Thereafter, documents affecting title to the
4 home are recorded in the land records, rather than with the government agency that maintains the
5 manufactured home records. If a statutory title conversion process is unavailable, the owner
6 must establish that the home has become a fixture.

7 To eliminate the necessity for the issuance of a certificate of title and for a title
8 conversion process and to establish a single chain of ownership for a manufactured home that ~~is~~
9 ~~affixed on land, subsection (c) requires~~ will be classified as real property, subsections (a) & (b)
10 require the retailer to transfer title by a manufactured home deed in recordable form. Under
11 Section 8(d), all future conveyances of a right, title, or interest in the home while it remains real
12 property must be made in accordance with the real property laws. For example, a deed is used to
13 convey title, and a mortgage or deed of trust is used to create a security interest. If the home is
14 severed, Section 5 requires the owner to record an affidavit of severance in the land records of
15 the jurisdiction from which the home is being moved. If the owner subsequently reaffixes the
16 home on land, Section 6 requires the owner to record an affidavit of affixation in the land records
17 of the jurisdiction in which the home is reaffixed- if it will be classified as real property. This
18 affidavit must include the recording information for the deed or affidavit of affixation for the
19 home's previous location.

20 *Applicability of Article Two of Uniform Commercial Code*

21 Substantial authority exists that Article Two of the Uniform Commercial Code governs
22 the sale of a manufactured home, though it will be affixed on land before the sale is
23 consummated. *E.g.*, *Joswick v. Chesapeake Mobile Homes, Inc.*, 765 A.2d 90 (Md. 2001); *Reece*
24 *v. Homette Corp.*, 429 S.E.2d 768 (N.C. Ct. App. 1993); *Osburn v. Bendix Home Systems, Inc.*,
25 613 P.2d 445 (Okla. 1980); *Duffee v. Judson*, 380 A.2d 843 (Pa. Super. Ct. 1977); *Long v.*
26 *Quality Mobile Home Brokers, Inc.*, 248 S.E.2d 311 (S.C. 1978); *Paskell v. Nobility Homes, Inc.*,
27 871 S.W.2d 481 (Tenn. 1994); *Apeco Corp. v. Bishop Mobile Homes, Inc.*, 506 S.W.2d 711
28 (Tex. App. 1974). However, these opinions do not specify whether relevant state law classified
29 the home as real property after it was affixed on land but before consummation of the sale.
30 Therefore, **subsection (ed)** is intended to eliminate any question concerning the applicability of
31 Article 2 to retail sales of manufactured homes after [day before act's effective date]. The only
32 exception is that the transferor cannot disclaim the warranties provided in ~~subsection~~
33 ~~(b)(4)~~ Section 2(6)(D), though Article 2 permits disclaimer.

34 *Manufactured Home Financed as Real Property*

35 A primary goal of this uniform act is to increase the affordability and availability of
36 financing for manufactured homes. Currently, most loans for manufactured homes are chattel
37 loans, though the interest rates on real property loans for manufactured homes are substantially
38 lower. Moreover, the term of a real property loan normally is significantly longer than for a
39 chattel loan. The combination of a lower interest rate and longer term causes the monthly
40 payments on a real property loan to be substantially less than on a chattel loan.

41 The less favorable terms for manufactured home chattel loans are attributable in part to a

1 relative lack of availability and, therefore, a relative lack of competition. Far fewer lenders make
2 manufactured home chattel loans than make real property loans on those homes. Additionally,
3 many home buyers are steered by the retailer to a chattel lender.

4 The absence of a secondary market for chattel loans on manufactured homes also
5 substantially hinders credit availability ~~and affordability~~. Although Fannie Mae purchases
6 manufactured home loans, its purchase program is limited to loans secured by manufactured
7 homes that are classified as real property. ~~By characterizing all~~ Because approximately three-
8 quarters of manufactured homes are on land owned by the homeowner, characterizing these
9 homes as real property, ~~could significantly expand the pool of mortgages that qualify for~~ Fannie
10 Mae's purchase program ~~could greatly expand, thereby increasing capital, as will enabling~~
11 homes on leased land to be classified as real property. As a result, more credit will be available
12 and decreasing at lower interest rates. Moreover, Fannie Mae ~~has stated that it will standardize~~ is
13 standardizing underwriting, valuation, and documentation for manufactured home real property
14 loans, which will facilitate the secondary market ~~in the same ways for these loans~~ as it has for the
15 secondary market for site-built home loans.

16 Therefore, to increase credit affordability and availability, **subsection (fe)** provides that,
17 if the purchase of a manufactured home ~~purchasethat will be classified as real property~~ is
18 financed with a loan secured by the home, the security interest in the home must be conveyed by
19 a mortgage or deed of trust. Because mortgage financing may be more difficult to obtain if the
20 home is affixed on land that the homeowner does not own, the owner can elect to classify the
21 home as personal property and finance the purchase with a chattel loan.

22 The alternative language is included in subsection (fe) because states differ on whether
23 only mortgages, only deeds of trust, or both can be used to secure real property loans.

24 *Representative State Laws Permitting Real Property Classification at Time of Retail Sale*

25 Colo. Rev. Stat. § 38-29-114(2) (new manufactured home becomes real property when
26 certificate of permanent location recorded in land records); Idaho Code Ann. § 63-304 & Idaho
27 Admin. Code r. 35.01.03.304 (new manufactured home becomes real property when buyer
28 records “statement of intent to declare the manufactured home as real property” with the county
29 recorder and provides tax assessor with copy of recorded statement of intent); Mont. Code Ann.
30 § 15-1-116 (new manufactured home becomes real property when “Statement of Intent to
31 Declare a Manufactured Home an Improvement to Real Property” is recorded in land records);
32 N.D. Cent. Code §§ 39-05-35(1)(c) & 47-10-27(6) (new manufactured home becomes real
33 property when affidavit of affixation recorded in land records and copy of recorded affidavit of
34 affixation and application for surrender of title filed with Department of Transportation); Or.
35 Rev. Stat. § 446.626 (new manufactured home becomes real property when “Application and
36 Certification Exempting a Manufactured Structure from Ownership Document” filed with county
37 assessor and county assessor records application in deed records); Tex. Occ. Code Ann. §
38 1201.2055 (new manufactured home becomes real property when (1) “Statement of Ownership
39 and Location” (SOL) filed with Department of Housing & Community Affairs (“Department”),
40 (2) Department mails certified copy of SOL to owner and each lienholder, (3) owner files
41 certified copy of SOL in land records and notifies Department and tax assessor-collector that
42 copy has been filed, and (4) Department and tax assessor-collector note in their records that real

1 file certificate of permanent location to reclassify home as real property when home is
2 permanently affixed to land even if owner purchased before law's effective date).

3 **Subsection (b)** applies to a manufactured home moved to this state from another state. It
4 requires the homeowner to convert the home to real property.

5 "Affixed" is defined in Section 2(2).

6 **SECTION 5. SEVERANCE OF MANUFACTURED HOME.**

7 (a) Not later than ten days after a manufactured home is severed and moved from a
8 location for which an affidavit of affixation has been filed for recording, the homeowner shall
9 file an affidavit of severance for recording in the land records in which the affidavit was
10 recorded. The affidavit must include the following:

11 (1) the homeowner's name;

12 (2) the legal description of the home;

13 (3) a legally sufficient description of the land from which the home is or will be
14 severed;

15 (4) if the homeowner does not own the land from which the home is or will be
16 severed, the landowner's name;

17 (5) a statement that the home has been or will be moved;

18 (6) the date that the home has been or will be moved;

19 (7) a legally sufficient description of the land to which the home has been or will
20 be moved;

21 (8) if the owner of the home at the new location is different than the owner at the
22 location from which the home has been or will be severed, the name of the new owner;

23 (9) the recording information for the most recent deed or affidavit of affixation
24 for the home; and

25 (10) the signature of the homeowner or the homeowner's representative.

1 (b) A homeowner may not sever the manufactured home unless the holder of every
2 security interest or other encumbrance on the home consents.

3 (c) If a manufactured home for which an affidavit of affixation has been filed for
4 recording is on land that the homeowner does not own, the landowner shall file an affidavit of
5 severance, together with a certified copy of any required judgment or order authorizing the
6 landowner to sever the home as an attachment to the affidavit, for recording in the same land
7 records. The landowner, rather than the homeowner, shall sign the affidavit of severance. The
8 landowner shall file the affidavit not later than ten days after severing the home. The landowner
9 need not obtain the consent of the holder of a security interest or other encumbrance on the
10 home.

11 Comment

12 **Subsections (a) & (b)** deal with a homeowner's severance of its manufactured home.
13 Before severing the home, the owner must obtain the consent of every holder of a security
14 interest or other encumbrance on the home. Not later than ten days after the home is severed and
15 moved, the owner must file an affidavit of severance for recording in the land records in which
16 the affidavit of affixation was recorded.

17 If an encumbrance on the title to a home is not released before it is severed, some courts
18 have held that the encumbrance is unimpaired. *Johnson v. Bratton*, 70 N.W. 1021 (Mich. 1897);
19 *Partridge v. Hemenway*, 50 N.W. 1084 (Mich. 1891); *Hamlin v. Parsons*, 12 Minn. 108 (1866);
20 *Mills v. Pope*, 4 P.2d 485 (1931); *Turner v. Mebane*, 14 S.E. 974 (N.C. 1892); *Dakota Loan &*
21 *Trust Co. v. Parmalee*, 58 N.W. 811 (S.D. 1894) (all involving site-built homes). *See*
22 RESTATEMENT (THIRD) OF PROPERTY (MORTGAGES) § 4.6, Reporters' Note cmt. B. In a few
23 other cases, the court has held that a secured lender loses its security interest in the home but has
24 an action for waste or for impairment of security. *Bockout v. Swift*, 27 Cal. 433 (1865); *Walch v.*
25 *Beck*, 296 N.W. 780 (Iowa 1941); *Clark v. Reyburn*, 1 Kan. 281 (1863); *Harris v. Bannon*, 78
26 Ky. 568 (1880) (all involving site-built homes).

27 To maintain a chain of ownership in the land records when a manufactured home is
28 severed and moved, **subsection (a)(7)** provides that the affidavit of severance must include a
29 legal description of the land to which the home is being moved. Additionally, if ownership of
30 the home will change when the home is severed, **subsection (a)(8)** provides that the affidavit
31 must include the new owner's name.

32 **Subsection (c)** deals with a landowner's severance from its land of a home that it does
33 not own. For example, subsection (c) applies when a landowner leases the land to a

1 manufactured homeowner that fails to remove the home when the land lease terminates.

2 *Representative State Statutes*

3 The following descriptions of some representative state statutes provide an overview of
4 the different methods for addressing the issue of home severance.

5 *Colorado* requires the homeowner to file a certificate of removal with the county clerk
6 and recorder for the county where the home is located. Colo. Rev. Stat. § 38-29-203(1)(a) & (b).
7 Within twenty days after the location change, the owner must file a notice of the change with the
8 county assessor and the county treasurer for the counties from which and to which the home has
9 been moved. § 38-29-143. A landlord that is evicting a tenant can record a certificate of
10 removal. § 38-29-203(2.5)(b). All lienholders must consent to the removal. If a lienholder does
11 not consent, the homeowner can file a bond in an amount equal to 150% of the secured amount.
12 Colo. Rev. Stat. § 38-29-203(4).

13 *Connecticut* requires a manufactured homeowner to file a statutorily-specified “Mobile
14 Manufactured Home Removal Statement” for recording in the land records of the jurisdiction
15 from which the home is being moved at least 72 hours before the move. The form describes the
16 home’s current location and the location to which it is being moved. It also requires the written
17 consent of each security interest holder “subject to the condition that the . . . security
18 interest/mortgage/lien/attachment shall remain in full force and effect.” Conn. Gen. Stat. § 21-
19 67a(f).

20 In *Idaho*, at least thirty days before a manufactured home relocation, the owner must give
21 the county assessor for the county where the home is located (1) A “Reversal of Declaration of
22 Manufactured Home as Real Property”, (2) a copy of a title report from a title insurance
23 company that identifies all owners of an interest in the land to which the home is affixed and the
24 written consent of each owner, other than the owner of a right-of-way, easement, or subsurface
25 right, and (3) an application for a title to the home. The reversal declaration must be recorded
26 and a certificate of title must be issued before the owner moves the home. Idaho Code § 63-305;
27 Idaho Admin. Code r. 35.01.03.304.02 & .04.

28 *Montana* requires the owner to file a statement of reversal of declaration with the county
29 clerk and recorder of the county in which the home is located. All lienholders must consent to
30 the reversal. The clerk and recorder must forward a copy of the statement to the Department of
31 Justice (“Department”; entity responsible for titling manufactured homes). The Department must
32 give the owner a restored certificate of origin or certificate of title. After receiving the fee for a
33 new certificate of title, the county treasurer must forward the statement of reversal of declaration
34 to the Department. The Department then must give the owner a statement in recordable form
35 that the process of converting the home has been completed. The owner then must record the
36 statement. Mont. Code § 15-1-118.

37 *New Hampshire* requires an owner that is relocating a home within the state to record a
38 deed evidencing the change of location in the land records of the counties from which and to
39 which the home is moved. If the home is moved outside the state, the owner must record a
40 statutorily-prescribed relocation statement in the land records of the county from which the home

1 is moved. The home cannot be moved out of state unless all lienors give written consent on the
2 transfer statement. If the home is on leased land, the landowner’s written consent also is
3 required whether the owner is relocating the home inside or outside the state, because the
4 landowner has a right to a lien for any unpaid rent. The consent requirement alerts the
5 landowner to file a lien before the home is moved to another jurisdiction. N.H. Rev. Stat.
6 § 477:44, subp. II.

7 In *Oregon*, a manufactured home that is classified as real property cannot be moved
8 unless the Department of Consumer and Business Services, the agency that titles manufactured
9 homes, approves the move and the county assessor issues a “trip permit”. The department
10 cannot approve an application to move a home to another county unless all taxes and special
11 assessments have been paid. If the department approves the move, it must issue an ownership
12 document and must deliver it to the holder of the most senior security interest in the home or, if
13 none, to the owner. The department also must send a copy of the ownership document to any
14 other security interest holder and to the county assessor for the county to which the home is to be
15 moved. Or. Rev. Stat. § 446.631.

16 **SECTION 6. RELOCATION OF MANUFACTURED HOME.** If a manufactured
17 home, for which an affidavit of affixation has been filed for recording in this state, is moved and
18 affixed on another parcel of land in this state, the following rules apply if the homeowner owns
19 the land on which the home is affixed or, if not, elects to classify the home as real property:

20 (a) Not later than ten days after the home is affixed, the homeowner shall file an affidavit
21 of affixation for recording in the land records of the [county, municipality, or other recording
22 jurisdiction] in which the home is affixed. The affidavit must include the recording information
23 for the most recent deed or affidavit of affixation for the home at its previous location.

24 (b) If the owner of the home when it is affixed at the new location is different than the
25 owner when the home was severed from the former location, each document that conveyed title
26 to the home since it was last affixed must be recorded as an attachment to the affidavit of
27 affixation.

28 **Legislative Note:** *If the state uses electronic certificates of title, it will be necessary to provide a*
29 *method for obtaining a certified copy to attach to the affidavit of affixation.*

30
31 **Comment**

1 This section deals with intrastate manufactured home relocations. Section 4(b) deals with
2 interstate home relocations. If the home is being moved in connection with a retail sale, Section
3 3 applies.

4 This section is designed to maintain a single record chain of title for manufactured homes
5 that are ~~subject to this act~~ classified as real property. The chain begins with the recording of a
6 deed and affidavit of affixation in the land records pursuant to Section 3 or of an affidavit of
7 annexation pursuant to Section 4 and continues with the recording of any deeds subsequently
8 given to transfer title to the home. If the home is moved from the land on which it was originally
9 affixed, Section 5 requires the homeowner to record an affidavit of severance in that location.
10 The affidavit of severance must identify the land to which the home is being moved and the
11 name of the new owner, if any. When the home is reaffixed and is classified as real property,
12 this section requires the owner to record an affidavit of affixation in the new location that
13 includes the recording information for the most recent deed or affidavit of affixation at the
14 former location.

15 When the home is severed, it becomes personal property unless and until it is reaffixed on
16 land. As personal property, title will not be transferred by a deed. Therefore, to maintain an
17 unbroken chain of title in the land records, subsection (b) provides that each document that
18 conveyed title to the home while it was personal property must be recorded as an attachment to
19 the affidavit of affixation. Maintaining a single chain of title when the home is severed and
20 reaffixed eliminates the time and expense of creating a new chain of title when the home is
21 severed with the government agency that currently maintains title records for manufactured
22 homes and another new chain in the land records when the home is reaffixed.

23 *Representative State Statutes*

24 The following descriptions of representative state statutes provide an overview of the
25 different methods for addressing the issue of home relocation.

26 Within twenty days after relocation, *Colorado* requires the homeowner to file a notice of
27 relocation with the county assessor and the county treasurer for the counties from which and to
28 which the home has been moved. Colo. Rev. Stat. § 38-29-143. When the home is permanently
29 affixed at the new location, the owner must file a certificate of permanent location. § 38-29-118.

30 *New Hampshire* requires an owner that is relocating a home within the state to record a
31 deed evidencing the change of location in the land records of the counties from which and to
32 which the home is moved. N.H. Rev. Stat. Ann. § 477:44, subp. II.

33 *Texas* requires the owner that relocates to apply for a new Statement of Ownership and
34 Location (“SOL”) within sixty days after the relocation, Tex. Occ. Code § 1201.206(f), though
35 the change location form states that it must be recorded within thirty days after relocation. The
36 owner must submit a copy of the Texas DOT moving permit with the SOL application. 10 Tex.
37 Admin. Code SOL Application Instructions 4.

38 **SECTION 7. RECORDING.**

1 manufactured home as real property and any ownership document filed with county assessor;
2 application then recorded in deed records; assessor then sends ownership document to agency
3 that titles manufactured homes; agency cancels ownership document and sends cancellation
4 confirmation to assessor and to owner). *See also* Or. Admin. R. 918-550-0160 (tax assessor).

5 In contrast, this section requires the deed and affidavit of affixation to be filed first with
6 the recorder. *Accord* Colo. Rev. Stat. § 38-29-114(2); Mont. Code § 15-1-116(1); N.H. Rev.
7 Stat. §477:44, subp. III. When the home buyer finances the purchase, the lender or title insurer
8 normally will file the deed and affidavit for recording. When the buyer does not finance the
9 purchase, the manufactured home retailer, like a car dealer, can offer to file the deed and
10 affidavit for recording, or the buyer can file them. In this way, the home immediately is brought
11 into the real property title system.

12 The possibility that a manufactured home transferor will fraudulently transfer title to the
13 home more than once is a significant practical concern. This wrongful practice is facilitated if
14 the transferor retains the manufacturer’s certificate or statement of origin or certificate of title, if
15 any. Therefore, **subsection (a)** requires delivery of these documents to the recorder when the
16 deed and affidavit are filed and requires the recorder to mark them as being no longer valid. This
17 section is based on Colo. Rev. Stat. §§ 38-29-202(1)(c), 38-29-207.

18 Requiring the recorder, rather than the homeowner, to deliver a copy of the deed and
19 affidavit of affixation to the tax assessor and to the titling agency, if any, is more likely to ensure
20 that delivery occurs. The homeowner may be unaware of the delivery requirement or may fail to
21 deliver in an attempt to avoid paying real property taxes. However, some jurisdictions prohibit
22 the recorder from delivering documents. Therefore, **subsection (b)** includes alternative language
23 that requires the owner to do so. Similarly, **subsection (c)** provides alternative language for an
24 affidavit of severance.

25 **SECTION 8. RIGHT, TITLE, AND INTEREST IN MANUFACTURED HOME.**

26 (a) When the sale of a manufactured home sale that is or will be classified as real
27 property is subject to Section 3 and the buyer is a buyer in ordinary course of business, the buyer
28 takes free of a security interest created by the buyer’s seller pursuant to [state version of Uniform
29 Commercial Code, Article 9], even if the security interest is perfected and the buyer knows of its
30 existence. The buyer is a “buyer in ordinary course of business” if it buys the home in good
31 faith, without knowledge that the sale violates the rights of another person in the home, and in
32 the ordinary course from a person in the business of selling manufactured homes. A person buys
33 a manufactured home in the ordinary course if the sale comports with the usual or customary
34 practices in manufactured home retail sales or with the seller’s own usual or customary practices.

1 A buyer in ordinary course of business may buy for cash, by exchange of other property, or on
2 secured or unsecured credit, and may acquire a home under a preexisting contract for sale. Only
3 a buyer that takes possession of the home or has a right to recover the home from the seller under
4 [state version of Uniform Commercial Code, Article 2] may be a buyer in ordinary course of
5 business. A person that acquires homes in a transfer in bulk or as security for or in total or
6 partial satisfaction of a money debt is not a buyer in ordinary course of business.

7 (b) A manufactured home ~~that is subject for which an affidavit of affixation is filed for~~
8 recording pursuant to the provisions of Section Sections 3 or Section 6 becomes real property for
9 all purposes when ~~the home~~ is affixed on land. A home ~~that for which an affidavit of affixation~~
10 is subject to the provisions of filed for recording pursuant to Section 4 becomes real property for
11 all purposes when the affidavit of affixation is filed ~~for recording~~ in the appropriate land records.
12 The home is real property even if the affidavit of affixation and the document by which the
13 owner of the home acquired title to it do not satisfy all the requirements of this [act]; but, to be
14 valid, both documents must include the legal description of the home and a legally sufficient
15 description of the land on which it is or will be affixed.

16 (c) When a manufactured home is affixed on land, title to the home remains separate
17 from the title to the land. The home is not subject to any security interest or other encumbrance
18 in or on the title to the land, and the land is not subject to any security interest or other
19 encumbrance in or on the title to the home.

20 (d) Each transfer of a right, title, or interest in a manufactured home that is classified as
21 real property must be made in accordance with applicable real property law and must include the
22 legal description of the home and a legally sufficient description of the land on which the home
23 is or will be affixed.

1 (e) If a manufactured home that has become real property is severed from the land on
2 which it is affixed, the home becomes personal property [but does not require a certificate of
3 title]. After becoming personal property, each transfer of a right, title, or interest in the home
4 must be made in accordance with applicable personal property law until the home again becomes
5 real property. Each transfer of a right, title, or interest in the home while it is personal property
6 must include the legal description of the home.

7 (f) If the law of this state governs the perfection of a tenancy, security interest, or other
8 encumbrance on a manufactured home while it is personal property or real property and if the
9 encumbrance was [filed in the proper place in this state] [noted on the certificate of title for the
10 home], it remains effective, retains the time and date of its priority, and provides the same rights
11 and remedies, though the home's classification as personal or real property or its location within
12 this state, whichever controlled the original [filing] [notation], is thereafter changed one or more
13 times.

14 (g) After a manufactured home is moved into this state and the owner files an affidavit of
15 affixation as provided in Section 4(b), subsequent purchasers for value of an interest in the home,
16 including a security interest, acquire that interest free and clear of any tenancy, security interest,
17 or other encumbrance that is not filed in the proper place in this state, unless:

18 (1) the subsequent purchaser has actual notice of the tenancy, security interest, or other
19 encumbrance;

20 (2) the recorded affidavit of affixation describes the tenancy, security interest, or other
21 encumbrance; or

22 (3) the tenancy, security interest, or other encumbrance is filed in the proper place in this
23 state within four months after the earlier of the filing of the affidavit of affixation or affixation of

1 the home.

2 **Comment**

3 **Subsection (a)** describes the circumstances under which a buyer from a manufactured
4 home dealer acquires title free of an Article 9 security interest that the dealer granted.
5 Subsection (a) is based on U.C.C. §§ 1-201 & 9-320(a). If the manufactured home will not be
6 affixed when purchased and, therefore, will remain personal property, these U.C.C. provisions
7 concerning a buyer in ordinary course of business will apply, rather than subsection (a) of this
8 [act].

9 **Subsection (b)** provides that, when a home is classified as real property, it is real
10 property for all purposes. *Accord* Colo. Rev. Stat. §§ 38-29-112(1.5), 38-29-114(2); Mont. Code
11 § 15-1-116(5); Or. Rev. Stat. § 446.626(2) & (5). This provision eliminates the ambiguity that
12 currently exists in some state statutes concerning the purposes for which the home is to be treated
13 as real property. When a statutory provision that a manufactured home can be classified as real
14 property does not include this type of language, courts have questioned whether the home is
15 classified as real property only for certain purposes, such as financing, or for all purposes.

16 ~~Pursuant to subsection (b), a manufactured home becomes real property though the~~
17 ~~homeowner does not own the land on which the home is affixed. Many state statutes permit a~~
18 ~~manufactured home on leased land to be real property. E.g., Cal. Health & Safety Code §~~
19 ~~18551(a)(1)(A); Colo. Rev. Stat. § 38-29-202(1)(d); Conn. Gen. Stat. § 21-67a; Fla. Stat. §~~
20 ~~319.261; Idaho Code § 63-304(1)(b); N.H. Rev. Stat. § 477:44, subp. I; Or. Rev. Stat. §~~
21 ~~446.626(1); S.C. Code § 56-19-510; Tex. Occ. Code § 1201.2055. However, other states do not~~
22 ~~permit a home to be real property if it is on leased land. E.g., Ala. Code § 32-8-30; Ariz. Rev.~~
23 ~~Stat. § 42-15201(2); Ga. Code § 8-2-181(b)(1); Mich. Comp. Laws § 125.2330i; Miss. Code § 27-~~
24 ~~53-15; Vt. Stat. tit. 9, § 2603(b). This restriction prevents about one quarter of manufactured~~
25 ~~homes from being converted to real property.~~

26 Under **subsection (c)**, the title to a manufactured home remains separate from the title to
27 the land on which it is affixed whether the homeowner leases or owns the land. If the
28 homeowner leases the land, the landowner acquires no interest in the home solely by virtue of its
29 affixation. However, the landowner can obtain a lien on the home for any unpaid rent, for
30 example, to the extent that state law permits.

31 If the homeowner also owns the land, the home and land titles still remain separate after
32 the home is affixed. National organizations that represent consumers, including manufactured
33 homeowners, have stated that keeping the titles separate is important because it enables a
34 landowner to purchase a manufactured home with a loan that is secured by just the home. In this
35 way, if the purchaser defaults on the loan, it will lose the home but not the land. Of course, a
36 lender can refuse to make the loan without also getting a security interest in the land.

37 **Subsection (f)** deals with interests in a manufactured home that existed before the
38 home's legal classification as real or personal property changed or the home was moved
39 intrastate. This subsection provides that a properly perfected interest will continue to encumber
40 the title to the home and will retain its priority, thereby eliminating the need for the interest

1 holder to take any further action to retain its interest or priority. This provision is based on
2 U.C.C. § 9-501(a) and on its predecessor, § 9-401(3).

3 Subsection (f) also provides that the rights and remedies available to the interest holder
4 and to the homeowner will not change. For example, if a creditor acquired a security interest in a
5 manufactured home while it was personal property, the creditor will retain the same rights and
6 remedies though the home has become real property. Conversely, if a secured creditor holds a
7 mortgage or deed of trust on the home and the home becomes personal property by means of
8 severance, the mortgage continues to encumber the home, and the mortgagee's remedy is
9 foreclosure. *Accord Johnson v. Bratton*, 70 N.W. 1021 (Mich. 1897); *Partridge v. Hemenway*,
10 50 N.W. 1084 (Mich. 1891); *Hamlin v. Parsons*, 12 Minn. 108 (1866); *Mills v. Pope*, 4 P.2d 485
11 (Mt. 1931); *Turner v. Mebane*, 14 S.E. 974 (N.C. 1892); *Dakota Loan & Trust Co. v. Parmalee*,
12 58 N.W. 811 (S.D. 1894). *Contra Bockout v. Swift*, 27 Cal. 433 (1865); *Walch v. Beck*, 296
13 N.W. 780 (Iowa 1941); *Clark v. Reyburn*, 1 Kan. 281 (1863); *Harris v. Bannon*, 78 Ky. 568
14 (1880).

15 **Subsection (g)** concerns manufactured homes brought into this state from another state.
16 It is based on Colo. Rev. Stat. § 38-29-127 and on U.C.C. § 9-316.

17 **SECTION 9. PREEMPTION OF COMMON LAW.** This act preempts the common
18 law, including the law of fixtures. When a manufactured home becomes real property by the
19 terms of this [act], it is not a fixture and is not subject to the law of fixtures.

20 **Comment**

21 This section has two purposes: (1) to make clear that this act preempts the common law
22 in this area and (2) to create parity between site-built homes and manufactured homes. Because
23 a manufactured home is personal property before it is affixed on land, a court may treat the home
24 as a fixture, which is a type of real property. As a fixture, different financing and creditor
25 remedies are available than for a site-built home. Therefore, this subsection expressly provides
26 that the home is not a fixture.

27 **SECTION 10. TAXATION OF MANUFACTURED HOME.** To be determined

28 **SECTION 11. HOME WARRANTIES.** A warranty that applies to a manufactured
29 home while it is personal property continues to apply when the home becomes real property
30 under this [act].

31 **Comment**

32 This section is based on Tex. Occ. Code § 1201.2055(h). It is designed to preserve
33 personal property warranties for a manufactured home after it has been converted to real

1 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
2 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
3 U.S.C. Section 7003(b).

4 **Comment**

5 In 2000, Congress enacted the “Electronic Signatures in Global and National Commerce
6 Act,” 106 PUB. L. NO. 229, 114 Stat. 464, 15 U.S.C. § 7001, *et seq.* (popularly known as “E-
7 Sign”). E-Sign largely tracks the Uniform Electronic Transactions Act (UETA). Section 102 of
8 E-Sign, entitled “Exemption to preemption”, provides in pertinent part that:

9 (a) A State statute, regulation, or other rule of law may modify, limit, or
10 supersede the provisions of section 101 with respect to State law only if such statute,
11 regulation, or rule of law—

12 (1) constitutes an enactment of adoption of the Uniform Electronic
13 Transactions Act as approved and recommended for enactment in all the States by the
14 National Conference of Commissioners on Uniform State Laws in 1999” [with
15 certain exception] or

16 (2) (A) specifies the alternative procedures or requirements for the
17 use or acceptance (or both) of electronic records or electronic signatures to establish
18 the legal effect, validity, or enforceability of contracts or other records, if [they meet
19 certain criteria] and

20 (B) if enacted or adopted after the date of the enactment of this
21 Act, makes specific reference to this Act.

22 15 U.S.C. § 7002(a). The inclusion of this section is necessary to comply with the requirement
23 that the act “make[] specific reference to this Act” pursuant to 15 U.S.C. § 7002(a)(2)(B) if the
24 act contains a provision authorizing electronic records or signatures in place of writings or
25 written signatures.

26 **SECTION 15. SAVINGS PROVISION.** Subject to Section 8(g) of this [act],
27 transactions, certificates of title, records, and information that were validly entered into or
28 created before the effective date of this [act], and would be subject to this [act] if they had been
29 entered into or created on or after the effective date of this [act], and the rights, duties, and
30 interests flowing from these transactions, certificates of title, records, and information, remain
31 valid after the effective date of this [act].

32 **Comment**

33 This section is taken from Uniform Law Commission Drafting Rule 603. It is designed

1 to minimize the disruptions inherent in changes from old laws to new laws. It preserves laws
2 that the act supersedes and that otherwise would apply to transactions and events that occurred
3 before the act's effective date.

4 **SECTION 16. REPEALS.** The following are repealed:

5 ***Legislative Note:** This section is for states that wish to replace their existing statutes*
6 *concerning: (1) classification of manufactured homes as real property or as personal property,*
7 *(2) titling of manufactured homes, (3) creation and perfection of security interests in*
8 *manufactured homes and creditor remedies, and (4) manufactured home taxation. After*
9 *enactment of this act, some manufactured homes in the state will remain personal property, such*
10 *as homes that consumers purchased before the act's effective date. Therefore, rather than*
11 *repealing statutes in their entirety, modifying them to reflect the new law and its effective date*
12 *normally would be a better practice.*

13
14 **SECTION 17. EFFECTIVE DATE.** This [act] takes effect on _____.