

UNIFORM MANUFACTURED HOUSING ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FIRST YEAR
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WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM MANUFACTURED HOUSING ACT

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UNIFORM MANUFACTURED HOUSING ACT

Prefatory Note

The act's primary focus is the proper classification of manufactured homes (also commonly called mobile homes) as real property or 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 owners of manufactured homes with many of the same legal protections as owners of site-built homes.

Many states' laws concerning manufactured homes have not kept pace with the changes in them over the last 90 years. Based on manufactured homes' earliest ancestor—the travel trailer—state laws classify most of these homes as personal property, though the great majority are not moved after being sited on a lot. Three-quarters of manufactured homes are sited on the owner's land, and the average lot size is more than twice the average lot size for site-built homes. HUD construction and installation standards have virtually eliminated the differences in construction quality and safety between manufactured and site-built homes. As a result, the life expectancy of and deterioration rate for manufactured homes are now equivalent to those for site-built homes. Moreover, a manufactured home's appearance can be virtually indistinguishable from that of a site-built home. Today's manufactured home is functionally more equivalent to a site-built home than to a travel trailer, but only 25% of manufactured homes are classified as real property.

In addition to being generally outdated, existing state laws vary tremendously from state to state, which creates substantial inefficiencies in the manufactured home sale and finance markets.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

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

UNIFORM MANUFACTURED HOUSING ACT

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

SECTION 2. DEFINITIONS. In this [act]:

(1) “Buyer” means a person that buys or contracts to buy a manufactured home.

(2) “Certificate of location” means a record in recordable form which includes:

(A) the homeowner’s name;

(B) the unique identifier of the manufactured home that is the subject of the certificate;

(C) a legally sufficient description of the land on which the home is located or on which the homeowner intends to locate it;

(D) the name of the record owner of the land;

(E) the homeowner’s representations that:

(i) the homeowner owns the home;

(ii) the home is or will be located on the land described in the certificate;

and

(iii) the homeowner has the legal right to locate the home on the land described in the certificate;

(F) the homeowner’s signature;

(G) the date the homeowner signed the certificate;

(H) the name and mailing address of the person to which the [recorder] is to return the recorded certificate; and

(I) as an attachment to the certificate:

(i) the certificate of origin for the home, together with an official

[Uniform Commercial Code Article 9] search report, issued not more than [15] days before the date of the certificate of location by the [Secretary of State or other central filing office] of the state in which the homeowner is located as determined under [Uniform Commercial Code Section 9-307], that lists each financing statement filed in the state which lists the homeowner as a debtor and a copy of each financing statement; [or]

(ii) a certified copy of the most recent certificate of location for the home and of the deed, if any, by which the homeowner acquired title to the home[; or] [.]

[(iii) the certificate of title for the home.]

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

(4) “Certificate of relocation” means a record in recordable form which includes:

(A) the name of the person causing the manufactured home that is the subject of the certificate to be relocated;

(B) if the person causing the home to be relocated does not own the home, the homeowner’s name, if known;

(C) the unique identifier of the manufactured home, if known;

(D) a legally sufficient description of the land from which the home has been or will be relocated;

(E) the name of the record owner of the land;

(F) the recording information for the most recent deed or certificate of location for the home;

(G) a statement that the home has been or will be relocated;

(H) the date that the home was or will be relocated;

(I) the signature of the person causing the home to be relocated;

(J) the date the person signed the certificate; and

(K) the name and mailing address of the person to which the [recorder] is to return the recorded certificate.

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

(6) “Land controlled by the homeowner” means land on which the owner of a manufactured home has the legal right to locate the home.

(7) “Located”, with reference to a manufactured home, means placing the home at a site at which the home has or previously had electricity supplied from any source and having the towing hitch, wheels, and axles removed from the home.

(8) “Manufactured home” means a structure, including the plumbing, heating, air conditioning, and electrical systems contained in the structure, that is:

(A) transportable in one or more sections;

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

(C) built on a permanent chassis;

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

(E) not a self-propelled recreational vehicle.

(9) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

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

(11) “Record”, used as a noun, 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.

(12) “Retailer” means a person that, in the ordinary course of business, sells manufactured homes to persons other than those in the business of selling or leasing manufactured homes.

(13) “Security interest” means an interest in real or personal property which secures payment or performance of an obligation. The term includes a mortgage, deed of trust, and security interest as defined in [Uniform Commercial Code Article 1].

(14) “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.

(15) “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.

(16) “Unique identifier of the manufactured home” means the name of the manufacturer of the manufactured home, the identification number placed on the home by the manufacturer, and the make, model designation, and model year of the home.

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

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

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

If the state uses electronic certificates of title, the state should provide a method for obtaining a certified copy to attach to the certificate of location described in paragraph (2).

If the state does not issue a certificate of title for manufactured homes, it should delete the bracketed language in paragraph (2)(I)(iii).

If a state wishes to use permanent affixation to land as the prerequisite for real property status, the state may define “located” and “location” to mean “the manufactured home is attached to a permanent foundation.”

Comment

Paragraph (1) is based on Uniform Commercial Code Section 2-103(1)(a).

Paragraph (2) specifies the requirements for a certificate of location, which must be filed for recording to convert a manufactured home to real property. Subsection (I) provides alternative attachments for the certificate because the certificate may be filed when the home (1) has always been personal property, in which case the attachment will be a certificate of origin or certificate of title, depending on whether the state issues a certificate of title for manufactured homes, (2) has been moved from land where it was real property, in which case the attachment will be a certified copy of the previous certificate of location and of the deed, if any, by which the owner acquired title, or (3) was converted to real property but subsequently was reconverted to personal property for longer than the period specified in Section 4(e), in which case the attachment will be a re-issued certificate of origin or re-issued certificate of title in those states that title manufactured homes.

Paragraph (6), the definition of “land controlled by the owner”, includes land (i) owned by the homeowner, (ii) in a common interest community, and (iii) on which the home is located with the consent of the record owner of the land, such as by lease.

Many states permit a manufactured home on leased land to be real property. *E.g.*, Cal. Health & Safety Code § 18551(a)(1)(A); Colo. Rev. Stat. § 38-29-202(1)(d); Conn. Gen. Stat. § 21-67a; Fla. Stat. § 319.261; Idaho Code § 63-304(1)(b); N.H. Rev. Stat. § 477:44, subp. I; Or. Rev. Stat. § 446.626(1); S.C. Code § 56-19-510; Tex. Occ. Code § 1201.2055. However, other states prohibit a home from being real property if it is on leased land. *E.g.*, Ala. Code § 32-8-30; Ariz. Rev. Stat. § 42-15201(2); Ga. Code § 8-2-181(b)(1); Mich. Comp. Laws § 125.2330i; Miss. Code § 27-53-15; Vt. Stat. tit. 9, § 2603(b).

Some states that permit a manufactured home on leased land to be real property require that the lease have a minimum specified term. *E.g.*, Cal. Health & Safety Code § 18551(a)(1)(A) (thirty-five years); Colo. Rev. Stat. § 38-29-202(1)(d) (ten years); Fla. Stat. § 319.261 (thirty years); Or. Rev. Stat. § 446.626(1) (twenty years); S.C. Code § 56-19-510 (thirty-five years). This restriction addresses the concern that the owner will have to move the home in the relatively

short term because, for example, the lease term has expired and the tenant cannot afford a rent increase. However, even if the lease is for a long term, it can provide for periodic rent increases and for early termination, such as upon the tenant's default. Moreover, when a lease terminates, the home usually is left in place and is sold to a new owner, because the cost of moving and the potential for damage are so great. Finally, if the owner sells or refinances the home when the remaining lease term is less than the statutory period, mortgage financing will be unavailable.

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

Paragraph (7) identifies when a manufactured home has become sufficiently connected to land and unlikely to be moved that the home becomes real property. Because the great majority of manufactured homes are not moved after being sited on land, removal of the towing hitch, wheels, and axles and connection to a source of electricity constitute a sufficient connection to the land and a standard that is objective that is objective, readily verifiable, and achievable in all jurisdictions and by all owners of manufactured homes. The following standards do not satisfy those tests:

- installation in accordance with the manufacturer's installation instructions and with applicable federal, state, and local laws. This standard excludes homes that are improperly installed and requires a determination whether a home has been properly installed;
- issuance of a certificate of occupancy, because not all jurisdictions require them;
- government certification of utility connection or of proper home installation, because the certification can take several months to obtain;
- attachment to a permanent foundation, because, (1) the HUD definition of "manufactured home" does not require it, (2) some states and many landlords do not permit a permanent foundation in a leasehold community, and (3) according to the American Housing Survey for the United States, approximately 60% of manufactured homes are not attached to a permanent foundation;
- permanent affixation to land, because, though unlikely, the home can be moved and, therefore, is not permanently affixed; and
- satisfaction of the fixture test, because it is fact dependent and unpredictable and because some forms of installation that the HUD Code permits do not satisfy that test.

Paragraph (8), the definition of "manufactured home", is intended to have the same meaning as the definition in the federal Manufactured Housing Act, 42 U.S.C. § 5402(6), and Uniform Commercial Code Section 9-102(a)(53). Using this definition will help harmonize this act with the federal act and with the Uniform Commercial Code. However, unlike the federal act

and Article 9, this act includes manufactured homes built before June 15, 1976, which was the effective date of HUD's construction standards for them. Technically, these homes are called "mobile homes", while homes built on or after that date are called "manufactured homes."

Some states permit both manufactured and mobile homes to be classified as real property. Other states permit only manufactured homes to be so classified. *E.g.*, Colo. Rev. Stat. § 38-29-102(6) (manufactured and mobile homes); Idaho Code Ann. § 39-4105(8) (manufactured homes only); Mont. Code Ann. § 15-1-101(1) (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 would replace those laws.

Paragraph (10) is based on the definitions of "purchase" and "purchaser" in Uniform Commercial Code Section 1-201(b).

Paragraph (12) provides the definition of "retailer" for Sections 3 and 11.

Paragraph (13), the definition of "security interest", includes security interests in real and personal property because a manufactured home's classification can change once or more during the home's life.

Paragraph (15) includes the information that most state statutes require in conveyance documents for manufactured homes. "Serial number" includes the vehicle identification number (VIN).

SECTION 3. SALE OF MANUFACTURED HOME.

(a) Except as otherwise provided in subsection (c), when a retailer and buyer contract for the sale of a manufactured home, the retailer shall deliver a notice in a record to the buyer and obtain a signed receipt from the buyer. The notice must include the following or substantially similar statements:

(1) Under the law of this state, the buyer shall elect whether the home will be real property or personal property if the home is to be located on land controlled by the homeowner.

(2) The buyer's election may affect the amount of the monthly payments and costs for a loan to buy the home, the buyer's legal rights in the home, and the taxation of the home.

(3) The buyer should consult a trusted adviser, other than the retailer, about this election.

(b) Except as otherwise provided in subsection (c), a seller may not direct or otherwise steer a buyer to classify the manufactured home as real property or personal property for purposes of financing or otherwise.

(c) Subsections (a) and (b) do not apply to a sale to a person that buys for resale.

(d) If a sale of a manufactured home by a retailer is not governed by [Uniform Commercial Code Article 2], the warranty provisions of [Uniform Commercial Code Article 2] that apply to a sale of goods apply to the sale of the manufactured home, and any rights arising from breach of warranty are those in [Uniform Commercial Code Article 2].

(e) When a manufactured home is sold, the seller shall deliver to the buyer at the time of sale the certificate of origin [or the certificate of title] for the home. If the seller does not have a certificate of origin [or certificate of title] because the home is real property under Section 4 at the time of sale, the seller shall deliver a certified copy of the most recent certificate of location for the home and of the deed, if any, by which the seller acquired title to the home.

[(f) If, not later than [10] days after buying a new manufactured home, a buyer files a certificate of location for recording in accordance with Section 4, the buyer need not obtain a certificate of title for the home.]

***Legislative Note:** If the state issues a certificate of title for a manufactured home, it should insert the number of days that the buyer has to file a certificate of location, if desired, in subsection (f). If the state does not issue a certificate of title for manufactured homes, subsection (f) should be deleted, as well as the bracketed language in subsection (e).*

Comment

Although manufactured home buyers in almost every state can elect to have the home classified as real property, most buyers are unaware that they have the choice and the significance of that choice. Therefore, **subsection (a)** requires a retailer to notify the buyer that the election is available and that it can affect the buyer's financing and legal rights in the home, such as homestead protection and marital property rights, and taxation of the home. **Subsection (c)** provides that the retailer need not give this notice to a person that is buying the home for resale.

Under the current system of manufactured home financing, sellers, including retailers,

have incentives to steer buyers to chattel loans, rather than to mortgage loans. However, when a mortgage loan is available, it often is the better option for the buyer. Though the closing costs for a mortgage loan can be higher than for a chattel loan, the lower interest rate and longer term for a mortgage loan translate to substantially lower monthly payments. Financing with a mortgage loan also provides the owner of a manufactured home with the same legal protections as the owner of a site-built home. Therefore, **subsection (b)** prohibits seller steering. It is based on The Mortgage Reform and Anti-Predatory Lending Act (Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010). 15 U.S.C. § 1639b(c)(3)(B); 12 C.F.R. § 1026.36(e). Under **subsection (c)**, it does not apply to a person that is buying the home for resale.

Substantial authority exists that Article Two of the Uniform Commercial Code governs the sale of a manufactured home, though it will be affixed on 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, these opinions do not specify whether relevant state law classified the home as real property after it was affixed on land but before consummation of the sale. To address this ambiguity, **subsection (d)** provides that the warranties contained in Article Two will apply to manufactured homes even if they are not goods within the meaning of Article Two. The rights provided by subsection (d) include limitations on those rights, such as a statute of limitations.

Manufactured home manufacturers deliver a certificate of origin for each home that a retailer sells. The certificate provides the beginning of a chain of title for the home. In states that issue a certificate of title for manufactured homes, the home buyer surrenders the certificate of origin to the titling agency to obtain the certificate of title. Therefore, unless the home has become real property under Section 4 of this act, the seller, whether a retailer or other type of seller, should have either the certificate of origin or a certificate of title for the home. To provide proof of title to the buyer and to prevent seller fraud, such as selling the same home more than once, **subsection (e)** requires the seller to deliver the certificate to the buyer at the time of sale.

If the home has become real property under Section 4, the seller no longer has a certificate of origin or certificate of title, because it was recorded with the certificate of location and was invalidated under Section 6(b). In this case, the recorded certificate of location and any subsequently delivered deeds for the home constitute proof of ownership. The seller must deliver these documents to the buyer at the time of sale.

Subsection (f) enables a manufactured home buyer to avoid the time and expense of obtaining a certificate of title for the home, in those states that title them, and subsequently complying with the statutory procedure for converting the home to real property. *Accord* Colo. Rev. Stat. § 38-29-114(2); Idaho Code Ann. § 63-304 & Idaho Admin. Code r. 35.01.03.304; Mont. Code Ann. § 15-1-116; N.D. Cent. Code §§ 39-05-35(1)(c) & 47-10-27(6); Or. Rev. Stat. § 446.626; Tex.Occ. Code Ann. § 1201.2055.

SECTION 4. CONVERSION OF HOME TO REAL PROPERTY.

(a) In this section, “affidavit of lost document” means a record in recordable form which includes:

(1) the name of the owner of the manufactured home that is the subject of the affidavit;

(2) the unique identifier of the manufactured home;

(3) the homeowner’s representations that the homeowner:

(A) owns the home; and

(B) cannot reasonably obtain possession of the certificate of origin [or certificate of title] because the certificate was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of a person who will not surrender it, an unknown person, or a person that cannot be found;

(4) the name and, if known, address of the person from which the homeowner acquired the home;

(5) the homeowner’s signature; and

(6) the date the homeowner signed the affidavit.

(b) If a manufactured home is or will be located on land controlled by the homeowner, the homeowner may elect to file a certificate of location for recording in the land records of the [county, municipality, or other recording jurisdiction] in which the home is or will be located.

(c) Subject to Section 8(a) and (b), if a certificate of location substantially conforms to Section 2(2), the manufactured home is real property for all purposes when the home is located and the certificate is filed, [including] [except] for purposes of taxation.

(d) If a certificate of origin [or certificate of title] must be attached to the certificate of location but the homeowner cannot locate or obtain the certificate of origin [or certificate of

title], the homeowner may attach an affidavit of lost document to the certificate of location instead of the certificate of origin [or certificate of title].

[(e) If a manufactured home is moved to this state from another state or from land in this state for which a certificate of location was filed for recording, the homeowner shall obtain a certificate of title for the home, unless the homeowner files a certificate of location for recording in the land records of the [county, municipality, or other recording jurisdiction] to which the home is moved not later than [time period provided in state certificate of title laws for issuance of new title] after the home is moved. The homeowner may file a certificate of location only if the home is or will be located on land controlled by the homeowner.]

Legislative Note: *In subsection (c), the state should select how a manufactured home that is real property will be taxed.*

If the state already provides a method for dealing with a lost certificate of origin and a lost certificate of title, in those states that title manufactured homes, subsection (d) is unnecessary, as is the definition of “affidavit of lost document” in subsection (a). However, the state may choose to permit the use of an affidavit of lost document for the limited purpose of recording a certificate of location.

If the state does not issue a certificate of title for manufactured homes, the bracketed language in subsections (a) and (d) and subsection (e) should be deleted.

Comment

Under **subsection (b)**, the owner of a manufactured home can choose whether to convert it to real property. This choice is available for homes purchased before and after the act’s effective date. Under **subsection (c)**, the home becomes real property when the owner files a certificate of location for recording and the home is located on land controlled by the owner. “Located” is defined in Section 2(7). “Land controlled by the owner” is defined in Section 2(6). If the home is subsequently detached from the land, it again becomes personal property, as provided in Section 8(b)(1).

When a home becomes real property, subsection (c) provides that it is real property for all purposes, except as provided in Section 8(a) and (b) and, possibly, for purposes of taxation. *Accord* Colo. Rev. Stat. §§ 38-29-112(1.5), 38-29-114(2); Mont. Code § 15-1-116(5); Or. Rev. Stat. § 446.626(2) & (5). This provision eliminates the ambiguity that currently exists in some state statutes concerning the purposes for which the home is to be treated as real property. When a statutory provision that a manufactured home can be classified as real property does not include this type of language, courts have questioned whether the home is real property only for certain purposes, such as financing, or for all purposes.

Subsection (d) provides a method for dealing with a lost certificate of origin or certificate of title because, under some circumstances, Section 2(2)(I) requires that one or the other be attached to the certificate of location. As stated in the legislative note, this subsection may be unnecessary.

When a manufactured home is moved from outside the state or from a parcel of land in the state where the home was real property, **subsection (e)** requires the homeowner to obtain a certificate of title, unless the owner files a certificate of location for the home. The requirement concerning a home moved from another state is consistent with existing certificate of title laws. Imposing the same requirement on the owner of a home moved from another parcel of land in the state also is necessary when the home was real property at the former location. In that case, if the home is going to be personal property at the new location, the owner needs a new certificate of title because the previous certificate of title was cancelled when the homeowner filed the certificate of location to make the home real property at the former location or because the owner filed a certificate of location upon purchase and, therefore, never got a certificate of title under Section 3(f).

SECTION 5. RELOCATION OF MANUFACTURED HOME. If a manufactured home is moved from land in this state for which a certificate of location has been filed for recording, the person causing the home to be relocated shall file a certificate of relocation for recording in the land records of the jurisdiction from which the home has been or will be relocated not later than ten days after it is relocated. If the person causing the home to be relocated does not own the home, that person also shall file, with the certificate of relocation, an affidavit that it has the right to relocate the home and a certified copy of any required judgment or order authorizing it to do so.

Comment

When a manufactured home has become real property by the filing of a certificate of location, this section addresses relocation of the home. To give record notice of the relocation, this section requires the filing of a certificate of relocation in the land records in which the certificate of location was recorded. Section 2(4) specifies the information that must be included in the certificate of relocation. Section 5 applies whether the homeowner or any other person relocates the home. For example, if the home is located on leased land, the ground lessor may remove the home when the lease terminates if the homeowner fails to do so or a secured creditor may remove the home after the homeowner defaults.

SECTION 6. RECORDING.

(a) If a certificate of location or certificate of relocation is filed for recording, the

[recorder] shall record it, together with any attachments, index it, and return it to the person that requested the return. [The [recorder] shall index the certificate in the grantor index under the landowner's name and in the grantee index under the name, if known, of the owner of the manufactured home.] [The [recorder] shall create a new tract index page for the manufactured home.]

(b) If a certificate of origin [or certificate of title] is filed for recording as an attachment to a certificate of location, the [recorder] shall stamp or make a notation on the certificate of origin [or certificate of title] that it is no longer valid.

Legislative Note: *As described in the legislative note to Section 2, if the officer who has authority under state law to accept documents for recording in the land records office is not known as a "recorder", the appropriate term should be substituted in this section.*

If the land records office employs only one type of document index, the state should delete the inapplicable bracketed sentence from subsection (a).

If the state does not issue a certificate of title for manufactured homes, the bracketed language concerning certificates of title should be deleted.

Comment

In many states that permit a manufactured home to be classified as real property, the necessary documents must be filed initially with the agency that maintains the manufactured home title records or with the property tax assessor. This type of process is cumbersome and can prevent the home's title from appearing in the land records until several weeks after the filing. In contrast, this section requires the certificate of location to be filed first with the recorder. *Accord* Colo. Rev. Stat. § 38-29-114(2); Mont. Code § 15-1-116(1); N.H. Rev. Stat. §477:44, subp. III. When the home buyer finances the purchase, the lender or title insurer normally will file the certificate for recording. When the buyer does not finance the purchase, the manufactured home seller, like a car dealer, can offer to file the certificate for recording, or the buyer can file it. In this way, the home immediately is brought into the real property title system.

When the owner of a manufactured home files a certificate of location for recording and the home becomes real property, the homeowner is the "grantee" of this newly created real property. Therefore, the certificate is indexed under the homeowner's name in the grantee index. The certificate is indexed in the grantor index under the landowner's name so that a person searching title to that parcel of land can identify the owner of the home. Indexing under both the landowner's name and homeowner's name also alerts a title searcher to inquire about the homeowner's interest in the land, such as a lease or license, if someone else is named as the landowner.

When a certificate of relocation is filed, it also is indexed under both the landowner's and homeowner's names, so that a person searching the title for the land or for the home can find the certificate.

Because the same person may own the home and the land, this section authorizes the recorder to record the certificate though the same person is the grantor and grantee.

If the jurisdiction uses a tract (parcel) index instead of or in addition to grantor-grantee indices, this section authorizes the recorder to create a new index page for the newly created real property—the manufactured home.

The possibility that a manufactured home seller will fraudulently transfer title to the home more than once is a significant practical concern. This wrongful practice is facilitated if the seller retains the certificate of origin or certificate of title, if any. Therefore, Section 3(e) requires the seller to deliver any such document to the buyer when the home is sold, Section 2(2)(I) requires the document to be attached to the certificate of location, and **subsection (b)** of this section requires the recorder to mark it as being no longer valid. This section is based on Colo. Rev. Stat. § 38-29-202(1)(c).

SECTION 7. BUYER IN ORDINARY COURSE OF BUSINESS; FREE FROM SECURITY INTERESTS CREATED BY SELLER.

(a) In this section, “buyer in ordinary course of business” means a person that buys a manufactured home that is real property in good faith, without knowledge that the sale violates the rights of another person in the home, and in the ordinary course from a person in the business of selling manufactured homes. A person buys a manufactured home in ordinary course if the sale comports with the usual or customary practices in manufactured home sales or with the seller's own usual or customary practices. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire a home under a preexisting contract for sale. Only a buyer that takes possession of the home or has a right to recover the home from the seller under the law of this state may be a buyer in ordinary course of business. A person that acquires homes in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(b) A buyer in ordinary course of business takes free of a security interest in the manufactured home created by the buyer's seller, even if the security interest is perfected and the

buyer knows of its existence.

Comment

This section describes the circumstances in which a buyer of a manufactured home that is real property acquires title free of a pre-existing security interest. It is based on U.C.C. §§ 1-201 & 9-320(a). If the manufactured home is personal property at the time of sale, those U.C.C. provisions apply, rather than this section.

SECTION 8. EFFECTS OF CONVERSION.

(a) The following rules apply to a manufactured home that is converted to real property under Section 4:

(1) Except as provided in paragraph (2), the rules that determine the rights and remedies of a person that, before conversion of the manufactured home to real property under Section 4, had a security interest governed by [Uniform Commercial Code Article 9] in the manufactured home, and the effectiveness and priority of the security interest under this [act] against a purchaser and a creditor, are those that would apply under [Uniform Commercial Code Article 9] if, on conversion to real property, the manufactured home became a fixture as that term is used in [Uniform Commercial Code Article 9].

(2) If the manufactured home became a fixture, as that term is used in [Uniform Commercial Code Article 9], before conversion to real property under Section 4, for purposes of paragraph (1) the home must be treated as having become a fixture at the earlier time.

(3) A copy of a financing statement [or certificate of title] that is attached to a certificate of location and that was sufficient under [Uniform Commercial Code Article 9] to perfect a security interest in the manufactured home immediately before conversion to real property constitutes a fixture filing under [Uniform Commercial Code Article 9] covering the manufactured home and provides sufficient notice so that a subsequent bona fide purchaser of the manufactured home takes subject to the security interest.

(b) The following rules apply to a manufactured home that is real property under Section

4 and is subsequently detached from the land on which it is located:

(1) The manufactured home becomes personal property.

(2) Except as provided in paragraph (3), the rules that determine the rights of a person that, immediately before detachment, had a security interest in the manufactured home arising under real property law, and the effectiveness and priority of the security interest against a purchaser and a creditor, are those that apply under [Uniform Commercial Code Article 9].

(3) On default a person that, immediately before detachment, had a security interest in the manufactured home arising under real property law may proceed under real property law or [Uniform Commercial Code Article 9], except [Uniform Commercial Code Section 9-609(b)(2)]. The remedies under [Uniform Commercial Code Article 9] are subject to [insert mortgagor protection laws].

(c) Each transfer of a right, title, or interest in a manufactured home that is real property must be made in accordance with real property law and must include a legally sufficient description of the land on which the home is located. If the manufactured home is sold separately from the land, the conveyance document for the home must include the unique identifier of the manufactured home.

(d) Title to a manufactured home remains separate from the title to the land on which it is located though the home has become real property. Title to the home is not encumbered by a security interest in or other encumbrance in or on the title to the land. Title to the land is not encumbered by a security interest in or other encumbrance in or on the title to the home.

(e) If a manufactured home is located on land that the homeowner does not own, the terms of a land lease and the landlord's and homeowner's rights and duties under the lease are not affected by conversion of the home to or from real property.

Legislative Note: *If the state statutorily provides protections for landowners as part of the foreclosure process, such as statutory redemption and antideficiency legislation, it should insert*

the relevant statutory citations at the end of subsection (b)(3).

If the state does not issue a certificate of title for manufactured homes, it should delete the bracketed language concerning them.

Comment

When a manufactured home converts from real or personal property, difficult issues can arise concerning the rights, remedies, effectiveness, and priority of title encumbrances that existed before the conversion, because the Uniform Commercial Code applies to security interests in personal property while mortgage law applies to security interests in real property. **Subsections (a) and (b)** address these issues. Subsection (a) deals with a home that changes from personal property to real property. Subsection (b) deals with a home that changes from real property to personal property.

To the greatest extent possible, these subsections are designed to preserve the rights of the homeowner and of any secured creditor when a home changes its property classification. To accomplish this goal and to harmonize the act with existing law, subsections (a) and (b) incorporate the fixture provisions of Article 9, because they deal with security interests in property that changes from personal to real and back to personal again. Additionally, the Article 9 provisions concerning matters such as priority are analogous to real property law. Therefore, when a home changes to real property, any pre-existing Article 9 security interest will remain effective and retain its priority against purchasers and creditors. Conversely, when a home converts from real to personal, any pre-existing real property security interest will remain effective and retain its priority.

However, significant differences exist between Article 9 and real property law concerning a secured party's remedies and the homeowner's rights upon default. In most states, the Article 9 sale process proceeds more quickly than a foreclosure sale but may generate a higher sale price. Article 9 does not include the borrower protections that many state foreclosure laws provide, such as arrearages legislation (the right to stop the foreclosure by paying just the amount past due, rather than the entire remaining debt amount), statutory redemption (a period of time after the foreclosure sale during which the borrower can get the home back), and antideficiency legislation (legislation that eliminates or limits the lender's ability to sue the homeowner if the foreclosure sale does not generate enough proceeds to pay the debt in full).

To preserve the terms of a personal property loan agreement when a home converts from personal to real property, subsection (a)(1) provides that Article 9 continues to govern the secured party's remedies and the homeowner's rights upon default though the home is real property. Under § 9-604(b), the secured party has the option to enforce its security interest under real property law.

Preserving the real property remedies is more difficult when the home converts from real to personal property, because the foreclosure laws generally do not anticipate the possibility that the home will have become personal property and moved after a real property security interest is acquired. Nevertheless, some courts have held that the secured party must foreclose in the jurisdiction to which the home has been moved though the home has become personal property. *Accord Johnson v. Bratton*, 70 N.W. 1021 (Mich. 1897); *Partridge v. Hemenway*, 50 N.W. 1084

(Mich. 1891); *Hamlin v. Parsons*, 12 Minn. 108 (1866); *Mills v. Pope*, 4 P.2d 485 (1931); *Turner v. Mebane*, 14 S.E. 974 (N.C. 1892); *Dakota Loan & Trust Co. v. Parmalee*, 58 N.W. 811 (S.D. 1894) (all involving site-built homes). See RESTATEMENT (THIRD) OF PROPERTY (MORTGAGES) § 4.6, Reporters' Note cmt. B. Other courts have held that the secured party cannot foreclose but has an action for impairment of security or for waste. *Bockout v. Swift*, 27 Cal. 433 (1865); *Walch v. Beck*, 296 N.W. 780 (Iowa 1941); *Clark v. Reyburn*, 1 Kan. 281 (1863); *Harris v. Bannon*, 78 Ky. 568 (1880) (all involving site-built homes).

Because of the difficulties that may arise in attempting to foreclose on a home that has been severed from land, subsection (b) provides that the mortgagee or other security interest holder can exercise its real property remedies or the remedies provided by Article 9. However, to ensure that the homeowner does not lose the statutory protections that the state foreclosure laws may provide, such as statutory redemption, subsection (b) also provides that the homeowner has the benefit of those protections even if the security interest holder elects to employ the Article 9 remedies.

Under **subsection (d)**, title to a manufactured home remains separate from the title to the land on which it is located. If the homeowner does not own the land on which the home is located, the landowner acquires no interest in the home solely by virtue of its location but can obtain a lien on the home for any unpaid rent, for example, to the extent that state law permits.

SECTION 9. RELATION TO OTHER LAW.

(a) If a manufactured home becomes real property under this [act], it is not a fixture and, except as otherwise provided in Section 8, is not subject to the law of fixtures.

(b) Unless displaced by provisions of this [act], principles of law and equity supplement its provisions.

(c) Filing a certificate of location for recording does not itself constitute a subdivision of land.

Comment

To create legal parity between site-built homes and manufactured homes that become real property by the terms of this act, **subsection (a)** provides that the manufactured home is not a fixture. However, this subsection is not intended to prevent a manufactured home from being classified as a fixture as an alternative method for achieving real property status. Section 8(a)(2) expressly addresses the possibility that the home is a fixture.

Subsection (b) is taken from U.C.C. § 1-103(b). As described in the comments to that section, legislation is “drafted against the backdrop of existing bodies of law, including the common law and equity, and relies on those bodies of law to supplement its provisions in many important ways. . . . [However], while principles of common law and equity may *supplement* provisions of [this act], they may not be used to *supplant* its provisions, or the purposes and

policies those provisions reflect. . . . [This act] preempts principles of common law and equity that are inconsistent with either its provisions or its purposes and policies.”

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

SECTION 10. HOME WARRANTY. A warranty that applies to a manufactured home when it is sold and rights arising from a breach of the warranty are not affected by a subsequent change in the home’s classification as real or personal property. No additional warranty applies to a manufactured home solely because of a subsequent change in the home’s classification as real or personal property.

Comment

This section is based on Tex. Occ. Code § 1201.2055(h). It is intended to eliminate any question about the continued applicability of a warranty after a manufactured home’s classification as real or personal property changes. Conversely, this section provides that the home is not covered by any additional warranty solely because its classification has changed.

SECTION 11. REMEDY FOR NONCOMPLIANCE WITH ACT.

(a) A person injured by another person’s failure to comply with this [act] may be awarded damages and obtain other relief.

(b) If a retailer violates Section 3(a) or if a seller, including a retailer, violates Section 3(b) or (e), it is subject to the remedies and penalties available to a consumer and to the [Attorney General] under [the state consumer protection act].

(c) A person that does not comply with the requirements of Section 5 is subject to [insert civil penalty].

(d) This section does not limit other remedies of an injured person.

Legislative Note: *In subsection (b), the state should insert the statutory citation for the state consumer protection act and the title of the government official with authority to enforce it.*

The state should insert a civil penalty into subsection (c).

Comment

An injured person's ability to obtain "other relief" under **subsection (a)** does not include an award of attorney's fees.

Subsection (b) deals with the consumer protection provisions of Section 3—delivery of a notice of rights and proof of ownership at the time of sale and a prohibition on steering. Therefore, subsection (b) provides the same remedies and penalties that are available under the state consumer protection act and grants standing to the government official with authority to enforce the act.

Subsection (c) provides a penalty for failure to file a certificate of relocation. A separate provision is necessary because failing to file will not injure a person within the meaning of subsection (a).

Subsection (d) is intended to make clear that an injured party can enforce other causes of action that it may have, such as an action on a promissory note or mortgage.

SECTION 12. 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.

SECTION 13. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the 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

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. § 7001, et seq. (popularly known as "E-Sign"). E-Sign largely tracks the Uniform Electronic Transactions Act (UETA). Section 102 of E-Sign, entitled "Exemption to preemption", provides in pertinent part that:

(a) A State statute, 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 Transactions Act as approved and recommended for enactment in all the States by the National 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 14. SAVINGS CLAUSE. This [act] does not affect an action or proceeding commenced before the effective date of this [act].

Comment

This section preserves all actions and proceedings that may have been commenced before the act’s effective date. For example, if a manufactured home retailer and buyer entered into a purchase agreement before the act’s effective date, the retailer would not be required to give the buyer the notice provided in Section 3(a) after the act’s effective date.

SECTION 15. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)

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

Because a wide variety of state statutory regimes exist, a uniform transition rule is inappropriate.

SECTION 16. EFFECTIVE DATE. This [act] takes effect