

MEMORANDUM

To: Committee of the Whole

From: Manufactured Housing Act Drafting Committee

Date: June 4, 2012

Purpose of the Act

The act's primary focus is to enable a purchaser to elect to treat his or her manufactured home as real property. Although only a small percentage of manufactured homes are moved after being sited, the historic assumption is that the manufactured home is personal property – a remaining vestige of its ancestor, the travel trailer. As a result, forty-two states issue a certificate of title for manufactured homes, as they do for cars. Though most of these states provide a statutory method by which a manufactured home can be reclassified as real property, the methods are cumbersome and often confusing. The act provides an efficient and effective method for having a manufactured home classified as real property at the time of the first retail sale, thereby obviating the need for a certificate of title, or at any other time.

By electing to be treated as real estate, the home will qualify for real estate financing and will achieve all the benefits and burdens of real estate ownership.

As directed at the 2011 annual meeting, the act allows an owner to treat the home as personal property.

Structure of the Act

A retailer must give notice to a buyer when the purchase agreement is signed that the buyer may elect to have the home treated as real estate if the home will be located on land owned or controlled by the buyer, and the retailer may not direct the buyer to classify the home as either personalty or realty. [Section 3]

If the buyer is the owner of the land on which the home is located or has the consent of the landowner (if the land is not owned by the buyer), the buyer may record a certificate of location in the appropriate land records; from that time forward, the home will be treated as real estate for all purposes. [Sections 4, 7]

In the uncommon circumstance that the home is moved to another location in the State or elsewhere, the act provides a mechanism to preserve the real estate status of the home. [Section 5] However, when the home is moved, the owner can elect to keep it personal property even after it is located on a new parcel of land. [Sections 4, 7]

Because a manufactured home begins its life as personal property, the act addresses the consequences of conversion to real property (and back to personal property) by paralleling (as appropriate) the relevant provisions of the UCC. [Section 7]

Failure to comply with the act's provisions is addressed in Section 10.

Issues for Consideration

Has the Committee satisfied the demand for a two-track approach?

The Committee of the Whole in 2011 directed the Drafting Committee to “level the playing field” by requiring that the act allow a home to be either personalty or realty. The Drafting Committee believes that it has satisfied this requirement.

Is the “anti-steering” language in Section 3(b) sufficient, too stringent or just right?

The Drafting Committee considered a number of alternative approaches on this subject, including mandating delivery of lengthy documents. Ultimately, it concluded that the minimalist approach is the best. Note, though, that the act authorizes the Attorney General to take action under a State's consumer fraud laws, which may result in criminal prosecution.

How should the law of fixtures fit in this context?

The 2011 annual meeting version of the act eliminated the application of the law of fixtures to manufactured homes, drawing a bright line between personalty and realty.

The 2012 version reversed that conclusion. It now allows a home to become realty under the State's fixtures law, though the preferred (and easier) approach is to follow the act's recording of a certificate of location.

Leased land.

If the act did not allow homes on leased land to be treated as real estate, a major reason for the act would not be achieved.

However, allowing the home to be real estate on leased land could, for some, seem strange; to others, though, this is a normal occurrence.

The Drafting Committee first concluded that the lease must be for a stated (and relatively long) period of time to allow the home to be treated as real estate. It also considered whether the consent of the landowner should be a requirement. Ultimately, the Drafting Committee decided that a home on leased land can be treated as real estate if the home owner “has the legal right to locate the home” on the land.

Relationship to the Uniform Commercial Code.

Will the provisions of Section 7 work in the real world by preserving rights and remedies under personal property law after conversion to real property, and *vice versa*?