

D R A F T
FOR DISCUSSION ONLY

MANUFACTURED HOUSING ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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MANUFACTURED HOUSING ACT

WITH PREFATORY NOTE AND COMMENTS

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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May 31, 2011

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In addition to being generally outdated, existing state laws vary tremendously from state to state, which creates substantial inefficiencies in the manufactured home sales and finance markets.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

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

1 **UNIFORM MANUFACTURED HOUSING ACT**

2

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

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

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

8 (2) “Home” means a manufactured home, as defined in Section 2(5) of this [act].

9 (3) “Installed” means that a manufactured home has electricity supplied by a utility or by
10 any other means or has been occupied as a residence at one location for at least thirty days,
11 whichever occurs first.

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

14 (5) “Manufactured home” or “manufactured housing” means a structure, transportable in
15 one or more sections, which, in the traveling mode, is eight body feet or more in width or 40
16 body feet or more in length, and which is built on a permanent chassis and designed to be used as
17 a dwelling with or without a permanent foundation when connected to the required utilities, and
18 includes the plumbing, heating, air-conditioning, and electrical systems contained therein; but the
19 terms do not include any self-propelled recreational vehicle and do not include a structure used
20 only for nonresidential purposes. The terms “manufactured home” and “manufactured housing”
21 also include a mobile home, as defined in Section 2(6) of this [act].

22 (6) “Mobile home” means a structure manufactured before June 15, 1976, transportable
23 in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40

body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; but the term does not include any self-propelled recreational vehicle and does not include a structure used only for nonresidential purposes.

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

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

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

(10) “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.

(11) “Transferee” means a person who acquires property in any legal manner, including sale, gift, or testate or intestate succession.

(12) “Transferor” means a person who transfers property in any legal manner, including sale, gift, or testate or intestate succession.

(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.

Comment

Paragraph (1) is the standard Uniform Law Commission definition of “electronic”.

Paragraph (3) identifies when a manufactured home has become sufficiently connected to land 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.

Because only 1% of manufactured homes are moved after being sited on land, the committee determined that residential use of the home at one location for a month or connection to a source of electricity is a sufficient connection to the land and is a standard that is objective, readily verifiable, and universally achievable.

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

Paragraph (5) is based on the “manufactured home” definition in Uniform Commercial Code § 9-102(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 U.C.C. The drafting committee’s style member offered alternative language to conform the definition to the Style Committee’s rules, but, to avoid conflicts or gaps between this uniform act and the U.C.C., the drafting committee respectfully determined to use the definition based on Article 9. However, the committee also decided that, for purposes of this act, the definition should differ from the Article 9 definition in four 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, it is inappropriate for purposes of this act. Therefore, that clause is in this act’s definition.
- This act’s “manufactured home” definition expressly includes “mobile homes” to make clear that factory-built homes of any age are covered by the act. As a term of art, “manufactured homes” are homes built in a factory on or after June 15, 1976, which was the effective date of HUD’s construction standards for them. “Mobile homes” are homes manufactured before that date. Some states that permit a home to be characterized as real property from the time of retail purchase do so only for manufactured homes, whereas other states do so for manufactured and mobile homes. *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’s definition expressly excludes manufactured homes used only for nonresidential purposes.
- Based on the federal definition, Article 9 provides that a “manufactured home” must include at least 320 square feet unless the manufacturer files a certification that the home was built in accordance with the HUD construction standards, in which case the home can be less than 320 square feet. Because the U.C.C. definition permits homes of less than 320 square feet to be categorized as a “manufactured home” and because the certification process is unavailable for homes built before the standards’ effective date, the drafting committee elected to eliminate the minimum square footage requirement.

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

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

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

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

SECTION 3. RETAIL SALE OF NEW MANUFACTURED HOME.

- (a) After [day before act’s effective date], a manufactured home retailer that sells a new manufactured home shall deliver a deed in recordable form to the transferee if the home is or will

1 be installed on land in this state. The retailer may not deliver the deed until the home has been
2 placed on that land. The deed must include the following:

- 3 (1) the legal description of the manufactured home;
- 4 (2) a legally sufficient description of the land on which the home is or will be
5 installed;
- 6 (3) if the home transferee does not own the land on which the home is or will be
7 installed, the landowner's name;

8 **Alternative A**

- 9 (4) the home manufacturer's address;
- 10 (5) the retailer's warranties that its title to the home is good and its transfer
11 rightful and that the home is free from any security interest or other lien or encumbrance that is
12 not listed as an exception on the deed; and
- 13 (6) as an attachment to the deed, the manufacturer's certificate or statement of
14 origin.

15 **Alternative B**

- 16 (4) the home manufacturer's address; and
- 17 (5) the retailer's warranties that its title to the home is good and its transfer
18 rightful and that the home is free from any security interest or other lien or encumbrance that is
19 not listed as an exception on the deed.

20 (b) When the deed is filed for recording or the home has been installed, whichever occurs
21 first, the home will be real property for all purposes from the date the deed was delivered, even if
22 the deed does not satisfy the requirements of this section.

23 **Comment**

1 This section is designed to ensure that the purchaser of a new manufactured home
2 acquires it as real property, so that mortgage financing is more readily available. Subsection (a)
3 provides that the retailer shall not transfer title until the home is placed on land, and subsection
4 (b) provides that the home will be real property from the time of title transfer.

5
6 Because the home will be real property when transferred, subsection (a) requires the
7 retailer to transfer title by a deed in recordable form and specifies the additional information that
8 must be included in the deed because it is conveying title to a manufactured home, rather than to
9 a site-built home. Subsection (a)(5) is based on U.C.C. § 2-312(1). Alternatives A and B are
10 included because some states do not require a manufacturer's certificate or statement of origin.

11
12 Subsection (b) specifies three methods by which a manufactured home changes from
13 personal property to real property. The first method, filing the deed for recording, has the
14 advantages of bringing the home's title into the real property recording system and of being
15 readily verifiable. However, an owner may fail to file for a variety of reasons, including in an
16 attempt to avoid the obligation to pay real property taxes. Therefore, based on the definition of
17 "installed", subsection (b) provides two other methods by which the home will be converted to
18 real property—supplying electricity to the home or occupying it as a residence at one location for
19 at least thirty days. When one of these events occurs, the home is extremely unlikely to be
20 moved, and both events normally are readily ascertainable.

21
22 Subsection (b) also provides that, when the home changes to real property, that property
23 classification relates back to the time that the home purchaser acquired title. In this way, the
24 home purchaser can qualify for mortgage financing. *Compare* Colo. Rev. Stat. § 38-29-114(2)
25 (new manufactured home becomes real property when certificate of permanent location recorded
26 in land records); Idaho Code Ann. § 63-304 & Idaho Admin. Code r. 35.01.03.304 (new
27 manufactured home becomes real property when purchaser records "statement of intent to
28 declare the manufactured home as real property" with the county recorder and provides tax
29 assessor with copy of recorded statement of intent); Mont. Code Ann. § 15-1-116 (new
30 manufactured home becomes real property when "Statement of Intent to Declare a Manufactured
31 Home an Improvement to Real Property" is recorded in land records); N.D. Cent. Code §§ 39-
32 05-35(1)(c) & 47-10-27(6) (new manufactured home becomes real property when affidavit of
33 affixation recorded in land records and copy of recorded affidavit of affixation and application
34 for surrender of title filed with Department of Transportation); Or. Rev. Stat. § 446.626 (new
35 manufactured home becomes real property when "Application and Certification Exempting a
36 Manufactured Structure from Ownership Document" filed with county assessor and county
37 assessor records application in deed records); Tex. Occ. Code Ann. § 1201.2055 (new
38 manufactured home becomes real property when (1) "Statement of Ownership and Location"
39 (SOL) filed with Department of Housing & Community Affairs ("Department"), (2) Department
40 mails certified copy of SOL to owner and each lienholder, (3) owner files certified copy of SOL
41 in land records and notifies Department and tax assessor-collector that copy has been filed, and
42 (4) Department and tax assessor-collector note in their records that real property election has
43 been made).

44
45 Though the manufactured home will be real property when the retailer transfers title,
46 Article 2 of the Uniform Commercial Code governs the sale, because it constitutes the sale of a

1 “good”. U.C.C. § 2-105(1) (“ ‘Goods’ means all things (including specially manufactured
2 goods) which are movable at the time of identification to the contract for sale”); *Joswick v.*
3 *Chesapeake Mobile Homes, Inc.*, 765 A.2d 90 (Md. 2001); *Reece v. Homette Corp.*, 429 S.E.2d
4 768 (N.C. Ct. App. 1993); *Osburn v. Bendix Home Systems, Inc.*, 613 P.2d 445 (Okla. 1980);
5 *Duffee v. Judson*, 380 A.2d 843 (Pa. Super. Ct. 1977); *Long v. Quality Mobile Home Brokers,*
6 *Inc.*, 248 S.E.2d 311 (S.C. 1978); *Paskell v. Nobility Homes, Inc.*, 871 S.W.2d 481 (Tenn. 1994);
7 *Apeco Corp. v. Bishop Mobile Homes, Inc.*, 506 S.W.2d 711 (Tex. App. 1974). This act does not
8 preempt Article 2, including its warranties. Section 9 of this act addresses warranties that are not
9 included in Article 2.

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

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

30
31 Some states that permit a manufactured home on leased land to be classified as real
32 property require the landowner’s consent to the real property classification. *E.g.*, Ariz. Rev. Stat.
33 § 33-1501; Or. Rev. Stat. § 446.626. This requirement is unnecessary because, as provided in
34 Section 7(a) of this act, title to the home and to the land remain distinct, and because, as provided
35 in Section 7(b), the home and the land are valued and taxed separately.

36
37 Another restriction in some states is that the land lease must have a minimum specified
38 term. *E.g.*, Cal. Health & Safety Code § 18551(a)(1)(A) (thirty-five years); Colo. Rev. Stat. § 38-
39 29-202(1)(d) (ten years); Fla. Stat. § 319.261 (thirty years); Or. Rev. Stat. § 446.626(1) (twenty
40 years); S.C. Code § 56-19-510 (thirty-five years). This restriction addresses the concern that the
41 owner will have to move the home in the relatively short term because, for example, the lease
42 term has expired and the tenant cannot afford a rent increase. However, even if the lease is for a
43 long term, it can provide for periodic rent increases and for early termination, such as upon the
44 tenant’s default. Moreover, when a lease terminates, the home usually is left in place and is sold
45 to a new owner, because the cost of moving and the potential for damage are so great. Although
46 the length of the lease term is a loan underwriting consideration, it is an unnecessary restriction

on the ability to classify a manufactured home as real property, as evidenced by the jurisdictions that do not require a minimum term. Conn. Gen. Stat. § 21-67a; Mont. Code § 15-1-116(1); N.H. Rev. Stat. § 477:44, subp. I; 10 Tex. Admin. Code § 80.2 (no minimum term required if each lienholder has approved the real property classification; otherwise, lease term must be at least five years).

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 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 whom 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;

Alternative A

(7) if the owner does not own the land on which the home is installed, the landowner's name;

(8) the home owner's signature; and

(9) as an attachment to the certificate, the manufacturer's certificate or statement of origin or the certificate of title that establishes the owner's ownership of the home.

Alternative B

(7) if the owner does not own the land on which the home is installed, the

landowner's name; and

(8) the home owner's signature.

(b) When the certificate is filed for recording, the home will be real property for all purposes.

(c) If the owner of a manufactured home acquired it 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;

Alternative A

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

(3) if the home 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 establishes the transferor's ownership of the home, as an attachment to the deed.

Alternative B

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

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

(d) If the home is not real property immediately before the deed is delivered to the transferee, it becomes real property for all purposes at the time of delivery.

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

7 By requiring the owner of a pre-act, installed home to transfer title by recordable deed,
8 virtually all homes eventually will be classified as real property. By bringing all manufactured
9 home titles into the existing real property recording system, states can save money by
10 eliminating the manufactured home title system that the Department of Motor Vehicles or other
11 agency currently administers.
12

13 Alternatives A and B are included in subsections (a) and (c) because some states do not
14 require a manufacturer's certificate or statement of origin or a certificate of title.
15

16 **SECTION 5. MOVING A MANUFACTURED HOME.**

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

- 20 (1) the home owner's name;
- 21 (2) the legal description of the manufactured home;
- 22 (3) a legally sufficient description of the land from which the home will be
23 moved;
- 24 (4) a statement that the home is going to be moved;
- 25 (5) the approximate date that the home will be moved;
- 26 (6) the recording information for the current deed or certificate of location; and
27 (7) the owner's signature.

28 (b) If a manufactured home for which a deed or certificate of location has been filed for
29 recording is on land that the home owner does not own, the landowner cannot remove the home
30 until the landowner files a certificate of severance, together with a certified copy of any required
31 judgment or order authorizing the landowner to sever the home, for recording in the same land

1 records. The landowner, rather than the home owner, shall sign the certificate of severance.

2 (c) The recorder shall record and index the certificate of severance, together with the
3 certified copy of any required judgment or order, and shall deliver the recorded certificate to the
4 person that owned the home when the certificate was filed. When the certificate of severance is
5 filed, the recorder shall deliver a copy of it to the tax assessor for the jurisdiction from which the
6 home is moved.

7 (d) If the home owner is the same before and after the home is moved, the owner shall
8 file a certificate of location for recording in the land records of the jurisdiction to which the
9 home has been moved within ten days after the home is moved. The certificate required by this
10 subsection must include the following:

11 (1) the date of the certificate;

12 (2) the owner's name;

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

14 (4) a legally sufficient description of the land to which the home has been moved;

15 (5) if the owner does not own the land to which the home has been moved, the
16 landowner's name;

17 (6) if a deed or certificate of location for the home previously has been filed for
18 recording in this state, the recording information for that deed or certificate;

19 **Alternative A**

20 (7) if a deed or certificate of location for the home has not previously been filed
21 for recording in this state, the name of the person from whom and the date on which the owner
22 acquired the home;

23 (8) the home owner's signature; and

1 (9) if a deed or certificate of location for the home has not previously been filed
2 for recording in this state, the manufacturer's certificate or statement of origin or the certificate
3 of title that establishes the owner's ownership of the home, as an attachment to the certificate.

4 **Alternative B**

5 (7) if a deed or certificate of location for the home has not previously been filed
6 for recording in this state, the name of the person from whom and the date on which the owner
7 acquired the home; and

8 (8) the home owner's signature.

9 When the certificate is filed for recording or the home has been installed at the new location, the
10 home will be real property for all purposes from the date it was moved to the new location.

11 (e) If the home owner after the move is different than the owner before the move, the
12 transferor shall deliver a deed in recordable form to the transferee. Unless the title transfer is
13 governed by Section 3 of this [act], the deed must include the following:

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

15 (2) a legally sufficient description of the land to which the home has been or will
16 be moved;

17 **Alternative A**

18 (3) if the home transferee does not own the land to which the home has been or
19 will be moved, the landowner's name;

20 (4) if a deed or certificate of location for the home previously has been filed for
21 recording in this state, the recording information for that deed or certificate; and

22 (5) if a deed or certificate of location for the home has not previously been filed
23 for recording in this state, the manufacturer's certificate or statement of origin or the certificate

1 of title that establishes the transferor's ownership of the home, as an attachment to the deed.

2 **Alternative B**

3 (3) if the home transferee does not own the land to which the home has been or
4 will be moved, the landowner's name; and

5 (4) if a deed or certificate of location for the home previously has been filed for
6 recording in this state, the recording information for that deed or certificate.

7 When the deed is filed for recording or the home has been installed at the new location, the home
8 will be real property for all purposes from the date the home was moved to the new location.

9 (f) Subject to Section 6(b) of this [act], relocation of a home does not impair a security
10 interest or other lien or encumbrance on the home.

11 **Comment**

12
13 Section 5 incorporates the requirements of a number of state statutes but simplifies the
14 requirements and fills in gaps in many of the existing statutes. Alternatives A and B are included
15 in subsections (d) and (e) because some states do not require a manufacturer's certificate or
16 statement of origin or a certificate of title. The following descriptions of some representative
17 state statutes will provide an overview of the different methods for addressing the issue of home
18 relocation.

19
20 *Colorado* requires the home owner to file a certificate of removal with the county clerk
21 and recorder for the county where the home is located. Colo. Rev. Stat. § 38-29-203(1)(a) & (b).
22 Within twenty days after the location change, the owner must file a notice of the change with the
23 county assessor and the county treasurer for the counties from which and to which the home has
24 been moved. § 38-29-143. A landlord that is evicting a tenant can record a certificate of
25 removal. § 38-29-203(2.5)(b). If a lienholder fails to consent to relocation, the home owner can
26 file a bond in an amount equal to 150% of the secured amount. Colo. Rev. Stat. § 38-29-203(4).
27 When the home is permanently affixed at the new location, the owner must file a certificate of
28 permanent location. § 38-29-118.

29
30 *Connecticut* requires a manufactured home owner to file a statutorily-specified "Mobile
31 Manufactured Home Removal Statement" for recording in the land records of the jurisdiction
32 where the home currently is located at least 72 hours before moving the home. The form
33 describes the home's current location and the location to which it is being moved. It also
34 requires the written consent of each security interest holder "subject to the condition that the . . .
35 security interest/mortgage/lien/attachment shall remain in full force and effect." Conn. Gen.
36 Stat. § 21-67a(f).

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

10
11 *Montana* requires the owner to file a statement of reversal of declaration with the county
12 clerk and recorder of the county in which the home is located. All lienholders must consent to
13 the reversal. The clerk and recorder must forward a copy of the statement to the Department of
14 Justice (“Department”; entity responsible for titling manufactured homes). The Department must
15 give the owner a restored certificate of origin or certificate of title. After receiving the fee for a
16 new certificate of title, the county treasurer must forward the statement of reversal of declaration
17 to the Department. The Department then must give the owner a statement in recordable form
18 that the process of converting the home has been completed. The owner then must record the
19 statement. Mont. Code § 15-1-118.

20
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
32 In *Oregon*, a manufactured home that is classified as real property cannot be moved
33 unless the Department of Consumer and Business Services, the agency that titles manufactured
34 homes, approves the move and the county assessor issues a “trip permit”. The department
35 cannot approve an application to move a home to another county unless all taxes and special
36 assessments have been paid. If the department approves the move, it must issue an ownership
37 document and must deliver it to the holder of the most senior security interest in the home or, if
38 none, to the owner. The department also must send a copy of the ownership document to any
39 other security interest holder and to the county assessor for the county to which the home is to be
40 moved. Or. Rev. Stat. § 446.631.

41
42 *Texas* requires the owner that relocates to apply for a new Statement of Ownership and
43 Location (“SOL”) within sixty days after the relocation, Tex. Occ. Code § 1201.206(f), though
44 the change location form states that it must be recorded within thirty days after relocation. The
45 owner must submit a copy of the Texas DOT moving permit with the SOL application. 10 Tex.
46 Admin. Code SOL Application Instructions 4.

1
2 * * * * *
3

4 When a manufactured home is severed from the land, it becomes personal property.
5 However, consistent with several cases concerning site-built homes, subsection (f) provides that
6 moving a home does not impair a security interest or other lien or encumbrance on the home.
7 Courts that have held that a relocated home remains encumbered by a pre-existing mortgage or
8 deed of trust also have held that, upon default, the security interest holder first must foreclose on
9 the land from which the home was moved. If that sale does not generate enough proceeds to
10 repay the secured loan, the lender then can foreclose on the home. These courts also have held
11 that the lien on the home is senior to a mortgage or deed of trust on the land to which the home
12 was moved. *Johnson v. Bratton*, 70 N.W. 1021 (Mich. 1897); *Partridge v. Hemenway*, 50 N.W.
13 1084 (Mich. 1891); *Hamlin v. Parsons*, 12 Minn. 108 (1866); *Mills v. Pope*, 4 P.2d 485 (1931);
14 *Betz v. Verner*, 19 A. 206 (N.J. 1890); *Turner v. Mebane*, 14 S.E. 974 (N.C. 1892); *Dakota Loan*
15 *& Trust Co. v. Parmalee*, 58 N.W. 811 (S.D. 1894). See RESTATEMENT (THIRD) OF PROPERTY
16 (MORTGAGES) § 4.6, Reporters' Note cmt. b. However, in a few other cases, courts have held
17 that the secured lender loses its security interest in the home when it is moved but has an action
18 for waste or for impairment of security. *Bockout v. Swift*, 27 Cal. 433 (1865); *Walch v. Beck*,
19 296 N.W. 780 (Iowa 1941); *Clark v. Reyburn*, 1 Kan. 281 (1863); *Harris v. Bannon*, 78 Ky. 568
20 (1880).
21

22 **SECTION 6. MANUFACTURED HOME FROM ANOTHER STATE.**

23 (a) Within ten days after moving a manufactured home from another state to land in this
24 state, the home owner shall file a certificate of location for recording in the land records of the
25 jurisdiction to which the home has been moved. The certificate must include the following:

- 26 (1) the date of the certificate;
27 (2) the owner's name;
28 (3) the name of the person from whom the owner acquired the home;
29 (4) the date that the owner acquired the home;
30 (5) the legal description of the manufactured home;
31 (6) a legally sufficient description of the land to which the home has been moved;

32 **Alternative A**

33 (7) if the owner does not own the land to which the home has been moved, the
34 landowner's name;

1 (8) the home owner's signature; and

2 (9) as an attachment to the certificate, the manufacturer's certificate or statement
3 of origin or the certificate of title that establishes the owner's ownership of the home.

4 **Alternative B**

5 (7) if the owner does not own the land to which the home has been moved, the
6 landowner's name; and

7 (8) the home owner's signature.

8 When the certificate is filed for recording or the home has been installed, the home will be real
9 property for all purposes from the date the home was moved to land in this state.

10 (b) After a manufactured home owner brings the home into this state from another state
11 and files a certificate of location as provided in subsection (a), subsequent purchasers for value
12 of an interest in the home, including a security interest, acquire the interest free and clear of any
13 lien or other encumbrance that is not recorded in the land records of the jurisdiction in this state
14 to which the home has been moved, unless the subsequent purchaser knows of the lien or other
15 encumbrance at the time of purchase. A lien or encumbrance is recorded in the land records if
16 the document that created it is recorded, if the recorded certificate of location describes it, or if it
17 is described on the manufacturer's certificate or statement of origin or the certificate of title that
18 is recorded with the certificate of location.

19 **Comment**

20 Subsection (a) is based on Colo. Rev. Stat. § 38-29-117(6), though Colorado does not
21 have a filing deadline. Alternatives A and B are included in subsection (a) because some states
22 do not require a manufacturer's certificate or statement of origin or a certificate of title.

23
24 Subsection (b) is based on Colo. Rev. Stat. § 38-29-127.
25

1 **SECTION 7. EFFECTS OF CONVERSION TO REAL PROPERTY.**

2 (a) If the manufactured home is on land that the home owner does not own, the
3 landowner acquires no interest in the home, and the home is not subject to the tenancies, liens,
4 and other encumbrances on the land.

5 (b) If the manufactured home is on land that the home owner does not own, the home and
6 land must be valued and taxed separately.

7 (c) If the manufactured home is on land that some or all of the home owners own, those
8 owners' interests in the home are subject to the same tenancies, liens, and other encumbrances as
9 the land title.

10 (d) Subject to Section 6(b) of this [act], a security interest that is perfected in a
11 manufactured home before it becomes real property has priority over a conflicting interest of an
12 encumbrancer or owner of the land and over a conflicting interest of an encumbrancer of the
13 home after it becomes real property.

14 (e) The manufactured home is not a fixture.

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

20 **Comment**

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

22 Subsection (d) is based on U.C.C. § 9-334(e)(4).

23 Subsection (e) is intended to create parity between site-built homes and manufactured
24 homes. Because a manufactured home is personal property before it is installed on land, a court
25
26

1 may treat the home as a fixture, which is a type of real property. As a fixture, different financing
2 and creditor remedies are available than for a site-built home. Therefore, this subsection
3 provides that the home is not a fixture.

4
5 Subsection (f) is from Uniform Law Commission Drafting Rule 603.

6
7 **SECTION 8. RECORDING DEED OR CERTIFICATE OF LOCATION.** When a
8 manufactured home deed or certificate of location is filed, the recorder shall record and index it.
9 If a manufacturer's certificate or statement of origin or certificate of title is filed with the deed or
10 certificate of location, the recorder shall record and index them as one document and then shall
11 destroy the manufacturer's certificate or statement of origin or the certificate of title. The
12 recorder shall deliver the recorded deed or certificate of location to the home owner and a copy
13 of the recorded deed or certificate of location to the tax assessor. If a manufacturer's certificate
14 or statement of origin or certificate of title is filed with the deed or certificate of location, the
15 recorder also shall deliver a copy to the [government agency that maintains manufactured home
16 title records].

17 **Comment**

18
19 In many states that permit a manufactured home to be classified as real property, the
20 necessary documents must be filed initially with the agency that maintains the manufactured
21 home title records or with the tax assessor. This type of process is cumbersome and can prevent
22 the home's title from appearing in the land records until several weeks after the filing. For
23 example, in Texas, a manufactured home retailer that sells a home has 60 days after the sale to
24 file an application for a Statement of Ownership and Location ("SOL") and the original
25 manufacturer's certificate or statement of origin with the Manufactured Housing Division of the
26 Texas Department of Housing & Community Affairs ("Department"). The Department then has
27 15 days to issue the SOL and send it to the home owner. After receiving the SOL, the owner has
28 60 days to file a certified copy of the SOL in the real property records of the county where the
29 home is located and to notify the Department and the tax assessor-collector that the copy has
30 been filed for record. Tex. Occ. Code §§ 1201.206, 1201.207, 1201.2055(d). The Oregon
31 procedure is similarly complicated and slow. Or. Rev. Stat. § 446.626(2) (application to classify
32 manufactured home as real property and any ownership document filed with county assessor;
33 application then recorded in deed records; assessor then sends ownership document to agency
34 that titles manufactured homes; agency cancels ownership document and sends cancellation
35 confirmation to assessor and to owner). *See also* Or. Admin. R. 918-550-0160 (tax assessor).

1 In contrast, this section requires the deed or 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 deed or certificate for recording. When the buyer does not finance the
5 purchase, the manufactured home retailer, like a car dealer, can offer to file the deed for
6 recording, or the purchaser can file it. In this way, the home immediately is brought into the real
7 property title system. Moreover, by requiring the recorder, rather than the home owner, to notify
8 the tax assessor and the government agency that maintains the manufactured home title records,
9 the notice is more likely to be given. The home owner may be unaware of the requirement to
10 deliver notice or may attempt to avoid paying real property taxes by failing to deliver it.

11
12 The possibility that a manufactured home seller will fraudulently transfer title to the
13 home more than once is another significant practical concern. This wrongful practice is
14 facilitated if the transferor retains the original ownership document. Therefore, this section
15 requires delivery of the original ownership document to the recorder when the deed or certificate
16 of location is filed. It also requires the recorder to destroy the ownership document to prevent its
17 future use. This section is based on Colo. Rev. Stat. §§ 38-29-202(1)(c), 38-29-207.

18
19 **SECTION 9. HOME WARRANTIES.** Manufactured home warranties apply to a
20 home whether it is real property or personal property.

21 **Comment**

22 This section is designed to retain warranties for a manufactured home that is classified as
23 personal property when it is converted to real property. It is based on Tex. Occ. Code
24 §1201.2055(h).

25
26 **SECTION 10. REAL ESTATE LICENSE UNNECESSARY.** Nothing in this [act]
27 requires a manufactured home retailer to be licensed as a real estate agent.

28 **Comment**

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

30 **SECTION 11. ENFORCEMENT.** A manufactured home transferee, lender, or any
31 other person subject to this [act] may bring an action to enforce a right granted or obligation
32 imposed by this [act]. [Punitive damages may be awarded for a willful failure to comply with
33 this [act].] The court may award reasonable attorney's fees and costs.

34 **Comment**

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

2 **SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

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

5 **Comment**

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

8
9 **SECTION 13. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
10 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
11 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001, et seq., but
12 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
13 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
14 U.S.C. Section 7003(b).

15 **Comment**

16 Uniform Law Commission Drafting Rule 602 (2006) requires inclusion of this provision
17 to comply with Section 102(a)(2)(B) of the Electronic Signatures in Global and National
18 Commerce Act, 15 U.S.C. Section 7002(a)(2)(B). Section 102(a)(2)(B) provides that a state
19 statute can modify, limit, or supersede the Electronic Signatures in Global and National
20 Commerce Act by specifically referring to it.

21
22 **SECTION 14. REPEALS.** The following are repealed:

23 ***Legislative Note:** This section is for states wishing to replace their existing statutes concerning:*
24 *(1) classification of manufactured homes as real property or as personal property, (2) titling of*
25 *manufactured homes, (3) creation and perfection of security interests in manufactured homes*
26 *and creditor remedies, and (4) manufactured home taxation.*

27
28 **SECTION 15. EFFECTIVE DATE.** This [act] takes effect on _____.