

D R A F T
FOR APPROVAL

UNIFORM MANUFACTURED HOUSING ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM MANUFACTURED HOUSING ACT

WITH PREFATORY NOTE AND COMMENTS

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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June 4, 2012

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UNIFORM MANUFACTURED HOUSING ACT

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UNIFORM 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 owners of manufactured homes 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 the great majority are not 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 25% 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In addition to being generally outdated, existing state laws vary tremendously from state to state, which creates substantial inefficiencies in the manufactured home sale and finance markets.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, approximately 8% of the United States population—more than twenty-four million people—live in manufactured homes. In some states, the percentage is almost 20%. Perversely, existing state laws frequently cause manufactured home buyers to pay more to purchase and to finance their home than buyers of a site-built home.

1 **UNIFORM MANUFACTURED HOUSING ACT**

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

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

5 (1) “Affidavit of lost document” means a record in recordable form that includes the
6 following:

7 (A) the name of the owner of the manufactured home that is the subject of the
8 affidavit;

9 (B) the unique identifier of the manufactured home;

10 (C) the owner’s representations that the owner:

11 (i) owns the home; and

12 (ii) cannot reasonably obtain possession of the certificate of origin [or
13 certificate of title] because the certificate was destroyed, its whereabouts cannot be determined,
14 or it is in the wrongful possession of a person who will not surrender it, or an unknown person,
15 or a person that cannot be found;

16 (D) the date of the affidavit; and

17 (E) the owner’s signature.

18 (2) “Certificate of location” means a record in recordable form that includes the
19 following:

20 (A) the owner’s name;

21 (B) the unique identifier of the manufactured home that is the subject of the
22 certificate;

23 (C) a legally sufficient description of the land on which the home is located or on
24 which the owner intends to locate it;

1 (D) if the owner is not the record owner of the land on which the home is or will
2 be located, the name of the record owner of the land;

3 (E) the owner's representations that:

4 (i) the owner owns the home;

5 (ii) the home is or will be located on the land described in the certificate;

6 and

7 (iii) the owner has the legal right to locate the home on the land described
8 in the certificate;

9 (F) the date of the certificate;

10 (G) the owner's signature;

11 (H) the name and mailing address of the person to which the [recorder] should
12 return the recorded certificate; and

13 (I) as an attachment to the certificate:

14 (i) the certificate of origin for the home, together with an official Uniform
15 Commercial Code Article 9 filed security interest search report, dated not more than [15] days
16 before the date of the certificate of location, and issued by the [Secretary of State or other central
17 filing office] of the state in which the owner is located as determined under [Uniform
18 Commercial Code Section 9-307], and listing and including a copy of each financing statement
19 filed in the state that lists the owner as a debtor; [or]

20 (ii) a certified copy of the most recent certificate of location for the home
21 and of the deed, if any, by which the owner acquired title to the home[; or] [.]

22 [(iii) the certificate of title for the home.]

23 (3) "Certificate of origin" means a record created by a manufacturer or importer as the
24 manufacturer's or importer's proof of identity of a manufactured home.

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

3 (5) “Land controlled by the owner” means land on which the owner of a manufactured
4 home has the legal right to locate the home.

5 (6) “Located” or “location” means that the towing hitch, wheels, and axles to a
6 manufactured home have been removed and the home has electricity from any source. Whether
7 the electric supply is stopped subsequently does not affect whether the home is real property.

8 (7) “Manufactured home” means a structure, including the plumbing, heating, air-
9 conditioning, and electrical systems contained in the structure, that is:

10 (A) transportable in one or more sections;

11 (B) in the traveling mode, eight body feet or more in width or 40 body feet or
12 more in length;

13 (C) built on a permanent chassis;

14 (D) designed to be used as a dwelling with or without a permanent foundation,
15 when connected to the required utilities; and

16 (E) not a self-propelled recreational vehicle.

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

20 (9) “Purchaser” means a person that takes by sale, lease, discount, negotiation, mortgage,
21 deed of trust, pledge, consensual lien, security interest, issue or reissue, gift, or any other
22 voluntary transaction creating an interest in property.

23 (10) “Record”, used as a noun, means information that is inscribed on a tangible medium
24 or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) “Retailer” means a person that, in the ordinary course of business, sells manufactured homes to persons other than those in the business of selling or leasing manufactured homes.

(12) “Security interest” means an interest in real or personal property that secures payment or performance of an obligation. The term includes a mortgage, deed of trust, and a security interest, as defined in [Uniform Commercial Code, Article 1].

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

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

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

(14) “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.

(15) “Unique identifier of the manufactured home” means the name of the manufacturer of the manufactured home, the identification number placed on the home by the manufacturer, and the make, model designation, and model year of the home.

Legislative Note: The word “recorder” is used in this act to identify the officer who has authority under state law to accept documents for recording in the land records office. Although “recorder” is the word commonly used in most states to identify that officer, it has been placed in brackets as an indication that other titles might be used for the position. For example, the words “registrar” or “clerk” are used in some states to designate that officer.

In addition, because this act affects all land recording systems in a state, the word “recorder” also applies to the appropriate officer under the alternative title system sometimes known as a Torrens title registration system. In some states, the traditional officer is known as a “recorder” and the officer under the alternative system is known as a “registrar”. Regardless of name, this act would apply to both officers.

When adopting this act, the legislature should consider whether to delete the word “recorder” wherever it appears and substitute the appropriate word or words used under the system or systems in effect in the state. If the word “recorder” is retained, the brackets should be removed.

1
2 *If the state already provides a method for dealing with a lost certificate of origin and, in*
3 *those states that issue a title for manufactured homes, for dealing with a lost certificate of title,*
4 *Paragraph (1) can be deleted. However, the state may choose to permit the use of an affidavit of*
5 *lost document for the limited purpose of recording a certificate of location.*
6

7 *If the state uses electronic certificates of title, the state should provide a method for*
8 *obtaining a certified copy to attach to the certificate of location described in Paragraph (2).*
9

10 *If the state does not issue a certificate of title for manufactured homes, it should delete*
11 *the bracketed language in Paragraph (1)(C)(ii) and (I)(iii).*
12

13 *The Uniform Law Commission determined that a manufactured home should not have to*
14 *be permanently affixed to land to become real property because (1) the HUD definition of*
15 *“manufactured home” does not require it, (2) some states and many landlords do not permit a*
16 *permanent foundation in a leasehold community, and (3) according to the American Housing*
17 *Survey for the United States, approximately 60% of manufactured homes are not attached to a*
18 *permanent foundation. Under this act, a manufactured home can be real property when it is*
19 *“located”, as defined in Paragraph (6). However, if a state wishes to use permanent affixation*
20 *to land as the prerequisite for real property status, it can define “located” and “location” to*
21 *mean “the manufactured home is attached to a permanent foundation.”*
22

23 **Comment**

24

25 **Paragraph (1)** specifies the requirements for an affidavit of lost document, which may
26 be filed with the certificate of location pursuant to Section 4(b).
27

28 **Paragraph (2)** specifies the requirements for a certificate of location, which must be
29 filed for recording to convert a manufactured home to real property. Subsection (I) provides
30 alternative attachments for the certificate because the certificate may be filed when the home (1)
31 has always been personal property, in which case the attachment will be a certificate of origin or
32 certificate of title, depending on whether the state issues a certificate of title for manufactured
33 homes, (2) has been moved from land where it was real property, in which case the attachment
34 will be a certified copy of the previous certificate of location and of the deed, if any, by which
35 the owner acquired title, or (3) was converted to real property but subsequently was reconverted
36 to personal property for longer than the period specified in Section 3(d), in which case the
37 attachment will be a re-issued certificate of origin or re-issued certificate of title in those states
38 that title manufactured homes.
39

40 **Paragraph (3)** is based on the definition of “certificate of origin” in Uniform Certificate
41 of Title Act Section 2(4).
42

43 **Paragraph (4)** is the standard Uniform Law Commission definition of “electronic”.
44

45 **Paragraph (5)**, the definition of “land controlled by the owner”, includes land (i) owned
46 by the homeowner, (ii) in a common interest community, and (iii) on which the home is located
47 with the consent of the record owner of the land, such as by lease.
48

1 Many states permit a manufactured home on leased land to be real property. *E.g.*, Cal.
2 Health & Safety Code § 18551(a)(1)(A); Colo. Rev. Stat. § 38-29-202(1)(d); Conn. Gen. Stat. §
3 21-67a; Fla. Stat. § 319.261; Idaho Code § 63-304(1)(b); N.H. Rev. Stat. § 477:44, subp. I; Or.
4 Rev. Stat. § 446.626(1); S.C. Code § 56-19-510; Tex. Occ. Code § 1201.2055. However, other
5 states prohibit a home from being real property if it is on leased land. *E.g.*, Ala. Code § 32-8-30;
6 Ariz. Rev. Stat. § 42-15201(2); Ga. Code § 8-2-181(b)(1); Mich. Comp. Laws § 125.2330i; Miss.
7 Code § 27-53-15; Vt. Stat. tit. 9, § 2603(b).

8
9 Some states that permit a manufactured home on leased land to be real property require
10 that the lease have a minimum specified term. *E.g.*, Cal. Health & Safety Code § 18551(a)(1)(A)
11 (thirty-five years); Colo. Rev. Stat. § 38-29-202(1)(d) (ten years); Fla. Stat. § 319.261 (thirty
12 years); Or. Rev. Stat. § 446.626(1) (twenty years); S.C. Code § 56-19-510 (thirty-five years).
13 This restriction addresses the concern that the owner will have to move the home in the relatively
14 short term because, for example, the lease term has expired and the tenant cannot afford a rent
15 increase. However, even if the lease is for a long term, it can provide for periodic rent increases
16 and for early termination, such as upon the tenant's default. Moreover, when a lease terminates,
17 the home usually is left in place and is sold to a new owner, because the cost of moving and the
18 potential for damage are so great. Finally, if the owner sells or refinances the home when the
19 remaining lease term is less than the statutory period, mortgage financing will be unavailable.

20
21 Although the length of the lease term is a loan underwriting consideration, it is an
22 unnecessary restriction on the ability to classify a manufactured home as real property, as
23 evidenced by the jurisdictions that do not require a minimum term. Conn. Gen. Stat. § 21-67a;
24 Mont. Code § 15-1-116(1); N.H. Rev. Stat. § 477:44, subp. I; 10 Tex. Admin. Code § 80.2 (no
25 minimum term required if each lienholder has approved the real property classification;
26 otherwise, lease term must be at least five years).

27
28 **Paragraph (6)** identifies when a manufactured home has become sufficiently connected
29 to land and unlikely to be moved that the home becomes real property. In considering
30 alternatives, the drafting committee stressed the need for a standard that is objective, readily
31 verifiable, and achievable in all jurisdictions and by all manufactured homeowners. The
32 committee considered and rejected numerous definitions, including the following:

- 33
34 • permanent affixation to land, which was defined as installation in accordance with the
35 manufacturer's installation instructions and with applicable federal, state, and local
36 laws. The committee rejected this standard because: (1) it excludes homes that are
37 improperly installed; (2) it requires a determination whether a home has been
38 properly installed; and (3) though unlikely, the home can be moved and, therefore, is
39 not "permanently" affixed;
- 40
41 • issuance of a certificate of occupancy, because not all jurisdictions require them;
- 42
43 • government certification of utility connection or of proper home installation, because
44 the certification can take several months to obtain;
- 45
46 • attachment to a permanent foundation, because, as described in the legislative note to
47 this section, (1) the HUD definition of "manufactured home" does not require it, (2)
48 some states and many landlords do not permit a permanent foundation in a leasehold

community, and (3) according to the American Housing Survey for the United States, approximately 60% of manufactured homes are not attached to a permanent foundation; 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.

Because the great majority of manufactured homes are not moved after being sited on land, the drafting committee determined that removal of the towing hitch, wheels, and axles and connection to a source of electricity constitute a sufficient connection to the land and a standard that is objective, readily verifiable, and universally achievable.

Paragraph (7) is based on the “manufactured home” definition in Uniform Commercial Code Section 9-102(a)(53). As stated in comment 5(b) to that section, the definition is intended to have the same meaning as the definition in the federal Manufactured Housing Act, 42 U.S.C. § 5402(6). Using this definition will help harmonize this act with the federal act and with the Uniform Commercial Code. However, this act’s definition differs from the Article 9 definition in two ways:

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

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

Paragraph (8) is the standard Uniform Law Commission definition of “person”.

Paragraph (9) is based on the definitions of “purchase” and “purchaser” in Uniform Commercial Code Section 1-201(b).

Paragraph (10) is the standard Uniform Law Commission definition of “record”.

1 **Paragraph (11)** provides the definition of “retailer” for Sections 3 and 10.

2
3 **Paragraph (12)**, the definition of “security interest”, includes security interests in real
4 and personal property because a manufactured home’s classification can change once or more
5 during the home’s life.

6
7 **Paragraph (13)** is the standard Uniform Law Commission definition of “sign”.

8
9 **Paragraph (14)** is the standard Uniform Law Commission definition of “state”.

10
11 **Paragraph (15)** includes the information that most state statutes require in conveyance
12 documents for manufactured homes. “Serial number” includes the vehicle identification number
13 (VIN).

14
15 **SECTION 3. SALE OF MANUFACTURED HOME.**

16 (a) When a retailer and buyer contract for the purchase of a manufactured home, the
17 retailer shall deliver a written notice to the buyer, the receipt for which the buyer shall sign. The
18 notice must include statements to the following effect:

19 (1) under the law of this state, the buyer shall elect whether the home will be real
20 property or personal property if the home is to be located on land controlled by the owner;

21 (2) the buyer’s election may affect the amount of the monthly payments and costs
22 for a loan to buy the home and the buyer’s legal rights in the home; and

23 (3) the buyer should consult a trusted adviser, other than the retailer, about this
24 election.

25 (b) A seller may not direct or otherwise steer a buyer to classify the manufactured home
26 as real property or personal property for purposes of financing or otherwise.

27 (c) If a sale of a home by a retailer is not governed by [Uniform Commercial Code,
28 Article 2], [Sections 2-312 – 2-316] shall apply as if the home were goods, within the meaning of
29 those sections.

30 (d) When a manufactured home is sold, the seller shall deliver to the buyer the certificate
31 of origin [or the certificate of title] for the home. If the seller does not have a certificate of origin

[or certificate of title] because the home is real property pursuant to Section 4(a), the seller shall deliver a certified copy of the most recent certificate of location for the home and of the deed, if any, by which the seller acquired title to the home. The seller shall deliver the certificate or certified copy or copies at the time of sale.

(e) [If, not later than [] days after buying a new manufactured home, a buyer files a certificate of location for recording in accordance with Section 4, the buyer need not obtain a certificate of title for the home.]

Legislative Note: *If the state issues a certificate of title for a manufactured home, it should insert the number of days that the buyer has to file a certificate of location, if desired. If the state does not issue a certificate of title for manufactured homes, subsection (e) should be deleted.*

Comment

Although manufactured home buyers in almost every state can elect to have the home classified as real property, most buyers are unaware that they have the choice and the significance of that choice. Therefore, **subsection (a)** requires a retailer to notify the buyer that the election is available and that it can affect the buyer's financing and legal rights in the home, such as homestead protection and marital property rights.

Under the current system of manufactured home financing, sellers have incentives to steer buyers to chattel loans, rather than to mortgage loans. However, when a mortgage loan is available, it normally is the better option for the buyer. Though the closing costs for a mortgage loan can be higher than for a chattel loan, the lower interest rate and longer term for a mortgage loan translate to substantially lower monthly payments. Financing with a mortgage loan also provides the owner of a manufactured home with the same legal protections as the owner of a site-built home. Therefore, **subsection (b)** prohibits seller steering. It is based on The Mortgage Reform and Anti-Predatory Lending Act (Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010). 15 U.S.C. § 1639b(c)(3)(B); 12 C.F.R. § 1026.36(e).

Substantial authority exists that Article Two of the Uniform Commercial Code governs the sale of a manufactured home, though it will be affixed on 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, these opinions do not specify whether relevant state law classified the home as real property after it was affixed on land but before consummation of the sale. To address this ambiguity, **subsection (c)** provides that the warranties contained in Article Two will apply to manufactured homes even if they are not goods within the meaning of Article Two.

1 Manufactured home manufacturers deliver a certificate of origin for each home that a
2 retailer sells. The certificate provides the beginning of a chain of title for the home. In states
3 that issue a certificate of title for manufactured homes, the home buyer surrenders the certificate
4 of origin to the titling agency to obtain the certificate of title. Therefore, unless the home has
5 become real property pursuant to Section 4(a) of this act, the seller should have either the
6 certificate of origin or a certificate of title for the home. To provide proof of title to the buyer
7 and to prevent seller fraud, such as selling the same home more than once, **subsection (d)**
8 requires the seller to deliver the certificate to the buyer at the time of sale.
9

10 If the home has become real property pursuant to Section 4(a), the seller no longer has a
11 certificate of origin or certificate of title, because it was recorded with the certificate of location
12 and was invalidated pursuant to Section 6(b). In this case, the recorded certificate of location
13 and any subsequently delivered deeds for the home constitute proof of ownership. The seller
14 must deliver these documents to the buyer at the time of sale.
15

16 **Subsection (e)** enables a manufactured home buyer to avoid the time and expense of
17 obtaining a certificate of title for the home, in those states that title them, and subsequently
18 complying with the statutory procedure for converting the home to real property. *Accord* Colo.
19 Rev. Stat. § 38-29-114(2); Idaho Code Ann. § 63-304 & Idaho Admin. Code r. 35.01.03.304;
20 Mont. Code Ann. § 15-1-116; N.D. Cent. Code §§ 39-05-35(1)(c) & 47-10-27(6); Or. Rev. Stat.
21 § 446.626; Tex.Occ. Code Ann. § 1201.2055.
22

23 **SECTION 4. CERTIFICATE OF LOCATION.**

24 (a) If a manufactured home is or will be located on land controlled by the owner, the
25 owner may elect to file a certificate of location for recording in the land records of the [county,
26 municipality, or other recording jurisdiction] in which the home is or will be located. If the
27 certificate of location substantially conforms to the provisions of Section 2(2), the home is real
28 property for all purposes when it is located and the certificate is filed, subject to Section 7(b) and
29 (c) [and for purposes of taxation].

30 (b) If the certificate of origin [or certificate of title] must be attached to the certificate of
31 location but the homeowner cannot locate or obtain it, the owner may attach an affidavit of lost
32 document to the certificate of location in lieu of the certificate of origin [or certificate of title].

33 [(c) If a manufactured home is moved to this state from another state or from land in this
34 state for which a certificate of location was filed for recording, the homeowner shall obtain a
35 certificate of title for the home, unless the owner files a certificate of location for recording in the

land records of the [county, municipality, or other recording jurisdiction] to which the home is moved not later than [time period provided in state certificate of title laws for issuance of new title] after the home is moved. The owner may file a certificate of location only if the home is or will be located on land controlled by the homeowner.]

Legislative Note: *If the state wants a manufactured home that is real property to be taxed as such, the bracketed language in subsection (a) should be deleted.*

If the state already provides a method for dealing with a lost certificate of origin and a lost certificate of title, in those states that title manufactured homes, subsection (b) is unnecessary, as is the definition of “affidavit of lost document” in Section 2(1). However, the state may choose to permit the use of an affidavit of lost document for the limited purpose of recording a certificate of location.

If the state does not issue a certificate of title for manufactured homes, the bracketed language in subsection (b) and subsection (c) should be deleted.

Comment

Pursuant to **subsection (a)**, the owner of a manufactured home can choose whether to convert it to real property. This choice is available for homes purchased before and after the act’s effective date. The home becomes real property when the owner files a certificate of location for recording and the home is located on land controlled by the owner. “Located” is defined in Section 2(6). “Land controlled by the owner” is defined in Section 2(5). If the home is subsequently detached from the land, it again becomes personal property, as provided in Section 7(c).

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

Subsection (b) provides a method for dealing with a lost certificate of origin or certificate of title because, under some circumstances, Section 2(2)(I) requires that one or the other be attached to the certificate of location. As stated in the legislative note, this subsection may be unnecessary.

When a manufactured home is moved from outside the state or from a parcel of land in the state where the home was real property, **subsection (c)** requires the homeowner to obtain a certificate of title, unless the owner files a certificate of location for the home. The requirement concerning a home moved from another state is consistent with existing certificate of title laws.

1 Imposing the same requirement on the owner of a home moved from another parcel of land in
2 the state also is necessary when the home was real property at the former location. In that case,
3 if the home is going to be personal property at the new location, the owner needs a new
4 certificate of title because the previous certificate of title was cancelled when the homeowner
5 filed the certificate of location to make the home real property at the former location or because
6 the owner filed a certificate of location upon purchase and, therefore, never got a certificate of
7 title pursuant to Section 3(e).

8
9 **SECTION 5. RELOCATION OF MANUFACTURED HOME;**
10 **NONCOMPLIANCE.**

11 (a) In this section, a “certificate of relocation” is a record in recordable form that
12 includes the following:

- 13 (1) the relocation declarant’s name;
- 14 (2) if the declarant does not own the manufactured home that has been or will be
15 moved, the owner’s name, if known;
- 16 (3) the unique identifier of the manufactured home, if known;
- 17 (4) a legally sufficient description of the land from which the home has been or
18 will be moved;
- 19 (5) if the declarant does not own the land from which the home has been or will
20 be moved, the name of the record owner of the land;
- 21 (6) the recording information for the most recent deed or certificate of location
22 for the home;
- 23 (7) a statement that the home has been or will be moved;
- 24 (8) the date that the home was or will be moved;
- 25 (9) the date of the certificate;
- 26 (10) the declarant’s signature; and
- 27 (11) the name and mailing address of the person to which the [recorder] should
28 return the recorded certificate.

1 (b) If a manufactured home is moved from land in this state for which a certificate of
2 location has been filed for recording, the declarant shall file a certificate of relocation for
3 recording in the land records of the jurisdiction from which the home has been or will be moved
4 not later than ten days after it is moved. A declarant that does not own the home also shall file,
5 with the certificate, an affidavit that the declarant has the right to remove the home and a
6 certified copy of any required judgment or order authorizing it to move the home.

7 (c) A person that does not comply with the requirements of subsection (b) is subject to [
8 ***].

9 **Legislative Note:** *The state should insert a penalty into subsection (c). For example, it could*
10 *provide a fine of a specified amount, e.g., Conn. Gen. Stat. § 21-67a(g) (five hundred dollars), or*
11 *provide that failure to comply constitutes a misdemeanor. E.g., Colo. Rev. Stat. § 38-29-143(2)*
12 *(misdemeanor traffic offense punished by a fine of not less than one hundred dollars nor more*
13 *than one thousand dollars).*

14 15 **Comment**

16 When a manufactured home has become real property by the filing of a certificate of
17 location, this section addresses reconversion of the home to personal property. To give record
18 notice of the reconversion, **subsection (b)** requires the filing of a certificate of relocation in the
19 land records in which the certificate of location was recorded. **Subsection (a)** specifies the
20 information that must be included in the certificate of relocation. This section applies whether
21 the homeowner or any other person moves the home. For example, if the home is located on
22 leased land, the ground lessor may remove the home when the lease terminates if the homeowner
23 fails to do so.

24 25 *Representative State Statutes*

26
27 The following descriptions of some representative state statutes provide an overview of
28 the different methods for addressing the issue of home relocation.

29
30 *Colorado* requires the homeowner to file a certificate of removal with the county clerk
31 and recorder for the county where the home is located. Colo. Rev. Stat. § 38-29-203(1)(a) & (b).
32 Within twenty days after the removal, the owner must file a notice of the change with the county
33 assessor and the county treasurer for the counties from which and to which the home has been
34 moved. § 38-29-143. A landlord that is evicting a tenant can record a certificate of removal. §
35 38-29-203(2.5)(b). All lienholders must consent to the removal. If a lienholder does not
36 consent, the homeowner can file a bond in an amount equal to 150% of the secured amount.
37 Colo. Rev. Stat. § 38-29-203(4).

38
39 *Connecticut* requires the owner of a manufactured home to file a statutorily-specified

1 “Mobile Manufactured Home Removal Statement” for recording in the land records of the
2 jurisdiction from which the home is being moved at least 72 hours before the move. The form
3 describes the land from which the home will be removed and the land to which it is being
4 moved. It also requires the written consent of each security interest holder “subject to the
5 condition that the . . . security interest/mortgage/lien/attachment shall remain in full force and
6 effect.” Conn. Gen. Stat. § 21-67a(f).

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

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

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

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

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(b) If a certificate of origin [or certificate of title] is filed as an attachment to a certificate of location, the [recorder] shall stamp or make a notation on the certificate of origin [or certificate of title] that it is no longer valid.

If the land records office employs only one type of document index, the state should delete the inapplicable bracketed sentence from subsection (a).

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

1 In contrast, this section requires the certificate of location to be filed first with the
2 recorder. *Accord* Colo. Rev. Stat. § 38-29-114(2); Mont. Code § 15-1-116(1); N.H. Rev. Stat.
3 §477:44, subp. III. When the home buyer finances the purchase, the lender or title insurer
4 normally will file the certificate for recording. When the buyer does not finance the purchase,
5 the manufactured home seller, like a car dealer, can offer to file the certificate for recording, or
6 the buyer can file it. In this way, the home immediately is brought into the real property title
7 system.

8
9 When the owner of a manufactured home files a certificate of location for recording and
10 the home becomes real property, the homeowner is the “grantee” of this newly created real
11 property. Therefore, the certificate is indexed under the homeowner’s name in the grantee index.
12 The certificate is indexed in the grantor index under the landowner’s name so that a person
13 searching title to that parcel of land can identify the owner of the home. Similarly, when a
14 certificate of relocation is filed, it is indexed under both the landowner’s and homeowner’s
15 names, so that a person searching the title for the land or for the home can find the certificate.
16 Because the same person may own the home and the land, this section authorizes the recorder to
17 record the certificate though the same person is the grantor and grantee.

18
19 If the jurisdiction uses a tract (parcel) index instead of or in addition to grantor-grantee
20 indices, this section authorizes the recorder to create a new index page for the newly created real
21 property—the manufactured home.

22
23 The possibility that a manufactured home seller will fraudulently transfer title to the
24 home more than once is a significant practical concern. This wrongful practice is facilitated if
25 the seller retains the certificate of origin or certificate of title, if any. Therefore, Section 3(d)
26 requires the seller to deliver any such document to the buyer when the home is sold, Section
27 2(2)(I) requires the document to be attached to the certificate of location, and **subsection (b)** of
28 this section requires the recorder to mark it as being no longer valid. This section is based on
29 Colo. Rev. Stat. §§ 38-29-202(1)(c), 38-29-207.

30 31 **SECTION 7. RIGHT, TITLE, AND INTEREST IN MANUFACTURED HOME.**

32 (a) In this section, “buyer in the ordinary course of business” means a person that buys a
33 manufactured home that is real property in good faith, without knowledge that the sale violates
34 the rights of another person in the home, and in the ordinary course of business from a person in
35 the business of selling manufactured homes. A person buys a manufactured home in the
36 ordinary course if the sale comports with the usual or customary practices in manufactured home
37 sales or with the seller’s own usual or customary practices. A buyer in the ordinary course of
38 business may buy for cash, by exchange of other property, or on secured or unsecured credit, and
39 may acquire a home under a preexisting contract for sale. Only a buyer that takes possession of

1 the home or has a right to recover the home from the seller under the law of this state may be a
2 buyer in the ordinary course of business. A person that acquires homes in a transfer in bulk or as
3 security for or in total or partial satisfaction of a money debt is not a buyer in the ordinary course
4 of business. A buyer in the ordinary course of business takes free of a security interest in the
5 manufactured home created by the buyer's seller, even if the security interest is perfected and the
6 buyer knows of its existence.

7 (b) The rules that determine the rights and remedies of a person that, immediately before
8 a manufactured home became real property pursuant to Section 4(a), had a security interest
9 governed by [Uniform Commercial Code, Article 9] in the home, the effectiveness of the
10 security interest under this [act] against purchasers, and the priority of the security interest under
11 this [act] as against the interests of such purchasers, are those that would apply under [Uniform
12 Commercial Code, Article 9] if, upon conversion to real property under Section 4(a), the home
13 had become a fixture as that term is used in [Uniform Commercial Code, Article 9]. If the home
14 became a fixture under the law of this state before conversion to real property pursuant to
15 Section 4(a) and remained so until the time of conversion, the home shall be treated as having
16 become a fixture when it became a fixture under the law of this state. Each copy of a financing
17 statement attached to the certificate of location constitutes a fixture filing with respect to the
18 corresponding security interest and provides sufficient notice that a subsequent bona fide
19 purchaser of the home takes subject to it.

20 (c) If a manufactured home that is real property pursuant to Section 4(a) is detached from
21 the land on which it is located, it is personal property until it is again becomes real property.
22 While the home is personal property, the rights of a person that, immediately before detachment,
23 had a security interest in the home as real property, the effectiveness of the security interest
24 against purchasers, and the priority of the security interest as against the interests of such

1 purchasers, are those that would apply under [Uniform Commercial Code, Article 9] as if the
2 home had been a fixture immediately before detachment; but the remedies for the security
3 interest remain the same as before the home was detached.

4 (d) Each transfer of a right, title, or interest in a manufactured home that is real property
5 must be made in accordance with real property law and must include a legally sufficient
6 description of the land on which the home is located. If the home is sold separately from the
7 land, the conveyance document for the home must include the unique identifier of the
8 manufactured home.

9 (e) If a manufactured home is located on land that the owner does not own:

10 (1) title to the home remains separate from the title to the land although the home
11 is real property;

12 (2) title to the home is not encumbered by a security interest in or other
13 encumbrance in or on the title to the land;

14 (3) title to the land is not encumbered by a security interest in or other
15 encumbrance in or on the title to the home; and

16 (4) the terms of a land lease and the landlord's and tenant's rights and duties
17 under the lease are not affected by conversion of the home to or from real property.

18 **Comment**

19 **Subsection (a)** describes the circumstances in which a buyer of a manufactured home
20 that is real property acquires title free of a pre-existing Article 9 security interest. Subsection (a)
21 is based on U.C.C. §§ 1-201 & 9-320(a). If the manufactured home is personal property at the
22 time of sale, these U.C.C. provisions apply, rather than subsection (a).
23

24 When a manufactured home converts from real or personal property, difficult issues can
25 arise concerning the rights, remedies, and priority of title encumbrances that existed before the
26 conversion, because the Uniform Commercial Code applies to security interests in personal
27 property but mortgage law applies to security interests in real property. **Subsections (b) and (c)**
28 address these issues. Subsection (b) deals with a home that changes from personal property to
29 real property. Subsection (c) deals with a home that changes from real property to personal
30 property.

Both subsections provide that the security interest holder's rights, remedies, and priority are unaffected by the change in the home's property classification. Therefore, if a security interest was created pursuant to Article 9 because the home was personal property at the time, the interest holder has the same remedies though the home has become real property. Conversely, if a security interest was created pursuant to mortgage law because the home was real property at the time, the mortgagee must foreclose in the jurisdiction where the home is located though the home has become personal property. *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); *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) (all involving site-built homes). 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) (all involving site-built homes).

To harmonize the act with existing law, subsections (b) and (c) incorporate the fixture provisions of Article 9, because they deal with security interests in property that changes from personal to real and back to personal again. The only exception to this reliance on Article 9 is the last clause of subsection (c) concerning the remedy for a mortgagee when the home has become personal property. Although the Article 9 provisions concerning matters such as priority are analogous to real property law, the Article 9 remedy provisions differ significantly from mortgage law in most states. Therefore, the last clause for subsection (c) states that mortgage law continues to apply though the home has become personal property.

Under **subsection (e)**, title to a manufactured home remains separate from the title to the land on which it is located if the homeowner does not own the land. Although the landowner acquires no interest in the home solely by virtue of its location, the landowner can obtain a lien on the home for any unpaid rent, for example, to the extent that state law permits.

SECTION 8. RELATION TO STATE AND LOCAL LAW.

(a) When a manufactured home becomes real property under this [act], it is not a fixture and, except as otherwise provided in Section 7, is not subject to the law of fixtures.

(b) Unless displaced by the provisions of this [act], the principles of law and equity supplement its provisions.

(c) Filing a certificate of location for recording is not a subdivision of land subject to [state and local subdivision laws].

Comment

To create legal parity between site-built homes and manufactured homes that become real property by the terms of this act, **subsection (a)** provides that the manufactured home is not a

1 fixture. However, this subsection is not intended to prevent a manufactured home from being
2 classified as a fixture as an alternative method for achieving real property status. Section 7(b)
3 expressly addresses the possibility that the home is a fixture.
4

5 **Subsection (b)** is taken from U.C.C. § 1-103(b). As described in the comments to that
6 section, legislation is “drafted against the backdrop of existing bodies of law, including the
7 common law and equity, and relies on those bodies of law to supplement its provisions in many
8 important ways. . . . [However], while principles of common law and equity may *supplement*
9 provisions of [this act], they may not be used to *supplant* its provisions, or the purposes and
10 policies those provisions reflect. . . . [This act] preempts principles of common law and equity
11 that are inconsistent with either its provisions or its purposes and policies.”
12

13 As part of their power to regulate land use, states regulate the subdivision of land into
14 smaller parcels, either by state laws or by delegation to local governments. Because Section 7(e)
15 provides that title to a manufactured home that becomes real property may remain distinct from
16 title to the land on which it is located, **subsection (c)** is intended to eliminate the argument that a
17 subdivision has occurred within the meaning of the land subdivision laws.
18

19 **SECTION 9. HOME WARRANTY.** Any warranty that applies to a manufactured
20 home when it is purchased is not affected by a subsequent change in the home’s classification as
21 real or personal property. No additional warranty applies to a home solely because the home’s
22 classification as real or personal property changes.
23

23 **Comment**

24 This section is based on Tex. Occ. Code § 1201.2055(h). It is intended to eliminate any
25 question about the continued applicability of a warranty after a manufactured home’s
26 classification as real or personal property changes. Conversely, this section provides that the
27 home is not covered by any additional warranty solely because its classification has changed.
28

29 **SECTION 10. NONCOMPLIANCE.**

30 (a) A person injured by another person’s failure to comply with the terms of this [act]
31 may be awarded damages and obtain other relief.

32 (b) If a retailer violates Section 3(a) or if a seller, including a retailer, violates Section
33 3(b) or (d), it is subject to all the remedies and penalties available to a consumer and to the
34 [Attorney General] under [the state consumer protection act].

35 (c) This section does not limit other remedies of an injured person.

36 **Comment**

Subsection (c) is intended to make clear that an injured party can enforce other causes of action that it may have, such as an action on a promissory note or mortgage.

SECTION 11. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

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

Comment

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

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

Comment

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

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

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

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

(B) if enacted or adopted after the date of the enactment of this

1 Act, makes specific reference to this Act.

2
3 15 U.S.C. § 7002(a). The inclusion of this section is necessary to comply with the requirement
4 that the act “make[] specific reference to this Act” pursuant to 15 U.S.C. § 7002(a)(2)(B) if the
5 act contains a provision authorizing electronic records or signatures in place of writings or
6 written signatures.

7
8 **SECTION 13. SAVINGS CLAUSE.** This [act] does not affect an action or proceeding
9 commenced before the effective date of this [act].

10 **SECTION 14. REPEALS.** The following are repealed:

11 ***Legislative Note:** This section is for states that wish to replace their existing statutes*
12 *concerning: (1) classification of manufactured homes as real property or as personal property,*
13 *(2) titling of manufactured homes, (3) creation and perfection of security interests in*
14 *manufactured homes and creditor remedies, and (4) manufactured home taxation.*

15
16 **SECTION 15. EFFECTIVE DATE.** This [act] takes effect