

D R A F T
FOR DISCUSSION ONLY

MANUFACTURED HOUSING ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

For April 13-15, 2012 Drafting Committee Meeting

With Prefatory Note and Comments

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April 9, 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 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 the great majority are not moved after being sited on a lot. Three-quarters of manufactured homes are sited on the owner's land, and the average lot size is more than twice the average lot size for site-built homes. HUD construction and installation standards have virtually eliminated the differences in construction quality and safety between manufactured and site-built homes. As a result, the life expectancy of and deterioration rate for manufactured homes are now equivalent to those for site-built homes. Moreover, a manufactured home's appearance can be virtually indistinguishable from that of a site-built home. Today's manufactured home is functionally more equivalent to a site-built home than to a travel trailer, but only 25% of manufactured homes are classified as real property.

In addition to being generally outdated, existing state laws vary tremendously from state to state, which creates substantial inefficiencies in the manufactured home sale and finance markets.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

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

1 home or

2 (ii) a certified copy of the most recent affidavit of affixation, if any, for
3 the home and of the deed, if any, by which the owner acquired title to the home.

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

8 (3) “Certificate of origin” means a record created by a manufacturer or importer as the
9 manufacturer’s or importer’s proof of identity of a manufactured home.

10 (4) “Chattel loan” means a loan secured by personal property.

11 (5) “Common interest community” means real property described in a declaration with
12 respect to which a person, by virtue of the person’s ownership of a unit, is obligated to pay for a
13 share of real property taxes, insurance premiums, maintenance, or improvement of, or services or
14 other expenses related to, common elements, other units, or other real property described in the
15 declaration. [For purposes of this definition, “ownership of a unit” does not include holding a
16 leasehold interest of less than () years, including renewal options.]

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

19 (7) “Land controlled by the homeowner” means land on which the owner of a
20 manufactured home has the legal right to affix the home because the land is:

21 (A) owned by the homeowner;

22 (B) rented by the homeowner [if the lease has been filed for recording in the land
23 records of the (county, municipality, or other recording jurisdiction) in which the home is
24 affixed] [if the homeowner’s lease for the land has an original term of at least () years]; or

1 (C) in a common interest community.

2 (8) “Manufactured home”, “manufactured housing”, or “home” means a structure,
3 including the plumbing, heating, air-conditioning, and electrical systems contained in the
4 structure, that is:

5 (A) transportable in one or more sections;

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

8 (C) built on a permanent chassis;

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

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

12 (9) “Mortgage loan” means a loan secured by real property.

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

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

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

21 (13) “Retailer” means a person that, in the ordinary course of business, sells
22 manufactured homes.

23 (14) “Security interest” means an interest in real or personal property that secures
24 payment or performance of an obligation. The term includes, without limitation, mortgages,

1 deeds of trust, and a “security interest” as defined in Article 1 of [the Uniform Commercial
2 Code].

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

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

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

7 (16) “State” means a state of the United States, the District of Columbia, Puerto Rico,
8 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
9 of the United States.

10 (17) “Unique identifier of the manufactured home” is the home’s manufacturer, make,
11 model designation, model year, and the identification number placed on the home by the
12 manufacturer.

13 **Legislative Note:** *The word “recorder” is used in this act to identify the officer who has the*
14 *authority under state law to accept documents for recording in the land records office. Although*
15 *“recorder” is the word commonly used in most states to identify that officer, it has been placed*
16 *in brackets as an indication that other titles might be used for the position. For example, the*
17 *words “registrar” or “clerk” are used in some states to designate that officer.*
18

19 *In addition, because this act affects all land recording systems in a state, the word*
20 *“recorder” also applies to the appropriate officer under the alternative title system sometimes*
21 *known as a Torrens title registration system. In some states, the traditional officer is known as a*
22 *“recorder” and the officer under the alternative system is known as a “registrar”. Regardless*
23 *of name, this act would apply to both officers.*
24

25 *When adopting this act, the legislature should consider whether to delete the word*
26 *“recorder” wherever it appears and substitute the appropriate word or words used under the*
27 *system or systems in effect in the state. If the word “recorder” is retained, the brackets should*
28 *be removed.*
29

30 *If the state uses electronic certificates of title, it will be necessary to provide a method for*
31 *obtaining a certified copy to attach to the affidavit of affixation in subsection (1).*
32

33 *The Uniform Law Commission determined that a manufactured home should not have to*
34 *be permanently affixed to land to become real property because (1) the HUD definition of*
35 *“manufactured home” does not require it, (2) some states and many landlords do not permit a*
36 *permanent foundation in a leasehold community, and (3) according to the American Housing*

1 *Survey for the United States, approximately 60% of manufactured homes are not attached to a*
2 *permanent foundation. Under this act, a manufactured home can be real property when it is*
3 *“affixed”, as defined in subsection (2). However, if a state wishes to use permanent affixation*
4 *to land as the prerequisite for real property status, it can substitute a definition of “permanently*
5 *affixed” as meaning “the manufactured home is attached to a permanent foundation.”*

6 7 **Comment**

8
9 **Paragraph (1)** specifies the requirements for an affidavit of affixation, which must be
10 recorded for a manufactured home to become real property. Subsection (J) provides alternative
11 attachments for the affidavit because the affidavit may be filed when the home has always been
12 personal property (manufacturer’s certificate of origin or certificate of title), the home has been
13 moved from a location where it was real property (affidavit of affixation for former location and
14 deed, if any, by which the owner acquired title), or was converted to real property but
15 subsequently reconverted to personal property for longer than the period specified in Section
16 5(b) (certificate of title or affidavit of affixation for states that do not issue a certificate of title for
17 manufactured homes).

18
19 **Paragraph (2)** identifies when a manufactured home has become sufficiently connected
20 to land and unlikely to be moved that the home becomes real property. In considering
21 alternatives, the drafting committee stressed the need for a standard that is objective, easy to
22 verify, and achievable in all jurisdictions and by all manufactured homeowners. The committee
23 considered and rejected numerous definitions, including the following:

- 24
- 25 • permanent affixation to land, which was defined as installation in accordance with the
26 manufacturer’s installation instructions and with applicable federal, state, and local
27 laws. The committee rejected this standard because: (1) it excludes homes that are
28 improperly installed; (2) it requires a determination whether a home has been
29 properly installed; and (3) though unlikely, the home can be moved and, therefore, is
30 not “permanently” affixed;
 - 31
 - 32 • issuance of a certificate of occupancy, because not all jurisdictions require them;
 - 33
 - 34 • government certification of utility connection or of proper home installation, because
35 the certification can take several months to obtain;
 - 36
 - 37 • attachment to a permanent foundation, because, as described in the Legislative Note,
38 (1) the HUD definition of “manufactured home” does not require it, (2) some states
39 and many landlords do not permit a permanent foundation in a leasehold community,
40 and (3) according to the American Housing Survey for the United States,
41 approximately 60% of manufactured homes are not attached to a permanent
42 foundation; and
 - 43
 - 44 • satisfaction of the fixture test, because it is fact dependent and unpredictable and
45 because some forms of installation that the HUD Code permits do not satisfy that test.
 - 46

47 Because the great majority of manufactured homes are not moved after being sited on
48 land, the drafting committee determined that removal of the towing hitch, wheels, and axles and

1 connection to a source of electricity constitute a sufficient connection to the land and a standard
2 that is objective, readily verifiable, and universally achievable.

3
4 **Paragraph (3)** is based on the definition of “certificate of origin” in Uniform Certificate
5 of Title Act § 2(4).

6
7 **Paragraph (5)** is based on the definition of “common interest community” in Uniform
8 Common Interest Ownership Act § 1-103(9) (2008).

9
10 **Paragraph (6)** is the standard Uniform Law Commission definition of “electronic”.

11
12 **Paragraph (8)** is based on the “manufactured home” definition in Uniform Commercial
13 Code § 9-102(a)(53). As stated in comment 5(b) to that section, the definition is intended to
14 have the same meaning as the definition in the federal Manufactured Housing Act, 42 U.S.C.
15 § 5402(6). Using this definition will help harmonize this act with the federal act and with the
16 Uniform Commercial Code. However, this act’s definition differs from the Article 9 definition
17 in two ways:

- 18
19
 - Although the Article 9 definition is based on the federal definition, Article 9 omits a
20 clause that the federal definition includes—“and except that such term shall not
21 include any self-propelled recreational vehicle.” Although that exclusion is
22 appropriate for Article 9, it is inappropriate for purposes of this act. Therefore, that
23 clause is in this act’s definition.
 - The federal and Article 9 definitions of “manufactured home” include only homes
24 built on or after June 15, 1976, which was the effective date of HUD’s construction
25 standards for them. This act’s definition also includes homes built before that date,
26 which technically are called “mobile homes”.

27
28
29
30 Some states permit both manufactured and mobile homes to be classified as real
31 property from the time of retail sale. Other states permit only manufactured homes to
32 be so classified. *E.g.*, Colo. Rev. Stat. § 38-29-102(6) (manufactured and mobile
33 homes); Idaho Code Ann. § 39-4105(8) (manufactured homes only); Mont. Code
34 Ann. § 15-1-101(l) (manufactured homes only); N.H. Rev. Stat. Ann. § 674:31
35 (manufactured and mobile homes); N.D. Cent. Code § 39-05-01 (manufactured
36 homes only); Or. Rev. Stat. § 446.561 (manufactured and mobile homes); Tex. Occ.
37 Code Ann. § 1201.003(18) (manufactured and mobile homes). This act would
38 replace those laws.

39
40 This act’s “manufactured home” definition does not require a minimum square footage
41 because neither the federal definition nor the Article 9 definition requires it.

42
43 **Paragraph (10)** is the standard Uniform Law Commission definition of “person”.

44
45 **Paragraph (11)** is based on the definitions of “purchase” and “purchaser” in Uniform
46 Commercial Code § 1-201(b).

47
48 **Paragraph (12)** is the standard Uniform Law Commission definition of “record”.

Paragraph (15) is the standard Uniform Law Commission definition of “sign”.

Paragraph (16) is the standard Uniform Law Commission definition of “state”.

Paragraph (17) 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.

SECTION 3. APPLICABILITY. This [act] applies to a manufactured home that is affixed on land controlled by the homeowner.

Comment

This act applies only to manufactured homes that are affixed on land controlled by the homeowner. As defined in Section 2(2), “affixed” means that the towing hitch, wheels, and axles to the home have been removed and that the home has electricity supplied by a utility or other means. As defined in Section 2(7), “land controlled by the homeowner” includes land that the homeowner owns or leases or that is in a common interest community.

Many states permit a manufactured home on leased land to be real property. *E.g.*, Cal. Health & Safety Code § 18551(a)(1)(A); Colo. Rev. Stat. § 38-29-202(1)(d); Conn. Gen. Stat. § 21-67a; Fla. Stat. § 319.261; Idaho Code § 63-304(1)(b); N.H. Rev. Stat. § 477:44, subp. I; Or. Rev. Stat. § 446.626(1); S.C. Code § 56-19-510; Tex. Occ. Code § 1201.2055. However, other states prohibit a home from being real property if it is affixed 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).

Some states that permit a manufactured home on leased land to be real property require that the lease have a minimum specified term. *E.g.*, Cal. Health & Safety Code § 18551(a)(1)(A) (thirty-five years); Colo. Rev. Stat. § 38-29-202(1)(d) (ten years); Fla. Stat. § 319.261 (thirty years); Or. Rev. Stat. § 446.626(1) (twenty years); S.C. Code § 56-19-510 (thirty-five years). This restriction addresses the concern that the owner will have to move the home in the relatively short term because, for example, the lease term has expired and the tenant cannot afford a rent increase. However, even if the lease is for a long term, it can provide for periodic rent increases and for early termination, such as upon the tenant's default. Moreover, when a lease terminates, the home usually is left in place and is sold to a new owner, because the cost of moving and the potential for damage are so great. Although the length of the lease term is a loan underwriting consideration, it is an unnecessary restriction on the ability to classify a manufactured home as real property, as evidenced by the jurisdictions that do not require a minimum term. Conn. Gen. Stat. § 21-67a; Mont. Code § 15-1-116(1); N.H. Rev. Stat. § 477:44, subp. I; 10 Tex. Admin. Code § 80.2 (no minimum term required if each lienholder has approved the real property classification; otherwise, lease term must be at least five years).

SECTION 4. RETAIL SALE OF MANUFACTURED HOME.

(a) When a retailer sells a new manufactured home, it shall simultaneously deliver the

1 title and the certificate of origin for the home to the buyer. [When a retailer sells a used
2 manufactured home, it shall simultaneously deliver the title and the certificate of title, if any, for
3 the home to the buyer.]

4 (b) When the retailer and buyer contract for the purchase of a manufactured home, the
5 retailer shall deliver to the buyer a written notice that includes the following statements:

6 (1) when the buyer acquires title to the home, the buyer shall elect whether the
7 home will be classified as real property or as personal property;
8 the monthly payment for a loan secured by real property (“mortgage loan”) normally is less than
9 for a loan secured by personal property (“chattel loan”) because the interest rate for a mortgage
10 loan is lower than for a chattel loan and because a mortgage loan can be repaid over a longer
11 period of time;

12 (2) the costs of obtaining a mortgage loan may be greater than for a chattel loan;
13 and

14 (3) the buyer may wish to consult an attorney about whether to classify the home
15 as real property or as personal property, because the election has several important consequences
16 for the buyer.

17 (c) For three years after transferring title to a manufactured home, the retailer shall retain
18 a copy of the notice provided in subsection (b). The retailer’s retained copy shall bear the
19 buyer’s signature.

20 (d) If the retailer gives the buyer any information concerning a loan for the purchase of
21 the home:

22 (1) the retailer shall present the buyer with loan options for mortgage loans and
23 for chattel loans that include:

24 (A) The loan with the lowest interest rate;

1 (B) The loan with the lowest interest rate without negative amortization, a
2 prepayment penalty, interest-only payments, a balloon payment in the first seven years of the life
3 of the loan, a demand feature, shared equity, or shared appreciation; or, in the case of a reverse
4 mortgage, a loan without a prepayment penalty, shared equity, or shared appreciation; and

5 (C) The loan with the lowest total dollar amount for origination points or
6 fees and discount points.

7 (2) The retailer must have a good faith belief that the buyer likely qualifies for
8 options that the retailer presents.

9 (3) If the retailer presents more than three mortgage loans or more than three
10 chattel loans, the retailer must highlight the loans that satisfy the criteria in subsection (d)(1).

11 (e) If the retailer directs or otherwise steers the buyer to classify the manufactured home
12 as personal property for purposes of a loan or otherwise, the retailer will be subject to all the
13 remedies and penalties available to a consumer and to the attorney general under [the state
14 consumer protection act].

15 (f) If a sale by a retailer is not governed by [state version of Uniform Commercial Code,
16 Article Two], [§§ 2-312 – 2-316] shall apply as if the home was a “good”, within the meaning of
17 those sections.

18 (g) [If, within () days after buying a manufactured home, the buyer files an affidavit of
19 affixation for recording in accordance with Section 5, the buyer need not obtain a certificate of
20 title for the home.]

21 **Comment**

22 *When Manufactured Home’s Property Classification Changes*

23 While a manufactured home is part of a retailer’s inventory, the home is personal
24 property. The home becomes real property when the buyer affixes it on land and files an
25 affidavit of affixation for recording in the land records. “Affixed” is defined in Section 2(2). If
26 the home is subsequently removed from the land, it again becomes personal property. If it is
27
28

1 later reaffixed on land, it can again become real property.

2 3 *Prohibition on Steering* 4

5 Under the current system of manufactured home financing, retailers have incentives to
6 steer buyers to chattel loans, rather than to mortgage loans. By doing so, the retailer may receive
7 greater compensation, and chattel loans normally are funded more quickly than mortgage loans.
8 However, a mortgage loan normally is the better option for the buyer. Though the closing costs
9 for a mortgage loan can be higher than for a chattel loan, the lower interest rates and longer
10 terms for a mortgage loan translate to substantially lower monthly payments. Financing with a
11 mortgage loan also provides a manufactured home owner with the same legal protections as the
12 owner of a site-built home. Therefore, **subsection (d)** requires the retailer to provide balanced
13 loan information to buyers, and **subsection (e)** prohibits retailer steering. They are based on The
14 Mortgage Reform and Anti-Predatory Lending Act (Title XIV of the Dodd-Frank Wall Street
15 Reform and Consumer Protection Act of 2010). 15 U.S.C. § 1639b(c)(3)(B); Federal Reserve
16 System Truth in Lending Rules, 12 C.F.R. § 226.36(e).

17 18 *Applicability of Article Two of Uniform Commercial Code* 19

20 Substantial authority exists that Article Two of the Uniform Commercial Code governs
21 the sale of a manufactured home, though it will be affixed on land before the sale is
22 consummated. *E.g., Joswick v. Chesapeake Mobile Homes, Inc.*, 765 A.2d 90 (Md. 2001); *Reece*
23 *v. Homette Corp.*, 429 S.E.2d 768 (N.C. Ct. App. 1993); *Osburn v. Bendix Home Systems, Inc.*,
24 613 P.2d 445 (Okla. 1980); *Duffee v. Judson*, 380 A.2d 843 (Pa. Super. Ct. 1977); *Long v.*
25 *Quality Mobile Home Brokers, Inc.*, 248 S.E.2d 311 (S.C. 1978); *Paskell v. Nobility Homes, Inc.*,
26 871 S.W.2d 481 (Tenn. 1994); *Apeco Corp. v. Bishop Mobile Homes, Inc.*, 506 S.W.2d 711
27 (Tex. App. 1974). However, these opinions do not specify whether relevant state law classified
28 the home as real property after it was affixed on land but before consummation of the sale.
29 Therefore, **subsection (f)** provides that the warranties contained in Article Two will apply to a
30 manufactured home even if it is not a “good” that is covered by Article Two.

31 32 *Representative State Laws Permitting Real Property Classification at Time of Retail Sale* 33

34 Colo. Rev. Stat. § 38-29-114(2) (new manufactured home becomes real property when
35 certificate of permanent location recorded in land records); Idaho Code Ann. § 63-304 & Idaho
36 Admin. Code r. 35.01.03.304 (new manufactured home becomes real property when buyer
37 records “statement of intent to declare the manufactured home as real property” with the county
38 recorder and provides tax assessor with copy of recorded statement of intent); Mont. Code Ann.
39 § 15-1-116 (new manufactured home becomes real property when “Statement of Intent to
40 Declare a Manufactured Home an Improvement to Real Property” is recorded in land records);
41 N.D. Cent. Code §§ 39-05-35(1)(c) & 47-10-27(6) (new manufactured home becomes real
42 property when affidavit of affixation recorded in land records and copy of recorded affidavit of
43 affixation and application for surrender of title filed with Department of Transportation); Or.
44 Rev. Stat. § 446.626 (new manufactured home becomes real property when “Application and
45 Certification Exempting a Manufactured Structure from Ownership Document” filed with county
46 assessor and county assessor records application in deed records); Tex. Occ. Code Ann. §
47 1201.2055 (new manufactured home becomes real property when (1) “Statement of Ownership
48 and Location” (SOL) filed with Department of Housing & Community Affairs (“Department”),

(2) Department mails certified copy of SOL to owner and each lienholder, (3) owner files certified copy of SOL in land records and notifies Department and tax assessor-collector that copy has been filed, and (4) Department and tax assessor-collector note in their records that real property election has been made).

SECTION 5. AFFIDAVIT OF AFFIXATION.

(a) If a manufactured home is affixed on a parcel of land, the homeowner may file an affidavit of affixation in the land records of the [county, municipality, or other recording jurisdiction] in which the home is affixed.

(b) If the certificate of origin must be attached to the affidavit of affixation but the homeowner cannot locate it, the owner may attach an affidavit of lost document to the affidavit in lieu of the certificate. The affidavit of lost document must include the following:

(1) the homeowner's name;

(2) the unique identifier of the manufactured home that is the subject of the affidavit;

(3) the homeowner's representations that the owner:

(i) owns the home and

(ii) cannot reasonably obtain possession of the certificate of origin because it was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found;

(4) the date of the affidavit; and

(5) the homeowner's signature, together with an acknowledgment of the signature.

[(c) If the owner of a manufactured home cannot locate the certificate of title for the home, the (agency that administers manufactured home titles) shall issue a duplicate certificate upon application by the owner.

(d) If a manufactured home is moved to a parcel of land in this state from a parcel for

1 which an affidavit of affixation was filed for recording in this state or from a location outside this
2 state, the homeowner shall file an affidavit of affixation for recording or shall obtain a certificate
3 of title for the home not later than [four months] [time period provided in state certificate of title
4 laws] after the home is moved. The homeowner may file an affidavit of affixation only if the
5 home is affixed.]

6 **Legislative Note:** Subsections (b) and (c) are necessary in states that do not have a lost
7 documents statute. Subsections (c) and (d) are necessary in states that issue certificates of title
8 for manufactured homes.
9

10 **Comment**

11
12 **Subsection (d)** applies to a home that was real property at its former location, because
13 either a certificate of title was never issued for the home pursuant to Section 4 or the previous
14 certificate of title was cancelled when the homeowner filed the affidavit of affixation.
15

16 “Affixed” is defined in Section 2(2).
17

18 **SECTION 6. RELOCATION OF MANUFACTURED HOME.**

19 (a) An “affidavit of relocation” is a record in recordable form that includes the following,
20 if known:

- 21 (1) the affiant’s name;
- 22 (2) if the affiant does not own the manufactured home that has been or will be
23 moved, the homeowner’s name;
- 24 (3) the unique identifier of the manufactured home;
- 25 (4) a legally sufficient description of the land from which the home has been or
26 will be moved;
- 27 (5) if the homeowner does not own the land from which the home has been or
28 will be moved, the landowner’s name;
- 29 (6) a statement that the home has been or will be moved;
- 30 (7) the date that the home has been or will be moved;

1 (8) the recording information for the most recent deed or affidavit of affixation
2 for the home;

3 (9) the date of the affidavit;

4 (10) the affiant's signature; and

5 (11) the name and mailing address of the person to which the [recorder] should
6 return the recorded affidavit.

7 (b) If the owner of a manufactured home moves the home from a location for which an
8 affidavit of affixation has been filed for recording, the homeowner shall file an affidavit of
9 relocation for recording in the same land records not later than ten days after the home is moved.
10 A homeowner that does not comply with this subsection is [subject to a fine of five hundred
11 dollars] [guilty of a misdemeanor traffic offense and, upon conviction thereof, shall be punished
12 by a fine of not less than one hundred dollars nor more than one thousand dollars. This shall be a
13 strict liability offense.]

14 (c) If a landowner has the right to move a manufactured home that it does not own from
15 its land, the landowner shall file an affidavit of relocation for recording if an affidavit of
16 affixation for the home has been filed for that location. The landowner shall file a certified copy
17 of any required judgment or order authorizing it to move the home as an attachment to the
18 affidavit of relocation. The landowner shall file the affidavit in the same land records in which
19 the affidavit of affixation was filed for recording not later than ten days after moving the home.

20 **Comment**

21 This section deals with the conversion of a manufactured home from real to personal
22 property. **Subsection (b)** requires the owner to file an affidavit of relocation for recording in the
23 land records in which the affidavit of affixation was recorded. **Subsection (a)** specifies the
24 information that must be included in the affidavit of relocation. Section 7(c) requires that a copy
25 of the affidavit be delivered to the property tax assessor.

26
27 The alternative penalties provided in subsection (b) are from Conn. Stat. § 21-67a(g) and
28 Colo. Stat. § 38-29-143(2), respectively.

Subsection (c) deals with a landowner moving a home that it does not own from its land. For example, subsection (c) applies when a landowner leases the land to the owner of a manufactured home that fails to remove it when the land lease terminates.

Representative State Statutes

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

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

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

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

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

New Hampshire requires an owner that is relocating a home within the state to record a deed evidencing the change of location in the land records of the counties from which and to which the home is moved. If the home is moved outside the state, the owner must record a

1 statutorily-prescribed relocation statement in the land records of the county from which the home
2 is moved. The home cannot be moved out of state unless all lienors give written consent on the
3 transfer statement. If the home is on leased land, the landowner's written consent also is
4 required whether the owner is relocating the home inside or outside the state, because the
5 landowner has a right to a lien for any unpaid rent. The consent requirement alerts the
6 landowner to file a lien before the home is moved to another jurisdiction. N.H. Rev. Stat.
7 § 477:44, subp. II.
8

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

19 **SECTION 7. RECORDING.**

20 (a) When an affidavit of affixation or an affidavit of relocation is filed, the [recorder]
21 shall record and index it, together with any attachments. [The (recorder) shall index the affidavit
22 in the grantor index under the landowner's name and in the grantee index under the
23 homeowner's name.] [The (recorder) shall create a new index page for the manufactured home.]

24 (b) If a manufacturer's certificate of origin or a certificate of title is filed as an
25 attachment to the affidavit of affixation, the [recorder] shall stamp or make a notation on it that it
26 is no longer valid.

27 (c) The [(recorder) shall deliver a copy of the affidavit] [person that filed it shall deliver
28 a copy of the recorded affidavit] to the property tax assessor for that [county, municipality, or
29 other recording jurisdiction]. [If a certificate of title is filed with the affidavit, the [(recorder)
30 also shall deliver a copy of the recorded affidavit] (person that filed it also shall deliver a copy of
31 the recorded affidavit) to the (government agency that maintains manufactured home title
32 records), and (that agency) shall note in its records that the home has become real property.]

33 ***Legislative Note:*** *When a manufactured home owner files an affidavit of affixation for recording*
34 *and the home thereby becomes real property, Section 8(c) makes it a separate parcel from the*

1 *land on which it is affixed. The homeowner is the “grantee” of this newly created real property.*
2 *Therefore, the affidavit is indexed under the homeowner’s name in the grantee index. The*
3 *affidavit is indexed in the grantor index under the landowner’s name so that a person searching*
4 *title to that parcel of land can identify the owner of the home. Because the same person may own*
5 *the home and the land on which it is affixed, this section authorizes the recorder to record the*
6 *affidavit though the same person is named as grantor and grantee.*

7
8 *If the jurisdiction uses a tract index in lieu of or in addition to grantor-grantee indices,*
9 *this section directs the recorder to create a new index page for the newly created real property—*
10 *the manufactured home.*

11 12 **Comment** 13

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

31
32 In contrast, this section requires the affidavit of affixation to be filed first with the
33 recorder. *Accord* Colo. Rev. Stat. § 38-29-114(2); Mont. Code § 15-1-116(1); N.H. Rev. Stat.
34 §477:44, subp. III. When the home buyer finances the purchase, the lender or title insurer
35 normally will file the affidavit for recording. When the buyer does not finance the purchase, the
36 manufactured home retailer, like a car dealer, can offer to file the affidavit for recording, or the
37 buyer can file them. In this way, the home immediately is brought into the real property title
38 system.

39
40 The possibility that a manufactured home seller will fraudulently transfer title to the
41 home more than once is a significant practical concern. This wrongful practice is facilitated if
42 the seller retains the manufacturer’s certificate of origin or certificate of title, if any. Therefore,
43 Section 2(1)(J) requires the document to be attached to the affidavit of affixation, and **subsection**
44 **(b)** of this section requires the recorder to mark it as being no longer valid. This section is based
45 on Colo. Rev. Stat. §§ 38-29-202(1)(c), 38-29-207.

46
47 Requiring the recorder, rather than the homeowner, to deliver a copy of the affidavit of
48 affixation to the tax assessor and to the titling agency, if any, is more likely to ensure that

1 delivery occurs. The homeowner may be unaware of the delivery requirement or may fail to
2 deliver in an attempt to avoid paying real property taxes. However, some jurisdictions prohibit
3 the recorder from delivering documents. Therefore, **subsection (b)** includes alternative language
4 that requires the owner to do so. Similarly, **subsection (c)** provides alternative language for an
5 affidavit of severance.

6 7 **SECTION 8. RIGHTS, TITLES, AND INTERESTS IN MANUFACTURED** 8 **HOME.**

9 (a) “Buyer in ordinary course of business” means a person that buys a home in good
10 faith, without knowledge that the sale violates the rights of another person in the home, and in
11 the ordinary course from a retailer. A person buys a manufactured home in the ordinary course if
12 the sale comports with the usual or customary practices in manufactured home retail sales or
13 with the seller’s own usual or customary practices. A buyer in ordinary course of business may
14 buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire
15 a home under a preexisting contract for sale. Only a buyer that takes possession of the home or
16 has a right to recover the home from the seller under [state version of Uniform Commercial
17 Code, Article 2] may be a buyer in ordinary course of business. A person that acquires homes in
18 a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a
19 buyer in ordinary course of business. When a buyer in ordinary course of business buys a
20 manufactured home that is real property, the buyer takes free of a security interest created by the
21 buyer’s seller pursuant to [state version of Uniform Commercial Code, Article 9], even if the
22 security interest is perfected and the buyer knows of its existence.

23 (b) A manufactured home becomes real property for all purposes when an affidavit of
24 affixation for the home is filed for recording, if the affidavit substantially conforms to the
25 provisions of Section 2(1).

26 (c) Title to a manufactured home remains separate from the title to the land on which it is
27 affixed though the home has become real property. The home is not subject to any security

1 interest or other encumbrance in or on the title to the land and the land is not subject to any
2 security interest or other encumbrance in or on the title to the home, unless the owner and the
3 encumbrancer expressly agree otherwise.

4 (d) Each transfer of a right, title, or interest in a manufactured home that is real property
5 must be made in accordance with real property law and must include the unique identifier of the
6 home and a legally sufficient description of the land on which the home is affixed.

7 (e) If a manufactured home that is real property is detached from the land on which it is
8 affixed, the home becomes personal property. After becoming personal property, each transfer
9 of a right, title, or interest in the home is governed by personal property law until the home again
10 becomes real property.

11 (f) The owner of a manufactured home shall not file an affidavit of affixation pursuant to
12 Section 5 or sever a home that is classified as real property unless all security interests and other
13 encumbrances on the title to the home are released or the encumbrancer gives written consent.

14 (g) If the law of this state governs the perfection of a tenancy, security interest, or other
15 encumbrance on a manufactured home while it is personal property or real property and if the
16 encumbrance was [filed in the proper place in this state] [noted on the certificate of title for the
17 home], it remains effective, retains the time and date of its priority, and provides the same rights
18 and remedies, though the home's classification as personal or real property or its location within
19 this state, whichever controlled the original [filing] [notation], is thereafter changed one or more
20 times.

21 (h) After a manufactured home is moved into this state and the owner files an affidavit of
22 affixation, a subsequent purchaser for value of an interest in the home acquires that interest free
23 and clear of any tenancy, security interest, or other encumbrance that is not filed in the proper
24 place in this state, unless:

(1) the subsequent purchaser has actual knowledge of the tenancy, security interest, or other prior encumbrance;

(2) the recorded affidavit of affixation describes the tenancy, security interest, or other prior encumbrance; or

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

(i) Except as otherwise provided in [Uniform Commercial Code, Articles 3, 4, [and] 5, [and 6], a person gives value for rights for purposes of subsection (h) if the person acquires them:

(1) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2) as security for, or in total or partial satisfaction of, a preexisting claim;

(3) by accepting delivery under a preexisting contract for purchase; or

(4) in return for any consideration sufficient to support a simple contract.

Comment

Subsection (a) describes the circumstances in which a buyer of a manufactured home that is real property 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 remain personal property after purchase, these U.C.C. provisions apply, rather than subsection (a).

Subsection (b) provides that, when a home is 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 real property only for certain purposes, such as financing, or for all purposes.

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

1 affixation. However, the landowner can obtain a lien on the home for any unpaid rent, for
2 example, to the extent that state law permits.

3
4 If the homeowner also owns the land, the home and land titles still remain separate after
5 the home is affixed. National organizations that represent consumers, including manufactured
6 homeowners, have stated that keeping the titles separate is important because it enables a
7 landowner to purchase a manufactured home with a loan that is secured by just the home. In this
8 way, if the purchaser defaults on the loan, it will lose the home but not the land. Of course, a
9 lender can refuse to make the loan without also getting a security interest in the land.

10
11 If a security interest or other encumbrance attaches to a manufactured home title while it
12 is personal property, difficult issues arise concerning the interest and the rights it provides when
13 the home becomes real property, or when real property interests exist in a home that
14 subsequently becomes personal property. The cases are divided on this issue. For example, some
15 courts have held that a mortgage on a home is unimpaired when the home is severed. *Johnson v.*
16 *Bratton*, 70 N.W. 1021 (Mich. 1897); *Partridge v. Hemenway*, 50 N.W. 1084 (Mich. 1891);
17 *Hamlin v. Parsons*, 12 Minn. 108 (1866); *Mills v. Pope*, 4 P.2d 485 (1931); *Turner v. Mebane*,
18 14 S.E. 974 (N.C. 1892); *Dakota Loan & Trust Co. v. Parmalee*, 58 N.W. 811 (S.D. 1894) (all
19 involving site-built homes). See RESTATEMENT (THIRD) OF PROPERTY (MORTGAGES) § 4.6,
20 Reporters' Note cmt. B. In other cases, the court has held that a secured lender loses its security
21 interest in the home but has an action for waste or for impairment of security. *Bockout v. Swift*,
22 27 Cal. 433 (1865); *Walch v. Beck*, 296 N.W. 780 (Iowa 1941); *Clark v. Reyburn*, 1 Kan. 281
23 (1863); *Harris v. Bannon*, 78 Ky. 568 (1880) (all involving site-built homes). In an attempt to
24 eliminate these issues, **subsection (f)** requires that all security interests and other encumbrances
25 be released before the manufactured home's property classification is changed. Alternatively,
26 the interest holder can consent to the change and can re-perfect its interest to reflect the home's
27 changed property classification. Subsection (f) does not apply when a land lessor severs a
28 tenant's manufactured home.

29
30 If a manufactured home owner does not comply with subsection (f), **subsection (g)**
31 provides that a properly perfected interest will continue to encumber the title to the home and
32 will retain its priority, thereby eliminating the need for the interest holder to take any further
33 action to retain its interest or priority. This provision is based on U.C.C. § 9-501(a) and on its
34 predecessor, § 9-401(3).

35
36 Subsection (g) also provides that the rights and remedies available to the interest holder
37 and to the homeowner will not change. For example, if a creditor acquired a security interest in a
38 manufactured home while it was personal property, the creditor will retain the same rights and
39 remedies though the home has become real property. Conversely, if a secured creditor holds a
40 mortgage or deed of trust on the home and the home becomes personal property by means of
41 severance, the mortgage continues to encumber the home, and the mortgagee's remedy is
42 foreclosure

43
44 **Subsections (h) & (i)** concern manufactured homes brought into this state from another
45 state. It is based on Colo. Rev. Stat. § 38-29-127 and on U.C.C. § 9-316. The definition of
46 "value" is from U.C.C. § 1-204.

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(a) When a manufactured home becomes real property by the terms of this [act], it is not
re and is not subject to the law of fixtures.

(b) Unless displaced by the particular provisions of this [act], the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other operative legal principles, shall supplement its provisions.

(c) Filing an affidavit of affixation for recording is not a subdivision of land subject to and local subdivision laws].

Comment

To create legal parity between site-built homes and manufactured homes that become real property by the terms of this act, **subsection (a)** provides that the manufactured home is not a fixture. If the home was characterized as a fixture, different financing and creditor remedies would be available than for a site-built home. However, this subsection is not intended to prevent a manufactured home from being classified as a fixture as an alternative method for achieving real property status.

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

As part of their power to regulate land use, states regulate the subdivision of land into smaller parcels, either by state regulations or by delegation to local governments. Because Section 8(b) of this act provides that title to a manufactured home that becomes real property is distinct from title to the land on which it is affixed, **subsection (c)** is intended to eliminate the argument that a subdivision of land has occurred within the meaning of the land subdivision laws.

SECTION 10. TAXATION OF MANUFACTURED HOME. To be determined.

SECTION 11. HOME WARRANTIES. Any warranty that applies to a manufactured home when it is purchased is unaffected by a subsequent change in the home's classification as

1 real or personal property. No additional warranty applies to a home solely because its
2 classification as real or personal property changes.

3 **Comment**

4 This section is based on Tex. Occ. Code § 1201.2055(h). It is intended to eliminate any
5 question about the continued applicability of a warranty after a manufactured home's
6 classification as real or personal property changes. For example, although substantial authority
7 exists that the warranties in Article Two of the Uniform Commercial Code apply to the sale of a
8 manufactured home though it will be affixed to land before the sale is consummated, *e.g.*,
9 *Joswick v. Chesapeake Mobile Homes, Inc.*, 765 A.2d 90 (Md. 2001); *Reece v. Homette Corp.*,
10 429 S.E.2d 768 (N.C. Ct. App. 1993); *Osburn v. Bendix Home Systems, Inc.*, 613 P.2d 445
11 (Okla. 1980); *Duffee v. Judson*, 380 A.2d 843 (Pa. Super. Ct. 1977); *Long v. Quality Mobile*
12 *Home Brokers, Inc.*, 248 S.E.2d 311 (S.C. 1978); *Paskell v. Nobility Homes, Inc.*, 871 S.W.2d
13 481 (Tenn. 1994); *Apeco Corp. v. Bishop Mobile Homes, Inc.*, 506 S.W.2d 711 (Tex. App.
14 1974), none of these opinions specifies whether relevant state law classified the home as real
15 property after it was affixed on land but before the sale was consummated. Therefore, this
16 section provides that the home continues to be covered by the personal property warranties
17 provided in Article Two and in other laws after the home becomes real property. Conversely,
18 this section provides that the home is not covered by any additional warranties solely because its
19 classification has changed.

20 **SECTION 12. PRIVATE CAUSE OF ACTION.** A person injured by another

22 person's failure to comply with the terms of this [act] may bring an action for damages and for
23 other relief to enforce a right granted or obligation imposed by this [act]. This section does not
24 provide the injured person's exclusive remedy.

25 **Comment**

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

29 **SECTION 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

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

33 **Comment**

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

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

Comment

This section is taken from Uniform Law Commission Drafting Rule 603. It is designed to minimize the disruptions inherent in changes from old laws to new laws. It preserves laws that the act supersedes and that otherwise would apply to transactions and events that occurred before the act's effective date.

SECTION 16. REPEALS. The following are repealed:

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

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