

D R A F T
FOR DISCUSSION ONLY

MANUFACTURED HOUSING ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

For October 28-30, 2011 Drafting Committee Meeting

With Prefatory Note and Comments

Changes Shown in Strike and Score.

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October 20, 2011

DRAFTING COMMITTEE ON A MANUFACTURED HOUSING ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

CARL H. LISMAN, 84 Pine St., P.O. Box 728, Burlington, VT 05402, *Chair*

BORIS AUERBACH, 5715 E. 56th St., Indianapolis, IN 46226

WILLIAM R. BREETZ, Connecticut Urban Legal Initiative, Inc., University of Connecticut
School of Law, Knight Hall, Room 202, 35 Elizabeth St., Hartford, CT 06105

THOMAS J. BUTEWEG, 4215 Westbrook Dr., Ann Arbor, MI 48108

ELLEN F. DYKE, 2125 Cabots Point Ln., Reston, VA 20191

THOMAS T. GRIMSHAW, 1700 Lincoln St., Suite 3800, Denver, CO 80203

LAWRENCE R. KLEMIN, 116 N. 2nd St., P.O. Box 955, Bismarck, ND 58502-0955

JANICE L. PAULS, 1634 N. Baker St., Hutchinson, KS 67501

HIROSHI SAKAI, 3773 Diamond Head Cir., Honolulu, HI 96815

EDWIN E. SMITH, 1 Federal St., 30th Floor, Boston, MA 02110-1726

CAM WARD, 124 Newgate Rd., Alabaster, AL 35007

ANN M. BURKHART, University of Minnesota Law School, 426 Mondale Hall, 229 19th
Ave. S., Minneapolis, MN 55455, *Reporter*

EX OFFICIO

MICHAEL HOUGHTON, P.O. Box 1347, 1201 N. Market St., 18th Floor, Wilmington, DE
19899, *President*

BARRY C. HAWKINS, 300 Atlantic St., Stamford, CT 06901, *Division Chair*

PERMANENT EDITORIAL BOARD ADVISOR

NEIL B. COHEN, Brooklyn Law School, 250 Joralemon St., Brooklyn, NY 11201-3700, *PEB
Advisor*

AMERICAN BAR ASSOCIATION ADVISOR

CHERYL A. KELLY, One U.S. Bank Plaza, 505 N. 7th St., Suite 3500, St. Louis, MO 63101-
1693, *ABA Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.uniformlaws.org

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

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

1 **MANUFACTURED HOUSING ACT**

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

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

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

17 (1)(2) “Electronic” means relating to technology having electrical, digital, magnetic,
18 wireless, optical, electromagnetic, or similar capabilities.

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

20 (3)(3) “Installed” means that the wheels and axles to a manufactured home have been
21 removed and the home has electricity supplied by a utility or by any other means or has been
22 occupied as a residence at one location for at least thirty days, whichever occurs first. A home

1 will continue to be “installed” within the meaning of this section though the electric supply
2 subsequently is stopped.

3 ~~(4)~~(4) “Legal description of the manufactured home” is the home’s manufacturer, make,
4 model designation, model year, identification number, length, and width.

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

13 ~~(6) “Mobile home” means a structure manufactured before~~(5) “Manufactured home” or
14 “manufactured housing” means a structure manufactured before, on, or after June 15, 1976,
15 transportable in one or more sections, which, in the traveling mode, is eight body feet or more in
16 width or 40 body feet or more in length, and which is built on a permanent chassis and designed
17 to be used as a dwelling with or without a permanent foundation when connected to the required
18 utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained
19 therein; but the ~~term does~~terms do not include any self-propelled recreational vehicle ~~and does~~
20 ~~not include a structure used only for nonresidential purposes.~~

21 ~~(7)~~(6) “Person” means an individual, corporation, business trust, estate, trust,
22 partnership, limited liability company, association, joint venture, public corporation, government
23 or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

~~(8)(7)~~ “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(9)(8)~~ “Recorder” means the government official that records documents affecting land titles and makes them available for public inspection.

~~(9)~~ “Security interest” means an interest in real property or in personal property that secures payment or performance of an obligation.

~~(10)~~ “Sign” means, with present intent to authenticate or adopt a record:

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

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

~~(10)(11)~~ “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

~~(11)(12)~~ “Transferee” means a person ~~who~~that acquires ~~property~~title to a manufactured home in any ~~legal~~ manner, including sale, exchange, gift, or testate or intestate succession.

~~(12)(13)~~ “Transferor” means a person ~~who~~that transfers ~~property~~title to a manufactured home in any ~~legal~~ manner, including sale, exchange, gift, or testate or intestate succession.

~~(13)“Sign” means, with present intent to authenticate or adopt a record:~~

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

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

Comment

1 ~~Paragraph (1)~~ **Paragraph (1)** is based on Uniform Commercial Code § 1-201. The
2 definition relates to Section 8(a) of this act, which deals with the enforceability of preexisting
3 liens on a manufactured home against a buyer in ordinary course of business.

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

5 **Paragraph (3)** identifies when a manufactured home has become sufficiently connected
6 to land and unlikely to be moved that the home becomes real property. In considering
7 alternatives, the drafting committee stressed the need for a standard that is objective, easy to
8 verify, and achievable in all jurisdictions and by all manufactured home owners. The committee
9 considered and rejected numerous definitions, including the following:

- 10 • permanent affixation to land, which was defined as installation in accordance with the
11 manufacturer’s installation instructions and with applicable federal, state, and local
12 laws. The committee rejected this standard because: (1) it excludes homes that are
13 improperly installed; (2) it requires a determination whether a home has been
14 properly installed; and (3) though unlikely, the home can be moved and, therefore, is
15 not “permanently” affixed;
- 16 • -issuance of a certificate of occupancy, because not all jurisdictions require them;
- 17 • -government certification of utility connection or of proper home installation, because
18 the certification can take several months to obtain;
- 19 • -attachment to a permanent foundation, because the HUD definition of “manufactured
20 home” does not require it and because some states and many landlords do not permit
21 a permanent foundation in a leasehold community; and
- 22 • satisfaction of the fixture test, because it is fact dependent and unpredictable and
23 because some forms of installation that the HUD Code permits do not satisfy that test.

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

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

30 **Paragraph (5)** is based on the “manufactured home” definition in Uniform Commercial
31 Code § 9-102(53). As stated in comment 5(b) to that section, the definition is intended to have
32 the same meaning as the definition in the federal Manufactured Housing Act, 42 U.S.C. §
33 § 5402(6). Using this definition will help harmonize this act with the federal act and with the
34 U.C.C. The drafting committee’s style member offered alternative language to conform the
35 definition to the Style Committee’s rules, but, to avoid conflicts or gaps between this uniform act
36 and the U.C.C., the drafting committee respectfully determined to use the definition based on

Article 9. However, the committee also decided that, for purposes of this act, the definition should differ from the Article 9 definition in four~~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.
- ~~This act’s The federal and Article 9 definitions of “manufactured home” definition expressly includes “mobile homes” to make clear that factory-built homes of any age are covered by the act. As a term of art, “manufactured homes” are homes built in a factory include only homes built~~ on or after June 15, 1976, which was the effective date of HUD’s construction standards for them. ~~“Mobile homes” are~~ 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 ~~before that date. at any time.~~
- ~~Some states that permit a home both manufactured and mobile homes to be characterized classified~~ as real property from the time of retail ~~purchase do so only for manufactured homes, whereas others~~ sale. Other states ~~do so for~~ permit only manufactured ~~and mobile~~ 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 ~~expressly excludes manufactured homes used only for nonresidential purposes.~~
- ~~Based on~~ does not require a minimum square footage because neither the federal definition, nor the Article 9 ~~provides that a “manufactured home” must include at least 320 square feet unless the manufacturer files a certification that the home was built in accordance with the HUD construction standards, in which case the home can be less than 320 square feet. Because the U.C.C. definition permits homes of less than 320 square feet to be categorized as a “manufactured home” and because the certification process is unavailable for homes built before the standards’ effective date, the drafting committee elected to eliminate the minimum square footage requirement requires it.~~

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

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

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

Paragraph (~~13~~11) is the standard Uniform Law Commission definition of “~~sign~~state”.

SECTION 3. RETAIL SALE OF NEW MANUFACTURED HOME.

(a) ~~After [day before act’s effective date], a~~ A manufactured home retailer that sells a new manufactured home shall ~~deliver~~transfer title to the home by a deed in recordable form ~~to the transferee~~ 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 ~~placed on~~delivered to that land. The deed must include the following:

(1) the legal description of the manufactured home;

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

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

Alternative A

~~(4)~~ the home manufacturer’s address;

~~(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 deed; and,] []

~~(6) as an attachment to the deed, the manufacturer’s certificate or statement of~~
~~origin.~~

Alternative B

~~(4) the home manufacturer’s address; and~~

~~(5)~~(5) 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 deed: [.] []; and,

1 (6) as an attachment to the deed, the manufacturer's certificate or statement of
2 origin.]

3 **(b)** When the home is installed or the deed is filed for recording ~~or the home has been~~
4 ~~installed~~, whichever occurs first, the home ~~will be~~becomes real property for all purposes from the
5 ~~date time~~ the ~~deed title~~ was ~~delivered, transferred.~~ The home will be real property even if the deed
6 does not satisfy all the requirements of this section; but, to be valid, the deed must include the
7 legal description of the manufactured home and a legally sufficient description of the land on
8 which the home is or will be installed.

9 **(c)** The sale of a home subject to this section also is subject to [state's version of Article
10 Two of the Uniform Commercial Code]; except that the transferor cannot disclaim the warranties
11 provided in subsection (a)(5).

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

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

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

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

18 **Comment**

19 ~~This section is designed to ensure that the purchaser of a new~~ When Manufactured Home

20 Converts to Real Property

21 ~~While a~~ While a manufactured home ~~acquires it as real property, so that mortgage financing is~~
22 ~~more readily available. Subsection (a) provides that the retailer shall not transfer title until~~ is part
23 ~~of a dealer's inventory, the home is placed on land, and subsection (b) provides that the home~~
24 ~~will be real property from the time of title transfer.~~

25 ~~Because the home will be real property when transferred, subsection (a) requires the~~
26 ~~retailer to transfer title by a deed in recordable form and specifies the additional information that~~

1 must be included in the deed because it is conveying title to a manufactured home, rather than to
2 a site-built home. Subsection (a)(5) is based on U.C.C. § 2-312(1). Alternatives A and B are
3 included because some states do not require a manufacturer's certificate or statement of origin.

4 Subsection (b) specifies three methods by which a manufactured home changes from
5 personal property to real property. The first, Subsection (b) provides two methods by which the
6 home converts to real property—the home is installed, as defined in Section 2(3), or the deed to
7 the home is filed for recording, which, pursuant to subsection (a), cannot occur before the home
8 is delivered to the land on which it will be installed. The latter method, filing the deed for
9 recording, has the advantages of bringing the home's title into the real property recording system
10 and advantage of being readily verifiable/ascertainable. However, an owner may fail to file for a
11 variety of reasons, including in an attempt to avoid the obligation to pay/paying real property
12 taxes. Therefore, based on the definition of “installed”, subsection (b) provides two other
13 methods by which the home will be converted to real property—supplying electricity to the
14 home or occupying it as a residence at one location for at least thirty days. When one of these
15 events occurs a home also becomes real property when its wheels and axles have been removed
16 and electric service has been supplied. When these two events occur, the home is extremely
17 unlikely to be moved, and both. These two events are useful conversion standards because they
18 normally are readily ascertainable.

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

41 Though the manufactured home will be real property when the retailer transfers title,
42 Article 2 of the Uniform Commercial Code governs the sale, because it constitutes the sale of a
43 “good”. U.C.C. § 2-105(1) (“‘Goods’ means all things (including specially manufactured
44 goods) which are movable at the time of identification to the contract for sale”); *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); *Apeco Corp. v. Bishop Mobile Homes, Inc.*, 506 S.W.2d 711 (Tex. App. 1974). This act does not preempt Article 2, including its warranties. Section 9 of this act addresses warranties that are not included in Article 2.~~

~~Subsection (b) further 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 taxation, or for all purposes.~~

be readily ascertained.

Pursuant to Section 3, the home will become real property though the home owner does not own the land on which the home is installed. 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 automatically prevents about one-quarter of manufactured homes from being converted to real property.

Some states that permit a manufactured home on leased land to be classified as real property require the landowner's consent to the real property classification. *E.g.*, Ariz. Rev. Stat. § 33-1501; Or. Rev. Stat. § 446.626. This requirement is unnecessary because, as provided in Section ~~7(a)(8)(b)~~ of this act, title to the home and to the land remain distinct, and because, as provided in Section ~~7(b); 10~~, the home and the land are valued and taxed separately.

Another restriction in some states is that the land lease must have a minimum statutorily-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. A minimum lease term requirement also hampers the sale or refinancing of a manufactured home when the remaining term on the less has fallen to less than the statutorily-specified minimum.

1 Although the length of the lease term is a loan underwriting consideration, it is an unnecessary
2 restriction on the ability to classify a manufactured home as real property, as evidenced by the
3 jurisdictions that do not require a minimum term. E.g., Conn. Gen. Stat. § 21-67a; Mont. Code
4 § 15-1-116(1); N.H. Rev. Stat. § 477:44, subp. I; 10 Tex. Admin. Code § 80.2 (no minimum term
5 required if each lienholder has approved the real property classification; otherwise, lease term
6 must be at least five years).

7 *Relation Back of Real Property Classification*

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

15 *Deed to Transfer Title to Manufactured Home*

16 Because the relation back provision will make the home real property from the time the
17 retailer transfers title, **subsection (a)** requires the retailer to transfer title by a deed in recordable
18 form. 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 (a)(1)-[(5)][(6)] also must be
21 included in the deed. However, the failure to include this additional information will not prevent
22 the home from becoming real property, so long as the deed satisfies the state's other legal
23 requirements.

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

26 **Subsection (a)** includes alternative language because some states do not require a
27 manufacturer's certificate or statement of origin.

28 *Manufactured Home Becomes Real Property for All Purposes*

29 **Subsection (b)** provides that, when a home is classified as real property, it is real
30 property for all purposes. Accord Colo. Rev. Stat. §§ 38-29-112(1.5), 38-29-114(2); Mont. Code
31 § 15-1-116(5); Or. Rev. Stat. § 446.626(2) & (5). This provision eliminates the ambiguity that
32 currently exists in some state statutes concerning the purposes for which the home is to be treated
33 as real property. When a statutory provision that a manufactured home can be classified as real
34 property does not include this type of language, courts have questioned whether the home is
35 classified as real property only for certain purposes, such as financing or taxation, or for all
36 purposes.

37 *Applicability of Article 2 of the Uniform Commercial Code*

1 Substantial authority exists that Article Two of the Uniform Commercial Code governs
2 the sale of a manufactured home, though it will be affixed to land before the sale is
3 consummated. E.g., *Joswick v. Chesapeake Mobile Homes, Inc.*, 765 A.2d 90 (Md. 2001); *Reece*
4 *v. Homette Corp.*, 429 S.E.2d 768 (N.C. Ct. App. 1993); *Osburn v. Bendix Home Systems, Inc.*,
5 613 P.2d 445 (Okla. 1980); *Duffee v. Judson*, 380 A.2d 843 (Pa. Super. Ct. 1977); *Long v.*
6 *Quality Mobile Home Brokers, Inc.*, 248 S.E.2d 311 (S.C. 1978); *Paskell v. Nobility Homes, Inc.*,
7 871 S.W.2d 481 (Tenn. 1994); *Apeco Corp. v. Bishop Mobile Homes, Inc.*, 506 S.W.2d 711
8 (Tex. App. 1974). However, these opinions do not specify whether relevant state law classified
9 the home as real property after it was affixed to land but before consummation of the sale.
10 Therefore, **subsection (c)** is intended to eliminate any question concerning the applicability of
11 Article 2 to retail sales of new manufactured homes after [day before act’s effective date]. The
12 only exception is that the transferor cannot disclaim the warranties provided in subsection (a)(5),
13 though Article 2 permits disclaimer.

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

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

34 **SECTION 4. MANUFACTURED HOME ACQUIRED BEFORE [ACT’S** 35 **EFFECTIVE DATE].**

36 (a) If a manufactured home owner, other than a manufactured home retailer, acquired the
37 home before [act’s effective date] and **if** the home is installed on land in this state, the owner
38 may file a certificate of location for recording in the land records of the jurisdiction in which the
39 home is installed. The certificate must include the following:

(1) the date of the certificate;

(2) the owner's name;

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

(4) the date that the owner acquired the home;

(5) the legal description of the manufactured home;

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

Alternative A

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

landowner's name; [and] []

(8) the signature of the home ~~owner's signature;~~owner or a duly authorized

representative[.]]; and,

(9) as an attachment to the certificate, the manufacturer's certificate or statement

of origin or the certificate of title that ~~establishes~~evidences the owner's ownership of the

home.]

Alternative B

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

~~landowner's name; and~~

~~(8)the home owner's signature.~~

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

~~(b)If the owner~~ The home will be real property even if the certificate does not satisfy all the requirements of this section.

(c) If a manufactured home owner, other than a manufactured home retailer, acquired ~~the home~~ before [act's effective date] and if the home is installed on land in this state when the owner transfers title to the home, the owner shall deliver a deed in recordable form to the transferee. The deed must include the following:

(1) the legal description of the manufactured home;

Alternative A

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

[and] []

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

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

Alternative B

~~(2)(d)~~ If the home is not real property immediately before the deed is delivered to the transferee, the home becomes real property for all purposes when the deed is delivered. The home will be real property even if the deed does not satisfy all the requirements of this section; but, to be valid, the deed must include the legal description of the manufactured home and a legally sufficient description of the land on which the home is installed; ~~and,~~

~~(3)if the home transferee~~ (e) All subsequent transfers of a right, title, or interest in the home must be made in accordance with applicable real property law and 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 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 ~~(d) If the home is not real property immediately before the deed is delivered to the~~
5 ~~transferee, it becomes real property for all purposes at the time of delivery.~~

6 **Comment**

7 **Subsections (a) and (b)** make the act voluntarily retroactive. If the owner of a pre-act
8 home wants to convert it to real property, these paragraphs provide the means to do so. *Accord*
9 Or. Rev. Stat. § 446.626(1); Tex. Occ. Code § 1201.214. *Compare* Colo. Rev. Stat. §§ 38-29-
10 112(1.5), 38-29-118 (home owner *must* file certificate of permanent location to reclassify home
11 as real property when home is permanently affixed to land even if owner purchased before law's
12 effective date; recognizing that an owner may not comply with this requirement, a subsequent
13 purchaser of the home must file certificate of permanent location).

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

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

27 Alternatives A and B are Alternative language is included in **subsections (a) and (c)**
28 because some states do not require a manufacturer's certificate or statement of origin or a
29 certificate of title.

30 "Installed" is defined in Section 2(3).

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

33 **SECTION 5. MOVING A SEVERANCE OF MANUFACTURED HOME.**

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

4 (1) the home owner's name;

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

6 (3) a legally sufficient description of the land from which the home will be
7 ~~moved~~severed;

8 (4) a statement that the home is going to be severed and moved;

9 (5) the approximate date that the home will be severed and moved;

10 (6) the recording information for the current deed or certificate of location; and

11 (7) the ~~owner's~~ signature of the home owner or its duly authorized representative.

12 (b) If a manufactured home for which a deed or certificate of location has been filed for
13 recording is on land that the home owner does not own, the landowner cannot ~~remove~~sever the
14 home until the landowner files a certificate of severance, together with a certified copy of any
15 required judgment or order authorizing the landowner to sever the home, for recording in the
16 same land records. The landowner, rather than the home owner, shall sign the certificate of
17 severance.

18 (c) The recorder shall record and index the certificate of severance, together with the
19 certified copy of any required judgment or order, and shall deliver the recorded certificate to the
20 person that owned the home when the certificate was filed. When the certificate of severance is
21 [filed, the recorder] [recorded and delivered, the person to which it is delivered] shall deliver a
22 copy of it to the property tax assessor for ~~the~~that jurisdiction ~~from which the home is moved~~.

23 ~~(d) If the home owner is the same before and after the home is moved, the owner shall file~~
24 ~~a certificate of location for recording in the land records of the jurisdiction to which the home~~

1 ~~has been moved within ten days after the home is moved. The certificate required by this~~
2 ~~subsection must include the following:~~

3 ~~(1)the date of the certificate;~~

4 ~~(2)the owner's name;~~

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

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

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

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

11 **~~Alternative A~~**

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

15 ~~(8)the home owner's signature; and,~~

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

19 **~~Alternative B~~**

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

23 ~~(8)the home owner's signature.~~

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

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

6 ~~(1) the legal description of the manufactured home;~~
7 ~~(2) a legally sufficient description of the land to which the home has been or will~~
8 ~~be moved;~~

9 **~~Alternative A~~**

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

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

14 ~~(5)if a deed or certificate of location for the home has not previously been filed~~
15 ~~for recording in this state, the manufacturer's certificate or statement of origin or the certificate~~
16 ~~of title that establishes the transferor's ownership of the home, as an attachment to the deed.~~

17 **~~Alternative B~~**

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

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

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

1 (d) Subject to Section 6(b) of this [act], relocation Severance of a home does not impair a
2 security interest or other ~~lien or~~ encumbrance on the title to the home that existed immediately
3 before the severance. When the home is moved to another parcel of land:

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

6 (f)(2) upon default, the holder of a preexisting security interest that encumbers
7 both the home and the land from which it was severed, must exercise its rights in the land before
8 it exercises its right to recover any remaining unpaid debt from the home.

9 **Comment**

10 Section 5 incorporates the requirements **Subsection (a)** deals with a home owner's
11 severance of a number its home.

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

15 **Subsection (c)** includes alternative language concerning the requirements and fills in
16 gaps in many person responsible for delivering a copy of the existing statutes. Alternatives A and
17 B are included in subsections (d) and (e) because some states do not require a manufacturer's
18 certificate or statement of severance to the property tax assessor. Delivery is more likely to
19 occur if the recorder is obligated to deliver it, but some jurisdictions prohibit the recorder from
20 doing so.

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

32 **Subsection (d)** also provides that, if the home is moved, the security interest or other
33 encumbrance on the title to the home has priority over any interests in the land to which it is
34 moved. Additionally, upon default, the security interest holder first must exercise any rights that

1 [it has in the land from which the home was severed. If the action against the land does not](#)
2 [generate enough proceeds to repay the secured debt, the lender then can exercise its rights in the](#)
3 [home. *Accord Johnson v. Bratton*, 70 N.W. 1021 \(Mich. 1897\); *Partridge v. Hemenway*, 50](#)
4 [N.W. 1084 \(Mich. 1891\); *Hamlin v. Parsons*, 12 Minn. 108 \(1866\); *Dakota Loan & Trust Co. v.*](#)
5 [*Parmalee*, 58 N.W. 811 \(S.D. 1894\).](#)

6 *Representative State Statutes*

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

9 *Colorado* requires the home owner to file a certificate of removal with the county clerk
10 and recorder for the county where the home is located. Colo. Rev. Stat. § 38-29-203(1)(a) & (b).
11 Within twenty days after the location change, the owner must file a notice of the change with the
12 county assessor and the county treasurer for the counties from which and to which the home has
13 been moved. § 38-29-143. A landlord that is evicting a tenant can record a certificate of
14 removal. § 38-29-203(2.5)(b).~~*Colorado* requires the home owner to file a certificate of removal~~
15 ~~with the county clerk and recorder for the county where the home is located. Colo. Rev. Stat. §~~
16 ~~38-29-203(1)(a) & (b). Within twenty days after the location change, the owner must file a~~
17 ~~notice of the change with the county assessor and the county treasurer for the counties from~~
18 ~~which and to which the home has been moved. § 38-29-143. A landlord that is evicting a tenant~~
19 ~~can record a certificate of removal. § 38-29-203(2.5)(b). All lienholders must consent to the~~
20 ~~removal. If a lienholder ~~fails to~~does not consent to relocation, the home owner can file a bond in~~
21 ~~an amount equal to 150% of the secured amount. Colo. Rev. Stat. § 38-29-203(4). ~~When the~~~~
22 ~~home is permanently affixed at the new location, the owner must file a certificate of permanent~~
23 ~~location. § 38-29-118.~~

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

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

39 *Montana* requires the owner to file a statement of reversal of declaration with the county
40 clerk and recorder of the county in which the home is located. All lienholders must consent to
41 the reversal. The clerk and recorder must forward a copy of the statement to the Department of

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

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

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

SECTION 6. RELOCATION OF MANUFACTURED HOME.

(a) If a manufactured home is moved from a parcel of land in this state for which a deed or certificate of 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 same person owns the home before and after it is moved, that person shall file a certificate of location for recording in the land records of the jurisdiction to which the home is moved. The certificate must be filed for recording within ten days after the home is delivered to its new location. The certificate must include the following:

(1) the date of the certificate;

(2) the home owner’s name;

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

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

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

6 (6) the recording information for the deed or certificate of location for the home's
7 previous location; and

8 (7) the signature of the home owner or its duly authorized representative.

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

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

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

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

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

3 (4) the recording information for the deed or certificate of location for the home's
4 previous location.

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

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

16 (1) the date of the certificate;

17 (2) the owner's name;

18 (3) the name of the person from which the owner acquired the home;

19 (4) the date that the owner acquired the home;

20 (5) the legal description of the manufactured home;

21 (6) a legally sufficient description of the land on which the home is or will be
22 installed;

1 in the deed. Failure to include this additional information will not prevent the home from
2 becoming real property, so long as the deed satisfies the state’s other legal requirements. If the
3 home is being relocated in connection with the retail sale of a new manufactured home, the title
4 transfer is governed by Section 3, rather than by this subsection.

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

9 **Subsection (c)** also does not require the recording of a certificate of location when a
10 manufactured home is moved from this state to another state. After the home is relocated, it is
11 no longer within this state’s jurisdiction. However, Section 5 requires that a certificate of
12 severance be filed for recording in this state before the home is moved.

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

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

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

20 *Representative State Statutes*

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

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

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

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

35 *****

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

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

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

22 (1) the date of the certificate;

23 (2) the owner's name;

24 (3) the name of the person from whom the owner acquired the home;

25 (4) the date that the owner acquired the home;

26 (5) the legal description of the manufactured home;

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

28 **Alternative A**

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

31 (8) the home owner's signature; and,

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

~~Alternative B~~

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

~~(8)the home owner's signature.~~

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

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

Comment

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

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

~~SECTION 7. EFFECTS OF CONVERSION TO REAL PROPERTY.~~

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

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

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

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

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

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

Comment

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

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

~~Subsection (e) is intended to create parity between site-built homes and manufactured homes. Because a manufactured home is personal property before it is installed 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 provides that the home is not a fixture.~~

1 ~~Subsection (f) is from Uniform Law Commission Drafting Rule 603.~~

2 **SECTION 8. RECORDING DEED OR CERTIFICATE OF LOCATION.** When a

3 manufactured home deed or certificate of location is filed, the recorder shall record and index it.

4 If a manufacturer's certificate or statement of origin or certificate of title is filed with the deed or
5 certificate of location, the recorder shall record and index them as one document and then shall

6 destroy the manufacturer's certificate or statement of origin or the certificate of title. The

7 recorder shall deliver the recorded deed or certificate of location to the home owner ~~and a copy.~~

8 The [recorder shall deliver a copy of the deed or certificate of location] [home owner shall

9 deliver a copy of the recorded deed or certificate of location] to the property tax assessor. If a

10 manufacturer's certificate or statement of origin or certificate of title is filed with the deed or

11 certificate of location, the [recorder also shall deliver a copy of the deed or certificate of

12 location] [home owner also shall deliver a copy of the recorded deed or certificate of location] to

13 the [government agency that maintains manufactured home title records].

14 **Comment**

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

1 In contrast, this section requires the deed or certificate of location to be filed first with the
2 recorder. *Accord* Colo. Rev. Stat. § 38-29-114(2); Mont. Code § 15-1-116(1); N.H. Rev. Stat.
3 §477:44, subp. III. When the home buyer finances the purchase, the lender or title insurer
4 normally will file the deed or certificate for recording. When the buyer does not finance the
5 purchase, the manufactured home retailer, like a car dealer, can offer to file the deed for
6 recording, or the purchaser can file it. In this way, the home immediately is brought into the real
7 property title system. ~~Moreover, by requiring the recorder, rather than the home owner, to notify~~
8 ~~the tax assessor and the government agency that maintains the manufactured home title records,~~
9 ~~the notice is more likely to be given. The home owner may be unaware of the requirement to~~
10 ~~deliver notice or may attempt to avoid paying real property taxes by failing to deliver it.~~

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

17 Requiring the recorder, rather than the home owner, to deliver a copy of the deed or
18 certificate of location to the tax assessor and to the titling agency, if any, is more likely to ensure
19 that delivery occurs. The home owner may be unaware of the delivery requirement or may
20 attempt to avoid paying real property taxes by failing to deliver. However, some jurisdictions
21 prohibit the recorder from delivering documents. Therefore, this section includes alternative
22 language that requires the owner to do so.

23 **SECTION 8. RIGHTS, TITLES, AND INTERESTS IN MANUFACTURED**

24 **HOME.**

25 (a) A buyer in ordinary course of business takes free of a security interest created by the
26 buyer's seller pursuant to [state's version of U.C.C. Article 9], even if the security interest is
27 perfected and the buyer knows of its existence.

28 (b) If a manufactured home is installed on land that the home owner does not own, the
29 landowner acquires no interest in the home, and the home is not subject to any tenancies, security
30 interests, or other encumbrances in or on the title to the land.

31 (c) A perfected security interest in a manufactured home has priority over a conflicting
32 interest of an encumbrancer or owner of the land on which it is installed if the debtor owns the
33 land or an undivided interest in it and:

1 (1) the security interest is a purchase-money security interest;
2 (2) the interest of the encumbrancer or owner arises before the manufactured
3 home became real property; and
4 (3) the security interest is perfected by (A) a fixture filing before the home
5 becomes real property or within 20 days thereafter or (B) recording a [mortgage][deed of trust].
6 (d) A perfected security interest in a manufactured home has priority over a conflicting
7 interest of an encumbrancer or owner of the land on which it is installed if:
8 (1) the debtor owns the land or an undivided interest in it and the security
9 interest:
10 (A) is perfected by a fixture filing or by recording a [mortgage][deed of
11 trust] before the interest of the encumbrancer or owner is of record; and
12 (B) has priority over any conflicting interest of a predecessor in title of
13 the encumbrancer or owner;
14 (2) the security interest:
15 (A) is created in a manufactured home in manufactured-home transaction
16 as defined by [state version of U.C.C. § 9-102(54)]; and
17 (B) is perfected pursuant to a statute described in [state version of U.C.C.
18 § 9-311(a)(2), the certificate of title provision]; or
19 (3) the conflicting interest is a lien on real property obtained by legal or equitable
20 proceedings after the security interest was perfected.
21 (e) A security interest in a manufactured home, whether or not perfected, has priority
22 over a conflicting 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.

(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 perfection of a tenancy, security interest, or other encumbrance on a manufactured home, a filing that has been made in the proper place in this state continues effective though the home's classification as real or personal property or its location within this state, whichever controlled the original filing, is thereafter changed.

(h) After a manufactured home is moved into this state and the owner files a certificate of location as provided in Section 6(c), 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) the subsequent purchaser has actual notice of the tenancy, security interest, or other encumbrance, (ii) the recorded certificate of location describes the tenancy, security interest, or other encumbrance, or (iii) 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 of location or (B) installation 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 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. § 9-320(a).

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

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

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

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

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

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

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

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

Subsection (h) 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 HOMES.

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 to create parity between site-built homes and manufactured homes. Because a manufactured home is personal property before it is installed 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 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 be valued and taxed separately.

(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 a home whether it is real property or personal property.

Comment

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

This section is based on Tex. Occ. Code § 1201.2055(h). It is designed to preserve warranties for a manufactured home after it has been converted to real property. For example, as described in the Comment 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); *Apeco Corp. v. Bishop Mobile Homes, Inc.*, 506 S.W.2d 711 (Tex. App. 1974). However, none of these opinions specifies whether relevant state law classified the home as real property after it was affixed to land but before consummation of the sale. Therefore, this section is intended to eliminate any question concerning the applicability to manufactured homes of the warranties contained in Article Two and in other laws and to preserve the warranties after the home has become real property.

SECTION 4012. REAL ESTATE LICENSE UNNECESSARY. Nothing in this [act] requires a manufactured home retailer to be licensed as a [real estate agent:].

Comment

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

SECTION 1113. ENFORCEMENT. A ~~manufactured home transferee, lender, or any other person subject to~~injured by another person's failure to comply with the terms of this [act] may bring an action for damages and for other relief to enforce a right granted or obligation imposed by this [act]. ~~[Punitive damages may be awarded for a willful failure to comply with this [act].]~~ The court may award reasonable attorney's fees and costs to the prevailing party.

Comment

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

SECTION 1214. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Comment

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

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

Comment

Uniform Law Commission Drafting Rule 602 (2006) requires inclusion of this provision to comply with Section 102(a)(2)(B) of In 2000, Congress enacted the “Electronic Signatures in Global and National Commerce Act,” 106 PUB. L. NO. 229, 114 Stat. 464, 15 U.S.C. Section 7002(a)(2)(B)§ 7001, *et seq.* (popularly known as “E-Sign”). E-Sign largely tracks the Uniform Electronic Transactions Act (UETA). Section 102(a)(2)(B) of E-Sign, entitled “Exemption to preemption”, provides in pertinent part that—a state:

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

(1) constitutes an enactment of adoption of the Uniform Electronic Signatures in Global Transactions Act as approved and recommended for enactment in all the States by the National Commerce Act by specifically referring to it Conference of Commissioners on Uniform State Laws in 1999” [with certain exception] or

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

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

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

SECTION 16. SAVINGS PROVISION. Subject to Section 6(b) of this [act],
transactions, certificates of title, records, and information that were validly entered into or
created before the effective date of this [act], and would be subject to this [act] if they had been

1 entered into or created on or after the effective date of this [act], and the rights, duties, and
2 interests flowing from these transactions, certificates of title, records, and information, remain
3 valid after the effective date of this [act].~~14~~

4 Comment

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

9 **SECTION 17. REPEALS.** The following are repealed:

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

18 **SECTION ~~15~~18. EFFECTIVE DATE.** This [act] takes effect on _____.