

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In addition to being generally outdated, existing state laws vary tremendously from state to state, which creates substantial inefficiencies in the manufactured home sale and finance markets.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.

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SECTION 2. DEFINITIONS. In this [act]:

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

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

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

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

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

Comment

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

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

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

- permanent affixation to land, which was defined as installation in accordance with the manufacturer’s installation instructions and with applicable federal, state, and local laws. The committee rejected this standard because: (1) it excludes homes that are improperly installed; (2) it requires a determination whether a home has been properly installed; and (3) though unlikely, the home can be moved and, therefore, is not “permanently” affixed;
- issuance of a certificate of occupancy, because not all jurisdictions require them;
- government certification of utility connection or of proper home installation, because the certification can take several months to obtain;
- attachment to a permanent foundation, because the HUD definition of “manufactured home” does not require it and because some states and many landlords do not permit a permanent foundation in a leasehold community; and
- satisfaction of the fixture test, because it is fact dependent and unpredictable and 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”.
42

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

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

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

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

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

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

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

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

- (1) the legal description of the manufactured home;
- (2) a legally sufficient description of the land on which the home is installed;
- [and] []
- (3) if the transferee does not own the land on which the home is installed, the landowner's name[.]; and,
- (4) if the transferor has not previously filed a certificate of location for recording, the manufacturer's certificate or statement of origin or the certificate of title that evidences the transferor's ownership of the home, as an attachment to the deed.]

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

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

- (1) the legal description of the manufactured home;
- (2) a legally sufficient description of the land on which the home is installed; and
- (3) if the transferee does not own the land on which the home is installed, the landowner's name.

Comment

Subsections (a) and (b) make the act voluntarily retroactive. If the owner of a pre-act 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.

Subsection (b) deals with a landowner's severance of a home that it does not own. For example, subsection (b) would apply when a landowner wishes to sever a home from land leased to the home owner.

Subsection (c) includes alternative language concerning the person responsible for delivering a copy of the certificate of severance to the property tax assessor. Delivery is more likely to occur if the recorder is obligated to deliver it, but some jurisdictions prohibit the recorder from doing so.

When a manufactured home is severed from land, it becomes personal property. However, consistent with several cases concerning site-built homes, **subsection (d)** provides that severance does not impair a security interest or other encumbrance on the title to the home. *Johnson v. Bratton*, 70 N.W. 1021 (Mich. 1897); *Partridge v. Hemenway*, 50 N.W. 1084 (Mich. 1891); *Hamlin v. Parsons*, 12 Minn. 108 (1866); *Mills v. Pope*, 4 P.2d 485 (1931); *Turner v. Mebane*, 14 S.E. 974 (N.C. 1892); *Dakota Loan & Trust Co. v. Parmalee*, 58 N.W. 811 (S.D. 1894). See RESTATEMENT (THIRD) OF PROPERTY (MORTGAGES) § 4.6, Reporters' Note cmt. b. *Contra Bockout v. Swift*, 27 Cal. 433 (1865); *Walch v. Beck*, 296 N.W. 780 (Iowa 1941); *Clark v. Reyburn*, 1 Kan. 281 (1863); *Harris v. Bannon*, 78 Ky. 568 (1880) (secured lender loses security interest in home but has action for waste or for impairment of security).

Subsection (d) also provides that, if the home is moved, the security interest or other encumbrance on the title to the home has priority over any interests in the land to which it is moved. Additionally, upon default, the security interest holder first must exercise any rights that it has in the land from which the home was severed. If the action against the land does not generate enough proceeds to repay the secured debt, the lender then can exercise its rights in the home. *Accord Johnson v. Bratton*, 70 N.W. 1021 (Mich. 1897); *Partridge v. Hemenway*, 50 N.W. 1084 (Mich. 1891); *Hamlin v. Parsons*, 12 Minn. 108 (1866); *Dakota Loan & Trust Co. v. Parmalee*, 58 N.W. 811 (S.D. 1894).

Representative State Statutes

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

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

Connecticut requires a manufactured home owner to file a statutorily-specified “Mobile Manufactured Home Removal Statement” for recording in the land records of the jurisdiction from which the home is being moved at least 72 hours before the move. The form describes the home’s current location and the location to which it is being moved. It also requires the written

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

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

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

(1) the legal description of the manufactured home;

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

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

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

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

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

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

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

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

Comment

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

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

certificate of location. Section 5 requires the home owner to record a certificate of severance in the old location. This section requires the owner to record a deed or certificate of location in the new location. To maintain the record chain, the document recorded in the new location must include the recording information for the deed or certificate of location recorded in the former location.

Subsections (a) and (b) have to address the possibility that the home will not be installed at the new location. For example, a home might be moved to a dealership for resale. Therefore, these subsections require the recording of a deed or certificate of location for the new location when the home is “installed or otherwise located”. In this way, an unbroken chain of title will appear in the land records. For the same reason, subsections (a) and (b) also require that all subsequent transfers of title to the home be by deed. *Accord* N.H. Rev. Stat. Ann. § 477:44, subp. II. Maintaining a single chain of title in the land records when a home is not installed on the land to which it is moved eliminates the time and expense of creating a new chain of title with the government agency that maintains certificates of title and another new chain when the home is again installed on land. A single chain of title also simplifies title searches.

As provided in **subsection (b)**, the deed must satisfy the state’s usual legal requirements for the transfer of real property. Because the deed is conveying a manufactured home, rather than a site-built home, the information specified in subsections (b)(1)-(4) also must be included in the deed. Failure to include this additional information will not prevent the home from becoming real property, so long as the deed satisfies the state’s other legal requirements. If the home is being relocated in connection with the retail sale of a new manufactured home, the title transfer is governed by Section 3, rather than by this subsection.

In contrast to a home moved within this state, a home moved into this state from another state does not become real property unless it is or will be installed on land. Therefore, unlike subsections (a) and (b), **subsection (c)** does not apply if the home will be installed “or otherwise located” on land in this state.

Subsection (c) also does not require the recording of a certificate of location when a manufactured home is moved from this state to another state. After the home is relocated, it is no longer within this state's jurisdiction. However, Section 5 requires that a certificate of severance be filed for recording in this state before the home is moved.

Alternative language is included in **subsection (c)** because some states do not require a manufacturer's certificate or statement of origin or a certificate of title.

Subsection (c) is based on Colo. Rev. Stat. § 38-29-117(6), though Colorado does not have a filing deadline.

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

Representative State Statutes

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

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

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

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

SECTION 7. RECORDING DEED OR CERTIFICATE OF LOCATION. When a manufactured home deed or certificate of location is filed, the recorder shall record and index it. If a manufacturer's certificate or statement of origin or certificate of title is filed with the deed or certificate of location, the recorder shall record and index them as one document and then shall destroy the manufacturer's certificate or statement of origin or the certificate of title. The recorder shall deliver the recorded deed or certificate of location to the home owner. The [recorder shall deliver a copy of the deed or certificate of location] [home owner shall deliver a copy of the recorded deed or certificate of location] to the property tax assessor. If a manufacturer's certificate or statement of origin or certificate of title is filed with the deed or certificate of location, the [recorder also shall deliver a copy of the deed or certificate of location] [home owner also shall deliver a copy of the recorded deed or certificate of location] to the [government agency that maintains manufactured home title records].

Comment

In many states that permit a manufactured home to be classified as real property, the necessary documents must be filed initially with the agency that maintains the manufactured home title records or with the property tax assessor. This type of process is cumbersome and can prevent the home's title from appearing in the land records until several weeks after the filing. For example, in Texas, a manufactured home retailer that sells a home has 60 days after the sale to file an application for a Statement of Ownership and Location ("SOL") and the original

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

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

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

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

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

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

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

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

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

Subsection (a) is based on Colo. Rev. Stat. § 38-29-112(1.5).

SECTION 11. HOME WARRANTIES. Manufactured home warranties apply to a home whether it is real property or personal property.

Comment

This section is based on Tex. Occ. Code § 1201.2055(h). It is designed to preserve warranties for a manufactured home after it has been converted to real property. For example, as described in the Comment to Section 3, substantial authority exists that Article Two of the Uniform Commercial Code applies to the sale of a manufactured home, though it will be affixed to land before the sale is consummated. *E.g.*, *Joswick v. Chesapeake Mobile Homes, Inc.*, 765 A.2d 90 (Md. 2001); *Reece v. Homette Corp.*, 429 S.E.2d 768 (N.C. Ct. App. 1993); *Osburn v. Bendix Home Systems, Inc.*, 613 P.2d 445 (Okla. 1980); *Duffee v. Judson*, 380 A.2d 843 (Pa. Super. Ct. 1977); *Long v. Quality Mobile Home Brokers, Inc.*, 248 S.E.2d 311 (S.C. 1978); *Paskell v. Nobility Homes, Inc.*, 871 S.W.2d 481 (Tenn. 1994); *Apeco Corp. v. Bishop Mobile Homes, Inc.*, 506 S.W.2d 711 (Tex. App. 1974). However, none of these opinions specifies whether relevant state law classified the home as real property after it was affixed to land but before consummation of the sale. Therefore, this section is intended to eliminate any question concerning the applicability to manufactured homes of the warranties contained in Article Two and in other laws and to preserve the warranties after the home has become real property.

SECTION 12. REAL ESTATE LICENSE UNNECESSARY. Nothing in this [act] requires a manufactured home retailer to be licensed as a [real estate agent].

Comment

This section is based on Tex. Occ. Code § 1201.222.

SECTION 13. ENFORCEMENT. A person injured by another person's failure to comply with the terms of this [act] may bring an action for damages and for other relief to enforce a right granted or obligation imposed by this [act]. The court may award reasonable attorney's fees and costs to the prevailing party.

Comment

This section is based on Uniform Common Interest Ownership Act § 4-117 (2008).

1 **SECTION 14. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

2 applying and construing this uniform act, consideration must be given to the need to promote
3 uniformity of the law with respect to its subject matter among states that enact it.

4 **Comment**

5 Uniform Law Commission Drafting Rule 601 (2006) requires inclusion of this provision
6 to foster uniformity after the act’s enactment.

7 **SECTION 15. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
8 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
9 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001, *et seq.*, but
10 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
11 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
12 U.S.C. Section 7003(b).

13 **Comment**

14 In 2000, Congress enacted the “Electronic Signatures in Global and National
15 Commerce Act,” 106 PUB. L. NO. 229, 114 Stat. 464, 15 U.S.C. § 7001, *et seq.* (popularly known
16 as “E-Sign”). E-Sign largely tracks the Uniform Electronic Transactions Act (UETA). Section
17 102 of E-Sign, entitled “Exemption to preemption”, provides in pertinent part that:

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

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

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

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

31 15 U.S.C. § 7002(a). The inclusion of this section is necessary to comply with the requirement
32 that the act “make[] specific reference to this Act” pursuant to 15 U.S.C. § 7002(a)(2)(B) if the

act contains a provision authorizing electronic records or signatures in place of writings or written signatures.

SECTION 16. SAVINGS PROVISION. Subject to Section 6(b) of this [act], transactions, certificates of title, records, and information that were validly entered into or created before the effective date of this [act], and would be subject to this [act] if they had been entered into or created on or after the effective date of this [act], and the rights, duties, and interests flowing from these transactions, certificates of title, records, and information, remain valid after the effective date of this [act].

Comment

This section is taken from Uniform Law Commission Drafting Rule 603. It is designed to minimize the disruptions inherent in changes from old laws to new laws. It preserves laws that the act supersedes and that otherwise would apply to transactions and events that occurred before the act's effective date.

SECTION 17. REPEALS. The following are repealed:

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

SECTION 18. EFFECTIVE DATE. This [act] takes effect on _____.