

MEMORANDUM

To: Committee of the Whole

From: Manufactured Housing Act Drafting Committee

Date: May 31, 2011

Purpose of the Act

The act's primary focus is the proper classification of manufactured homes (also commonly called mobile homes) as real property or personal property. 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. 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.

Content of the Act

All manufactured homes sold after the act's effective date will be legally characterized as real property when they have been sited on land. The act provides a process by which homes acquired before the act's effective date can be converted to real property. It also deals with manufactured homes that are moved after being sited on land or that are brought into the state from another state.

An important aspect of the act is its elimination of vehicle titles for manufactured homes. In forty-two states, manufactured homes are titled like cars. Many of these states statutorily provide a method by which a manufactured home can be reclassified as real property, but the methods are cumbersome. Pursuant to the Manufactured Housing Act, a dealer will give a purchaser a deed that can be recorded immediately in the real property records, rather than a certificate of title that must be "converted" by following the statutory procedures.

The drafting committee has not yet discussed the significant tax and revenue allocation issues that the act presents. The reporter currently is preparing a report on this issue for the fall meeting.

Issues for the Committee of the Whole

At what point in time should a manufactured home be classified as real property?

While the home is in a dealer's inventory, it is personal property. When should it be classified as real property? A central issue is whether a home purchaser should be able to use

chattel financing or whether a mortgage loan should be the only option. Mortgage loans are significantly less expensive than chattel loans and provide greater borrower protections. However, the great majority of manufactured home loans today are chattel loans. In many cases, only a chattel loan is available because state law characterizes the home as a chattel. However, chattel loans also predominate because purchasers frequently rely on the manufactured home dealer to arrange financing. The dealer's financial incentive is to get the borrower to take the higher priced chattel loan, and the dealer does not have a legal duty to tell purchasers about the benefits of converting a home to real estate, if possible, so that mortgage financing would be available. On the other hand, some prospective purchasers cannot qualify for a mortgage loan but could get a chattel loan, because lenders are willing to make riskier loans for a higher interest rate. But, if the borrower cannot qualify for a lower interest rate mortgage loan, should a more expensive chattel loan be an option? Is it paternalistic to prevent the use of chattel loans? If a mortgage loan is to be used, how should the act address the possibility that the home may be purchased while it is still on the dealer's lot?

Should the real property characterization be mandatory or optional?

A related issue is whether manufactured home owners should be able to choose whether their home becomes real property. As described above, the great majority of states provide a statutory method for converting a manufactured home from personal property to real property. Other states permit a manufactured home to become real estate by satisfying the state's fixture test. In at least one state, manufactured homes are automatically treated as real property upon retail sale. However, U.S. Census data shows that only 28% of manufactured homes currently are classified as real property.

What events must occur for the home to become real property?

As described in the Comment to Section 2(3) of the act, the drafting committee wrestled with defining the event that triggers the classification of a manufactured home as real property. The committee felt that, at a minimum, the home should be sited on land. Should it also have to be hooked to utilities? Have its wheels and other running gear removed? Be attached to a permanent foundation? Satisfy the state's fixture test?

Can a manufactured home be real property if it is sited on leased land?

Approximately one-quarter of manufactured homes are sited on land leased by the home owner. If a tenant does not renew its lease, it virtually always sells the home where it is located, rather than moving it. States differ on whether these homes can be characterized as real property. In contrast, in several parts of the United States and in countries throughout the world, site-built homes on leased land always are classified as real estate and are financed using mortgage loans.

The drafting committee looks forward to discussing these issues and many others with you.