

D R A F T  
FOR DISCUSSION ONLY

# MANUFACTURED HOUSING ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAW

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For March 25 – 27, 2010 Drafting Committee Meeting

*With Prefatory Note and Comments*

*Redline Draft*

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March 7, 2010

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**MANUFACTURED HOUSING ACT**

**TABLE OF CONTENTS**

Prefatory Note..... 1  
SECTION 1. SHORT TITLE ..... 2  
SECTION 2. DEFINITIONS..... 2  
SECTION 3. ADMINISTRATION..... 7  
SECTION 4. RETAIL SALE OF NEW MANUFACTURED HOME..... 8  
SECTION 5. MANUFACTURED HOME ACQUIRED BEFORE [ACT’S EFFECTIVE  
DATE]..... 10  
SECTION 6. MANUFACTURED HOME FROM ANOTHER STATE..... 13  
SECTION 7. EFFECT OF FILING DEED OR CERTIFICATE OF LOCATION..... 13  
SECTION 8. RECORDING DEED OR CERTIFICATE OF LOCATION ..... 17  
SECTION 9. CERTIFICATE OF RELOCATION. .... 18  
SECTION 10. RECORD OF MORTGAGE OR DEED OF TRUST AS FINANCING  
STATEMENT..... 22  
SECTION 11. HOME WARRANTIES..... 22  
SECTION 12. REAL ESTATE LICENSE UNNECESSARY ..... 23  
SECTION 13. PENALTIES ..... 23  
SECTION 14. UNIFORMITY OF APPLICATION AND CONSTRUCTION..... 23  
SECTION 15. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND  
NATIONAL COMMERCE ACT ..... 23  
SECTION 16. REPEALS ..... 24  
SECTION 17. EFFECTIVE DATE..... 24

# 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 as personal property. The act is intended to modernize the law in this area, to bring uniformity and clarity into a chaotic area of state law, to increase the supply of affordable housing by making manufactured home financing more available and affordable, and to 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 all detached 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 title 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-three 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.

## UNIFORM MANUFACTURED HOUSING ACT

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

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

- (1) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (2) “Home” means a manufactured home, as defined in Section 2(4) of this [act].
- (3) “Legal description of the manufactured home” is the home’s manufacturer, make, model designation, model year, identification number, length, and width.

### Alternative A

(4) “Manufactured home” or “manufactured housing” means a structure, transportable 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, or, when erected on site, is 320 or more square feet, 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. The ~~term include terms~~ include any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code; and except that such term shall not include any self-propelled recreational vehicle.

### Alternative B

“Manufactured home” or “manufactured housing” means a structure, ~~including the plumbing, heating, air conditioning, and electrical systems contained therein, that is:~~

~~(A) —transportable in one or more sections;~~

~~(B) —, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, 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;~~

~~(C) —in the traveling mode is eight body feet or more wide or 40 body feet or more long; and~~

~~(D) —when erected on site is 320 or more square feet.~~

~~The term includes, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The terms include any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a ~~certificate~~certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code; and except that such term shall not include any self-propelled recreational vehicle. The terms “manufactured home” and “manufactured housing” also include a mobile home, as defined in Section 2(5) of this [act].~~

~~(5) —“Permanently affixed” means installed on the land in the manner specified by the manufacturer’s installation instructions and by the applicable federal, state, and local laws.~~

~~(5) “Mobile home” means a structure manufactured before June 15, 1976, transportable 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, or, when erected on site, is 320 or more square feet, 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; and except that such term shall not include any self-propelled recreational vehicle.

(6) “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.

(7) “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.

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

(9) “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.

(10) “Transferee” means a person who acquires property by any legal means, including sale, gift, and testate and intestate succession.

(11) “Transferor” means a person who transfers property by any legal means, including sale, gift, and testate and intestate succession.

(12) “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.

### Alternative A

(13) “Situated” means installed on land owned or leased by a manufactured home transferee.

### Alternative B

“Situated” means installed on land owned or leased by a manufactured home transferee with the running gear removed.

### Alternative C

“Situated” means installed on land owned or leased by a manufactured home transferee and connected to all necessary utilities.

### **Comment**

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

Paragraph (3) includes the information required by most state statutes concerning conveyances of manufactured homes.

Paragraph (4), Alternative A, is the “manufactured home” definition from Uniform Commercial Code § 9-102(53). As stated in comment 4(b) to that section, the definition is intended to have the same meaning as the definition in the Manufactured Housing Act, 42 U.S.C. §§ 5401-26. § 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, Professor Marion Benfield, drafted Paragraph (4), Alternative B, to make the definition consistent with the Style Committee’s requirements.

~~With respect to paragraph (5), a manufactured home is real property only if it “is or will be permanently affixed to land”. The definition of “permanently affixed” requires that the home be installed properly. If a home is improperly installed, would it still satisfy this standard because the owner can be ordered to install it properly (home *will be* permanently affixed)? Or should the definition be broader? For example, Colorado requires only that the home be “permanently affixed to the ground so that it is no longer capable of being drawn over the public highways”. It does not define “permanently affixed”. Colo. Rev. Stat. § 38-29-114(b). Similarly, Montana requires that the running gear be removed and that the home be “attached to a permanent foundation so that it is no longer capable of being drawn over public highways”. Mont. Code § 15-1-116(1).~~

### Paragraph (4) March 2011 Comment

To avoid conflicts or gaps between this uniform act and U.C.C. Article 9, the drafting committee respectfully determined to use the Alternative A definition from the October 2010 draft, which is taken from Article 9, rather than the definition that the drafting committee’s style member recommended.

Although the Article 9 definition is based on the federal definition, Article 9 omits a clause that is included in the federal definition—“and except that such term shall not include any self-propelled recreational vehicle.” This clause is now part of the uniform manufactured housing act definition.

A new Alternative B has been added to this draft to extend the uniform act’s coverage to mobile homes. “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).

#### **Paragraph (5) March 2011 Comment**

In Section 2(4) of this act, the last sentence of Alternative A and the penultimate sentence of Alternative B extend the definitions of “manufactured home” and “manufactured housing” to homes of less than 320 square feet if the home was built in accordance with the 1976 HUD construction standards (“HUD Code”) and if the manufacturer files a certification to that effect with HUD. 24 C.F.R. § 32.82.13. If the drafting committee wants pre-HUD Code homes of less than 320 square feet to be covered by the uniform act, the “mobile home” definition should be amended to so provide.

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

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

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

Paragraph (12) is the standard Uniform Law Commission definition of “sign”.

#### **Paragraph (13) March 2011 Comment**

The October 2010 draft specified that a manufactured home was to be “permanently affixed” to land and defined “permanently affixed” to mean that the home was installed in accordance with the manufacturer’s installation instructions and with applicable federal, state, and local laws. The drafting 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.

In considering alternatives, the committee stressed the need for a standard that is objective, readily satisfiable and verifiable, and available in all jurisdictions and for all manufactured home owners. The committee rejected issuance of a certificate of occupancy as the standard, because not all jurisdictions require them. It rejected government certification of utility connection or of proper installation, because the certification can take several months to obtain. Requiring that the home be attached to a permanent foundation is inappropriate because the HUD definition of “manufactured home” does not require attachment to a permanent foundation and because some states and many landlords do not permit a permanent foundation in a leasehold community. The fixture test also is an undesirable standard because it is fact dependent and unpredictable and because some forms of installation that the HUD Code permits do not satisfy that test.

This draft presents three alternative standards, each of which satisfies the committee’s criteria. **Alternative A** requires only that the home be installed on land owned or leased by the home owner. Some drafting committee members recommended this standard, because only 1% of manufactured homes are moved after being installed and because site-built homes are characterized as real estate even if not connected to utilities. **Alternative B** requires that the home be installed and that the running gear be removed, which is a readily verifiable fact. *See Mont. Admin. R. 42.20.117.* **Alternative C** requires that the home be installed and connected to required utilities. *Accord N.H.Rev. Stat. § 674:31.* Utility connection is not as readily verifiable as removal of the running gear, but title insurance companies are willing to insure that the home is real estate based on the owner’s certification that the home is connected to utilities. **Issue:** Do the utilities have to be turned on? If so, verification is more difficult, and a home can change character if, for example, the electricity is turned off for failure to pay.

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**SECTION 3. ADMINISTRATION.** The [government agency] shall administer this act. The [government agency] [~~may~~]shall] promulgate rules and forms necessary to administer this [act].

### Comment

The act provides that a state agency will promulgate a form deed, certificate of location, and certificate of relocation. Therefore, this paragraph requires the appointment of the responsible agency. Some states have regulations promulgated administrative rules concerning the matters covered in this act, but many ~~do~~have not.

**SECTION 4. ~~CERTIFICATE OF LOCATION~~ RETAIL SALE OF NEW MANUFACTURED HOME.**

(a) ~~When a~~ After [day before act's effective date], a manufactured home retailer that sells a new manufactured home ~~after [day before act's effective date], the retailer~~ that is or will be situated on land in this state shall ~~complete a certificate of location. The certificate~~ transfer title to it by a deed executed in recordable form. The deed must be in the form specified by [government agency] and must include the following:

(1) the transferor's name and address;

(2) the transferee's name and address;

~~(3) — a statement that the transferor is transferring title to the home to the transferee;~~

~~(4) —~~ the date;

~~(5)~~ (3) ~~the sale price;~~

~~(6)~~ (4) the home manufacturer's name and address;

~~(7)~~ (5) the legal description of the manufactured home;

~~(8)~~ (6) the street address and legal description of the land ~~to~~ on which the home is or will be ~~permanently affixed~~ situated;

~~(9)~~ (7) the name of each record owner of the land ~~to~~ on which the home is or will be ~~permanently affixed~~ situated;

~~(10)~~ (8) unless the home is or will be ~~permanently affixed to~~ situated on land owned by someone other than a home transferee, a release of all rights in the home by each transferee that does not also own the land ~~to~~ on which the home is or will be ~~permanently affixed~~ situated;

~~(11)~~(9) for each lien on the home, the lienholder's name and address, the date of the lien, and when and where it was recorded;

~~(12)~~(10) \_\_\_\_\_ a statement that each lienholder has consented to the filing of the ~~certificate of location~~deed;

~~(13)~~(11) \_\_\_\_\_ a statement that a person who provides false information in the ~~certificate~~deed is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than five hundred dollars but not more than one thousand dollars, or by imprisonment for not less than ten days but not more than six months, or by both fine and imprisonment;

~~(14)~~(12) \_\_\_\_\_ the transferor's ~~and transferee's signature~~signature; and

~~(15)~~(13) \_\_\_\_\_ any other information that the [government agency] requires.

~~\_\_\_\_\_ The certificate must be executed with the same formalities as a deed in recordable form.~~

(b) Within ten days after the date on the ~~certificate of location~~deed, the retailer shall file it for recording, together with the original manufacturer's certificate or statement of origin, in the land records of the jurisdiction in which the home is or will be ~~permanently affixed~~situated.

### Comment

Subparagraph (a)(~~108~~) deals with the situation in which the home is ~~affixed to~~situated on land owned by some, but not all, of the home owners. In essence, it requires a home owner that does not also own the land to release its interest in the home to eliminate the title complexities that otherwise would arise. *See, e.g.*, Colo. Rev. Stat. § 38-29-202(2)(m).

Subparagraphs (a)(~~11~~) & (~~129~~) & (10) require information concerning each lien on the home and each lienholder's consent to the deed filing ~~of the certificate of location~~. Some states limit these types of provisions to security interest holders. Colo. Rev. Stat. § 38-29-202(2)(j) (security interest holder); Mont. Code § 15-1-116(2)(b)(iv) (lienholder); Or. Admin. R. 918-550-0160(2) (lienholders must be notified; security interest holders must consent); Tex. Occ. Code § 1201.2075 (lienholder).

Subparagraph (a)(~~1311~~) notifies the transferor ~~and transferee~~ that providing false information in the ~~certificate~~deed constitutes a misdemeanor. An alternative approach would be to require each lienholder's signature, but that approach is more cumbersome and potentially unworkable if the lienholder wrongfully refuses or otherwise fails to sign. Colorado has addressed the situation in which a lienholder fails to consent, albeit in the context of a home

relocation, by allowing the home owner to post a bond in an amount equal to 150% of the amount secured by the lien. Colo. Rev. Stat. § 38-29-203(4).

Paragraph (b) requires the ~~certificate of location deed~~ and the original manufacturer's certificate or statement of origin to be recorded first with the recorder, rather than with the government agency that maintains manufactured home title records or with the tax assessor. *Accord* Colo. Rev. Stat. § 38-29-114(2); Mont. Code § 15-1-116(1); N.H. Rev. Stat. § 477:44, subp. III. *Contra* Or. Admin. R. 918-550-0160 (tax assessor); Tex. Occ. Code § 1201.206 (agency that maintains manufactured home title records). In this way, the manufactured home title will be recorded in the land records immediately after the sale. In states in which the initial recording is with the tax assessor or another government entity, the home's title does not appear in the land records for as long as several weeks after the sale.

Paragraph (b) requires the retailer, rather than the ~~owner transferee~~, to file the original manufacturer's certificate or statement of origin after the sale in order to establish a chain of custody for ~~athe~~ home from the time of manufacture to the retail sale. Tex. Occ. Code §§ 1201.204, -1201.206. Placing the burden on the retailer also increases the likelihood that the ~~certificate deed~~ will be filed. Tax assessors have said that buyers sometimes fail to file the necessary documents in an attempt to evade their property taxes. Additionally, some buyers will be unaware of the need to file or may be neglectful in doing so. Because a dishonest retailer may be tempted to ~~sell resell~~ the home ~~to another consumer~~, rather than to file the ~~certificate deed~~ for recording, Section 13 of the act makes the retailer's failure to file a misdemeanor.

## **SECTION 5. MANUFACTURED HOME ~~PURCHASED~~ ACQUIRED BEFORE [ACT'S EFFECTIVE DATE].**

(a) If the owner of a manufactured home acquired the home before [act's effective date] and if it is ~~permanently affixed to~~ situated 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 ~~affixed~~ situated. The certificate must be in the form specified by [government agency] and must include the following:

- (1) the name of each person from whom the owner acquired the home and, if known to the owner, each transferor's address;
- (2) the owner's name and address;
- (3) the date;
- ~~(3)~~(4) the date that the owner acquired the home;

(4) ~~the purchase price, if any;~~

(5) the legal description of the manufactured home;

(6) the street address and legal description of the land ~~to~~on which the home is ~~affixed~~situated;

(7) the name of each record owner of the land ~~to~~on which the home is ~~affixed~~situated;

(8) unless the home is ~~affixed to~~situated on land owned by someone other than the home owner, a release of all rights in the home by each home owner that does not also own the land ~~to~~on which the home is ~~affixed~~situated;

(9) for each lien on the home, the lienholder's name and address, the date of the lien, and when and where it was recorded;

(10) a statement that each lienholder has consented to the filing of the certificate of location;

(11) a statement that a person who provides false information in the certificate is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than five hundred dollars but not more than one thousand dollars, or by imprisonment for not less than ten days but not more than six months, or by both fine and imprisonment;

(12) the home owner's signature; and

(13) any other information that the [government agency] requires.

The certificate must be executed with the same formalities as a deed in recordable form.

When the home owner files the original certificate of location for recording, the owner must deliver to the recorder the original manufacturer's certificate or statement of origin or a certificate of title that establishes the owner's ownership of the home.

(b) If the owner ~~acquired of~~ a manufactured home acquired it before [act's effective date] and if the home is ~~permanently affixed to~~ situated on land in this state when the owner transfers title to the home, the owner shall ~~complete~~ transfer title by a certificate of location when transferring the home's title if the owner has not previously filed a certificate for recording in the land records of the jurisdiction ~~deed executed~~ in ~~which the home is affixed~~. ~~The certificate must contain the information and be in the~~ recordable form ~~specified in Section 4 of this [act]~~. ~~Within ten days after the date on the certificate of location, and shall deliver to~~ the transferee ~~of the home or the lender that financed the purchase, if any, shall file the certificate of location, together with~~ the original manufacturer's certificate or statement of origin or a certificate of title that establishes the transferee's title to the home. ~~The deed must be in the form and must include the information specified in Section 4 of this [act]~~. ~~Within ten days after the deed's date, the transferee of the home or the lender that financed the purchase, if any, shall file the deed for recording, together with the original manufacturer's certificate or statement of origin or a certificate of title that establishes the transferee's title to the home, for recording~~ in the land records of the jurisdiction in which the home is ~~affixed~~ situated.

### Comment

Paragraph (a) makes the act voluntarily retroactive. If the owner of a pre-act home wants to convert it to real property, this section provides the means to do so. *Accord* Or. Rev. Stat. § 446.626(1); Tex. Occ. Code § 1201.214. *Compare* Colo. Rev. Stat. §§ 38-29-112(1.5), 38-29-118 (home owner *must* file certificate of permanent location to reclassify home as real property when home is permanently affixed to ~~the~~ land even if owner purchased before law's effective date; recognizing that an owner may not comply with this requirement, a subsequent purchaser of the home must file certificate of permanent location).

By requiring the owner of a pre-act home ~~purchased before the act's effective date to complete a certificate of location when transferring~~ transfer title to the home by recordable deed, all homes ~~that are not part of, other than those in~~ a dealer's inventory ~~should~~, eventually will be classified as real property, ~~thereby~~. By bringing all manufactured home titles into the existing real property recording system, states can save money by eliminating the need for duplicative manufactured home title systems for manufactured homes system that the Department of Motor Vehicles or other agency currently administers.

## SECTION 6. MANUFACTURED HOME FROM ANOTHER STATE.

(a) A person that acquires a manufactured home in another state and ~~permanently affixes~~situates the home ~~to~~on land in this state shall file a certificate of location for recording in the land records of the jurisdiction in which the home is ~~affixed~~situated. The certificate must contain the information and be in the form specified in Section 5(a-)of this [act]. The home owner shall file the certificate for recording, together with the original manufacturer's certificate or statement of origin or a certificate of title that establishes the owner's title to the home, within ten days after the home is ~~permanently affixed~~situated in this state.

(b) After a manufactured home owner brings the home into this state from another state, subsequent purchasers for value of an interest in the home, including a security interest, acquire the interest free and clear of any lien or other encumbrance that is not recorded in the land records of the jurisdiction in this state in which the home is ~~located~~situated, unless the subsequent purchaser knows of the lien or other encumbrance at the time of purchase. Any such lien or encumbrance is recorded in the land records not only if the document that created it is recorded, but also if the recorded certificate of location describes it or if it is described on the manufacturer's certificate or statement of origin or the certificate of title that is recorded with the certificate of location.

### Comment

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

Paragraph (b) is based on Colo. Rev. Stat. § 38-29-127.

## SECTION 7. EFFECT OF FILING DEED OR CERTIFICATE OF LOCATION.

(a) Unless a deed or certificate of location for a manufactured home previously has been recorded in the jurisdiction in which the home is located, a transferee of the home does not

acquire title to it until a ~~certificate of location~~deed for the home has been filed for recording in accordance with Section 4 or Section 5 of this [act].

(b) ~~When a~~When a manufactured home is situated on land in this state and when a deed or certificate of location is filed for recording in the land records of the jurisdiction in which ~~a manufactured~~the home is ~~or will be permanently affixed~~situated, the home becomes real property for all purposes, including, but not limited to: (1) the types of interests and estates that can be created, (2) the methods of conveying and recording the title, (3) the creation, perfection, and enforcement of security interests and other title encumbrances, (4) marital rights, (5) homestead protections, and (6) taxation.

(c) A manufactured home on land that is not owned by the home owner shall be valued and taxed separately from the land on which it is ~~sited~~situated.

(d) If a manufactured home is ~~affixed to~~situated on land that the home owner does not own, the landowner acquires no interest in the home ~~when the certificate of location is filed for recording.~~ Title, and title to the home is not subject to the tenancies, liens, and other encumbrances on the title to the land ~~to which the home is affixed~~.

(e) When a deed or certificate of location is filed for a manufactured home that is or will be ~~affixed to~~situated on land owned by some, but not all, of the transferees of the home, title to the home vests only in the landowners. When the home becomes real property, its title is subject to the same tenancies, liens, and other encumbrances as the title to the land ~~to~~on which the home is ~~affixed~~situated.

(f) Subject to Section 6 of this [act], transactions, certificates of title, records, and information that were validly entered into or created before the effective date of this [act], and would be subject to this [act] if they had been entered into or created on or after the effective

date of this [act], and the rights, duties, and interests flowing from these transactions, certificates of title, records, and information, remain valid after the effective date of this [act].

### Comment

Paragraphs (a) and (b) are designed to ensure that a manufactured home purchaser acquires it as real property. In this way, mortgage financing will be more readily available, which can create significant cost savings. For example, on July 29, 2010, a Texas retailer said that, if a manufactured home purchaser's FICO score is 650, the interest rate on a chattel loan would be 12%, compared to 6.5% on an FHA deed of trust loan. The interest rate on a deed of trust loan for a manufactured home is only ½% more than for a site-built home.

If the home purchaser also owns the land on which the home will be ~~affixed~~situated, the loan normally is funded like a construction loan. The lender takes a mortgage or deed of trust on the land and pays the loan amount in draws. For example, in Montana, a first draw of approximately 10% of the loan amount is used to pay the purchaser's deposit on the home. The second draw is the amount necessary to pay the retailer's floor financing on the home (about 75%). It is paid when the home is delivered to the site. The third and final draw is paid when the home has been properly installed, as determined by the lender's and appraiser's inspectors. For some loans, a separate draw is paid for site preparation before the home is installed. The construction loan term varies from a few days to as long as a year and is paid with the proceeds of a permanent loan. As for other construction loans, the permanent loan must be approved before the construction loan will be funded.

If the home is ~~affixed to~~situated on leased land, the lender's mortgage or deed of trust encumbers the home and the leasehold interest. The landlord, such as a manufactured home community owner, normally will have prepared the site for the home, including building a foundation. Therefore, the loan is not paid in draws. Instead, the dealer usually receives the loan proceeds and the purchaser gets title to the home after it is installed on the site, which normally takes two to three days. The dealer's protections against the purchaser's default are a signed purchase agreement and a down payment. The purchaser also must have been pre-approved for a loan.

To deal with the possibility that a personal property lien will attach to the manufactured home before it becomes real property, a Wells Fargo manufactured home loan specialist said that the bank relies on title insurance. Wells Fargo will not make a loan if a pre-existing lien exists, and it requires the title company to file the necessary documents to convert the home to real property. The title company has an obvious incentive to convert the home to real property as quickly as possible to minimize its exposure on the title policy. As with land purchases, title insurance is used to cover the risks that are inherent in the recording system.

In addition to making mortgage financing available for all manufactured home purchases, paragraphs (a) and (b) are intended to create a strong incentive to file the ~~deed~~ or certificate of location for recording as soon as possible. Texas has adopted this approach. In Texas, title to the home does not transfer until the retailer files a statutorily-required document with a specified government agency. Tex. Occ. Code § 1201.206(e). To ensure that the document is filed as

quickly as possible, the lender's title insurer, rather than the retailer, normally files the certificate.

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

Some states that permit a manufactured home on leased land to be classified as real property require the landowner's consent to the real property classification. *E.g.*, Ariz. Rev. Stat. § 33-1501; Or. Rev. Stat. § 446.626. This requirement is unnecessary because, as provided in paragraph (d), title to the home and title to the land remain distinct, and because, as provided in paragraph (c), the home and the land are valued and taxed separately.

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

Paragraph (b) provides that, when a home is classified as real property, it is real property for all purposes. *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.

Subparagraph (c) is based on Colo. Rev. Stat. § 38-29-112(1.5).

Paragraph (e) is based on Colo. Rev. Stat. § 38-29-202(2)(m). As noted in the comment to Section 4, the provision is designed to eliminate the title complexities that would arise if some, but not all, of the home owners own the land to which the home is affixed.

Paragraph (f) is from Uniform Law Commission Drafting Rule 603.

**SECTION 8. RECORDING DEED OR CERTIFICATE OF LOCATION.** Upon receiving a manufactured home deed or certificate of location and the original manufacturer's certificate or statement of origin or certificate of title, the recorder shall record and index them as one document. The recorder shall destroy the original manufacturer's certificate or statement of origin or the certificate of title. The recorder shall deliver the recorded deed or certificate of location to the home owner and a copy of the recorded certificate of location to the [government agency that maintains manufactured home title records] and to the tax assessor for the jurisdiction in which the home is affixed.

#### **Comment**

The possibility that a manufactured home seller will fraudulently transfer title to the home more than once is a significant practical concern. This wrongful practice is facilitated if the transferor retains the original ownership document. Therefore, this section requires delivery of the original ownership document to the recorder when the deed or certificate of location is filed. It also requires the recorder to destroy the ownership document to prevent its future use. The recorder also must notify both the government agency that maintains the manufactured home title records, so that the home can be purged from its title system, and the tax assessor, so that the home can be added to the tax roll. This section is based on Colo. Rev. Stat. §§ 38-29-202(1)(c), 38-29-207.

In many states that permit a home to be classified as real estate when it is purchased from a retailer, the original ownership document must be delivered to the agency that maintains the manufactured home title records. For example, in Texas, the retailer must 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") within 60 days after the retail sale of the home. The Department must issue the SOL within 15 days after it receives the application. After receiving the SOL, the home owner has 60 days to convert the home to real property by (1) filing a certified copy of the SOL in the real property records of the county where the home is located and (2) notifying 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). *See* 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).

The Texas ~~process is and Oregon processes are~~ unnecessarily cumbersome and lengthy. By initially filing the deed or certificate of location and the ownership document with the recorder, the home immediately is brought into the real property system. By requiring the recorder to notify the ~~relevant tax assessor and the~~ government agency ~~and the tax assessor~~ that maintains the manufactured home ~~has become real property title records~~, the notice is more likely to be given. The home owner may be unaware of the requirement to deliver notice or may ~~be attempting attempt~~ to avoid paying property taxes by failing to deliver it.

## SECTION 9. CERTIFICATE OF RELOCATION.

(a) At least ten days before a manufactured home owner moves it from a location for which a deed or certificate of location has been filed for recording, the owner must file a certificate of relocation for recording in the land records of the jurisdiction in which the home is ~~located~~situated before the move. The certificate must be in the form specified by [government agency] and must include the following:

- (1) the home owner's name and mailing address;
- (2) the legal description of the manufactured home;
- (3) the street address and legal description of the land ~~to on~~ which the home is ~~affixed~~situated before relocation;
- (4) the date that the home will be removed ~~from the land to which it is~~ affixed;
- (5) the street address, ~~including the county and state,~~ legal description of the land to which the home will be relocated;
- (6) the date that the home will be delivered to the new location;
- (7) the name of each record owner of the land to which the home will be relocated;
- (8) for each lien on the home, the lienholder's name and address, the date of the lien, and when and where it was recorded;
- (9) the recording information for the current deed or certificate of location;

~~(10) — a statement that a person who provides false information in the certificate is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than five hundred dollars but not more than one thousand dollars, or by imprisonment for not less than ten days but not more than six months, or by both fine and imprisonment;~~

~~(11)~~(10) \_\_\_\_\_ the owner's and each lienholder's signature; and

~~(12)~~(11) \_\_\_\_\_ any other information that the [government agency] requires.

The certificate must be executed with the same formalities as a deed in recordable form.

(b) If a manufactured home for which a deed or certificate of location has been recorded is ~~affixed to~~situated on land owned by someone other than the home owner, the landowner cannot remove the home until the landowner files a certificate of relocation, together with a certified copy of the judgment or order for possession of the land, for recording in the land records of the jurisdiction in which the home is located. The landowner, rather than the home owner and lienholder, shall sign the certificate of relocation.

(c) The recorder shall record and index the certificate of relocation, together with any certified copy of a judgment or order for possession, and shall deliver the recorded certificate to the home owner. Upon receiving a certificate of relocation, the recorder also shall deliver a copy of it to the tax assessor for the jurisdiction in which the home is ~~affixed to~~situated before relocation.

~~(d) —~~ If the home is relocated and ~~permanently affixed to~~situated on land in this state, the home owner shall file a certificate of location or deed for recording in the land records of the jurisdiction in which the home is ~~affixed to~~situated. The owner ~~must~~shall file the certificate or deed within ten days after the home is ~~affixed to~~situated. If the owner is the same before and after the home is relocated, the owner shall file a certificate ~~must be~~that is in the form and ~~must contain~~contains the information specified in Section 5 of this [act]. If the owner is different than

the owner before the home was relocated, the ~~certificate must be~~ new owner shall file a deed that is in the form and ~~must contain~~ contains the information specified in Section 4 of this [act]. The certificate of location ~~or deed~~ must include the recording information for ~~a~~ the previously recorded ~~certificates~~ certificate of location ~~and certificates of relocation~~ or deed for the home.

~~(e)(d) If the home is relocated in this state but is not permanently affixed to land, the home owner shall apply to the [government agency] for a certificate or statement of origin or for a certificate of title within ten days of the relocation. The owner shall complete a certificate of location when subsequently transferring title to the home, unless the transferee does not intend to permanently affix the home to land. The certificate must contain the information and be in the form specified in Section 4 of this [act]. Within ten days after the date on the certificate of location, the transferee of the home or the lender that financed the purchase, if any, shall file the certificate of location, together with the certificate or statement of origin or the certificate of title that establishes the transferee's title to the home, for recording in the land records of the jurisdiction in which the home is or will be permanently affixed.~~

~~(f)(e)~~ (e) Subject to Section 6 of this [act], relocation of a home does not impair a security interest or other lien or encumbrance on the home unless the interest holder releases it.

### Comment

Paragraph 9 incorporates the requirements of a number of state statutes but simplifies the requirements and fills in gaps in many of the existing statutes. The following description of some representative state statutes will provide an overview of the different methods for addressing the issue of home relocation.

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

203(4). When the home is permanently affixed at the new location, the owner must file a certificate of permanent location. § 38-29-118.

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

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

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

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

In *Oregon*, a manufactured home that is classified as real property cannot be moved unless the Department of Consumer and Business Services, the agency that titles manufactured homes, approves the move and the county assessor issues a “trip permit”. The department cannot approve an application to move a home to another county unless all taxes and special assessments have been paid. If the department approves the move, it must issue an ownership document and must deliver it to the holder of the most senior security interest in the home or, if

none, to the owner. The department also must send a copy of the ownership document to any other security interest holder and to the county assessor for the county to which the home is to be moved. Or. Rev. Stat. § 446.631.

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

**SECTION 10. ~~CONVEYING HOME ON ANOTHER PERSON’S LAND.~~ If a manufactured home has become real estate and is affixed to land that the home owner does not own, a deed, [mortgage] [deed of trust], and any other instrument that transfers or creates an interest in the home must include the legal description of the manufactured home, as well as the legal description of the land to which it is affixed. RECORD OF MORTGAGE OR DEED OF TRUST AS FINANCING STATEMENT. A record of a mortgage or deed of trust on a manufactured home is effective, from the date of recording, as a financing statement filed as a fixture filing if:**

- (a) the record includes the legal description of the manufactured home;**
- (b) the manufactured home is or is to be situated on real property described in the record;**
- (c) the record satisfies the requirements for a financing statement in [U.C.C. § 9-502] other than an indication that it is to be filed in the real property records; and**
- (d) the record is [duly] recorded.**

**Comment**

This section is based on U.C.C. § 9-502(c).

**SECTION 11. HOME WARRANTIES.** All warranties concerning a manufactured home apply whether the home is real or personal property.

**Comment**

This section is based on Tex. Occ. Code § 1201.2055(h).

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

**Comment**

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

**SECTION 13. PENALTIES.** Any person who violates any provision of this act is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than five hundred dollars but not more than one thousand dollars, or by imprisonment for not less than ten days but not more than six months, or by both fine and imprisonment.

**Comment**

Tax assessors and government employees who work with manufactured home titles have said that fines have been an insufficient deterrent for transferees that attempt to hide their ownership in order to avoid paying property taxes or for transferors that want to sell the same home more than once. Therefore, ~~section~~Section 13 makes imprisonment an additional penalty. *See, e.g.,* Colo. Rev. Stat. § 38-29-141 (failure to comply with act constitutes a misdemeanor punishable by a fine of not less than one hundred dollars but not more than five hundred dollars, or by imprisonment in the county jail for not less than ten days but not more six months, or by both fine and imprisonment).

**SECTION 14. 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 15. 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**

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

**SECTION 16. REPEALS.** The following are repealed:

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

**SECTION 17. EFFECTIVE DATE.** This [act] takes effect on \_\_\_\_\_.