

Titling Homes as Real Property

OVERVIEW

Manufactured homes are the largest source of unsubsidized, affordable housing in the United States. More than 17 million Americans call one home. Although a modern manufactured home may be indistinguishable from a site-built home to many an observer, a manufactured home is typically considered personal property, like a car or a television set, rather than real property, as site-built homes are. This classification as personal property, along with other issues common to manufactured housing, often keeps homeowners from enjoying the same security and potential for wealth creation enjoyed by owners of site-built homes.

If states around the country could effect significant policy change so that manufactured homes can be classified as real property then owners could enjoy increased access to financing at fair terms and protections and disclosures when purchasing or refinancing their homes. Moreover, because these homes are typically more economical than site-built homes, the ability to grow assets and wealth – and weather financial turmoil – is afforded to more people.

Manufactured homes have historically been classified as personal rather than real property based in large part upon their evolution from “travel trailers” of the early 20th century. However, the modern manufactured home is not mobile. Just as site-built homes are rarely moved from their original location, manufactured homes also usually remain where they are originally placed. According to the Fannie Mae Foundation, only about 1% of manufactured homes are moved after being sited.

Yet manufactured homes continue to be predominately classified as personal property, and as such, homeowners are limited in their financing options to higher priced “chattel loans,” left vulnerable to reduced protections available if they default, prevented from controlling who is entitled to the home upon the homeowner’s death, and, in some cases this classification keeps real estate agents and appraisers from working with the home as they do site-built homes.

WHAT STATES CAN DO

States, not the federal government, determine whether a manufactured home is or is not real property and define the process by which homes may be converted from personal to real property. Currently, about three-quarters of states have statutes that set forth a procedure to convert a manufactured home from personal to real property and document that conversion. However, many of these statutes are problematic.

- Many do not permit homes on leased land to be converted. Even when such conversion is permitted, it often requires the permission of the landowner, particular types of financing and long lease terms.
- Many are unclear as to the implications of the conversion, often specifying that the home will be taxed as real property without clarifying whether the home is subject to foreclosure as real property or treated as real property for other purposes.
- Many require homes to meet onerous foundation requirements.
- Some require procedures that are too complex for homeowners to handle on their own, necessitating the hiring an attorney.

By creating a straightforward conversion process that is not only easy for homeowners to follow, but also protects existing lienholders and future buyers of the home, states can open the door to increased security and asset-building potential for owners of manufactured housing.

WHAT THE FEDERAL GOVERNMENT CAN DO

Although the classification of manufactured homes as real or personal property is a state issue, the federal government can also encourage states to provide equal rights and protections to manufactured homes. Several years ago, Freddie Mac launched a lending product that encouraged states to adopt laws allowing conversion of manufactured homes to real property to enable homeowners to obtain better loans. Although many states responded with policy changes, the conversion procedures created as a result were overly narrow in many cases. Currently Fannie Mae is also attempting to provide a more attractive loan product for manufactured homes titled as real property. Such lending efforts provide tremendous incentive for states to improve conversion policy. Modification of underwriting by the Federal Housing Administration to promote liberal conversion of homes to real property, by providing more attractive loans to homes titled as real property would be another positive step.

ELEMENTS OF A STRONG POLICY

To allow owners of manufactured homes access to the traditional benefits of homeownership, a policy that provides for conversion of manufactured homes from personal to real property should:

- Be available no matter who owns the land upon which the home is placed;
- Make the home real property for all purposes;
- Protect secured parties' interest in the home;
- Not require homes on rented land to have a specific lease term;
- Not impose requirements regarding the home's foundation beyond those required to site any manufactured home, whether considered real or personal property;
- Not infringe upon the landowner's interests if the home is on rented land, nor require the permission of the landowner;
- Create a clear chain of ownership to facilitate title searches;
- Be user friendly and permit homeowners to convert their homes without hiring a professional;
- Provide a bright line rule for when a home is real property; and
- Include the cancellation of certificates of title to reduce the possibility of fraud.

As an alternative to conversion, automatic treatment of homes as real property has several advantages, particularly in states where manufactured homes and site-built homes are already taxed at essentially the same rate.

In addition, regardless of whether a home is treated as real or personal property, states should consider adopting the following policies:

- Protections against deceptive practices (state Unfair and Deceptive Acts and Practices statutes) should apply to manufactured home sales.
- State homestead exemption laws should apply to manufactured homes.
- The requirements of the federal Real Estate Settlement and Procedures Act should be incorporated into state law and applied to all loan transactions secured by a manufactured home.
- Laws regarding appraisers and real estate agents should eliminate restrictions that impede their involvement in manufactured home sales, regardless of whether the home is real or personal property.

ABOUT I'M HOME

I'M HOME, or Innovations in Manufactured Homes, is an initiative of CFED, a national nonprofit organization dedicated to expanding economic opportunities for all Americans. The I'M HOME network includes nonprofit and for-profit, national and local partners who together work toward ensuring that all homeowners, regardless of whether their home is manufactured or site-built, enjoy the same rights and privileges of homeownership, including asset-building opportunities. For more information about I'M HOME, please visit www.cfed.org/go/imhome.

ABOUT THE NATIONAL CONSUMER LAW CENTER

The National Consumer Law Center (NCLC) is the nation's consumer law expert, helping consumers, their advocates and public policymakers use powerful and complex consumer laws on behalf of low-income and vulnerable Americans seeking economic justice. NCLC is the leading consumer legal advocate promoting legal protections for owners of manufactured homes. For more information about NCLC please visit www.consumerlaw.org.