

DRAFT
FOR DISCUSSION ONLY

MANUFACTURED HOUSING ACT

ONE TRACK

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

For ~~October 28-30, 2011~~February 24-26, 2012 Drafting Committee Meeting

With Prefatory Note and Comments

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By
NATIONAL CONFERENCE OF COMMISSIONERS
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~~October 20, 2011~~
February 10, 2012

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MANUFACTURED HOUSING ACT

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MANUFACTURED HOUSING ACT

Prefatory Note

The act's primary focus is the proper classification of manufactured homes (also commonly called mobile homes) as real property or personal property. The act is intended to modernize the law in this area, bring uniformity and clarity into a chaotic area of state law, increase the supply of affordable housing by making manufactured home financing more available and affordable, and provide manufactured ~~home-owners~~homeowners with many of the same legal protections as owners of site-built homes.

Many states' laws concerning manufactured homes have not kept pace with the changes in them over the last 90 years. Based on manufactured homes' earliest ancestor—the travel trailer—state laws classify most of these homes as personal property, though only one percent of them are moved after being sited on a lot. Three-quarters of manufactured homes are sited on the owner's land, and the average lot size is more than twice the average lot size for site-built homes. HUD construction and installation standards have virtually eliminated the differences in construction quality and safety between manufactured and site-built homes. As a result, the life expectancy of and deterioration rate for manufactured homes are now equivalent to those for site-built homes. Moreover, a manufactured home's appearance can be virtually indistinguishable from that of a site-built home. Today's manufactured home is functionally more equivalent to a site-built home than to a travel trailer, but only 28% of manufactured homes are classified as real property.

In addition to being generally outdated, existing state laws vary tremendously from state to state, which creates substantial inefficiencies in the manufactured home sale and finance markets.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

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

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SECTION 2. DEFINITIONS. In this [act]:

~~(1) “Buyer in ordinary course of business” means a person that buys a manufactured home in good faith, without knowledge that the sale violates the rights of another person in the manufactured home, and in the ordinary course from a person in the business of selling manufactured homes. A person buys a manufactured home in the ordinary course if the sale to the person comports with the usual or customary practices in manufactured home retail sales or with the seller’s own usual or customary practices. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire a manufactured home under a preexisting contract for sale. Only a buyer that takes possession of the manufactured home or has a right to recover the manufactured home from the seller under [state’s version of Uniform Commercial Code Article 2] may be a buyer in ordinary course of business. “Buyer in ordinary course of business” does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.~~

(1) _____ (2) “Affidavit of affixation” is an instrument in recordable form that
includes the following:

(A) the affiant's name;

(B) the legal description of the manufactured home that is the subject of the
affidavit;

(C) a legally sufficient description of the land on which the home is or will be

1 affixed;

2 (D) if the affiant does not own the land on which the home is or will be affixed,
3 the landowner's name;

4 (E) the affiant's representations that:

5 (i) the affiant owns the home;

6 (ii) the home is or will be affixed on the land described in the affidavit;

7 and

8 (iii) the affiant owns the land on which the home is or will be affixed or
9 has the landowner's permission to affix the home on the land;

10 (F) the date of the affidavit; and

11 (G) the signature of the affiant or the affiant's representative.

12 (2) "Affixed" means that the towing hitch, wheels, and axles to a manufactured home
13 have been removed and the home has electricity supplied by a utility or by other means. A home
14 is affixed even if the electric supply is stopped subsequently.

15 (3) "Electronic" means relating to technology having electrical, digital, magnetic,
16 wireless, optical, electromagnetic, or similar capabilities.

17 ~~—— (3) "Installed" means that the wheels and axles to a manufactured home have been~~
18 ~~removed and the home has electricity supplied by a utility or by any other means. A home will~~
19 ~~continue to be "installed" within the meaning of this section though the electric supply~~
20 ~~subsequently is stopped.~~

21 (4) "Legal description of the manufactured home" is the home's manufacturer, make,
22 model designation, model year, ~~identification number, length, and width~~ and any serial numbers.

23 (5) "Manufactured home" or "manufactured housing" means a structure ~~manufactured~~

1 ~~before, on, or after June 15, 1976, including the plumbing, heating, air-conditioning, and~~
2 ~~electrical systems contained in the structure, that is~~ transportable in one or more sections, ~~which,~~
3 ~~and (A)~~ in the traveling mode, is eight body feet or more in width or 40 body feet or more in
4 length, ~~and which;~~ (B) is built on a permanent chassis and is designed to be used as a dwelling
5 with or without a permanent foundation when connected to the required utilities, ~~and includes the~~
6 ~~plumbing, heating, air conditioning, and electrical systems contained therein; but the terms do~~
7 ~~not include any;~~ and (C) is not a self-propelled recreational vehicle.

8 (6) "Person" means an individual, corporation, business trust, estate, trust, partnership,
9 limited liability company, association, joint venture, public corporation, government or
10 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

11 (7) "Record" means information that is inscribed on a tangible medium or that is stored
12 in an electronic or other medium and is retrievable in perceivable form.

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

15 (9) "Security interest" means an interest in real property or in personal property that
16 secures payment or performance of an obligation.

17 (10) "Sign" means, with present intent to authenticate or adopt a record:

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

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

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

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

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

Comment

~~Paragraph (1) is based on Uniform Commercial Code § 1-201. The definition relates to Section 8(a) specifies the requirements for an affidavit of this act affixation, which deals with the enforceability of preexisting liens on is recorded in the land records when a manufactured home against a buyer in ordinary course of business becomes real property pursuant to Sections 3, 4, or 6.~~

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

~~Paragraph (3)~~ identifies when a manufactured home has become sufficiently connected to land and unlikely to be moved that the home becomes real property. In considering alternatives, the drafting committee stressed the need for a standard that is objective, easy to verify, and achievable in all jurisdictions and by all manufactured ~~home owners~~ homeowners. 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 ~~drafting~~ committee determined that removal of the ~~towing hitch~~, wheels, and axles and connection to a source of electricity constitute a sufficient connection to the land and a standard that is objective, readily verifiable, and universally achievable.

Paragraph (3) is the standard Uniform Law Commission definition of “electronic”.

Paragraph (4) includes the information that most state statutes require in conveyance documents for manufactured homes. **The “serial number” is the vehicle identification number (VIN). Manufactured homes built before June 15, 1976 do not have a serial number.**

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~~**Uniform Commercial Code. However, this act’s definition differs** from the Article 9 definition in two ways:

- Although the Article 9 definition is based on the federal definition, Article 9 omits a clause that the federal definition includes—“and except that such term shall not include any self-propelled recreational vehicle.” Although that exclusion is appropriate for Article 9, it is inappropriate for purposes of this act. Therefore, that clause is in this act’s definition.

- The federal and Article 9 definitions of “manufactured home” include only homes built on or after June 15, 1976, which was the effective date of HUD’s construction standards for them. This act’s definition also includes homes built before that date, which technically are called “mobile homes”. ~~To make clear that this act applies to mobile homes, as well as to manufactured homes, Paragraph (5) provides that this act’s definition of “manufactured home” includes homes manufactured at any time.~~

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

This act’s “manufactured home” definition does not require a minimum square footage because neither the federal definition nor the Article 9 definition requires it.

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

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

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

Paragraph (11) is the standard Uniform Law Commission definition of “state”.

SECTION 3. RETAIL SALE OF ~~NEW~~ MANUFACTURED HOME.

(a) ~~A manufactured home~~ In this section, “retailer” means a person that, in the ordinary course of business, sells a new manufactured homes to buyers who buy the home for occupancy as a residence.

(b) In this section, “manufactured home shall transfer title to the home by a deed in” means a document that satisfies the requirements for a recordable form if the home is or will be installed on land in this state. The retailer may not deliver the deed until the home has been delivered to that land. The deed must include the following and that includes:

(1) the retailer’s and buyer’s names;

(2) the legal description of the manufactured home;

(2) a legally sufficient description that is the subject of the land on which the home is or will be installed;

(3) if the transferee does not own the land on which the home is or will be installed, the landowner’s name;

(4) the home is new, the home manufacturer’s address; [and] [—]

(5) (4) the retailer’s warranties that its title to the home is good and, its transfer rightful, and that the home is free from any security interest or other lien or encumbrance that is not listed as an exception on the manufactured home deed [—]; and;

(5) the date of the deed;

(6) the signature of the retailer or of the retailer’s representative; and

(7) as an attachment to the deed, (A) the manufacturer’s certificate or statement of origin; if the home is new or (B) if the home is not new, the document by which the retailer

1 acquired title to the home and every other document that conveyed title to the home since it was
2 severed from the land on which it was last affixed, if any.

3 ~~(b) When the home is installed or the deed is filed for recording, whichever occurs first,~~
4 ~~the home becomes real property for all purposes from the time the~~(c) A retailer that sells a
5 manufactured home shall transfer title ~~was transferred. The~~ by a manufactured home deed if the
6 home is or will be ~~real property even if the deed does not satisfy all the requirements of this~~
7 ~~section; but, to be valid, the deed must include the legal description of the~~affixed on land in this
8 state.

9 (d) The buyer of a manufactured home ~~and a legally sufficient description that is subject~~
10 to this section shall record an affidavit of affixation, together with the manufactured home deed,
11 in the land records of the ~~land on [county, municipality, or other recording jurisdiction] in~~ which
12 the home is or will be ~~installed~~affixed.

13 (ee) ~~The~~ The sale of a manufactured home that is subject to this section also is subject to
14 ~~[state's~~state version of ~~Article Two of the~~ Uniform Commercial Code, Article 2]; except that the
15 ~~transferor~~retailer cannot disclaim the warranties provided in subsection ~~(a)(5b)(4).~~

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

18 ~~—— (1) the legal description of the manufactured home;~~

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

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

22 [(f) If the purchase of a manufactured home that is subject to this section is financed in
23 whole or in part with a loan that is secured by the home, the security interest in the home must be

1 conveyed by a (mortgage) (deed of trust) (mortgage or deed of trust). If the home is financed as
2 a chattel, the lender shall be subject to all the remedies and penalties available to a consumer and
3 the attorney general under (state consumer protection statute).]

4 **Comment**

5 *When Manufactured ~~Home Converts to Real~~Home's Property Classification Changes*

6 While a manufactured home is part of a dealer's inventory, the home is personal property.
7 ~~Subsection (b) provides two methods by which~~When the retailer sells the home ~~converts to a~~
8 ~~buyer that affixes it on land, the home becomes~~ real property—~~the home~~ pursuant to Section
9 8(b). "Affixed" is installed, as defined in Section 2(3), or the deed to 2). ~~If the home is filed for~~
10 ~~recording, which, pursuant to subsection (a), cannot occur before the home is delivered to the~~
11 ~~land on which it will be installed. The latter method, filing the deed for recording, has the~~
12 ~~advantage of being readily ascertainable. However, an owner may fail to file for a variety of~~
13 ~~reasons, including in an attempt to avoid paying real~~subsequently severed from the land, it again
14 becomes personal property ~~taxes. Therefore, a home also. If it is later reaffixed on land, it again~~
15 ~~becomes real property when its wheels and axles have been removed and electric service has~~
16 ~~been supplied. When these two events occur, the home is extremely unlikely to be moved.~~
17 ~~These two events are useful conversion standards because they normally also can be readily~~
18 ~~ascertained.~~

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

29 ~~Some states that permit a manufactured home on leased land to be classified as real~~
30 ~~property require the landowner's consent to the real property classification. E.g., Ariz. Rev. Stat.~~
31 ~~§ 33-1501; Or. Rev. Stat. § 446.626. This requirement is unnecessary because, as provided in,~~
32 ~~Section 8(b)5 of this act, title to the home and to the land remain distinct, and because, as~~
33 ~~provided in deals with severance, and Section 10, the home and the land are valued and taxed~~
34 ~~separately6 deals with reaffixation.~~

35 ~~Another restriction in some states is that the land lease must have a minimum statutorily-~~
36 ~~specified term. E.g., Cal. Health & Safety Code § 18551(a)(1)(A) (thirty-five years); Colo. Rev.~~
37 ~~Stat. § 38-29-202(1)(d) (ten years); Fla. Stat. § 319.261 (thirty years); Or. Rev. Stat. § 446.626(1)~~
38 ~~(twenty years); S.C. Code § 56-19-510 (thirty-five years). This restriction addresses the concern~~
39 ~~that the owner will have to move the home in the relatively short term because, for example, the~~

1 lease term has expired and the tenant cannot afford a rent increase. However, even if the lease is
2 for a long term, it can provide for periodic rent increases and for early termination, such as upon
3 the tenant's default. Moreover, when a lease terminates, the home usually is left in place and is
4 sold to a new owner, because the cost of moving and the potential for damage are so great. A
5 minimum lease term requirement also hampers the sale or refinancing of a manufactured home
6 when the remaining term on the less has fallen to less than the statutorily specified minimum.
7 Although the length of the lease term is a loan underwriting consideration, it is an unnecessary
8 restriction on the ability to classify a manufactured home as real property, as evidenced by the
9 jurisdictions that do not require a minimum term. *E.g.*, Conn. Gen. Stat. § 21-67a; Mont. Code
10 § 15-1-116(1); N.H. Rev. Stat. § 477:44, subp. I; 10 Tex. Admin. Code § 80.2 (no minimum term
11 required if each lienholder has approved the real property classification; otherwise, lease term
12 must be at least five years).

13 *Relation Back of Real Property Classification*

14 In addition to specifying when the home converts to real property, **subsection (b)**
15 includes a relation back provision. Based on this provision, when the home converts to real
16 property, it is treated as having been real property from the time the retailer delivered the deed.
17 Pursuant to subsection (a), the retailer cannot deliver the deed until the home has been delivered
18 to the land on which it will be installed. This relation back provision is designed to make the
19 home real property at the time of sale so that purchase money mortgage financing is more readily
20 available.

21 *Deed to Transfer Chain of Title to Manufactured Home*

22 ~~Because~~In approximately forty-two states, title to a manufactured home is evidenced by a
23 certificate of title that a department of motor vehicles or other government agency issues. In
24 those states that permit a manufactured home to be converted to real property, the relation back
25 provision will make owner must go through a cumbersome title conversion process. Thereafter,
26 documents affecting title to the home real property from are recorded in the time and records,
27 rather than with the retailer transfers title government agency that maintains the manufactured
28 home records. If a statutory title conversion process is unavailable, the owner must establish that
29 the home has become a fixture.

30 To eliminate the necessity for the issuance of a certificate of title and for a title
31 conversion process and to establish a single chain of ownership for a manufactured home that is
32 affixed on land, **subsection (ac)** requires the retailer to transfer title by a manufactured home
33 deed in recordable form. As provided in **subsection (b)**, the deed must satisfy the state's usual
34 legal requirements for the transfer of Under Section 8(d), all future conveyances of a right, title,
35 or interest in the home while it remains real property. ~~Because the deed is conveying a~~
36 ~~manufactured home, rather than a site-built home, the information specified in subsections~~
37 ~~(a)(1) [(5)][(6)] also must be included in the deed. However, must be made in accordance with~~
38 ~~the failure to include this additional information will not prevent the home from becoming real~~
39 ~~property, so long as the deed satisfies the state's other legal requirements laws. For example, a~~
40 ~~deed is used to convey title, and a mortgage or deed of trust is used to create a security interest.~~
41 ~~If the home is severed, Section 5 requires the owner to record an affidavit of severance in the~~
42 ~~land records of the jurisdiction from which the home is being moved. If the owner subsequently~~

1 reaffixes the home on land, Section 6 requires the owner to record an affidavit of affixation in the
2 land records of the jurisdiction in which the home is reaffixed. This affidavit must include the
3 recording information for the deed or affidavit of affixation for the home's previous location.

4 ~~Subsection (a)(5) is based on U.C.C. § 2-312(1). It is intended to prohibit the retailer~~
5 ~~from disclaiming these warranties, though Article 2 permits disclaimer.~~

6 ~~Subsection (a) includes alternative language because some states do not require a~~
7 ~~manufacturer's certificate or statement of origin.~~

8 *Manufactured Home Becomes Real Property for All Purposes*

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

17 *Applicability of Article 2Two of ~~the~~ Uniform Commercial Code*

18 Substantial authority exists that Article Two of the Uniform Commercial Code governs
19 the sale of a manufactured home, though it will be affixed ~~to~~on land before the sale is
20 consummated. *E.g., Joswick v. Chesapeake Mobile Homes, Inc.*, 765 A.2d 90 (Md. 2001); *Reece*
21 *v. Homette Corp.*, 429 S.E.2d 768 (N.C. Ct. App. 1993); *Osburn v. Bendix Home Systems, Inc.*,
22 613 P.2d 445 (Okla. 1980); *Duffee v. Judson*, 380 A.2d 843 (Pa. Super. Ct. 1977); *Long v.*
23 *Quality Mobile Home Brokers, Inc.*, 248 S.E.2d 311 (S.C. 1978); *Paskell v. Nobility Homes, Inc.*,
24 871 S.W.2d 481 (Tenn. 1994); *Apeco Corp. v. Bishop Mobile Homes, Inc.*, 506 S.W.2d 711
25 (Tex. App. 1974). However, these opinions do not specify whether relevant state law classified
26 the home as real property after it was affixed ~~to~~on land but before consummation of the sale.
27 Therefore, **subsection (ee)** is intended to eliminate any question concerning the applicability of
28 Article 2 to retail sales of ~~new~~ manufactured homes after [day before act's effective date]. The
29 only exception is that the transferor cannot disclaim the warranties provided in subsection
30 ~~(a)(5b)(4)~~, though Article 2 permits disclaimer.

31 *Manufactured Home Financed as Real Property*

32 A primary goal of this uniform act is to increase the affordability and availability of
33 financing for manufactured homes. Currently, most loans for manufactured homes are chattel
34 loans, though the interest rates on real property loans for manufactured homes are substantially
35 lower. Moreover, the term of a real property loan normally is significantly longer than for a
36 chattel loan. The combination of a lower interest rate and longer term causes the monthly
37 payments on a real property loan to be substantially less than on a chattel loan.

38 The less favorable terms for manufactured home chattel loans are attributable in part to a
39 relative lack of availability and, therefore, a relative lack of competition. Far fewer lenders make

1 manufactured home chattel loans than make real property loans on those homes. Additionally,
2 many home buyers are steered by the retailer to a chattel lender.

3 The absence of a secondary market for chattel loans on manufactured homes also
4 substantially hinders credit availability. Although Fannie Mae purchases manufactured home
5 loans, its purchase program is limited to loans secured by manufactured homes that are classified
6 as real property. By characterizing all manufactured homes as real property, Fannie Mae's
7 purchase program could greatly expand, thereby increasing capital and decreasing interest rates.
8 Moreover, Fannie Mae has stated that it will standardize underwriting, valuation, and
9 documentation for manufactured home real property loans, which will facilitate the secondary
10 market in the same ways as for the secondary market for site-built home loans.

11 Therefore, to increase credit affordability and availability, subsection (f) provides that, if
12 a manufactured home purchase is financed with a loan secured by the home, the security interest
13 in the home must be conveyed by a mortgage or deed of trust. The alternative language is
14 included in subsection (f) because states differ on whether only mortgages, only deeds of trust, or
15 both can be used to secure real property loans.

16 *Representative State Laws Permitting Real Property Classification at Time of Retail Sale*

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

36 **SECTION 4. MANUFACTURED HOME ~~ACQUIRED BEFORE [ACT'S~~** 37 **~~EFFECTIVE DATE]~~FOR WHICH NO AFFIDAVIT OF AFFIXATION HAS BEEN** 38 **RECORDED IN THIS STATE.**

39 ~~————(a) If a manufactured home owner, other than a manufactured home retailer,~~

1 ~~acquired the home before [act's effective date] and if the home is installed~~affixed on land in this
2 state, ~~the owner may file a certificate for which an affidavit of location~~affixation has not been
3 recorded under Section 3, the homeowner may file an affidavit of affixation for recording in the
4 land records of the [county, municipality, or other recording jurisdiction] in which the home is
5 ~~installed~~affixed. The ~~certificate~~affidavit must include ~~the following~~:

6 ~~_____ (1) the date of the certificate;~~

7 ~~_____ (2) the owner's name;~~

8 ~~_____ (3) the name of the person from which the owner acquired the home;~~

9 ~~_____ (4) the date that the owner acquired the home;~~

10 ~~_____ (5) the legal (3) a description of the manufactured home; any tenancy or security~~
11 interest or other encumbrance on the title to the home; and

12 ~~_____ (6) a legally sufficient description of the land on which the home is installed;~~

13 ~~_____ (7) if the owner does not own the land on which the home is installed, the~~
14 ~~landowner's name; [and] [—]~~

15 ~~_____ (8) the signature of the home owner or a duly authorized representative[.]; and,~~

16 ~~_____ (9) (4) as an attachment to the certificate~~affidavit, the manufacturer's certificate
17 or statement of origin ~~or,~~ the certificate of title that evidences the owner's ownership of the
18 home ~~+~~, or the original deed or certified copy of the deed by which the owner acquired title to
19 the home.

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

1 ~~—————(c) (b)~~ If a manufactured home owner, other than a manufactured home retailer,
2 acquired the home before [act's effective date] and if the home is installed on is moved from
3 another state to a parcel of land in this state ~~when the owner transfers title to the home, the~~
4 ~~owner~~ to be affixed, the homeowner shall ~~deliver a deed~~ file an affidavit of affixation in
5 ~~recordable~~ the form ~~to the transferee. The deed must include the following:~~

6 ~~—————(1) the legal description of the manufactured home;~~

7 ~~—————(2) a legally sufficient description of the land on which the home is installed;~~
8 ~~{and} [—]~~

9 ~~—————(3) if the transferee does not own the land on which the home is installed, the~~
10 ~~landowner's name[.]];~~ and,

11 ~~—————(4) if the transferor has not previously filed a certificate of location for recording,~~
12 ~~the manufacturer's certificate or statement of origin or the certificate of title that evidences the~~
13 ~~transferor's ownership of the home, as an attachment to the deed.]~~

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

19 ~~(e) All subsequent transfers of a right, title, or interest and in the home must be~~
20 ~~made~~ place provided in accordance with applicable real property law and must include the
21 ~~following:~~ subsection (a). The owner must file the affidavit not later than ten days after the home
22 is affixed in this state.

23 ~~—————(1) the legal description of the manufactured home;~~

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

4 **Comment**

5 ~~Subsections (a) and (b) make the act voluntarily retroactive. If the owner of a pre-act home~~
6 ~~wants to convert **Legislative Note:** *If the state uses electronic certificates of title, it to real*~~
7 ~~property, these paragraphs will be necessary to provide the means a method for obtaining a~~
8 ~~certified copy to attach to the affidavit of affixation.~~

9 **Comment**

10 ~~Subsection (a) applies to do so a manufactured home acquired before the act's effective~~
11 ~~date and to new homes acquired after the act's effective date but not for immediate affixation. It~~
12 ~~provides the method to convert the home to real property. Accord Or. Rev. Stat. § 446.626(1);~~
13 ~~Tex. Occ. Code § 1201.214. Compare Colo. Rev. Stat. Code § 1201.214. Compare Colo. Rev.~~
14 ~~Stat. §§ 38-29-112(1.5), 38-29-118 (home owner homeowner must file certificate of permanent~~
15 ~~location to reclassify home as real property when home is permanently affixed to land even if~~
16 ~~owner purchased before law's effective date; recognizing that an owner may not comply with~~
17 ~~this requirement, a subsequent purchaser of the home must file certificate of permanent location).~~

18 ~~Subsection (c) requires a person who acquired a manufactured home before the act's~~
19 ~~effective date to transfer title to it by deed if the home is installed on land in this state. The deed~~
20 ~~must satisfy the state's usual legal requirements for the transfer of real property. Because the~~
21 ~~deed is conveying a manufactured home, rather than a site-built home, the information specified~~
22 ~~in subsections (c)(1) [(3)][(4)] also must be included in the deed. However, the failure to include~~
23 ~~this additional information will not prevent the home from becoming real property, so long as the~~
24 ~~deed satisfies the state's other legal requirements. If the seller is a manufactured home retailer,~~
25 ~~the terms of the deed are governed by Section 3, rather than by this section.~~

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

31 ~~Alternative language is included in subsections (a) and (c) because some states do not~~
32 ~~require a manufacturer's certificate or statement of origin or a certificate of title.~~

33 ~~Installed~~ **Subsection (b) applies to a manufactured home moved to this state from**
34 **another state. It requires the homeowner to convert the home to real property.**

35 **"Affixed" is defined in Section 2(32).**

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

SECTION 5. SEVERANCE OF MANUFACTURED HOME.

(a) ~~Before~~Not later than ten days after a manufactured home is severed and moved from a location for which ~~a deed or certificate~~an affidavit of ~~location~~affixation has been filed for recording, the ~~home owner~~homeowner shall file ~~a certificate~~an affidavit of severance for recording in the ~~same~~ land records in which the affidavit was recorded. The ~~certificate~~affidavit must include the following:

(1) the ~~home owner's~~homeowner's name;

(2) the legal description of the ~~manufactured~~ home;

(3) a legally sufficient description of the land from which the home is or will be severed;

(4) if the homeowner does not own the land from which the home is or will be severed, the landowner's name;

(5) a statement that the home is going tohas been or will be ~~severed and~~ moved;

~~(56)~~ the ~~approximate~~ date that the home has been or will be moved;

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

(8) if the owner of the home at the new location is different than the owner at the location from which the home has been or will be severed ~~and moved~~, the name of the new owner;

~~(69)~~ the recording information for the ~~current~~most recent deed or ~~certificate~~affidavit of ~~location~~affixation for the home; and

~~(710)~~ the signature of the ~~home owner~~homeowner or ~~its duly authorized~~the

1 homeowner's representative.

2 (b) A homeowner may not sever the manufactured home unless the holder of every
3 security interest or other encumbrance on the home consents.

4 (c) If a manufactured home for which ~~a deed or certificate~~an affidavit of
5 ~~location~~affixation has been filed for recording is on land that the ~~home owner~~homeowner does
6 not own, the landowner ~~cannot sever the home until the landowner files a certificate~~shall file an
7 affidavit of severance, together with a certified copy of any required judgment or order
8 authorizing the landowner to sever the home as an attachment to the affidavit, for recording in
9 the same land records. The landowner, rather than the ~~home owner~~homeowner, shall sign the
10 ~~certificate~~affidavit of severance. The landowner shall file the affidavit not later than ten days
11 after severing the home. The landowner need not obtain the consent of the holder of a security
12 interest or other encumbrance on the home.

13 ~~—— (e) The recorder shall record and index the certificate of severance, together with the~~
14 ~~certified copy of any required judgment or order, and shall deliver the recorded certificate to the~~
15 ~~person that owned the home when the certificate was filed. When the certificate of severance is~~
16 ~~[filed, the recorder] [recorded and delivered, the person to which it is delivered] shall deliver a~~
17 ~~copy of it to the property tax assessor for that jurisdiction.~~

18 ~~—— (d) Severance of a home does not impair a~~ **Comment**
19 **Subsections (a) & (b) deal with a homeowner's severance of its manufactured home. Before**
20 **severing the home, the owner must obtain the consent of every holder of a security interest or**
21 **other encumbrance on the** ~~title to the home that existed immediately before the severance.~~
22 **When. Not later than ten days after** the home is ~~moved to another parcel of land:~~

1 ~~_____ (1) the preexisting security interest or other encumbrance on the title to the home~~
2 ~~has priority over any right, title, or interest in or to the land to which the home is moved; and~~

3 ~~_____ (2) upon default, the holder of a preexisting security interest that~~
4 ~~encumbers both the home and the land from which it was severed, must exercise its rights and~~
5 ~~moved, the owner must file an affidavit of severance for recording in the land records in the land~~
6 ~~before it exercises its right to recover any remaining unpaid debt from the homewhich the~~
7 ~~affidavit of affixation was recorded.~~

8 **Comment**

9 **Subsection (a)** deals with a home owner's severance of its home.

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

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

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

31 **Subsection (d)** also provides that, if the home is moved, the security interest or other
32 encumbrance on the title to the home has priority over any interests in the land to which it is
33 moved. Additionally, upon default, the security interest holder first must exercise any rights that
34 it has in the land from which the home was severed. If the action against the land does not
35 generate enough proceeds to repay the secured debt, the lender then can exercise its rights in the
36 home. To maintain a chain of ownership in the land records when a manufactured home is
37 severed and moved, subsection (a)(7) provides that the affidavit of severance must include a
38 legal description of the land to which the home is being moved. Additionally, if ownership of
39 the home will change when the home is severed, subsection (a)(8) provides that the affidavit

1 must include the new owner's name.

2 Subsection (c) deals with a landowner's severance from its land of a home that it does
3 not own. For example, subsection (c) applies when a landowner leases the land to a
4 manufactured homeowner that fails to remove the home when the land lease terminates.

5 ~~—Accord *Johnson v. Bratton*, 70 N.W. 1021 (Mich. 1897); *Partridge v. Hemenway*, 50~~
6 ~~N.W. 1084 (Mich. 1891); *Hamlin v. Parsons*, 12 Minn. 108 (1866); *Dakota Loan & Trust Co. v.*~~
7 ~~*Parmalee*, 58 N.W. 811 (S.D. 1894).~~

8 *Representative State Statutes*

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

11 *Colorado* requires the ~~home-owner~~homeowner to file a certificate of removal with the
12 county clerk and recorder for the county where the home is located. Colo. Rev. Stat. § 38-29-
13 203(1)(a) & (b). Within twenty days after the location change, the owner must file a notice of
14 the change with the county assessor and the county treasurer for the counties from which and to
15 which the home has been moved. § 38-29-143. A landlord that is evicting a tenant can record a
16 certificate of removal. § 38-29-203(2.5)(b). All lienholders must consent to the removal. If a
17 lienholder does not consent, the ~~home-owner~~homeowner can file a bond in an amount equal to
18 150% of the secured amount. Colo. Rev. Stat. § 38-29-203(4).

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

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

34 *Montana* requires the owner to file a statement of reversal of declaration with the county
35 clerk and recorder of the county in which the home is located. All lienholders must consent to
36 the reversal. The clerk and recorder must forward a copy of the statement to the Department of
37 Justice (“Department”; entity responsible for titling manufactured homes). The Department must
38 give the owner a restored certificate of origin or certificate of title. After receiving the fee for a
39 new certificate of title, the county treasurer must forward the statement of reversal of declaration
40 to the Department. The Department then must give the owner a statement in recordable form

1 that the process of converting the home has been completed. The owner then must record the
2 statement. Mont. Code § 15-1-118.

3 | *New Hampshire* requires an owner that is relocating a home within the state to record a
4 deed evidencing the change of location in the land records of the counties from which and to
5 which the home is moved. If the home is moved outside the state, the owner must record a
6 statutorily-prescribed relocation statement in the land records of the county from which the home
7 is moved. The home cannot be moved out of state unless all lienors give written consent on the
8 transfer statement. If the home is on leased land, the landowner's written consent also is
9 required whether the owner is relocating the home inside or outside the state, because the
10 landowner has a right to a lien for any unpaid rent. The consent requirement alerts the
11 landowner to file a lien before the home is moved to another jurisdiction. N.H. Rev. Stat.
12 § 477:44, subp. II.

13 | In *Oregon*, a manufactured home that is classified as real property cannot be moved
14 unless the Department of Consumer and Business Services, the agency that titles manufactured
15 homes, approves the move and the county assessor issues a "trip permit". The department
16 cannot approve an application to move a home to another county unless all taxes and special
17 assessments have been paid. If the department approves the move, it must issue an ownership
18 document and must deliver it to the holder of the most senior security interest in the home or, if
19 none, to the owner. The department also must send a copy of the ownership document to any
20 other security interest holder and to the county assessor for the county to which the home is to be
21 moved. Or. Rev. Stat. § 446.631.

22 | **SECTION 6. RELOCATION OF MANUFACTURED HOME.** If a manufactured
23 home, for which an affidavit of affixation has been filed for recording in this state, is moved and
24 affixed on another parcel of land in this state, the following rules apply:
25 ~~——(a) If a manufactured home is moved from a parcel of land in this state for which a deed~~
26 ~~or certificate of location has been filed for recording to another parcel of land in this state on~~
27 ~~which the home will be installed or otherwise located and if the same person owns the home~~
28 ~~before and after it is moved, that person shall file a certificate of location~~Not later than ten days
29 after the home is affixed, the homeowner shall file an affidavit of affixation for recording in the
30 land records of the [county, municipality, or other recording jurisdiction to] in which the home is
31 ~~moved~~affixed. The ~~certificate must be filed for recording within ten days after the home is~~
32 ~~delivered to its new location. The certificate~~affidavit must include the following:

33 | ~~——(1) the date of the certificate;~~

~~_____ (2) the home owner's name;~~

~~_____ (3) the legal description of the manufactured home;~~

~~_____ (4) a legally sufficient description of the land on which the home will be installed or otherwise located;~~

~~_____ (5) if the owner does not own the land on which the home will be installed or otherwise located, the landowner's name;~~

~~(6) the recording information for the most recent deed or certificate affidavit of location affixation for the home's home at its previous location; and,~~

~~_____ (7) (b) If the signature owner of the home owner or its duly authorized representative.~~

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

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

~~_____ (1) the legal description of the manufactured home;~~

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

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

5 ~~_____ (4) the recording information for the deed or certificate of~~
6 ~~severed from the former location for the home's previous location.~~

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

13 ~~_____ (e) When a manufactured home from another state is moved to a land in this state to be~~
14 ~~installed, the home owner shall file a certificate of location for recording in the land records of~~
15 ~~the jurisdiction in which the home is or will be installed. The owner must file the certificate~~
16 ~~within ten days after the home is delivered to land in this state. The certificate must include the~~
17 ~~following:~~

18 ~~_____ (1) the date of the certificate;~~

19 ~~_____ (2) the owner's name;~~

20 ~~_____ (3) the name of the person from which the owner acquired the home;~~

21 ~~_____ (4) the date that the owner acquired the home;~~

22 ~~_____ (5) the legal description of the manufactured home;~~

1 ~~_____ (6) a legally sufficient description of the land on which the home is or will be~~
2 ~~installed;~~

3 ~~_____ (7) if the owner does not own the land on which the home is or will be installed,~~
4 ~~the landowner's name;~~

5 ~~_____ (8) a description of any tenancy, security interest, or other encumbrance on the~~
6 ~~title to the home; [and] [—]~~

7 ~~_____ (9) the signature of the home owner or its authorized representative[.]; and,~~

8 ~~_____ (10) was last affixed must be recorded as an attachment to the certificate,~~
9 ~~the manufacturer's certificate or statement of origin or the certificate of title that evidences the~~
10 ~~owner's ownership of the home.]affidavit of affixation.~~

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

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

16 17 Comment

18 ~~**Subsections (a) and (b) deal**~~This section deals with intrastate manufactured home
19 relocations. ~~**Subsection (c)**~~Section 4(b) deals with interstate home relocations. If the home is
20 being moved in connection with a retail sale, Section 3 applies.

21 ~~**Subsections (a) and (b) are**~~This section is designed to maintain a single ~~recorded~~record
22 chain of title for ~~a manufactured home~~homes that ~~has been brought into the real property~~are
23 subject to this act. The chain begins with the recording system by a deed or certificate of
24 location, of a deed and affidavit of affixation in the land records pursuant to Section 3 or of an
25 affidavit of annexation pursuant to Section 4 and continues with the recording of any deeds
26 subsequently given to transfer title to the home. If the home is moved from the land on which it
27 was originally affixed, Section 5 requires the home ownerhomeowner to record a certificatean
28 affidavit of severance in the old location. This section that location. The affidavit of severance
29 must identify the land to which the home is being moved and the name of the new owner, if any.
30 When the home is reaffixed, this section requires the owner to record a deed or certificate of
31 location in the new location. To maintain the record chain, the document recorded an affidavit of

1 affixation in the new location ~~must include~~that includes the recording information for the most
2 recent deed or ~~certificate~~affidavit of ~~location recorded in~~affixation at the former location.

3 ~~Subsections (a) and (b) have to address the possibility that the home~~ When the home is
4 severed, it becomes personal property unless and until it is reaffixed on land. As personal
5 property, title will not be ~~installed at the new location~~. For example, a home might be moved to
6 a dealership for resale~~transferred by a deed~~. Therefore, these subsections require the recording
7 of a deed or certificate of location for the new location when the home is “installed or otherwise
8 located”. ~~In this way, to maintain~~ an unbroken chain of title ~~will appear~~ in the land records. ~~For~~
9 the same reason, subsections (a) and, subsection (b) also require~~provides~~ that ~~all subsequent~~
10 ~~transfers of each document that conveyed~~ title to the home while it was personal property must
11 be by deed. ~~Accord~~ N.H. Rev. Stat. Ann. § 477:44, subp. H recorded as an attachment to the
12 affidavit of affixation. Maintaining a single chain of title ~~in the land records~~ when at the home is
13 ~~not installed on the land to which it is moved~~severed and reaffixed eliminates the time and
14 expense of creating a new chain of title when the home is severed with the government agency
15 that currently maintains ~~certificates of title~~ records for manufactured homes and another new
16 chain when the home is again installed on land. A single chain of title also simplifies title
17 searches.

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

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

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

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

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

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

39 Representative State Statutes

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

3 | Within twenty days after relocation, *Colorado* requires the ~~home owner~~homeowner to file
4 | a notice of relocation with the county assessor and the county treasurer for the counties from
5 | which and to which the home has been moved. Colo. Rev. Stat. § 38-29-143. When the home is
6 | permanently affixed at the new location, the owner must file a certificate of permanent location.
7 | § 38-29-118.

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

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

16 | **SECTION 7. ~~RECORDING DEED OR CERTIFICATE OF LOCATION.~~ When a**
17 | ~~manufactured home deed or certificate of location is filed, the recorder shall record and index it.~~
18 | ~~If a manufacturer’s certificate or statement of origin or certificate of title is filed with the deed or~~
19 | ~~certificate of location, the recorder shall record and index them as one document and then shall~~
20 | ~~destroy the manufacturer’s certificate or statement of origin or the certificate of title. The~~
21 | ~~recorder shall deliver the recorded deed or certificate of location to the home owner. The~~
22 | ~~[recorder shall deliver a copy of the deed or certificate of location] [home owner shall deliver a~~
23 | ~~copy of the recorded deed or certificate of location] to the property tax assessor. If a~~
24 | ~~manufacturer’s certificate or statement of origin or certificate of title is filed with the deed or~~
25 | ~~certificate of location, the [recorder also shall deliver a copy of the deed or certificate of~~
26 | ~~location] [home owner also shall deliver a copy of the recorded deed or certificate of location] to~~
27 | ~~the [government agency that maintains manufactured home title records].~~ **RECORDING.**

28 | (a) When a deed to a manufactured home, an affidavit of affixation, or an affidavit of
29 | severance is filed, the recorder shall record and index it, together with any attachments. If a

1 manufacturer's certificate or statement of origin or a certificate of title was filed as an attachment
2 to the deed or affidavit of affixation, the recorder shall stamp or make a notation on it that it is no
3 longer valid.

4 (b) The recorder shall deliver the recorded deed or affidavit of affixation to the
5 homeowner. The [recorder shall deliver a copy of the deed or affidavit] [homeowner shall
6 deliver a copy of the recorded deed or affidavit] to the property tax assessor for the jurisdiction
7 in which the home is located. If a manufacturer's certificate or statement of origin or certificate
8 of title is filed with the deed or affidavit, the [recorder also shall deliver a copy of the deed or
9 affidavit] [homeowner also shall deliver a copy of the recorded deed or affidavit] to the
10 [government agency that maintains manufactured home title records].

11 (c) The recorder shall deliver the recorded affidavit of severance to the person that
12 filed it. When the affidavit is [filed, the recorder] [recorded and delivered, the person to which it
13 is delivered] shall deliver a copy of it to the property tax assessor for the jurisdiction from which
14 the home was severed.

15 **Comment**

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

1 assessor).

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

9 The possibility that a manufactured home transferor will fraudulently transfer title to the
10 home more than once is a significant practical concern. This wrongful practice is facilitated if
11 the transferor retains the ~~original ownership document~~manufacturer's certificate or statement of
12 ~~origin or certificate of title, if any.~~ Therefore, ~~this section~~subsection (a) requires delivery of ~~the~~
13 ~~original ownership document~~these documents to the recorder when the deed ~~or certificate of~~
14 ~~location is~~and affidavit are filed. ~~It also and~~ requires the recorder to ~~destroy the ownership~~
15 ~~document to prevent its future use~~mark them as being no longer valid. This section is based on
16 Colo. Rev. Stat. §§ 38-29-202(1)(c), 38-29-207.

17 Requiring the recorder, rather than the ~~home owner~~homeowner, to deliver a copy of the
18 deed ~~or certificate~~and affidavit of ~~location~~affixation to the tax assessor and to the titling agency,
19 if any, is more likely to ensure that delivery occurs. The ~~home owner~~homeowner may be
20 unaware of the delivery requirement or may ~~fail to deliver in an~~ attempt to avoid paying real
21 property taxes ~~by failing to deliver.~~ However, some jurisdictions prohibit the recorder from
22 delivering documents. Therefore, ~~this section~~subsection (b) includes alternative language that
23 requires the owner to do so. ~~Similarly, subsection (c) provides alternative language for an~~
24 ~~affidavit of severance.~~

25 **SECTION 8. ~~RIGHTS, TITLES~~RIGHT, TITLE, AND ~~INTERESTS~~INTEREST IN**
26 **MANUFACTURED HOME.**

27 ~~(a) A~~ When a manufactured home sale is subject to Section 3 and the buyer is a buyer
28 in ordinary course of business, the buyer takes free of a security interest created by the buyer's
29 seller pursuant to [~~state's~~state version of ~~U.C.C.~~Uniform Commercial Code, Article 9], even if
30 the security interest is perfected and the buyer knows of its existence.

31 ~~(b) If a manufactured home is installed on land~~ The buyer is a "buyer in ordinary course
32 of business" if it buys the home in good faith, without knowledge that the ~~home owner does not~~
33 ~~own, the landowner acquires no interest~~sale violates the rights of another person in the home,

1 and ~~the home is not subject to any tenancies, security interests, or other encumbrances in or on~~
2 ~~the title to the land.~~

3 ~~(c) A perfected security interest in a~~ in the ordinary course from a person in the business
4 of selling manufactured home ~~has priority over a conflicting interest of an encumbrancer or~~
5 ~~owner of the land on which it is installed if the debtor owns the land or an undivided interest in it~~
6 ~~and:~~

7 ~~————— (1) the security interest is~~ homes. A person buys a purchase-money security
8 ~~interest;~~

9 ~~————— (2) the interest of the encumbrancer or owner arises before the~~ manufactured
10 home ~~became real property; and~~

11 ~~————— (3) the security interest is perfected by (A) a fixture filing before the home~~
12 ~~becomes real property or within 20 days thereafter or (B) recording a [mortgage][deed of trust].~~

13 ~~———— (d) A perfected security interest in a~~ in the ordinary course if the sale comports with the
14 usual or customary practices in manufactured home ~~has priority over a conflicting interest of an~~
15 ~~encumbrancer or owner of the land on which it is installed if:~~

16 ~~————— (1) the debtor owns the land or an undivided interest in it and the security~~
17 ~~interest:~~

18 ~~————— (A) is perfected by a fixture filing or by recording a [mortgage][deed of~~
19 ~~trust] before the interest of the encumbrancer or owner is of record; and~~

20 ~~————— (B) has priority over any conflicting interest of a predecessor in title of~~
21 ~~the encumbrancer or owner;~~

22 ~~————— (2) the security interest:~~

1 ~~_____ (A) is created~~ retail sales or with the seller's own usual or customary
2 ~~practices. A buyer in a manufactured home in manufactured home transaction as defined~~
3 ~~by~~ ordinary course of business may buy for cash, by exchange of other property, or on secured or
4 unsecured credit, and may acquire a home under a preexisting contract for sale. Only a buyer
5 that takes possession of the home or has a right to recover the home from the seller under [state
6 version of U.C.C. § 9-102(54)]; and

7 ~~(a)(B) is perfected pursuant to a statute described~~ Uniform Commercial Code, Article 2]
8 may be a buyer in ordinary course of business. A person that acquires homes in [state version of
9 U.C.C. § 9-311(a)(2), the certificate of title provision]; or a transfer in bulk or as security for or in
10 total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

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

13 ~~(b)(e) A security~~ A manufactured home that is subject to the provisions of Section 3 or
14 Section 6 becomes real property for all purposes when it is affixed on land. A home that is
15 subject to the provisions of Section 4 becomes real property for all purposes when the affidavit
16 of affixation is filed for recording in the appropriate land records. The home is real property
17 even if the affidavit of affixation and the document by which the owner of the home acquired
18 title to it do not satisfy all the requirements of this [act]; but, to be valid, both documents must
19 include the legal description of the home and a legally sufficient description of the land on which
20 it is or will be affixed.

21 (c) When a manufactured home is affixed on land, title to the home remains separate
22 from the title to the land. The home is not subject to any security interest or other encumbrance
23 in or on the title to the land, and the land is not subject to any security interest or other

encumbrance in or on the title to the home.

(d) Each transfer of a right, title, or interest in a manufactured home, whether or not perfected, that is classified as real property must be made in accordance with applicable real property law and must include the legal description of the home and a legally sufficient description of the land on which the home is or will be affixed.

(e) If a manufactured home that has priority over a conflicting become real property is severed from the land on which it is affixed, the home becomes personal property [but does not require a certificate of title]. After becoming personal property, each transfer of a right, title, or interest of an encumbrancer or owner of the land on which it is installed if:

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

————— (2) the debtor has a right to remove the home as against the encumbrancer or owner in the home must be made in accordance with applicable personal property law until the home again becomes real property. Each transfer of a right, title, or interest in the home while it is personal property must include the legal description of the home.

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

————— (g) If the local law of this state governs the perfection of a tenancy, security interest, or other encumbrance on a manufactured home, a filing that has been made in while it is personal property or real property and if the encumbrance was [filed in the proper place in this state continues effective] [noted on the certificate of title for the home], it remains effective, retains the time and date of its priority, and provides the same rights and remedies, though the home's

classification as ~~real or~~ personal or real property or its location within this state, whichever controlled the original ~~[filing,]~~ [notation], is thereafter changed one or more times.

(hg) After a manufactured home is moved into this state and the owner files a ~~certificate~~ an affidavit of ~~location~~ affixation as provided in Section ~~6(e4(b))~~, subsequent purchasers for value of an interest in the home, including a security interest, acquire that interest free and clear of any tenancy, security interest, or other encumbrance that is not filed in the proper place in this state, unless ~~(i)~~:

(1) the subsequent purchaser has actual notice of the tenancy, security interest, or other encumbrance; ~~(ii)~~:

(2) the recorded ~~certificate~~ affidavit of ~~location~~ affixation describes the tenancy, security interest, or other encumbrance; ~~or (iii)~~

(3) the tenancy, security interest, or other encumbrance is filed in the proper place in this state within four months after the earlier of ~~(A)~~ the filing of the ~~certificate~~ affidavit of ~~location~~ affixation or ~~(B)~~ installation affixation of the home.

Comment

~~Subsection (a), together with the definition of “buyer in ordinary course of business” in Section 2(1),~~ describes the circumstances under which a ~~purchaser~~ buyer from a manufactured home dealer acquires title free of an Article 9 security interest that the dealer granted. Subsection (a) is based on U.C.C. §§ 1-201 & 9-320(a). If the manufactured home will not be affixed when purchased and, therefore, will remain personal property, these U.C.C. provisions concerning a buyer in ordinary course of business will apply, rather than subsection (a) of this [act].

~~Subsections (e)–(f) address the relative priorities of interests in a manufactured home and in the land on which it is installed. They are based on U.C.C. § 9-334, which deals with the priority of security interests in fixtures. Because the home potentially is subject to both real property and personal property security interests, Section 2(11) defines “security interest” to include both. These provisions apply both to a manufactured home that is installed on land for the first time and to a home that has been severed from another parcel of land. Consistent with the majority of cases, severance does not eliminate a preexisting lien from the title to the home, and the lien on the home is senior to any lien on the land to which it is moved. *Johnson v. Bratton*, 70 N.W. 1021 (Mich. 1897); *Mills v. Pope*, 4 P.2d 485 (1931).~~

~~Subsection (e) provides the circumstances in which a purchase-money security interest in a manufactured home has priority over previously created security or ownership interests in the land on which the home is installed. As noted in Comment 7 to § 9-334, this provision does not protect the purchase-money security interest from subsequently created real property interests. The purchase-money security interest will prevail against subsequent interests only by satisfying the requirements of subsection (d).~~

~~Subsection (e) requires that the purchase-money security interest be perfected by recording a mortgage whether the manufactured home is real or personal property when the security interest is created. This requirement is consistent with the fixture provisions of § 9-334, which provide that the security interest must be perfected by a fixture filing, because § 9-502(c) provides that a mortgage can be used for a fixture filing. Subsection (e) permits only a mortgage to avoid any implication that a manufactured home is a fixture or is subject to the law of fixtures. Section 9 of this act expressly provides the contrary.~~

~~Subsection (d)(1) provides the well-established rule that an earlier recorded interest has priority over a later recorded interest. As explained in Comment 6 to § 9-334, subsection (d)(1)(B) means that the conflicting interest has the same relative priority whether it is owned by its original holder or by an assignee. For example, if the security interest in the home is junior to a mortgage, it remains junior to the mortgage after the mortgage is assigned, though the mortgage assignment is recorded after the security interest in the home.~~

~~In forty-two states, a security interest in a manufactured home currently can be perfected by noting it on the home's certificate of title. U.C.C. § 9-311(a)(2). Subsection (d)(2) addresses this method of lien perfection because, pursuant to Section 4, this act can apply to manufactured homes that a consumer purchased before the act's effective date.~~

~~Subsection (d)(3) also addresses a lien that was perfected by notation on a certificate of title. That lien has priority over a subsequent judgment lien or other lien obtained by legal or equitable proceedings though the lien on the home is not recorded in the real property records.~~

~~The reference in subsection (d) to subsections (a), (b), and (f) is intended to make clear that, despite the language of subsection (d): (1) a lien eliminated by a buyer in ordinary course of business will not attach to the home or land when the home is installed; (2) liens on land owned by someone other than the home owner will not attach to the home; and (3) an encumbrance on a home from another state will not attach to the home or land unless subsection (f) provides otherwise.~~

~~Subsection (g) deals with interests in a manufactured home that existed before either~~
Subsection (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. When a statutory provision that a manufactured home can be classified as real property does not include this type of language, courts have questioned whether the home is classified as real property only for certain purposes, such as financing, or for all purposes.

Pursuant to subsection (b), a manufactured home becomes real property though the homeowner does not own the land on which the home is affixed. 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 do not permit a home to be real property if it is 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 prevents about one-quarter of manufactured homes from being converted to real property.

Under **subsection (c)**, the title to a manufactured home remains separate from the title to the land on which it is affixed whether the homeowner leases or owns the land. If the homeowner leases the land, the landowner acquires no interest in the home solely by virtue of its affixation. However, the landowner can obtain a lien on the home for any unpaid rent, for example, to the extent that state law permits.

If the homeowner also owns the land, the home and land titles still remain separate after the home is affixed. National organizations that represent consumers, including manufactured homeowners, have stated that keeping the titles separate is important because it enables a landowner to purchase a manufactured home with a loan that is secured by just the home. In this way, if the purchaser defaults on the loan, it will lose the home but not the land. Of course, a lender can refuse to make the loan without also getting a security interest in the land.

Subsection (f) deals with interests in a manufactured home that existed before the home's legal classification as real or personal property changed or the home was moved intrastate. ~~The~~**This** subsection provides that a properly perfected interest will continue to encumber the title to the home and will retain its priority, thereby eliminating the ~~necessity~~need for the interest holder to take any further action to retain its interest. ~~or priority~~. This ~~subsection~~provision is based on U.C.C. § 9-501(a) and on its predecessor, § 9-401(3).

~~Subsection (h)~~**Subsection (f)** also provides that the rights and remedies available to the interest holder and to the homeowner will not change. For example, if a creditor acquired a security interest in a manufactured home while it was personal property, the creditor will retain the same rights and remedies though the home has become real property. Conversely, if a secured creditor holds a mortgage or deed of trust on the home and the home becomes personal property by means of severance, the mortgage continues to encumber the home, and the mortgagee's remedy is foreclosure. *Accord Johnson v. Bratton*, 70 N.W. 1021 (Mich. 1897); *Partridge v. Hemenway*, 50 N.W. 1084 (Mich. 1891); *Hamlin v. Parsons*, 12 Minn. 108 (1866); *Mills v. Pope*, 4 P.2d 485 (Mt. 1931); *Turner v. Mebane*, 14 S.E. 974 (N.C. 1892); *Dakota Loan & Trust Co. v. Parmalee*, 58 N.W. 811 (S.D. 1894). *Contra Bockout v. Swift*, 27 Cal. 433 (1865); *Walch v. Beck*, 296 N.W. 780 (Iowa 1941); *Clark v. Reyburn*, 1 Kan. 281 (1863); *Harris v. Bannon*, 78 Ky. 568 (1880).

Subsection (g) concerns manufactured homes brought into this state from another state. It is based on Colo. Rev. Stat. § 38-29-127 and on U.C.C. § 9-316.

SECTION 9. ~~FIXTURE LAW INAPPLICABLE TO MANUFACTURED~~

HOMESPREEMPTION OF COMMON LAW. This act preempts the common law, including the law of fixtures. When a manufactured home becomes real property by the terms of this [act], it is not a fixture and is not subject to the law of fixtures.

Comment

This section ~~is intended~~ has two purposes: (1) to make clear that this act preempts the common law in this area and (2) to create parity between site-built homes and manufactured homes. Because a manufactured home is personal property before it is ~~installed~~affixed on land, a court may treat the home as a fixture, which is a type of real property. As a fixture, different financing and creditor remedies are available than for a site-built home. Therefore, this subsection expressly provides that the home is not a fixture.

SECTION 10. TAXATION OF MANUFACTURED HOME.

~~———— (a) If a manufactured home is on land that the home owner does not own, the home and land must To be valued and taxed separately. determined~~

~~(b) TBD~~

Comment

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

SECTION 11. HOME WARRANTIES. ~~Manufactured home warranties apply to~~

warranty that applies to a manufactured home ~~whetherwhile~~ it is ~~real property or~~ personal property- continues to apply when the home becomes real property under this [act].

Comment

This section is based on Tex. Occ. Code § 1201.2055(h). It is designed to preserve personal property warranties for a manufactured home after it has been converted to real property. For example, as described in the Commentcomment to Section 3, substantial authority exists that Article Two of the Uniform Commercial Code applies to the sale of a manufactured home, though it will be affixed to land before the sale is consummated. *E.g.*, *Joswick v. Chesapeake Mobile Homes, Inc.*, 765 A.2d 90 (Md. 2001); *Reece v. Homette Corp.*, 429 S.E.2d 768 (N.C. Ct. App. 1993); *Osburn v. Bendix Home Systems, Inc.*, 613 P.2d 445 (Okla. 1980); *Duffee v. Judson*, 380 A.2d 843 (Pa. Super. Ct. 1977); *Long v. Quality Mobile Home Brokers, Inc.*, 248 S.E.2d 311 (S.C. 1978); *Paskell v. Nobility Homes, Inc.*, 871 S.W.2d 481 (Tenn. 1994);

1 *Apeco Corp. v. Bishop Mobile Homes, Inc.*, 506 S.W.2d 711 (Tex. App. 1974). However, none
2 of these opinions specifies whether relevant state law classified the home as real property after it
3 was affixed ~~to~~on land but before consummation of the sale. Therefore, this section is intended to
4 eliminate any question concerning the applicability to manufactured homes of the warranties
5 contained in Article Two and in other laws and to preserve the warranties after the home has
6 become real property.

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

9 **Comment**

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

11 **~~SECTION 13. ENFORCEMENT.~~PRIVATE CAUSE OF ACTION.** A person
12 injured by another person's failure to comply with the terms of this [act] may bring an action for
13 damages and for other relief to enforce a right granted or obligation imposed by this [act]. The
14 court may award reasonable attorney's fees and costs to the prevailing party. This section does
15 not provide the injured person's exclusive remedy.

16 **Comment**

17 This section is based on Uniform Common Interest Ownership Act § 4-117 (2008). The
18 last sentence is intended to make clear that an injured party can enforce other causes of action
19 that it may have, such as an action on a promissory note or mortgage.
20

21 **SECTION ~~14~~13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
22 applying and construing this uniform act, consideration must be given to the need to promote
23 uniformity of the law with respect to its subject matter among states that enact it.

24 **Comment**

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

27 **SECTION ~~15~~14. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
28 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
29 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001, et seq., but

1 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
2 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
3 U.S.C. Section 7003(b).

4 **Comment**

5 ~~_____~~In 2000, Congress enacted the “Electronic Signatures in Global and National
6 Commerce Act,” 106 PUB. L. NO. 229, 114 Stat. 464, 15 U.S.C. § 7001, *et seq.* (popularly known
7 as “E-Sign”). E-Sign largely tracks the Uniform Electronic Transactions Act (UETA). Section
8 102 of E-Sign, entitled “Exemption to preemption”, provides in pertinent part that:

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

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

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

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

22 15 U.S.C. § 7002(a). The inclusion of this section is necessary to comply with the requirement
23 that the act “make[] specific reference to this Act” pursuant to 15 U.S.C. § 7002(a)(2)(B) if the
24 act contains a provision authorizing electronic records or signatures in place of writings or
25 written signatures.

26 **SECTION 1615. SAVINGS PROVISION.** Subject to Section ~~6(b)(8)(g)~~ of this [act],
27 transactions, certificates of title, records, and information that were validly entered into or
28 created before the effective date of this [act], and would be subject to this [act] if they had been
29 entered into or created on or after the effective date of this [act], and the rights, duties, and
30 interests flowing from these transactions, certificates of title, records, and information, remain
31 valid after the effective date of this [act].

32 **Comment**

33 This section is taken from Uniform Law Commission Drafting Rule 603. It is designed

1 to minimize the disruptions inherent in changes from old laws to new laws. It preserves laws
2 that the act supersedes and that otherwise would apply to transactions and events that occurred
3 before the act's effective date.

4 **SECTION ~~17~~16. REPEALS.** The following are repealed:

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

13
14 **SECTION ~~18~~17. EFFECTIVE DATE.** This [act] takes effect on _____.