

D R A F T
FOR DISCUSSION ONLY

MANUFACTURED HOUSING ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

For October 28-30, 2011 Drafting Committee Meeting

With Prefatory Note and Comments

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October 20, 2011

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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 home owners 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In addition to being generally outdated, existing state laws vary tremendously from state to state, which creates substantial inefficiencies in the manufactured home sale and finance markets.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 purchasers to pay more to purchase and to finance their home than purchasers 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) “Buyer in ordinary course of business” means a person that buys a manufactured
7 home in good faith, without knowledge that the sale violates the rights of another person in the
8 manufactured home, and in the ordinary course from a person in the business of selling
9 manufactured homes. A person buys a manufactured home in the ordinary course if the sale to
10 the person comports with the usual or customary practices in manufactured home retail sales or
11 with the seller’s own usual or customary practices. A buyer in ordinary course of business may
12 buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire
13 a manufactured home under a preexisting contract for sale. Only a buyer that takes possession of
14 the manufactured home or has a right to recover the manufactured home from the seller under
15 [state’s version of Uniform Commercial Code Article 2] may be a buyer in ordinary course of
16 business. “Buyer in ordinary course of business” does not include a person that acquires goods
17 in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

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

20 (3) “Installed” means that the wheels and axles to a manufactured home have been
21 removed and the home has electricity supplied by a utility or by any other means. A home will
22 continue to be “installed” within the meaning of this section though the electric supply
23 subsequently is stopped.

1 (4) “Legal description of the manufactured home” is the home’s manufacturer, make,
2 model designation, model year, identification number, length, and width.

3 (5) “Manufactured home” or “manufactured housing” means a structure manufactured
4 before, on, or after June 15, 1976, transportable in one or more sections, which, in the traveling
5 mode, is eight body feet or more in width or 40 body feet or more in length, and which is built on
6 a permanent chassis and designed to be used as a dwelling with or without a permanent
7 foundation when connected to the required utilities, and includes the plumbing, heating, air-
8 conditioning, and electrical systems contained therein; but the terms do not include any self-
9 propelled recreational vehicle.

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

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

15 (8) “Recorder” means the government official that records documents affecting land
16 titles and makes them available for public inspection.

17 (9) “Security interest” means an interest in real property or in personal property that
18 secures payment or performance of an obligation.

19 (10) “Sign” means, with present intent to authenticate or adopt a record:

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

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

1 (11) “State” means a state of the United States, the District of Columbia, Puerto Rico,
2 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
3 of the United States.

4 (12) “Transferee” means a person that acquires title to a manufactured home in any
5 manner, including sale, exchange, gift, or testate or intestate succession.

6 (13) “Transferor” means a person that transfers title to a manufactured home in any
7 manner, including sale, exchange, gift, or testate or intestate succession.

8 **Comment**

9 **Paragraph (1)** is based on Uniform Commercial Code § 1-201. The definition relates to
10 Section 8(a) of this act, which deals with the enforceability of preexisting liens on a
11 manufactured home against a buyer in ordinary course of business.

12 **Paragraph (2)** is the standard Uniform Law Commission definition of “electronic”.

13 **Paragraph (3)** identifies when a manufactured home has become sufficiently connected
14 to land and unlikely to be moved that the home becomes real property. In considering
15 alternatives, the drafting committee stressed the need for a standard that is objective, easy to
16 verify, and achievable in all jurisdictions and by all manufactured home owners. The committee
17 considered and rejected numerous definitions, including the following:

- 18 • permanent affixation to land, which was defined as installation in accordance with the
19 manufacturer’s installation instructions and with applicable federal, state, and local
20 laws. The committee rejected this standard because: (1) it excludes homes that are
21 improperly installed; (2) it requires a determination whether a home has been
22 properly installed; and (3) though unlikely, the home can be moved and, therefore, is
23 not “permanently” affixed;
- 24 • issuance of a certificate of occupancy, because not all jurisdictions require them;
- 25 • government certification of utility connection or of proper home installation, because
26 the certification can take several months to obtain;
- 27 • attachment to a permanent foundation, because the HUD definition of “manufactured
28 home” does not require it and because some states and many landlords do not permit
29 a permanent foundation in a leasehold community; and
- 30 • satisfaction of the fixture test, because it is fact dependent and unpredictable and
31 because some forms of installation that the HUD Code permits do not satisfy that test.

1 Because only 1% of manufactured homes are moved after being sited on land, the
2 committee determined that removal of the wheels and axles and connection to a source of
3 electricity constitute a sufficient connection to the land and a standard that is objective, readily
4 verifiable, and universally achievable.

5 **Paragraph (4)** includes the information that most state statutes require in conveyance
6 documents for manufactured homes.

7 **Paragraph (5)** is based on the “manufactured home” definition in Uniform Commercial
8 Code § 9-102(53). As stated in comment 5(b) to that section, the definition is intended to have
9 the same meaning as the definition in the federal Manufactured Housing Act, 42 U.S.C.
10 § 5402(6). Using this definition will help harmonize this act with the federal act and with the
11 U.C.C. The drafting committee’s style member offered alternative language to conform the
12 definition to the Style Committee’s rules, but, to avoid conflicts or gaps between this uniform act
13 and the U.C.C., the drafting committee respectfully determined to use the definition based on
14 Article 9. However, the committee also decided that, for purposes of this act, the definition
15 should differ from the Article 9 definition in two ways:

- 16 • Although the Article 9 definition is based on the federal definition, Article 9 omits a
17 clause that the federal definition includes—“and except that such term shall not
18 include any self-propelled recreational vehicle.” Although that exclusion is
19 appropriate for Article 9, it is inappropriate for purposes of this act. Therefore, that
20 clause is in this act’s definition.
- 21 • The federal and Article 9 definitions of “manufactured home” include only homes
22 built on or after June 15, 1976, which was the effective date of HUD’s construction
23 standards for them. This act’s definition also includes homes built before that date,
24 which technically are called “mobile homes”. To make clear that this act applies to
25 mobile homes, as well as to manufactured homes, Paragraph (5) provides that this
26 act’s definition of “manufactured home” includes homes manufactured at any time.

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

35
36 This act’s “manufactured home” definition does not require a minimum square footage
37 because neither the federal definition nor the Article 9 definition requires it.

38
39 **Paragraph (6)** is the standard Uniform Law Commission definition of “person”.

40
41 **Paragraph (7)** is the standard Uniform Law Commission definition of “record”.

1 **Paragraph (10)** is the standard Uniform Law Commission definition of “sign”.

2
3 **Paragraph (11)** is the standard Uniform Law Commission definition of “state”.

4
5 **SECTION 3. RETAIL SALE OF NEW MANUFACTURED HOME.**

6 (a) A manufactured home retailer that sells a new manufactured home shall transfer title
7 to the home by a deed in recordable form if the home is or will be installed on land in this state.
8 The retailer may not deliver the deed until the home has been delivered to that land. The deed
9 must include the following:

10 (1) the legal description of the manufactured home;

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

13 (3) if the transferee does not own the land on which the home is or will be
14 installed, the landowner’s name;

15 (4) the home manufacturer’s address; [and] []

16 (5) the retailer’s warranties that its title to the home is good and its transfer
17 rightful and that the home is free from any security interest or other lien or encumbrance that is
18 not listed as an exception on the deed[.]; and,

19 (6) as an attachment to the deed, the manufacturer’s certificate or statement of
20 origin.]

21 (b) When the home is installed or the deed is filed for recording, whichever occurs first,
22 the home becomes real property for all purposes from the time the title was transferred. The
23 home will be real property even if the deed does not satisfy all the requirements of this section;
24 but, to be valid, the deed must include the legal description of the manufactured home and a
25 legally sufficient description of the land on which the home is or will be installed.

1 (c) The sale of a home subject to this section also is subject to [state’s version of Article
2 Two of the Uniform Commercial Code]; except that the transferor cannot disclaim the warranties
3 provided in subsection (a)(5).

4 (d) All subsequent transfers of a right, title, or interest in the home must be made in
5 accordance with applicable real property law and must include the following:

6 (1) the legal description of the manufactured home;

7 (2) a legally sufficient description of the land on which the home is installed; and

8 (3) if the transferee does not own the land on which the home is installed, the
9 landowner’s name.

10 Comment

11 *When Manufactured Home Converts to Real Property*

12 While a manufactured home is part of a dealer’s inventory, the home is personal property.
13 **Subsection (b)** provides two methods by which the home converts to real property—the home is
14 installed, as defined in Section 2(3), or the deed to the home is filed for recording, which,
15 pursuant to subsection (a), cannot occur before the home is delivered to the land on which it will
16 be installed. The latter method, filing the deed for recording, has the advantage of being readily
17 ascertainable. However, an owner may fail to file for a variety of reasons, including in an
18 attempt to avoid paying real property taxes. Therefore, a home also becomes real property when
19 its wheels and axles have been removed and electric service has been supplied. When these two
20 events occur, the home is extremely unlikely to be moved. These two events are useful
21 conversion standards because they normally also can be readily ascertained.

22 Pursuant to Section 3, the home will become real property though the home owner does
23 not own the land on which the home is installed. Many state statutes permit a manufactured
24 home on leased land to be real property. *E.g.*, Cal. Health & Safety Code § 18551(a)(1)(A); Colo.
25 Rev. Stat. § 38-29-202(1)(d); Conn. Gen. Stat. § 21-67a; Fla. Stat. § 319.261; Idaho Code § 63-
26 304(1)(b); N.H. Rev. Stat. § 477:44, subp. I; Or. Rev. Stat. § 446.626(1); S.C. Code § 56-19-510;
27 Tex. Occ. Code § 1201.2055. However, other states do not permit a home to be real property if
28 it is on leased land. *E.g.*, Ala. Code § 32-8-30; Ariz. Rev. Stat. § 42-15201(2); Ga. Code § 8-2-
29 181(b)(1); Mich. Comp. Laws § 125.2330i; Miss. Code § 27-53-15; Vt. Stat. tit. 9, § 2603(b).
30 This restriction automatically prevents about one-quarter of manufactured homes from being
31 converted to real property.

32 Some states that permit a manufactured home on leased land to be classified as real
33 property require the landowner’s consent to the real property classification. *E.g.*, Ariz. Rev. Stat.
34 § 33-1501; Or. Rev. Stat. § 446.626. This requirement is unnecessary because, as provided in

1 Section 8(b) of this act, title to the home and to the land remain distinct, and because, as
2 provided in Section 10, the home and the land are valued and taxed separately.

3 Another restriction in some states is that the land lease must have a minimum statutorily-
4 specified term. *E.g.*, Cal. Health & Safety Code § 18551(a)(1)(A) (thirty-five years); Colo. Rev.
5 Stat. § 38-29-202(1)(d) (ten years); Fla. Stat. § 319.261 (thirty years); Or. Rev. Stat. § 446.626(1)
6 (twenty years); S.C. Code § 56-19-510 (thirty-five years). This restriction addresses the concern
7 that the owner will have to move the home in the relatively short term because, for example, the
8 lease term has expired and the tenant cannot afford a rent increase. However, even if the lease is
9 for a long term, it can provide for periodic rent increases and for early termination, such as upon
10 the tenant's default. Moreover, when a lease terminates, the home usually is left in place and is
11 sold to a new owner, because the cost of moving and the potential for damage are so great. A
12 minimum lease term requirement also hampers the sale or refinancing of a manufactured home
13 when the remaining term on the less has fallen to less than the statutorily-specified minimum.
14 Although the length of the lease term is a loan underwriting consideration, it is an unnecessary
15 restriction on the ability to classify a manufactured home as real property, as evidenced by the
16 jurisdictions that do not require a minimum term. *E.g.*, Conn. Gen. Stat. § 21-67a; Mont. Code
17 § 15-1-116(1); N.H. Rev. Stat. § 477:44, subp. I; 10 Tex. Admin. Code § 80.2 (no minimum term
18 required if each lienholder has approved the real property classification; otherwise, lease term
19 must be at least five years).

20 *Relation Back of Real Property Classification*

21 In addition to specifying when the home converts to real property, **subsection (b)**
22 includes a relation back provision. Based on this provision, when the home converts to real
23 property, it is treated as having been real property from the time the retailer delivered the deed.
24 Pursuant to subsection (a), the retailer cannot deliver the deed until the home has been delivered
25 to the land on which it will be installed. This relation back provision is designed to make the
26 home real property at the time of sale so that purchase money mortgage financing is more readily
27 available.

28 *Deed to Transfer Title to Manufactured Home*

29 Because the relation back provision will make the home real property from the time the
30 retailer transfers title, **subsection (a)** requires the retailer to transfer title by a deed in recordable
31 form. As provided in **subsection (b)**, the deed must satisfy the state's usual legal requirements
32 for the transfer of real property. Because the deed is conveying a manufactured home, rather
33 than a site-built home, the information specified in subsections (a)(1)-[(5)][(6)] also must be
34 included in the deed. However, the failure to include this additional information will not prevent
35 the home from becoming real property, so long as the deed satisfies the state's other legal
36 requirements.

37 **Subsection (a)(5)** is based on U.C.C. § 2-312(1). It is intended to prohibit the retailer
38 from disclaiming these warranties, though Article 2 permits disclaimer.

39 **Subsection (a)** includes alternative language because some states do not require a
40 manufacturer's certificate or statement of origin.

1 *Manufactured Home Becomes Real Property for All Purposes*

2 **Subsection (b)** provides that, when a home is classified as real property, it is real
3 property for all purposes. *Accord* Colo. Rev. Stat. §§ 38-29-112(1.5), 38-29-114(2); Mont. Code
4 § 15-1-116(5); Or. Rev. Stat. § 446.626(2) & (5). This provision eliminates the ambiguity that
5 currently exists in some state statutes concerning the purposes for which the home is to be treated
6 as real property. When a statutory provision that a manufactured home can be classified as real
7 property does not include this type of language, courts have questioned whether the home is
8 classified as real property only for certain purposes, such as financing or taxation, or for all
9 purposes.

10 *Applicability of Article 2 of the Uniform Commercial Code*

11 Substantial authority exists that Article Two of the Uniform Commercial Code governs
12 the sale of a manufactured home, though it will be affixed to land before the sale is
13 consummated. *E.g.*, *Joswick v. Chesapeake Mobile Homes, Inc.*, 765 A.2d 90 (Md. 2001); *Reece*
14 *v. Homette Corp.*, 429 S.E.2d 768 (N.C. Ct. App. 1993); *Osburn v. Bendix Home Systems, Inc.*,
15 613 P.2d 445 (Okla. 1980); *Duffee v. Judson*, 380 A.2d 843 (Pa. Super. Ct. 1977); *Long v.*
16 *Quality Mobile Home Brokers, Inc.*, 248 S.E.2d 311 (S.C. 1978); *Paskell v. Nobility Homes, Inc.*,
17 871 S.W.2d 481 (Tenn. 1994); *Apeco Corp. v. Bishop Mobile Homes, Inc.*, 506 S.W.2d 711
18 (Tex. App. 1974). However, these opinions do not specify whether relevant state law classified
19 the home as real property after it was affixed to land but before consummation of the sale.
20 Therefore, **subsection (c)** is intended to eliminate any question concerning the applicability of
21 Article 2 to retail sales of new manufactured homes after [day before act’s effective date]. The
22 only exception is that the transferor cannot disclaim the warranties provided in subsection (a)(5),
23 though Article 2 permits disclaimer.

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 purchaser
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

1 copy has been filed, and (4) Department and tax assessor-collector note in their records that real
2 property election has been made).

3 **SECTION 4. MANUFACTURED HOME ACQUIRED BEFORE [ACT'S**
4 **EFFECTIVE DATE].**

5 (a) If a manufactured home owner, other than a manufactured home retailer, acquired the
6 home before [act's effective date] and if the home is installed on land in this state, the owner
7 may file a certificate of location for recording in the land records of the jurisdiction in which the
8 home is installed. The certificate must include the following:

- 9 (1) the date of the certificate;
- 10 (2) the owner's name;
- 11 (3) the name of the person from which the owner acquired the home;
- 12 (4) the date that the owner acquired the home;
- 13 (5) the legal description of the manufactured home;
- 14 (6) a legally sufficient description of the land on which the home is installed;
- 15 (7) if the owner does not own the land on which the home is installed, the
16 landowner's name; [and] []
- 17 (8) the signature of the home owner or a duly authorized representative[.]; and,
- 18 (9) as an attachment to the certificate, the manufacturer's certificate or statement
19 of origin or the certificate of title that evidences the owner's ownership of the home.]

20 (b) When the certificate is filed for recording, the home will be real property for all
21 purposes. The home will be real property even if the certificate does not satisfy all the
22 requirements of this section.

23 (c) If a manufactured home owner, other than a manufactured home retailer, acquired the
24 home before [act's effective date] and if the home is installed on land in this state when the

1 owner transfers title to the home, the owner shall deliver a deed in recordable form to the
2 transferee. The deed must include the following:

3 (1) the legal description of the manufactured home;

4 (2) a legally sufficient description of the land on which the home is installed;

5 [and] []

6 (3) if the transferee does not own the land on which the home is installed, the
7 landowner's name[.]; and,

8 (4) if the transferor has not previously filed a certificate of location for recording,
9 the manufacturer's certificate or statement of origin or the certificate of title that evidences the
10 transferor's ownership of the home, as an attachment to the deed.]

11 (d) If the home is not real property immediately before the deed is delivered to the
12 transferee, the home becomes real property for all purposes when the deed is delivered. The
13 home will be real property even if the deed does not satisfy all the requirements of this section;
14 but, to be valid, the deed must include the legal description of the manufactured home and a
15 legally sufficient description of the land on which the home is installed.

16 (e) All subsequent transfers of a right, title, or interest in the home must be made in
17 accordance with applicable real property law and must include the following:

18 (1) the legal description of the manufactured home;

19 (2) a legally sufficient description of the land on which the home is installed; and

20 (3) if the transferee does not own the land on which the home is installed, the
21 landowner's name.

22 **Comment**

23 **Subsections (a) and (b)** make the act voluntarily retroactive. If the owner of a pre-act
24 home wants to convert it to real property, these paragraphs provide the means to do so. *Accord*

1 Or. Rev. Stat. § 446.626(1); Tex. Occ. Code § 1201.214. *Compare* Colo. Rev. Stat. §§ 38-29-
2 112(1.5), 38-29-118 (home owner *must* file certificate of permanent location to reclassify home
3 as real property when home is permanently affixed to land even if owner purchased before law’s
4 effective date; recognizing that an owner may not comply with this requirement, a subsequent
5 purchaser of the home must file certificate of permanent location).

6 **Subsection (c)** requires a person who acquired a manufactured home before the act’s
7 effective date to transfer title to it by deed if the home is installed on land in this state. The deed
8 must satisfy the state’s usual legal requirements for the transfer of real property. Because the
9 deed is conveying a manufactured home, rather than a site-built home, the information specified
10 in subsections (c)(1)-[(3)][(4)] also must be included in the deed. However, the failure to include
11 this additional information will not prevent the home from becoming real property, so long as the
12 deed satisfies the state’s other legal requirements. If the seller is a manufactured home retailer,
13 the terms of the deed are governed by Section 3, rather than by this section.

14 By requiring the owner of a pre-act, installed home to transfer title by recordable deed,
15 virtually all homes eventually will be classified as real property. By bringing all manufactured
16 home titles into the existing real property recording system, states can save money by
17 eliminating the manufactured home title system that the Department of Motor Vehicles or other
18 agency currently administers.

19 Alternative language is included in **subsections (a) and (c)** because some states do not
20 require a manufacturer’s certificate or statement of origin or a certificate of title.

21 “Installed” is defined in Section 2(3).

22 **Legislative Note:** *If the state uses electronic certificates of title, it will be necessary to provide a*
23 *method for obtaining a certified copy to attach to the certificate of location or deed.*

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

25 (a) Before a manufactured home is severed and moved from a location for which a deed
26 or certificate of location has been filed for recording, the home owner shall file a certificate of
27 severance for recording in the same land records. The certificate must include the following:

- 28 (1) the home owner’s name;
- 29 (2) the legal description of the manufactured home;
- 30 (3) a legally sufficient description of the land from which the home will be
31 severed;
- 32 (4) a statement that the home is going to be severed and moved;

1 (5) the approximate date that the home will be severed and moved;

2 (6) the recording information for the current deed or certificate of location; and

3 (7) the signature of the home owner or its duly authorized representative.

4 (b) If a manufactured home for which a deed or certificate of location has been filed for
5 recording is on land that the home owner does not own, the landowner cannot sever the home
6 until the landowner files a certificate of severance, together with a certified copy of any required
7 judgment or order authorizing the landowner to sever the home, for recording in the same land
8 records. The landowner, rather than the home owner, shall sign the certificate of severance.

9 (c) The recorder shall record and index the certificate of severance, together with the
10 certified copy of any required judgment or order, and shall deliver the recorded certificate to the
11 person that owned the home when the certificate was filed. When the certificate of severance is
12 [filed, the recorder] [recorded and delivered, the person to which it is delivered] shall deliver a
13 copy of it to the property tax assessor for that jurisdiction.

14 (d) Severance of a home does not impair a security interest or other encumbrance on the
15 title to the home that existed immediately before the severance. When the home is moved to
16 another parcel of land:

17 (1) the preexisting security interest or other encumbrance on the title to the home
18 has priority over any right, title, or interest in or to the land to which the home is moved; and

19 (2) upon default, the holder of a preexisting security interest that encumbers both
20 the home and the land from which it was severed, must exercise its rights in the land before it
21 exercises its right to recover any remaining unpaid debt from the home.

22 **Comment**

23 **Subsection (a)** deals with a home owner's severance of its home.

1 consent of each security interest holder “subject to the condition that the . . . security
2 interest/mortgage/lien/attachment shall remain in full force and effect.” Conn. Gen. Stat. § 21-
3 67a(f).

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

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

21 *New Hampshire* requires an owner that is relocating a home within the state to record a
22 deed evidencing the change of location in the land records of the counties from which and to
23 which the home is moved. If the home is moved outside the state, the owner must record a
24 statutorily-prescribed relocation statement in the land records of the county from which the home
25 is moved. The home cannot be moved out of state unless all lienors give written consent on the
26 transfer statement. If the home is on leased land, the landowner’s written consent also is
27 required whether the owner is relocating the home inside or outside the state, because the
28 landowner has a right to a lien for any unpaid rent. The consent requirement alerts the
29 landowner to file a lien before the home is moved to another jurisdiction. N.H. Rev. Stat.
30 § 477:44, subp. II.

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

1 **SECTION 6. RELOCATION OF MANUFACTURED HOME.**

2 (a) If a manufactured home is moved from a parcel of land in this state for which a deed
3 or certificate of location has been filed for recording to another parcel of land in this state on
4 which the home will be installed or otherwise located and if the same person owns the home
5 before and after it is moved, that person shall file a certificate of location for recording in the
6 land records of the jurisdiction to which the home is moved. The certificate must be filed for
7 recording within ten days after the home is delivered to its new location. The certificate must
8 include the following:

9 (1) the date of the certificate;

10 (2) the home owner's name;

11 (3) the legal description of the manufactured home;

12 (4) a legally sufficient description of the land on which the home will be installed
13 or otherwise located;

14 (5) if the owner does not own the land on which the home will be installed or
15 otherwise located, the landowner's name;

16 (6) the recording information for the deed or certificate of location for the home's
17 previous location; and

18 (7) the signature of the home owner or its duly authorized representative.

19 When the home is installed, it will be real property for all purposes. Whether the home becomes
20 real property, all subsequent transfers of title to the home must be by deed that includes (a) the
21 legal description of the manufactured home, (b) a legally sufficient description of the land on
22 which the home is installed or otherwise located, and (c) if the home owner does not own the

1 land on which the home is installed or otherwise located, the landowner's name. Every such
2 deed is recordable in the land records.

3 (b) If a manufactured home is moved from a parcel of land in this state for which a deed
4 or certificate of location has been filed for recording to another parcel of land in this state on
5 which the home will be installed or otherwise located and if the home owner after the move is
6 different than the owner before the move, the transferor shall transfer title to the transferee by a
7 deed in recordable form. Unless the title transfer is governed by Section 3 of this [act], the deed
8 must include the following:

9 (1) the legal description of the manufactured home;

10 (2) a legally sufficient description of the land on which the home will be installed
11 or otherwise located;

12 (3) if the transferee does not own the land on which the home will be installed or
13 otherwise located, the landowner's name; and

14 (4) the recording information for the deed or certificate of location for the home's
15 previous location.

16 When the home is installed, it will be real property for all purposes. Whether the home becomes
17 real property, all subsequent transfers of title to the home must be by deed that includes (a) the
18 legal description of the manufactured home, (b) a legally sufficient description of the land on
19 which the home is installed or otherwise located, and (c) if the home owner does not own the
20 land on which the home is installed or otherwise located, the landowner's name. Every such
21 deed is recordable in the land records.

22 (c) When a manufactured home from another state is moved to a land in this state to be
23 installed, the home owner shall file a certificate of location for recording in the land records of

1 the jurisdiction in which the home is or will be installed. The owner must file the certificate
2 within ten days after the home is delivered to land in this state. The certificate must include the
3 following:

- 4 (1) the date of the certificate;
- 5 (2) the owner's name;
- 6 (3) the name of the person from which the owner acquired the home;
- 7 (4) the date that the owner acquired the home;
- 8 (5) the legal description of the manufactured home;
- 9 (6) a legally sufficient description of the land on which the home is or will be
10 installed;
- 11 (7) if the owner does not own the land on which the home is or will be installed,
12 the landowner's name;
- 13 (8) a description of any tenancy, security interest, or other encumbrance on the
14 title to the home; [and] []
- 15 (9) the signature of the home owner or its authorized representative[.]; and,
- 16 (10) as an attachment to the certificate, the manufacturer's certificate or
17 statement of origin or the certificate of title that evidences the owner's ownership of the home.]

18 When the certificate is filed for recording or the home has been installed, whichever occurs first,
19 the home will be real property for all purposes. The home will be real property even if the
20 certificate does not satisfy all the requirements of this section.

21 **Comment**

22 **Subsections (a) and (b)** deal with intrastate home relocations. **Subsection (c)** deals with
23 interstate relocations.

24 **Subsections (a) and (b)** are designed to maintain a single recorded chain of title for a
25 manufactured home that has been brought into the real property recording system by a deed or

1 manufacturer's certificate or statement of origin with the Manufactured Housing Division of the
2 Texas Department of Housing & Community Affairs ("Department"). The Department then has
3 15 days to issue the SOL and send it to the home owner. After receiving the SOL, the owner has
4 60 days to file a certified copy of the SOL in the real property records of the county where the
5 home is located and to notify the Department and the tax assessor-collector that the copy has
6 been filed for record. Tex. Occ. Code §§ 1201.206, 1201.207, 1201.2055(d). The Oregon
7 procedure is similarly complicated and slow. Or. Rev. Stat. § 446.626(2) (application to classify
8 manufactured home as real property and any ownership document filed with county assessor;
9 application then recorded in deed records; assessor then sends ownership document to agency
10 that titles manufactured homes; agency cancels ownership document and sends cancellation
11 confirmation to assessor and to owner). *See also* Or. Admin. R. 918-550-0160 (tax assessor).

12 In contrast, this section requires the deed or certificate of location to be filed first with the
13 recorder. *Accord* Colo. Rev. Stat. § 38-29-114(2); Mont. Code § 15-1-116(1); N.H. Rev. Stat.
14 §477:44, subp. III. When the home buyer finances the purchase, the lender or title insurer
15 normally will file the deed or certificate for recording. When the buyer does not finance the
16 purchase, the manufactured home retailer, like a car dealer, can offer to file the deed for
17 recording, or the purchaser can file it. In this way, the home immediately is brought into the real
18 property title system.

19 The possibility that a manufactured home transferor will fraudulently transfer title to the
20 home more than once is a significant practical concern. This wrongful practice is facilitated if
21 the transferor retains the original ownership document. Therefore, this section requires delivery
22 of the original ownership document to the recorder when the deed or certificate of location is
23 filed. It also requires the recorder to destroy the ownership document to prevent its future use.
24 This section is based on Colo. Rev. Stat. §§ 38-29-202(1)(c), 38-29-207.

25 Requiring the recorder, rather than the home owner, to deliver a copy of the deed or
26 certificate of location to the tax assessor and to the titling agency, if any, is more likely to ensure
27 that delivery occurs. The home owner may be unaware of the delivery requirement or may
28 attempt to avoid paying real property taxes by failing to deliver. However, some jurisdictions
29 prohibit the recorder from delivering documents. Therefore, this section includes alternative
30 language that requires the owner to do so.

31 **SECTION 8. RIGHTS, TITLES, AND INTERESTS IN MANUFACTURED**
32 **HOME.**

33 (a) A buyer in ordinary course of business takes free of a security interest created by the
34 buyer's seller pursuant to [state's version of U.C.C. Article 9], even if the security interest is
35 perfected and the buyer knows of its existence.

1 (b) If a manufactured home is installed on land that the home owner does not own, the
2 landowner acquires no interest in the home, and the home is not subject to any tenancies, security
3 interests, or other encumbrances in or on the title to the land.

4 (c) A perfected security interest in a manufactured home has priority over a conflicting
5 interest of an encumbrancer or owner of the land on which it is installed if the debtor owns the
6 land or an undivided interest in it and:

7 (1) the security interest is a purchase-money security interest;

8 (2) the interest of the encumbrancer or owner arises before the manufactured
9 home became real property; and

10 (3) the security interest is perfected by (A) a fixture filing before the home
11 becomes real property or within 20 days thereafter or (B) recording a [mortgage][deed of trust].

12 (d) A perfected security interest in a manufactured home has priority over a conflicting
13 interest of an encumbrancer or owner of the land on which it is installed if:

14 (1) the debtor owns the land or an undivided interest in it and the security
15 interest:

16 (A) is perfected by a fixture filing or by recording a [mortgage][deed of
17 trust] before the interest of the encumbrancer or owner is of record; and

18 (B) has priority over any conflicting interest of a predecessor in title of
19 the encumbrancer or owner;

20 (2) the security interest:

21 (A) is created in a manufactured home in manufactured-home transaction
22 as defined by [state version of U.C.C. § 9-102(54)]; and

1 (B) is perfected pursuant to a statute described in [state version of U.C.C.
2 § 9-311(a)(2), the certificate of title provision]; or

3 (3) the conflicting interest is a lien on real property obtained by legal or equitable
4 proceedings after the security interest was perfected.

5 (e) A security interest in a manufactured home, whether or not perfected, has priority
6 over a conflicting interest of an encumbrancer or owner of the land on which it is installed if:

7 (1) the encumbrancer or owner has, in an authenticated record, consented to the
8 security interest or disclaimed an interest in the manufactured home; or

9 (2) the debtor has a right to remove the home as against the encumbrancer or
10 owner.

11 (f) The priority of the security interest under subsection (e)(2) continues for a reasonable
12 time if the debtor's right to remove the manufactured home as against the encumbrancer or
13 owner terminates.

14 (g) If the local law of this state governs perfection of a tenancy, security interest, or other
15 encumbrance on a manufactured home, a filing that has been made in the proper place in this
16 state continues effective though the home's classification as real or personal property or its
17 location within this state, whichever controlled the original filing, is thereafter changed.

18 (h) After a manufactured home is moved into this state and the owner files a certificate
19 of location as provided in Section 6(c), subsequent purchasers for value of an interest in the
20 home, including a security interest, acquire that interest free and clear of any tenancy, security
21 interest, or other encumbrance that is not filed in the proper place in this state, unless (i) the
22 subsequent purchaser has actual notice of the tenancy, security interest, or other encumbrance,
23 (ii) the recorded certificate of location describes the tenancy, security interest, or other

1 encumbrance, or (iii) the tenancy, security interest, or other encumbrance is filed in the proper
2 place in this state within four months after the earlier of (A) the filing of the certificate of
3 location or (B) installation of the home.

4 **Comment**

5 **Subsection (a)**, together with the definition of “buyer in ordinary course of business” in
6 Section 2(1), describes the circumstances under which a purchaser from a manufactured home
7 dealer acquires title free of an Article 9 security interest that the dealer granted. Subsection (a) is
8 based on U.C.C. § 9-320(a).

9 **Subsections (c)-(f)** address the relative priorities of interests in a manufactured home and
10 in the land on which it is installed. They are based on U.C.C. § 9-334, which deals with the
11 priority of security interests in fixtures. Because the home potentially is subject to both real
12 property and personal property security interests, Section 2(11) defines “security interest” to
13 include both. These provisions apply both to a manufactured home that is installed on land for
14 the first time and to a home that has been severed from another parcel of land. Consistent with
15 the majority of cases, severance does not eliminate a preexisting lien from the title to the home,
16 and the lien on the home is senior to any lien on the land to which it is moved. *Johnson v.*
17 *Bratton*, 70 N.W. 1021 (Mich. 1897); *Mills v. Pope*, 4 P.2d 485 (1931).

18 **Subsection (c)** provides the circumstances in which a purchase-money security interest in
19 a manufactured home has priority over previously created security or ownership interests in the
20 land on which the home is installed. As noted in Comment 7 to § 9-334, this provision does not
21 protect the purchase-money security interest from subsequently created real property interests.
22 The purchase-money security interest will prevail against subsequent interests only by satisfying
23 the requirements of subsection (d).

24 Subsection (c) requires that the purchase-money security interest be perfected by
25 recording a mortgage whether the manufactured home is real or personal property when the
26 security interest is created. This requirement is consistent with the fixture provisions of § 9-334,
27 which provide that the security interest must be perfected by a fixture filing, because § 9-502(c)
28 provides that a mortgage can be used for a fixture filing. Subsection (c) permits only a mortgage
29 to avoid any implication that a manufactured home is a fixture or is subject to the law of fixtures.
30 Section 9 of this act expressly provides the contrary.

31 **Subsection (d)(1)** provides the well-established rule that an earlier-recorded interest has
32 priority over a later-recorded interest. As explained in Comment 6 to § 9-334, subsection
33 (d)(1)(B) means that the conflicting interest has the same relative priority whether it is owned by
34 its original holder or by an assignee. For example, if the security interest in the home is junior to
35 a mortgage, it remains junior to the mortgage after the mortgage is assigned, though the
36 mortgage assignment is recorded after the security interest in the home.

37 In forty-two states, a security interest in a manufactured home currently can be perfected
38 by noting it on the home’s certificate of title. U.C.C. § 9-311(a)(2). **Subsection (d)(2)** addresses

1 this method of lien perfection because, pursuant to Section 4, this act can apply to manufactured
2 homes that a consumer purchased before the act's effective date.

3 **Subsection (d)(3)** also addresses a lien that was perfected by notation on a certificate of
4 title. That lien has priority over a subsequent judgment lien or other lien obtained by legal or
5 equitable proceedings though the lien on the home is not recorded in the real property records.

6 The reference in subsection (d) to subsections (a), (b), and (f) is intended to make clear
7 that, despite the language of subsection (d): (1) a lien eliminated by a buyer in ordinary course
8 of business will not attach to the home or land when the home is installed; (2) liens on land
9 owned by someone other than the home owner will not attach to the home; and (3) an
10 encumbrance on a home from another state will not attach to the home or land unless subsection
11 (f) provides otherwise.

12 **Subsection (g)** deals with interests in a manufactured home that existed before either the
13 home's legal classification as real or personal property changed or the home was moved
14 intrastate. The subsection provides that a properly perfected interest will continue to encumber
15 the title to the home, thereby eliminating the necessity for the interest holder to take any further
16 action to retain its interest. This subsection is based on U.C.C. § 9-501(a) and on its predecessor,
17 § 9-401(3).

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

20 **SECTION 9. FIXTURE LAW INAPPLICABLE TO MANUFACTURED HOMES.**

21 When a manufactured home becomes real property by the terms of this [act], it is not a fixture
22 and is not subject to the law of fixtures.

23 **Comment**

24 This section is intended to create parity between site-built homes and manufactured
25 homes. Because a manufactured home is personal property before it is installed on land, a court
26 may treat the home as a fixture, which is a type of real property. As a fixture, different financing
27 and creditor remedies are available than for a site-built home. Therefore, this subsection
28 provides that the home is not a fixture.

29 **SECTION 10. TAXATION OF MANUFACTURED HOME.**

30 (a) If a manufactured home is on land that the home owner does not own, the home and
31 land must be valued and taxed separately.

32 (b) TBD

33 **Comment**

