

# Titling Homes as Real Property

## BACKGROUND

For 17 million Americans, the pathway to the American Dream of homeownership is through manufactured housing. Today's manufactured housing can equate to a high-quality and affordable home and an entry into asset and wealth building for many families. Assets are the foundation for promoting long-term economic opportunity for most Americans. They provide security during unexpected financial troubles. They foster long-term planning and the drive to set and reach dreams, such as going to college and starting a business. For the last few generations of Americans, homeownership has been the bedrock of household financial assets. Even during times of economic insecurity in the housing market, homeownership remains the primary source of wealth for many Americans and continues to be the American Dream.

One hurdle that keeps many owners of manufactured homes from enjoying the same benefits as owners of site-built homes is classification of the home as personal property. Whether a home is classified as real or personal property can significantly affect the home's asset-building potential, mostly due to financing and tax implications, as well how the home and the homeowner will be treated in various situations. In lending as well as in public policy, manufactured homes are often treated as if they are cars rather than a home. They're often issued titles as motor vehicles, rather than real estate. They are commonly assessed with "blue book" values and are often taxed as personal property. This can make manufactured homes more expensive to finance and lead to lower resale values, reducing homeowners' opportunities to enjoy property appreciation and build equity.

### About This Resource Guide

This guide provides advocates and practitioners with the information they need to assess the benefits of converting manufactured homes from personal to real property and to develop strong policies that allow for the easy and voluntary conversion of homes to real property. It is intended to provide a detailed overview of the laws and regulations involved at the state and federal levels. This guide:

- Outlines the importance of real property designation in seven key areas;
- Analyzes current state statutes; and
- Provides recommendations for strong policies that allow for the classification of manufactured homes as real property.

## MANUFACTURED HOMES ARE HOMES: THE IMPORTANCE OF REAL PROPERTY CLASSIFICATION

*Black's Law Dictionary* defines real property as "[i]and, and generally whatever is erected or growing upon or fixed to land." On the other hand, it defines personal property as "[i]n broad and general sense, everything that is the subject of ownership, not coming under the denomination of real estate."

Manufactured homes are traditionally titled as personal property, largely due to the modern manufactured home's mid-20th century roots in the travel trailer industry. Advances in building technology and increased government regulation have resulted in a quality home construction comparable to site-built homes. Legally, however, manufactured homes are still bound by many of the same norms as their travel trailer ancestors, including use of certificates of title, similar to an automobile.

Although some manufactured homes are designated real estate because of their many similarities to site-built homes, most manufactured homes are still considered personal property absent an affirmative action by the homeowner to change its designation. All too often, however, homeowners are not permitted to classify their homes as real property.

Each category has advantages and disadvantages (see chart on “The Importance of Designation as Real Property”), but homeowners generally benefit from classification as real property, particularly when financing the home. The real property designation generally provides more favorable status in terms of taxation and consumer protection. Although more than three-quarters of states have some statutory method for converting a manufactured home from personal property to real property, these existing conversion statutes are often inadequate. Following is a discussion of the implications of property designation status.

## The Importance of Designation as Real Property: A Summary of Advantages and Disadvantages for Homeowners

Advantages of Real Property Classification	Disadvantages of Real Property Classification
<ul style="list-style-type: none"><li>■ Increased availability of favorable financing</li><li>■ More favorable titling options</li><li>■ Equitable taxation</li><li>■ Greater possibility of homestead exemptions</li><li>■ Better consumer protections</li><li>■ Stronger protections for heirs</li><li>■ More vibrant resale market</li><li>■ Equitable safeguards upon default</li></ul>	<ul style="list-style-type: none"><li>■ Possible greater tax burden</li><li>■ Possible loss of some consumer protections</li><li>■ Limitations on bankruptcy remedies</li></ul>

Designation as real property affects owners of manufactured housing in a number of areas. These areas touch each phase of the homeownership process from appraisals to financing, to taxation, to resale, and include:

1. Financing
2. Federal and State Consumer Protections
3. Appraisals and Sales
4. Taxes and Tax Exemptions
5. Rights and Opportunities upon Default
6. Protections for Spouses and Joint Ownership
7. Bankruptcy

### I. Financing

Most site-built homes are financed by a real estate mortgage, while manufactured homes classified as personal property are financed by chattel lending. Chattel is the legal term for personal property, as opposed to “real” property, which generally includes land and the structures attached to the land.

Chattel loans, which include loans for televisions and automobiles, differ in many respects from mortgages. The key disadvantages to chattel financing of homes compared to conventional mortgage financing are shorter loan terms (typically 10 to 20 years instead of 30), higher interest rates (typically at least two to five percentage points higher) and a smaller pool of lenders from which to choose.

Permitting conversion of a manufactured home to real property is an essential first step to improve financing options. Classification of a home as real property does not automatically permit the owner or purchaser to obtain conventional financing. However, designation of a manufactured home as *personal* property is almost certain to preclude favorable, conventional financing terms. For more information about the financing of manufactured homes see Financing Homes in Communities and Conventional Mortgage Financing.<sup>1</sup>

### 2. Federal and State Consumer Protections

Some federal and state consumer protection statutes apply only to real property, while others apply only to personal property. Although such distinctions can be explained by the separate evolution of laws dealing with goods and services and laws regulating real property transactions, the distinctions can lead to results that are inconsistent and at times inequitable. Such inconsistencies are especially apparent when looking at a manufactured home transaction, because the same home may be considered goods or real property. The distinction can have important consequences for the homeowner. While the home remains the same, the protections that apply depend upon the home’s classification as real or personal property. A discussion of existing federal and state laws and their consequences for owners of manufactured homes follows.

- **Federal Truth in Lending Act.** The Truth in Lending Act (TILA) is a law that requires disclosures about the terms of credit and other information in consumer credit transactions. It does not apply to transactions in which the amount financed exceeds \$53,500. (The dollar amount was previously \$25,000, but was increased to \$50,000 for transactions occurring on or after July 21, 2011, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act; that amount is now indexed for inflation.) This amount would serve to exclude many manufactured home transactions, but there is an exception for transactions in which the creditor takes a security interest in real property or in personal property used or expected to be used as the principal dwelling of the consumer.<sup>2</sup> The reference to either real or personal property covers manufactured homes, so the result is that TILA covers credit secured by a manufactured home that is the consumer’s principal dwelling regardless of whether the credit exceeds \$53,500.
- **Qualified Mortgage (QM) Standards.** The QM standard is a set of underwriting standards and loan terms. Generally speaking, a “QM” loan is one with safe, conventional loan terms with limits on points and fees, including some closing costs. Federal law does not require lenders to meet the QM standards, but it encourages them to do so by giving them some special protection from borrower lawsuits if they do because a lender who makes a Qualified Mortgage is presumed to have reasonably assessed the borrower’s ability to repay the loan. QMs that are higher-priced loans, while presumed to comply with ability-to-pay requirements, may be challenged by the homeowner who claims that the lender failed to reasonably assess the homeowner’s ability to repay the loan. Homeowners with QMs that fall below the QM higher-priced loan trigger may not challenge their lender’s compliance with the ability-to-pay requirements. Their lenders are said to have a “safe harbor.” For the purposes of determination of higher-priced loans under QM, it does not matter if a home is real property or personal property.<sup>3</sup>

From the consumer’s point of view, QM loans have safer terms and lower costs, but consumers have less redress against lenders who make unaffordable QM loans. Non-QM loans have worse terms and higher interest rates, but the lender has no insulation from liability if it did not reasonably assess the borrower’s ability to repay (although the standard for showing that is not a bright line).

- **Home Ownership and Equity Protection Act (HOEPA).** HOEPA was originally designed to provide protections to homeowners pledging their home as collateral in high-cost refinancing. The Act covered manufactured homes but because manufactured homes were seldom refinanced, HOEPA coverage was not much of an issue. The Dodd-Frank Wall Street Reform and Consumer Protection Act expanded HOEPA to cover loans for the purchase of homes, making the Act much more relevant to manufactured housing. HOEPA prohibits a number of abusive lending terms, but it applies only to high-cost loans. For most types of loans, the loan is considered high-cost if the annual percentage rate is 6.5 percentage points above the “average prime offer rate” (roughly equivalent to the prime rate).<sup>4</sup> But loans that are for less than \$50,000 and that are secured by a home that is personal property (i.e., most median-range manufactured home loans) are considered high-cost loans only if the interest rate is 8.5% above that rate. A loan can also be categorized as high-cost based on the points and fees that are charged. Loans of at least \$20,000 are high-cost if the points and fees exceed five percent of the total loan amount. For loans below \$20,000, the threshold is the lower of eight percent or \$1,000. The result is that, when a home is classified as personal property or is for a much smaller amount, the protections provided by HOEPA are less likely to apply.
- **Federal Real Estate Settlement and Procedures Act.** The federal Real Estate Settlement Procedures Act (RESPA) requires disclosures about closing costs (both before and at the time of settlement), and notices about escrow accounts, changes in loan servicing and the right to obtain account information through a written request. It also prohibits kickbacks and unearned fees for settlement services, charges for preparation of certain documents and steering of borrowers to a particular title insurance company. Furthermore, it regulates the handling of escrow accounts. RESPA applies to all loans secured by a first or subordinate lien on one-to-four family residential real property. The loan must also be made by a federally insured lender or be federally related in a manner specified by the law. Under the RESPA regulations originally adopted by the U.S. Department of Housing and Urban Development (HUD) (rulemaking authority was transferred to the Consumer Financial Protection Bureau [CFPB] in 2011), RESPA’s protections are limited to certain mortgage loans and to real property.

The extent of RESPA’s application to transactions involving manufactured homes is not as clear as it should be. Loans secured by manufactured homes are clearly subject to RESPA when the loan is *also* secured by a lien on the real property under the home.<sup>4</sup> This part is clear because the Act requires loans to be “secured by a . . . lien on residential real property . . . designed principally for the occupancy of from one to four families[.]” The land beneath the home is real property and the manufactured home meets the occupancy requirement. The RESPA regulations’ definition of “federally related mortgage loan” specifically includes loans secured by real property “upon which there is . . . [l]ocated or, following settlement, will be placed” a manufactured home.<sup>5</sup> Before its RESPA rulemaking authority was transferred to the CFPB, HUD confirmed that RESPA covers loans secured by manufactured homes under these circumstances in the Federal Register notice announcing the original version of the RESPA regulations and in a more recent, informal statement on HUD’s website.<sup>6</sup>

It is also clear that RESPA does not apply to a home that is not itself classified as real property and is not financed with a loan that is secured by a mortgage on the land on which the home is sited. Loans on homes classified as personal property on leased land are clearly not covered by RESPA.

The debate is in regard to manufactured homes that are—themselves—titled as real property but that are located on land that is not subject to the lender’s lien. The statutory definition of “federally related mortgage loan” appears to include loans secured by manufactured homes that are titled as real property regardless of where the home is placed or whether the lender has a lien on the land beneath the home. The Act requires the loan to be secured by “residential real property . . . designed principally for” family occupancy.<sup>7</sup> When the manufactured home is titled as real property, it meets both of these requirements, regardless of where the home is placed.

The definition of “federally related mortgage loan” in the RESPA regulations as first proposed in 1975 followed the statutory definition.<sup>8</sup> But when the final regulation was announced, the definition was changed to require a lien on real estate “upon which there is located a structure, including a mobile home owned or to be owned by the borrower . . .”<sup>9</sup> The notice provided no explanation for the change, except to mention that HUD had received comments requesting “clarification of the coverage of mobile homes.”<sup>10</sup> The notice then stated that the final regulations only covered “mobile homes and mobile home lots” if both were purchased with the loan at issue.<sup>11</sup>

So, the final version of the RESPA regulation’s definition of “federally related mortgage loan,” which remains unchanged in this regard, appears to add a restriction that has no basis in the statute. HUD’s suggestion that the change was in response to requests for “clarification” could mean the definition should be interpreted as consistent with the statutory definition, despite HUD’s unsupported statement that land must be included in the transaction.

Because there is no rational basis for such an interpretation, it would be more appropriate to construe the “upon which” language either as an anachronism not relevant to manufactured homes meeting the standards announced after the RESPA regulations were finalized, or as an arbitrary limitation that exceeded HUD’s authority in adopting those regulations.

The regulations do provide RESPA protections to certain owners of manufactured homes, as they apply to loans secured by real property upon which there is a manufactured home. However, the regulations do not explicitly state that any manufactured home classified as real property is covered by RESPA, an omission that calls for clarification.

- **The Federal Credit Practices Rule and the Federal Reserve Board’s Regulation AA, Unfair or Deceptive Acts or Practices.** The Federal Trade Commission (FTC) has authority to create rules that define and prevent unfair or deceptive acts or practices. One such rule is the Credit Practices Rule. It limits late charges and informs cosigners of their liability, while also prohibiting consumer credit contracts from containing confessions of judgment, wage assignments and waivers of exemption. Although the rule explicitly excludes credit involving the purchase of real property, it is silent on other types of real estate loans (e.g., refinancing or lines of credit). Accordingly, although the rule clearly applies to credit involving the purchase of a home considered personal property, there is some ambiguity as to its application when a home is real property.

The Credit Practices Rule does not apply to creditors outside of the FTC’s authority, including banks, savings and loans, and credit unions. The regulators of these three types of entities have their own versions of the rule, however. The Federal Reserve Board (FRB) adopted a version of the Credit Practices Rule. Its guidelines defer to state law to determine whether a dwelling is treated as real property. If it is considered real property, then the transaction is exempt from this rule. In its Staff Guidelines, the FRB states that “[t]he issue of whether purchases of mobile homes or houseboats are covered by the rule depends on how these dwellings are treated under state law. If the applicable state law considers them real property, as opposed to personal property, then transactions for their purchase would be exempt from the rule.”<sup>12</sup> The Office of Thrift Supervision (OTS) enacted an analogous rule that excludes real property and looks to state law to make that determination. The National Credit Union Administration (NCUA) enacted a similar rule applicable to credit unions and provides no exemption for real property loans. As of late 2014, the FRC, the OCC (which took over the functions of OTS in 2011), and NCUA were proposing to repeal their versions of the Credit Practices Rule on the ground that the 2010 Dodd-Frank Act had transferred to the CFPB the authority to adopt such rules. In 2014, the CFPB issued guidance incorporating the gist of the Credit Practices Rule, but it had not adopted a formal rule as of late 2014.

- **The Consumer Financial Protection Bureau’s Unfair Deceptive, or Abusive Acts Practices Authority.** The CFPB has authority to make rules or conduct enforcement activities preventing unfair, deceptive or abusive acts and practices in consumer credit transactions. Its authority extends equally to real and personal property transactions. As of late 2014, the CFPB had not adopted any rules under this authority.

- **The Federal Fair Housing Act.** The federal Fair Housing Act prohibits discrimination in the sale, rental or financing of homes. Analysis of the scope of the Act is difficult because different sections use different language to describe which transactions are covered. In most instances, the Act applies to dwellings, which would certainly include manufactured homes. However, one section ambiguously applies to dwellings and also to refinance loans secured by real estate. Although no cases appear on point, arguably, the Act applies to the sale of all homes, but to refinancing of a manufactured home only if it is considered real property.
- **Fraud Enforcement and Recovery Act of 2009.**<sup>13</sup> The Fraud Enforcement and Recovery Act seeks to address mortgage and securities fraud through increased criminal penalties. The Act defines “mortgage lending business” as an organization that finances or refinances “any debt secured by an interest in real estate...” This suggests that at least portions of the Act would not apply to chattel lending.
- **The Federal Magnuson-Moss Warranty Act.** The Magnuson-Moss Act regulates, simplifies and standardizes written warranties, implied warranties and service contracts. It applies only to personal property—not real property—and it covers the sale of both new and used goods. The Act has almost universal application to the sale of new manufactured homes, because even in states where a home may be converted to real property, it is generally classified as personal property at the time of sale. Accordingly, titling homes as real property is unlikely to have any significant effect on the applicability of the Magnuson-Moss Act.
- **SAFE Mortgage Licensing Act of 2008 (Secure and Fair Enforcement of Mortgage Licensing Act of 2008).**<sup>14</sup> The SAFE Act provides uniformity and consumer protections in the licensing and registration of loan originators. The Act applies to the origination of “residential mortgage loans,” a term that is defined to include any loan made primarily for personal, family or household use that is secured by a mortgage, deed of trust, or a similar security interest on a dwelling or on residential real estate upon which a dwelling has or will be built. The terms “dwelling” and “residential real estate” are defined by reference to the Federal Truth in Lending Act (TILA), which defines those terms as including “mobile home[s].” Thus, the SAFE Act applies to chattel loans: “Even if a state categorizes loans secured by [manufactured homes] as chattel mortgages, the SAFE Act covers these loans...”<sup>15</sup> There have been some efforts in states to exempt manufactured-home transactions, but it seems clear that states do not have the authority to exempt manufactured-home transactions from the SAFE Act.
- **State Warranty Laws.** Article 2 of the Uniform Commercial Code (UCC) sets forth warranty law for goods and has been enacted into law in every state but Louisiana. The UCC addresses both express and implied warranties and also sets forth consumer remedies for breach of warranty. Article 2 of the UCC defines goods as “all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale.” This definition is clearly broad enough to cover new manufactured homes, because they are movable when manufactured, even if they are or will be permanently placed upon land or titled as real property. If a home is attached to land and sold as part of the land, however, it is less likely to fall within the scope of Article 2 of the UCC. In such instances, common law warranties may apply, or courts may look to the UCC by analogy. Regardless, it is the permanent attachment to the land rather than the home’s designation as real or personal property that will determine applicability.
- **State Laws Prohibiting Unfair and Deceptive Acts and Practices.** Each of the fifty states has enacted at least one statute applicable to most consumer transactions designed to prevent deception and abuse.<sup>16</sup> While all states have such a statute, not all the statutes are applicable to real property transactions. In some states, real property is excluded because courts have ruled that real estate is not “goods or services,” terminology used in many of the statutes.<sup>17</sup> In other states, however, such language has been found to include real property.<sup>18</sup> Some statutes explicitly cover real property or all property.<sup>19</sup> In other states, courts have found legislative intent to cover real property where the statute is silent about covering real estate.<sup>20</sup> Even in states where the statute does not apply to the sale of real estate, services and personal property related to such transactions may be covered.<sup>21</sup> Thus, in some states the deceptive practices statute is more likely to apply to manufactured homes if they are considered real rather than personal property. However, the statute is likely to apply to sale of a manufactured home from a lot even if the home will be treated as real property once sited, so it is likely to apply to unfair and deceptive dealer practices whether the home is treated as real or personal property once installed on a site.

### 3. Appraisals and Sales

Home appraisers and real estate agents must typically be licensed by the state. In some states, there are restrictions placed on these professions regarding real property.

For example, in some states, appraisers are not permitted to appraise personal property. Even where there are regulations in place allowing real estate appraisers to appraise manufactured housing considered personal property, the confusing status of such housing is discouraging, even for seasoned appraisal professionals. Difficulties in obtaining an accurate appraisal also significantly limit financing options for prospective purchasers and homeowners seeking refinancing, as most traditional mortgage

lenders require an appraisal. Similarly, in some states, real estate agents and brokers are prohibited from listing properties not classified as real property. This can be a tremendous disadvantage to owners of homes considered personal property, because it is difficult to sell a home without the assistance of an agent. These limitations not only hurt individual homeowners, but also harm the broader resale market for manufactured homes.

Manufactured homes are appraised in one of two ways: those titled as personal property or on leased land are often appraised using the National Automobile Dealer Association (NADA) Manufactured Housing Appraisal Guide or other similar guide books. These guides automatically presume that manufactured homes will lose value over time. In contrast, manufactured homes titled as real property on owned land are appraised using the same method as site-built homes, but Fannie Mae appraisal guidelines call for at least one of the homes used for comparison to be another manufactured home. Additionally, appraisal standards may vary by state.

Imprecise statutes regarding conversion of manufactured homes from personal property to real property create a further complication for appraisers trying to appraise manufactured homes. It is evident that both homeowners and the industry would benefit from clear, easily monitored regulations that allow appraisers to more accurately determine the legal status and value of a home (Georgia and Alabama are two examples of states where appraisal boards have made efforts recently to clear up confusion that may arise after converting a manufactured home from personal to real property). Policies that allow clear and easy determination of a home's status as real property would make appraisals more accurate, lenders more comfortable with the knowledge that the home's status is settled, and homes easier to sell as buyers would be assured of a home's status.

There are other new developments in appraisals as well. Currently, lenders must obtain an appraisal before making a "higher-priced mortgage loan" (essentially a subprime loan) secured by a site-built home.<sup>22</sup> But for loans secured by manufactured homes, the appraisal requirement does not take effect until July 18, 2015.<sup>23</sup> Even then, the appraisal requirement will be more limited for manufactured homes than for site-built homes. The appraiser will not be required to examine the interior of manufactured home when the loan is secured by a new home and land. If the loan is only secured by a new home, the appraisal can be replaced with the manufacturer's invoice or an independent valuation, such as the NADA guide.<sup>24</sup>

#### 4. Taxes and Tax Exemptions

Although each state tax code is unique, states typically differentiate between real and personal property in several situations. Manufactured homes are almost universally considered personal property at the time of purchase, even if they are later converted to real property (unless the home is a used unit and was converted to real property by a previous owner.) As such, the buyer pays sales tax at purchase. In contrast, buyers of site-built homes usually pay excise or transfer taxes, which are calculated at a lower rate that factors in both the home purchase transaction and a sales tax on building materials. Because of this different tax structure, homebuyers in states without a sales tax reduction or exemption for buyers of manufactured homes are typically taxed at a far higher rate when buying a manufactured home. The inequity is exacerbated when a home is sold as personal property and then converted to real property. In this case, the home is often taxed at a higher rate (i.e., as personal property) upon sale, but after conversion, the homeowner's annual property tax bill is higher than it would have been because real property is taxed at a higher annual rate than personal property tax rate.

This classification also affects the broader community by determining which government entity receives the tax payment. Real property taxes are typically paid to a local municipality, while in many jurisdictions taxes on personal property and sales tax revenue go to the state. There may be some revenue consequences for government entities when the classification of homes is changed, but given the scale of manufactured housing and values of existing homes, it is not as significant as might be thought. However, the fact that changing the classification of manufactured homes creates winners and losers in regard to tax revenue can make reform difficult.

##### Exemption laws

When a creditor—for example, a credit card lender—sues a person for the debt and wins a ruling from the court that the debtor owes the money, states allow the creditor to have a sheriff or court official seize and sell the debtor's property to pay the debt. However, states recognize that it would be unjust, as well as counterproductive, to seize a family's home or car or other essential property because of an old credit card debt. The family would likely be rendered destitute, unable to get to work and earn an income that would pay other bills. For these reasons, state laws protect certain items of property that creditors cannot seize.

Most states provide some protection of the family home against claims of creditors. These laws are called homestead exemption laws. But a home's classification as real or personal property may affect the homeowner's ability to claim the property as exempt. In many states, the homestead exemption applies to a manufactured home regardless of property classification. Thus, even if a manufactured home is treated as personal property for most purposes, it may qualify for the homestead exemption because of the liberal construction of homestead exemption laws in many states. However, in some states, the applicability of

the homestead exemption to manufactured homes has not been clearly established, or is much lower than the protection for a site-built home.

## 5. Rights and Opportunities upon Default

The distinction between real property and personal property is especially important in the event of default. When a homeowner fails to make payments, the rights and responsibilities of the homeowner and lender depend upon the home's classification. If a home is personal property, the rights of the creditor and homeowner are governed by the UCC. Article 9 of the UCC applies to any contractual transaction that uses personal property as security. If a manufactured home is personal property and not affixed to real property, then it is governed only by Article 9 or other state laws dealing with repossession—not by state foreclosure law.

Such a home is generally subject to self-help repossession—a taking of the home by the lender without any oversight. Such repossession does not allow the homeowner to assert any claims or defenses that might stop the repossession and is also likely to involve the taking of the homeowner's household goods and belongings. The primary restriction that the UCC places on self-help repossession is that the creditor is liable to the consumer if he or she breaches the peace during the repossession.

If a home is real property, then in most states the creditor must use the foreclosure process when a homeowner defaults. In some states, foreclosure is a relatively balanced process, with judicial supervision, reasonable advance notice to the homeowner and an opportunity for the homeowner to present defenses prior to foreclosure. About half the states, however, allow nonjudicial foreclosure. In these states, a home (whether site-built or manufactured) can be sold by the creditor without any involvement of a judge and with minimal notice (as little as 14 or 15 days, respectively, in Virginia and Georgia, for example). While in the vast majority of states the foreclosure process provides more protections, in isolated cases when the homeowner lives in nonjudicial foreclosure states, classifying the homes as personal property may in fact provide more protections.

It is important to note that when a home is placed on real property, the home may become a "fixture." UCC Article 9 defines fixtures as goods that have become so related to particular real property that an interest in them arises under real property law. When a home is a fixture, the lender may choose a UCC remedy or state foreclosure law, unless there is a law that specifies a procedure for converting a manufactured home to real property, which may specify the default remedy.

### Homeownership Preservation Programs

In addition to the impact of classification regarding remedies a secured lender may have upon default, classification of a manufactured home as real or personal property may also impact the options of a struggling homeowner. In recent years, a number of programs have been designed to help homeowners having a difficult time to make payments on their homes.

#### A. Making Home Affordable Program of 2009

The Making Home Affordable program, under which "HAMP" loan modifications are offered, is an important tool for struggling homeowners to remain successfully in their homes. HAMP loan modifications are more advantageous to borrowers than most proprietary loan modifications (loan modification programs developed internally by lenders without any governmental involvement). HAMP provides better access to modifications for families and is more successful in creating modifications that are successful in the long term.

**Unfortunately this useful tool is unavailable to many, if not most, owners of manufactured homes.** The program handbook that sets out the HAMP eligibility criteria expressly includes first lien mortgage loans in the manufactured housing context in §1.1.1, but it says that "the first lien mortgage must be secured by the manufactured home and the land, both of which must be classified as real property under applicable state law."

#### B. HOPE for Homeowners Act<sup>26</sup>

The HOPE for Homeowners Program (H4H) is a temporary FHA mortgage insurance program. Under H4H, eligible homeowners with problems paying their mortgages are eligible to refinance into a more affordable FHA-insured mortgage. The Act provides that an "eligible mortgage" is a mortgage originated on or before January 1, 2008, where the mortgagor (1) occupies such property as his or her principal residence and (2) cannot, subject to such standards established by the Secretary of the Treasury, afford his or her mortgage payments." Although this test would not seem to exclude owners of manufactured homes, the authors are not aware of homeowners with manufactured homes who have qualified or participated.

#### C. Helping Families Save Their Homes Act of 2009

The Helping Families Save Their Homes Act is an amendment to the Truth in Lending Act (TILA) designed to help homeowners with their mortgage loans. Among other things, it provides protections on servicing loans. It requires notice of the new owner of a loan and provides immunity to servicers if they provide loss mitigation to a homeowner, as long as the action benefits the pool of investors collectively. The statutory amendments to TILA under this Act indicate that transactions covered elsewhere

by TILA are included, and thus these protections should apply to chattel loans. Currently, there is little secondary market for manufactured housing and therefore the provisions have little application.

## 6. Protections for Spouses and Joint Ownership

At common law, “dower interest” protects a wife by not allowing her to be “disinherited” by her husband; a “curtesy interest” provides a similar protection for a husband. Both interests typically apply only to real property. Some states retain the dower and curtesy interest, but most states provide a similar protection for spouses and children through a concept known as an “elective share.” States that use elective shares may have protections for real property that do not apply to personal property, such as a requirement that any conveyance of the homestead be authorized by both spouses, which may or may not include manufactured homes not considered real property. This has tremendous impact on families living in manufactured homes. If the home is titled in only one spouse’s name, that spouse could transfer the home without obtaining any consent from the other spouse. Were the home real property, lenders involved in the closing would require that both spouses consent to the transfer.

Another issue is the protections that apply when two spouses co-own a home. In many states, they are considered to own the property as “tenants by the entirety.” A tenancy by the entirety provides some advantages not available to other forms of co-ownership. Neither spouse can individually transfer or encumber the real property in a way that will affect the other spouse’s right of survivorship in the whole property. Unlike other types of co-ownership, a creditor cannot attach or execute upon entirety property to collect a debt owed by only one of the property owners; entirety property can only be attached for joint debts. Some states now allow both real and personal property to be held by the entirety, while other states have enacted special statutes extending the right to hold property as tenants by the entirety, but other states extend these special protections only to real property. This is a significant disadvantage for owners of manufactured homes classified as personal property and not allowed to be held by the entirety.

## 7. Bankruptcy

When a debtor files bankruptcy, Bankruptcy Code section 1322 enables the bankruptcy court to modify the rights of holders of most secured claims —debts for which the creditor has a lien of some sort on the debtor’s property. The modification may reduce the debtor’s monthly payment, allow the debtor to postpone making payments, or even eliminate the creditor’s lien. For a consumer filing bankruptcy, the modification may allow the consumer to keep an item that is acting as security on a loan and yet reduce the monthly payment.

There are some gaping holes in this right, however. Most notably, this right is not available for most debts when the creditor has a security interest in real property that is the debtor’s principal residence. This limitation means that owners of manufactured homes whose home is real property under state law will generally not be able to modify a first mortgage on their home through bankruptcy.<sup>27</sup> While homeowners whose homes are classified as personal property have previously been eligible for such a modification, recent changes to bankruptcy law have created some ambiguity about this.

If, despite the ambiguity introduced by the recent bankruptcy changes, courts continue to look to the distinction between real and personal property to determine the eligibility of an owner of a manufactured home to modify the debt on a home in a bankruptcy case, classifying a manufactured home as real property will be a disadvantage to homeowners who have to file bankruptcy. Such a homeowner may not be able to modify debts secured by the home, whereas the homeowner would have been eligible for modification if the home were personal property.

## ANALYSIS OF STATE STATUTES THAT ALLOW CONVERSION FROM PERSONAL TO REAL PROPERTY

Approximately three-quarters of the states have statutes that set forth a procedure to convert a manufactured home from personal to real property and document that conversion. Generally, the procedure involves surrendering the certificate of title or manufacturer’s certificate of origin and then filing an affidavit in the local county land records. Typically, the manufactured home must be permanently affixed to the land, a concept often specifically defined. Many states also require that the homeowner own the land in addition to the home. Other states allow a home to be converted to real property if it is permanently affixed to land that the owner is renting, typically requiring that the lease be for a minimum specified period of time.

Many state statutes that allow homes on rented land to be converted to real property were created to allow financing of manufactured homes under the Freddie Mac Leasehold Estate Mortgage Program. Fannie Mae manages a similar program that is being piloted in New Hampshire. Statutes that allow homes on rented land to be treated as real property have particular significance in resident-owned communities and communities owned by nonprofits or community land trusts because in such situations, each homeowner rents a lot from the cooperative, nonprofit or land trust. Some statutes allow homes under these conditions to be treated as real estate.



Title purging after conversion to real estate is critical in order to avoid opportunities of fraud and provide lenders with the security of clear ownership by the homeowner. A state that does not have a title purging statute may still grant requests to cancel a manufactured home's certificate of title. For example, if a home has a certificate of title, a state motor vehicle department may grant a request to cancel the title upon a showing that the home is not capable of being operated on a public highway. Some states have administrative rules allowing cancellation of the title. Even without a title purging statute, a state motor vehicle department may agree to cancel a title if the owner shows that a home no longer meets the jurisdiction's definition of motor vehicle because it has been attached to the land. However, as discussed in a later section, the effect of title purging, by statute or otherwise, may not always be clear. A few states, such as New York, specifically forbid title purging.

## Strengths of Existing State Conversion Laws

**Cancellation of Certificate of Title.** Conversion statutes in states that use a certificate of title for manufactured homes generally also prescribe procedures to make sure that the certificate of title is cancelled when the home is converted to real property. This is essential because the coexistence of two title documents—the certificate of title and the deed—enables an unscrupulous owner to sell the manufactured home twice, assigning the certificate of title to one buyer and conveying a deed to the other.

**Protection of Secured Lenders.** Most conversion statutes ensure the protection of secured parties. Before a state allows for the conversion of a manufactured home from personal to real property, they typically require the secured party to either release its security interest or accept a mortgage in substitution for the UCC security.

## Opportunities to Strengthen Existing State Conversion Laws

**Increase Clarity.** The ultimate effect of using a state's conversion statute is not always clear. Some state statutes indicate that once a home is converted to real property, foreclosure law applies. Others achieve the same result by stating that the home, upon conversion, is subject to all laws that apply to real estate. Some conversion statutes say nothing about the implications

# Uniform Manufactured Housing Act (UMHA)

In 2012, after years of study and drafting efforts, the Uniform Law Commission (ULC) approved the Uniform Manufactured Housing Act. The ULC, a nonprofit, unincorporated commission, is made up of more than 350 lawyers, judges, law professors and lawyer-legislators from every state. Together, they work to promote enactment of uniform laws that are designed to solve problems common to all the states.

After receiving the ULC's seal of approval, a uniform act is officially promulgated for consideration by the states, and legislatures are urged to adopt it. Since its inception in 1892, the ULC has been responsible for more than 200 acts, among them such bulwarks of state statutory law as the Uniform Commercial Code, the Uniform Probate Code, the Uniform Partnership Act and the Uniform Interstate Family Support Act. The Commission provides states with nonpartisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

The ULC addressed the issue of titling manufactured homes in recognition of the wide disparities in the ways that states currently treat manufactured homes and the detrimental impact these differences have on financing and other aspects of homeowners' lives. The model law seeks to modernize and improve state titling laws for manufactured homes, 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 homes built on site.

The UMHA creates a simple, straightforward process for converting a home's legal classification from personal property to real property. When a consumer signs an agreement to purchase a new home, the dealer must give the consumer a notice stating that he or she can choose whether the home will be classified as real or personal property. The consumer must make this decision and the dealer cannot try to influence the consumer's decision. In fact, the notice advises consumers to consult with someone other than the dealer about this decision.

If the consumer chooses to have the home classified as real property, the procedure is simple. The seller of the home will deliver proof of ownership to the buyer. That proof of ownership is attached to a certificate

of location, and the documents are filed together in the local land records office. The certificate of location certifies that the home will be located on land that the homeowner owns, leases or on which the homeowner otherwise has a legal right to place the home. Once the certificate is filed, the manufactured home will generally be considered real property for all purposes, although some states make taxation changes.

This process is available not only to buyers of new homes, but also buyers and owners of existing homes, including mobile homes built before the 1976 HUD Code was established. The home does not have to be attached to a permanent foundation to be classified as real property. Manufactured homes that are properly sited on land with the towing hitch, wheels and axles removed and connected to a source of electricity are sufficiently attached to the land for the purposes of the act. Most importantly, the act applies to homes placed on land owned or leased by the homeowner, including those in resident-owned communities.

### **What the Act Does not do:**

While the UMHA accomplishes many important changes, it is also important to understand the things the Act does not do as it may help lenders, community owners and others to accept the Act.

**The Act provides an option for homeowners to convert their homes from personal to real property, but does not mandate that homes must be titled as real property.** If the Act were enacted in your state, all homeowners—including those in manufactured home communities—would have the right to choose to have their home titled as real property.

**The Act does not change the rights or responsibilities of either landlords or tenants in manufactured home communities.** It makes a home's classification as real or personal property entirely separate from the relationship between the homeowner and the community owner. If the Act were enacted in your state, manufactured home community landlords would still be able to exercise the same rights as before in accordance with existing state landlord-tenant law. The Act ensures that title to the manufactured home remains separate from the title to the land on which it is located even if a home is converted to real property. The landowner's title to the land, the value of the land and their ability to transfer title of the land is not encumbered in any way by a lessee's manufactured home titled as real property.

**The Act protects original lenders' security interests.** If an existing manufactured home was originally titled and financed as personal property, the rules that determined the rights and remedies of a lender who had a security interest in the manufactured home before the home was converted to real property still apply after conversion to real property. In other words, a chattel lender's rights as governed by the Article 9 of the Uniform Commercial Code are preserved even after a home is converted to real property.

**The Act does not require lenders to offer mortgages for manufactured homes titled as real property; it does create one of many necessary conditions necessary to enable lenders to offer mortgages on more manufactured homes in the future.** Mortgages cannot be secured by homes titled as personal property. Many states' existing manufactured home titling statutes inherently preclude owners and buyers of manufactured homes from accessing mortgage finance by preventing them from converting their titles to real property. Many states mandate certain preconditions for titling as real property, such as requiring that the homeowner own the land beneath their home, have a permanent foundation or have a minimum lease term if located in a community. Other statutes prohibit homes in resident-owned communities or older homes from being converted to real property. Though titling as real property does not guarantee that a homeowner would qualify for a mortgage, titling as personal property makes it absolutely impossible for homeowners to access mortgage financing. By removing these onerous—and unnecessary—preconditions for titling as real property, the Uniform Act brings homeowners and buyers one step closer to accessing mortgage financing.

**In some states, the Uniform Act need not disrupt existing manufactured home taxation systems.** For a number of reasons the Act can be adopted by states either with or without any change to their existing taxation system. Many states already have manufactured home specific taxation programs and if the act is adopted in those states it may be done so with a desire to leave the existing system as is. The Act allows for this. If changes in taxation present other problems such as difficulty in adopting any act that is not revenue neutral the Act could be adopted leaving taxation unaffected. However, states may wish to use adoption of the act as an opportunity to update and harmonize taxation of manufactured homes and may certainly do so.

of the conversion or state only some effect on the manner in which the home is taxed. Other statutes merely provide that upon completion of the requirements, the title may be surrendered, without stating if all real estate laws apply to the home thereafter.

Adding to the confusion, a state's statute may be located among the state's manufactured home statutes or may be part of the state's motor vehicle, finance or tax laws. Although some courts have held that when a statute treats a manufactured home as real property for one purpose, such as taxation, it should be treated as real property for other purposes as well, such as bankruptcy. The lack of clarity in the statute can leave homeowners vulnerable.

In addition, some statutes lack clarity as to whether the statutory conversion procedure supplants common law methods of conversion. Such common law methods of conversion—rules created by precedent of previous court cases rather than statutes created by a legislature—typically involve actions of the homeowner that are sufficient to show that the home has become a part of the land on which it is sited.

Lenders wanting to sell their loans on the secondary mortgage market may insist that a home be converted to real property. Fannie Mae, for example, requires a manufactured home be legally classified as real property, and financing must be secured by a mortgage or deed of trust recorded in the jurisdiction's land records. In states where there is less clarity around conversion, a lender may be reluctant to extend conventional-style financing. Therefore, clarity is critical in regulations for converting a manufactured home from personal to real property.

**Ensure Reasonable Land Ownership and Lease Requirements.** Many states permit a manufactured home to convert to real property only if the home and the land that home is placed upon are both owned by the same person. Although policymakers and practitioners may be unfamiliar with the idea of a home being real property even though it sits upon land owned by another, there are several common examples. Many commercial buildings are not owned by the same entity which owns the land, yet the buildings are generally classified as real property. Similarly, community land trust homes sit on land leased, not owned, by the homeowner, and often homes in such situations are classified as real property.

More recent statutes for the conversion of manufactured homes permit the home itself to become real property, even when placed on leased land. Unfortunately, many of these statutes place severe restrictions on such conversions. Typically, they require long-term leasehold interest by the homeowners, often between 20 and 35 years. While long-term leases do provide some protection to homeowners and secured lenders, this protection is not comprehensive. Even with a long-term lease, the homeowner may still be vulnerable to rent increases or other changes that might ultimately force the home off the land. Lease requirements also put landowners—with the power to permit or deny a long-term lease—in control of a homeowner's ability to classify the home as real property. Requiring such a lease to convert the home to real property places many owners of manufactured homes on leased land at a disadvantage without actually conferring the safeguards that the measure may seek to put in place.

Even more disadvantageous to many homeowners is an unusual provision found in several conversion statutes that permits homes on leased land to become real property only if the home is financed through Fannie Mae, Freddie Mac, the Federal Housing Administration and other similar programs. Most of these statutes were enacted in response to Freddie Mac's program to make mortgage loans on manufactured homes atop leased land, which required that the home be real property. Such conversion statutes were designed to increase the likelihood of conventional financing for owners of manufactured homes, but it is not clear why the benefits of a real property designation should be denied to homeowners on leased land who already own their homes or are financing the home in some other way. Therefore, state conversion statutes must be reasonable and not overly burdensome with regard to land ownership and lease requirements.

**Call for Reasonable Permanent Foundation Requirements.** A majority of states with a statutory method for converting manufactured homes to real property require that the home be placed upon a permanent foundation before conversion. This requirement may mirror the standard foundation required for installation of all manufactured homes in that state, while in other states this requirement is more stringent than standard installation requirements.

States differ as to foundation requirements. Some may permit footings and piers; others may require a more extensive and expensive foundation, such as a masonry wall for the entire perimeter of the home. In addition to cost, a requirement for a permanent foundation presents other difficulties. Few homeowners on leased land would invest in such a foundation without feeling secure in their right to remain on the land. In addition, many manufactured home community owners, and in some cases local government regulations, prohibit such extensive foundations in land-lease communities. Therefore, states should not impose requirements regarding a home's foundation beyond those required to site any manufactured home.

**Remove Permission of Landowner Requirements.** Of the states that do permit homes sited on leased land to become real property, some, unfortunately, require that the homeowner obtain the permission of the landowner (expressed as a clause in

## A Special Note on State Automatic Conversion Laws

Many issues must be considered before creating a new conversion statute or modernizing existing statutes. The UMHA can be a great guide to drafting a state act. Whatever changes states may consider, advocates are cautioned to pay special attention to the issue of automatic conversion versus procedures for conversion—each has advantages and disadvantages. Most states that have enacted conversion statutes require that the homeowner take affirmative steps to convert the home to real property. Although conversion to real property may take place without any sort of bureaucratic procedure in states that continue to permit common law conversions, the number of such states is decreasing as more states make the statutory conversion process the sole means of conversion. Even states that continue to allow common law conversions generally require clear intentional acts on the part of the homeowner to convert the home to real property.

There is an alternative to such conversion requirements. A scant few states provide for automatic conversion to real property by virtue of *physical* actions of the homeowner, such as connection to utility service, rather than requiring *procedural actions*. Such approaches get rid of bureaucratic hurdles to real property designation, clearly benefiting homeowners who want their homes to be treated as real property.

There are, however, some potential disadvantages to an automatic conversion process. Automatic conversions may create confusion as to the status of the home. If conversion depends upon certain facts, such as whether the home sits upon a permanent foundation or is connected to utilities, it may be unclear to prospective buyers, lenders and even the homeowner whether the home is real or personal property. Making the determination may require verification of factual criteria that can give rise to disputes. A well-documented formal conversion process may avoid many of these issues. Alternatively, a conversion that occurs automatically upon the sale to the consumer would ease the burden of verifying that the home was, in fact, converted to real property.

An automatic conversion also removes the conversion option from the homeowner's control. Although homeowners will generally benefit from a real property designation, there may be situations in which the homeowner would benefit from maintaining a personal property designation. For example, in some states, treatment as real property may entail a significant tax increase for the homeowner.

the lease) in order to reclassify the home. Requiring such permission is an unnecessary burden on the homeowner as a conversion of the home to real property need not affect landowner rights. The permission of the landowner may be seen as necessary to protect secured lenders, because lenders may fear that landowners will treat the home as a fixture and convey it with the land. However, such fraudulent activity can be prevented by clear cross-referencing between the land deed and the home deed. Therefore, state conversion laws should not require permission from the landowner, nor should they affect the landowner's interests.

**Create User-Friendly Conversion Statutes.** In states with conversion statutes, courts commonly find that a home continues to be personal property until the statutory procedures are followed. Thus, even if a home is permanently affixed to the land, it may be considered personal property unless the owner surrendered the title and filed the proper papers to convert it to real property.

If the conversion is completed as part of a financing arrangement, it is likely that the conversion process will be properly followed, as the lender wishes to ensure that its security interest in the home is properly recorded and perfected. When a homeowner attempts conversion on his or her own, however, successful completion of the required procedures is less certain. Requirements may be relatively complex for a lay person, and homeowners may not be able to afford the services of an attorney to assist in the conversion process. Therefore, state conversion statutes should be straightforward and not require professional expertise.

## RECOMMENDATIONS FOR STRONG LAWS TO PROMOTE MANUFACTURED HOMES AS REAL PROPERTY

- Conversion should be available regardless of who owns the land upon which the home is placed.
- Conversion should make the home real property for all purposes.
- Conversion should protect secured parties' interest in the home.
- Conversion should not require homes on rented land to have a specific lease term.
- Conversion should not impose requirements regarding the home's foundation beyond those required to site any manufactured home.
- Conversion should not affect the landowner's interests if the home is on rented land, nor should it require the permission of the landowner.
- Conversion procedures should create a clear chain of ownership to facilitate title searches.
- Conversion procedures should be user-friendly and permit homeowners to convert their homes without hiring a professional for assistance.

- The Real Estate Settlement and Procedures Act should apply to all loan transactions secured by a manufactured home, regardless of the home's classification as real or personal property.
- Conversion should provide a bright-line rule for when a home is real property to ensure predictable and consistent results.
- Conversion procedures should include the cancellation of certificates of title in order to reduce the possibility of fraud.
- Protections against unfair and deceptive practices (state UDAP statutes) should apply to manufactured home sales and state homestead exemption laws should apply to manufactured homes, regardless of whether the home is real or personal property.
- 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](http://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](http://www.consumerlaw.org).

## ENDNOTES

- 1 Available at: [http://cfed.org/programs/innovations\\_manufactured\\_homes/manufactured\\_housing\\_advocacy\\_center/manufactured\\_housing\\_toolkit/](http://cfed.org/programs/innovations_manufactured_homes/manufactured_housing_advocacy_center/manufactured_housing_toolkit/).
- 2 15 U.S.C. § 1603.
- 3 12 CFR §1026.43(b)(4)
- 4 FAQs about RESPA for industry professionals can be found at <http://portal.hud.gov/hudportal/documents/huddoc?id=faqsjuly16.pdf>. (“[A] loan secured by a manufactured home (mobile home) [is a] covered transaction under RESPA . . . only if the manufactured home is located on real property on which the lender’s interest is secured by a lien.”); See 40 Fed. Reg. 22448 (May 22, 1975) (final notice for original Reg. X stating “The final regulations cover, mobile homes and mobile home lots only if both the mobile home and the lot on which it is to be located are being purchased with the proceeds of the loan in question.”). Other aspects of RESPA’s scope have been expanded since 1975 so the purchase limitation in the 1975 rule no longer applies.
- 5 12 C.F.R. § 1024.2(b).
- 6 See <http://portal.hud.gov/hudportal/documents/huddoc?id=faqsjuly16.pdf>. (undated); 40 Fed. Reg. 22448 (May 22, 1975). See also § 3.2.1, supra (discussing whether all HUD interpretation have been superseded).
- 7 12 U.S.C. § 2602(1)(A).
- 8 Compare 40 Fed. Reg. 7072 (Feb. 18, 1975) (proposed 24 C.F.R. § 82.1(a)(1)) with Pub. L. 93–533, (12-11-1974) 88 Stat 1724 § 3(1)(A).
- 9 40 Fed. Reg. 22448 (May 22, 1975) (final version of 24 C.F.R. § 82.2(e)). In the final version, the regulation used the term “Home Mortgage” rather than “federally related mortgage loan.” The terminology was later changed back to the statutory term.
- 10 Ibid.
- 11 Ibid.
- 12 Staff Guidelines on the Credit Practices Rule, reg. AA, are available at <http://www.federalreserve.gov/Regulations/cg/crdtpracrul.htm>.
- 13 (18 U.S.C. §27)
- 14 (12 U.S.C. §§5101–5116).
- 15 (76 Fed. Reg. at 38475).
- 16 See National Consumer Law Center, *Unfair and Deceptive Acts and Practices* (8th ed. 2012).
- 17 See *State v. First National Bank of Anchorage*, 660 P.2d 406 (Alaska 1982); *McElhannon v. Ford*, 73 P.3d 827 (N.M.App. 2003).
- 18 See, for example, *People ex rel. MacFarlane v. Alpert corp.*, 660 P.2d 464 (1986); *In re Bryant*, 111 B.R. 474 (E.D. Pa. 1990).
- 19 See, for example, *Murphy v. Berlin Construction Co.*, 1999 Del. Super. LEXIS 5 (Jan. 12, 1999) (Delaware defines “merchandise” to include real estate).
- 20 See *Warren v. LeMay*, 142 Ill.App.3d 550, 491 N.E.2d 464 (1986).
- 21 See *Woods v. Littleton*, 554 S.W.2d 662 (Tex. 1977) (UDAP applicable when seller promises to make repairs on home if problems arise); *Deltona Corp. v. Jannetti*, 392 So. 2d 976 (Fla. Dist. Ct.App. 1981) (UDAP statute applies to sale of carpeting and other accessories sold with the land).
- 22 12 C.F.R. (Reg. Z) § 1026.35(c)(3).
- 23 78 Fed. Reg. 78,542 (Dec. 26, 2013).
- 24 12 C.F.R. (Reg. Z) § 1026.35(c)(2) (effective July 18, 2015).
- 25 For more detailed information on the taxation of manufactured homes see Ann M. Burkhart, *Taxing Manufactured Homes*, [Minnesota Legal Studies Research Paper No. 13-45](#), University of Minnesota - Twin Cities School of Law, September 5, 2013.
- 26 12 U.S.C. §1715z-23 – §1715z-25
- 27 Even if the home is considered real property, homeowners may still be eligible to modify junior mortgages that are completely under-secured because the first mortgage exceeds the value of the home. They may also be able to obtain special bankruptcy remedies if the loan on the home has a short term or there is a balloon payment due prior to the end of the Chapter 13 plan. For a more thorough discussion of these and other bankruptcy issues, see National Consumer Law Center, *Consumer Bankruptcy Law and Practice* (10th ed., 2012).

# Appendix A

## EXISTING STATE CONVERSION STATUTES

The following states have statutes that specify a procedure for the conversion of a manufactured home to realty for at least some purposes. In the following summaries the terminology of the statutes as to manufactured or mobile homes has been retained.

### Alabama

The owner, retail purchaser, or lienholder for original purchaser of a manufactured home not more than twenty years old may apply to cancel the certificate of title or certificate of origin if the home is affixed to real property that the homeowner owns. The ownership of both the home and land must be identical. The owner must submit an application to the state department of revenue, including the certificate of origin or title or a bond in lieu, a release of any liens noted on the title or a bond in lieu, an affidavit executed by all with an ownership interest in the home and realty.<sup>1</sup> If the manufactured home is later detached from the land, the owner must reapply for a new certificate of title. Manufactured homes more than twenty model years old shall not be required to obtain a certificate of title.<sup>2</sup> This statute is part of the state home certificate of title act and does not state whether the home is treated as real property for foreclosure or other purposes after the title is cancelled. Alabama also has a statute dealing with the treatment of manufactured homes as real property for the purpose of ad valorem taxation,<sup>3</sup> but at least one court has held that does not convert the home to real property for other purposes.<sup>4</sup>

### Arizona

A manufactured home that is permanently affixed, i.e., installed on real property that the homeowner owns,<sup>5</sup> and for which an affidavit of affixture has been recorded, shall be assessed as real property for tax purposes.<sup>6</sup> A manufactured home that is located in a manufactured home park will, along with the leasehold interest, be treated as real property if the owner files an affidavit of affixture with the county recorder and: (1) the home has been installed on the real property with all wheels and axles removed in compliance with local and state installation standards; (2) the owner of the home has entered into a lease of at least twenty years for the lot and the lease specifically permits the recording of an affidavit of affixture; and (3) a memorandum of lease, signed by both landlord and tenant, is recorded that lists specified information.<sup>7</sup> Regardless of whether the home is located in a park, the affidavit of affixture must identify the holder of any security interest in the home that is not terminated by the consent of the secured party, and any such interest survives recordation of the affidavit.<sup>8</sup> When an affidavit of affixture is recorded, the owner must surrender the certificate of title.<sup>9</sup> A lien on a manufactured home for which an affidavit of affixture has been recorded may be perfected either in the manner provided by law for real property or in the manner provided for fixtures.<sup>10</sup>

### Arkansas

If a mobile or manufactured home is to be affixed to real estate, the title may be surrendered to the state department of finance and administration for cancellation. After cancellation, a security interest, lien, or encumbrance may be obtained in the same manner as for real property.<sup>11</sup>

### California

If a manufactured or mobile home is affixed to a permanent foundation in compliance with state standards,<sup>12</sup> default and sale are governed by California's mortgage foreclosure laws.<sup>13</sup> The homeowner must own the land or be leasing it with a term of at least thirty-five years.<sup>14</sup> Any lienholders must consent to the attachment of the home to the land.<sup>15</sup> The owner must surrender the certificate of title, and a statement that the home has been affixed to real property is to be recorded in the county land records.<sup>16</sup> Once these procedures are completed, the home is deemed a fixture and an improvement to the real property.<sup>17</sup> Default and sale are also governed by the state mortgage foreclosure laws if the creditor has a security interest in the land as well as the home.<sup>18</sup>

## Colorado

The owner of a manufactured home, once it is permanently affixed to the ground so that it can no longer be drawn over the public highways, shall file a certificate of permanent location that contains a statement of relinquishment by all secured lenders to release any interest in the home. Homeowners who do not own the land where it is sited must also release any interest in the home unless the property is subject to a lease of at least ten years.<sup>19</sup> Since a homeowner would generally not wish to give up ownership of the home, it is unlikely that homeowners without long-term leases would wish to convert their home to real property. The homeowner then surrenders the certificate of title and applies for purging of the title. The home then becomes real property, and subject to all laws that would apply to real estate.<sup>20</sup> The purchaser of a new manufactured home may use the same procedure to convert the home to real property without a title ever being issued for the home, and instead relying upon the manufacturer's certificate or statement of origin.<sup>21</sup> Although the statute permits conversion of homes placed on land pursuant to long-term leases, this may be problematic as it appears that after conversion the home is taxed as part of the land upon which it sits and so would hold the landowner responsible for taxes for a home he does not own.<sup>22</sup> Upon the filing of a certificate of removal, the statute permits issuance of a new title if the home is removed.<sup>23</sup>

## Connecticut

Title conveyances to manufactured homes are recorded on the land records with the town clerk's office of municipality.<sup>24</sup> While the document conveying title to homes on leased land must recite information about the land or park where the home is located,<sup>25</sup> it appears to allow conveyance of homes located upon land owned by the homeowner by deed, and such home would become part of the real property.<sup>26</sup>

## Florida

The owner of a manufactured home permanently affixed to land owned by the homeowner or in which the homeowner has a recorded leasehold interest of at least thirty years, may retire title to the home.<sup>27</sup> Before title is retired the following documents must be recorded in the official records of the clerk of court in the county where the home is located: (1) the original title to the home, including a statement by any recorded lienholder that the security interest has been released or will be upon retirement of title; (2) legal description of the real property, and if the homeowner's interest in the property is a leasehold, a copy of the lease; and (3) a sworn statement of the owner that he or she owns the home and the real property or leasehold interest. After the title is retired, the home is only conveyed by deed or real estate contract along with the property to which it is affixed.<sup>28</sup> A new title may be obtained if the home is to be removed from the land.<sup>29</sup>

Another Florida statute provides that if the manufactured home was classified as personal property by a seller or lender at the time a security interest in the home was granted, it shall continue to be so classified for all purposes relating to the loan and security agreement.<sup>30</sup>

## Georgia

A manufactured or mobile home is personal property unless: (1) the home is or is to be permanently affixed to real property and one or more persons with an ownership interest in the home also has an ownership interest in the real property; and (2) the owner and all holders of security interests sign and file a certificate of permanent location with the clerk of the local superior court and the state revenue commissioner. Once such a certificate has been properly filed, the home is a part of the real property for all legal purposes, including foreclosure.<sup>31</sup>

## Idaho

A manufactured home may constitute real property if the home is permanently affixed to a foundation and the running gear is removed. The home must be sited on land that the homeowner owns, is purchasing, or, if the home is being financed in accordance with a federal housing agency's guidelines, is leasing. The homeowner must record with the county recorder a statement of intent to declare the home as real property, and must turn over the certificate of title. Upon exercise of this option, lending institutions may treat the home as real property.<sup>32</sup> Physical removal of the home from the land is then prohibited unless the owner applies to have a new certificate of title issued.<sup>33</sup>



## Indiana

If a manufactured home has been attached to real estate by a permanent foundation, the owner may submit the certificate of title and an affidavit to the bureau of motor vehicles.<sup>34</sup> The county recorder is then to record the affidavit in the county real estate records,<sup>35</sup> and the home is thereafter deemed to be an improvement to the real estate.<sup>36</sup>

## Iowa

Iowa has two provisions; one addressing homes in land lease communities and one for homes on owned land. If the home is located in a manufactured home community and installed on a permanent foundation, the owner may surrender the certificate of title to the county treasurer for the purpose of assuring eligibility for federal mortgage lending programs. The title cannot be surrendered if there are unreleased security interests. A foreclosure action on a manufactured home whose title has been surrendered must be conducted as a real estate foreclosure. The owner may reapply for a certificate of title at a later date.<sup>37</sup>

If the home is not in a manufactured home community, it must be placed on a permanent foundation, but for limited exceptions. If a security interest is noted on the title, the homeowner must tender a mortgage on the real estate to the creditor, or the secured party must consent to the conversion, in which case the secured party retains a security interest in the home that is separate from any interest in the land. This statute is a tax law that does not state whether foreclosure law applies after the home is converted to real property.<sup>38</sup>

## Kansas

Manufactured homes are not subject to the laws, rules, and regulations applicable to vehicles, including titling and registration requirements and dealer licensing.<sup>39</sup> Rather, after obtaining a manufactured home the new owner is required to get a manufactured home certificate of title.<sup>40</sup> Whenever a manufactured or mobile home is permanently affixed to real property by placement upon a permanent foundation that cannot be removed intact from the land, the owner may apply to have the certificate of title eliminated. The application must include an affidavit signed by the owner and all parties having a security interest in the home. If the application is approved, it is filed in the county registry of deeds. Once the certificate of title is eliminated, ownership of the home is an incident of ownership of the land under governing real property law, and the home is subject to a lien only as part of the real property.<sup>41</sup>

## Kentucky

When a manufactured home is or is to be permanently affixed to real estate, the owner may file an affidavit of conversion with and surrender the certificate of title to the county clerk, who then is to record the affidavit. The home is then deemed an improvement of the real estate.<sup>42</sup>

## Louisiana

A manufactured home is considered immovable when a document describing the home and the land is recorded in the local parish records. The document must include a declaration by the owner of the home and any holder of a security interest in the home that the home is to remain permanently attached to the land. Once this document is recorded, the home is subject to all laws concerning immovable property. After recordation the owner or the owner's agent must file a certified copy with the Secretary of the Department of Public Safety and Corrections who creates an Internet accessible searchable database providing a public record with: the name of the owner of the manufactured home; the date of recording of the act of immobilization; the parish where the act is recorded; the year of manufacture; the name of the manufacturer; the dimensions and the vehicle identification number or numbers of the manufactured home; and the date of the secretary's filing of a copy of the act of immobilization.<sup>43</sup> However, the rights of the holder of a validly recorded chattel mortgage or a security interest perfected under Article 9 of the UCC are unaffected.<sup>44</sup> The owner may reverse the process so that the home is once again treated as movable property by filing another statement of intent and applying for a new certificate of title.<sup>45</sup>

## Maryland

In the spring of 2012, the Maryland House and Senate both unanimously passed a conversion statute which has been sent to the Governor and will likely be enacted. The bill creates a new title 8B under the Maryland Real Property Code permitting conversion of a manufactured home on a permanent foundation if the ownership interests in the manufactured property and the real property to which the manufactured home is or will be affixed are identical. The conversion requires an affidavit including a description of the home, a copy of the MCO and certificate of title, if available, the street address and legal description of the real property where the home is or will be located; and a statement from the owner that the manufactured home is free and clear of any lien, security interest or encumbrance. The bill also creates requirements for severing the home from the land where it is located.<sup>46</sup>

## Michigan

The owner of a manufactured home that is affixed to real property in which the owner has an ownership interest may apply for cancellation of the certificate of title. To be considered affixed to the real property, the wheels, towing hitches and running gear must be removed and the home must be attached to a foundation or other support system. The application must include the written consent of each holder of a security interest to termination of the security interest and cancellation of the title. Once the title is cancelled, the manufactured home is considered part of the realty and a lienholder may perfect a new security interest or lien on the manufactured home only in the manner prescribed by the real estate laws.<sup>47</sup> The owner may reapply for a certificate of title at a later date.<sup>48</sup>

In 2003, the Sixth Circuit Court of Appeals held that security interests in manufactured homes in Michigan could be perfected only by recording them on the title, not by recording a traditional mortgage.<sup>49</sup> The legislature responded by amending its titling laws to recognize both methods.<sup>50</sup> It amended the statute again two years later to make this rule retroactive.<sup>51</sup>

## Minnesota

When a manufactured home is affixed to real property, and financed by a mortgage on the real property, the owner of the home must surrender the certificate of title to the registrar of motor vehicles for cancellation. The department then is to issue a notice of surrender, which may be recorded in the county recorder's office or the registrar of titles. The statute provides that the manufactured home is then deemed to be an improvement to real property. The department may not cancel the certificate of title, however, if an unsatisfied security interest is noted on it.<sup>52</sup>

## Mississippi

A manufactured homeowner or mobile home owner who also owns the land on which the home is located has the option of declaring whether the home is to be classified as personal or real property. To be classified as real property, the wheels and axles must be removed and the home must be anchored and blocked in accord with rules adopted by the commissioner of insurance.<sup>53</sup> A certificate that the home has been classified as real property is then recorded in the county land records,<sup>54</sup> and the home's certificate of title may be sent to the state tax commission for cancellation.<sup>55</sup> The home is then treated as real property for purposes of *ad valorem* taxation, and a security interest in the home and land may be obtained through the use of a mortgage or deed of trust.<sup>56</sup>

## Missouri

The owner of a manufactured home may convert it to real property if it has been permanently affixed by means of a permanent foundation, or if the owner intends to permanently affix the home by means of a permanent foundation, to real property that the owner of the home owns or which the owner of the home leases under a recorded lease for a term of at least twenty years after the date of execution, and connected to residential utilities.<sup>57</sup> The owner must file an application along with the certificate of origin or certificate of title with the director of revenue with information including an affidavit of affixation.<sup>58</sup>

## Montana

A manufactured home is considered an improvement to real property if the running gear is removed, the home is attached to a permanent foundation on land that is owned or being purchased by the owner of the home (or that is placed on the land with the permission of the landowner), and a statement of intent declaring the manufactured home as an improvement to real property is recorded with the county. The statement of intent must include, *inter alia*, a description of any security interests in the home and approval from all lienholders to eliminate the certificate of title. After these steps are completed, the manufactured home may not be removed from the land unless the owner files a statement of reversal of this declaration. A manufactured home that has been declared an improvement to real property must be treated by lending institutions in the same manner as any other improvement to real property.<sup>59</sup>

## Nebraska

The title for a mobile or manufactured home may be canceled if it is affixed to real property in which the owner of the home has any ownership interest. The statute defines ownership interest as fee simple interest, or an interest as a lessee that continues for at least twenty years after the required affidavit. The title is surrendered for cancellation to the county clerk or designated official of the county. Along with the title to be surrendered an affidavit of affixture on a form provided by the department must be submitted. The form requires among other things, the names and addresses of all owners of the home, a description of the home, the legal description of the real property, a statement that the home is affixed, and the written consent of each lien holder to release its lien and cancel the title. After the title is canceled and the affidavit recorded, the home is treated as part of the real property.<sup>60</sup> The statute also provides a method for returning the home to the status of personal property.<sup>61</sup> For homes affixed to real estate for which a certificate of title was not issued before it was affixed, the homeowner may apply for a certificate of title for surrender and cancellation.<sup>62</sup>

## Nevada

A mobile or manufactured home is eligible to become real property if it becomes permanently affixed to land. The owner of the home must either own the land or, if the home is being financed in accordance with the guidelines of a federal housing program, lease it. The owner must record an affidavit of conversion in the county recorder's office, deliver a copy of the affidavit and all documents relating to the home to the manufactured housing division of the state department of business and industry, and pay the current year's personal property tax.<sup>63</sup> (But homes that are sited on lots outside manufactured home parks in accordance with local zoning laws are automatically recorded as real property without the need for an affidavit.<sup>64</sup>) Once the home is converted to real property, it is deemed to be a fixture and an improvement to the real property.<sup>65</sup>

## New Hampshire

A manufactured home placed on a site not owned by the homeowner and connected to utilities shall be deemed real estate for the purposes of transfer and shall be subject to attachment, liens, foreclosure, and execution in the same manner as real estate.<sup>66</sup> However, security interests in manufactured housing may also be created and perfected under the UCC as adopted by New Hampshire.<sup>67</sup> The statute does not address homes placed on land owned by the homeowner. Owners of manufactured homes in this situation must rely upon common law to determine if the home becomes real property. New Hampshire also has a statute which allows any lending institution to treat a manufactured home the same as realty for the purposes of securing loans to finance the home. When a lending institution exercises this option, no certificate of title is required, and all of the provisions of real estate law, including conveyances, deeds, and foreclosure, apply to the home. The home must be placed on a foundation or slab and hooked up to all conventional and necessary utility systems and must be intended to be used as a permanent dwelling unit.<sup>68</sup>

## New Jersey

New Jersey requires that all manufactured homes not taxed as real property must have certificates of ownership (titles) issued by the Director of the Division of Motor Vehicles.<sup>69</sup> A manufactured home is taxed as real property when it is affixed to the land by a permanent foundation, or if it is affixed by a nonpermanent foundation and connected to utility systems so as to render it habitable on a permanent basis.<sup>70</sup> However, a manufactured home installed in a park is not taxed as real property.<sup>71</sup> When a mobile or manufactured home is relocated from a park

to land which the owner of the home has an interest in or title to, the owner must file a notice with the Director of the Division of Motor Vehicles at least ten days before the move. If the director accepts the notice as complete, the certificate of ownership is canceled on the date of relocation.<sup>72</sup>

### North Carolina

A manufactured home qualifies as real property if it is a residential structure; the moving hitch, wheels, and axle have been removed; and the owner either owns the land on which it is located or has a lease of at least twenty years that expressly provides for disposition of the manufactured home upon termination of the lease.<sup>73</sup> The owner of such a home may have the certificate of title cancelled by submitting it, along with an affidavit, to the division of motor vehicles.<sup>74</sup> If the certificate of title shows a security interest that has not been released, the division may not cancel the title without the written consent of all secured parties. The affidavit is then to be filed in the county registry of deeds. Once the certificate of title is cancelled and the affidavit is recorded, the manufactured home becomes an improvement to real property and any lien on the home shall be perfected and given priority in the manner provided for real property liens.<sup>75</sup> An owner who wishes to separate the home from the land after the title has been cancelled can apply for a new certificate of title.

### North Dakota

A manufactured home may be converted to real property if the home is affixed to real property by a permanent foundation and connected to residential utilities; and the ownership interests in the home and land are identical or the home is placed there under a recordable lease for at least twenty years and the consent of the land owner. The homeowner must execute and record an affidavit of affixation with the county recorder which contains the manufacturer, the make, model name, model year, the dimensions, serial number of the home, whether the manufactured home is new or used, and state that the affiant is the owner of the land or is in possession under a lease meeting the requirements above. The affidavit must also include information about the certificate of title or MCO and its surrender, any security interests or liens, and other information. Once the requirements are met, the home is deemed to be real property and is governed by the laws applicable to real property.<sup>76</sup>

### Ohio

To be taxed as real property, a manufactured or mobile home must be affixed to a permanent foundation and located on land that the owner of the home owns.<sup>77</sup> The owner of a home that will be taxed as real property must surrender the certificate of title to the county auditor.<sup>78</sup> The owner must either satisfy any liens on the home, or, with the lienholder's consent, give the lienholder a mortgage on the home and land. Once surrendered, the title is to be deactivated, but it can be reactivated upon application by the owner. These statutes do not state what effect the deactivation of the title has outside the context of taxation, but a bankruptcy case holds that if a home was converted to real property through this procedure for taxation purposes it is also real property for purposes of bankruptcy law.<sup>79</sup>

### Oregon

The owner of a manufactured structure, or the dealer selling it, may apply to the county assessor to have the structure recorded in the county deed records. The owner must either own the land on which the structure is located, or hold a recorded lease of twenty years or more that specifically permits the structure to be recorded in the county deed records. The owner must turn over any ownership document for cancellation. The deed records must list any unreleased security interest in the manufactured structure. Once recorded in the deed records, the manufactured structure is subject to the same provisions of law applicable to any other building, housing, or structure on the land, and may be sold separately from the land or leasehold estate only if the owner applies to have it removed from the deed records.<sup>80</sup>

### Pennsylvania

Upon application, the department of transportation may cancel a certificate of title for a manufactured home that is affixed to real property.<sup>81</sup> The home must be permanently mounted on a foundation.<sup>82</sup> The owner must complete a form and return it, along with the title, to the department of transportation.<sup>83</sup> If a lien appears on the certificate of title, the title will not be cancelled until the homeowner submits satisfactory evidence that the

lien has been recorded against the land.<sup>84</sup> After cancellation, the ownership interest in the manufactured home, together with all liens and encumbrances on it, is transferred to and encumbers the real property.<sup>85</sup>

## South Carolina

The owner of a manufactured home may affix the home to real property by installing it in accordance with the state installation standards, removing the wheels, axles, and towing hitch, and filing an affidavit for retirement of title.<sup>86</sup> The owner of the home must either own the land on which it is located or have a leasehold estate of thirty-five years or more in the land. The local register of deeds or clerk of court must then record the affidavit as if it were a deed to real property. Upon completion of this process, the home is to be treated as real property for all purposes except condemnation.<sup>87</sup> The title certificate may be cancelled by presenting it to the division, along with a clocked and stamped copy of the affidavit.<sup>88</sup> Any party listed on the title certificate as having a security interest in the home must either lease the lien or consent to the cancellation of the title.<sup>89</sup> Once a manufactured home has been converted to real property in this manner, a manufactured home severance affidavit must be filed before it can be severed from the land.

## South Dakota

If a mobile or manufactured home is fixed to real property, and the owner of the home also owns the land, the owner may request that the title to the home be surrendered.<sup>90</sup> If the owner wants to remove the home from the real property at a later time, the owner may apply to have a title reissued.<sup>91</sup> These statutes are part of the state motor vehicle titling laws and do not state the effect of surrendering the title.

## Tennessee

If a manufactured home is affixed to real property, and the ownership of the home is identical to the ownership of the land, the owner may surrender the title to the state department of safety. The owner must submit an affidavit of affixation that, *inter alia*, certifies that all permits required by applicable governmental authorities have been obtained, the foundation system complies with the law and with the manufacturer's specifications, and the wheels and axles have been removed. All lienholders must have released their liens on the home. If the affidavit complies with all the statutory requirements, the county register of deeds is to record it. The home is then subject to taxation as an improvement to the land, but the statute does not specify the effect on foreclosure.<sup>92</sup>

## Texas

A manufactured home can be treated as real property, if it is attached to land that the owner of the home owns, or which the owner is leasing under a long-term lease as defined by the state department of housing and community affairs.<sup>93</sup> To be attached to land it must be installed in compliance with state rules and connected to a utility.<sup>94</sup> The owner must file an application for a statement of ownership and location with the department. In addition, each lienholder must either release the lien or give written consent to the conversion of the home to real property.<sup>95</sup> Within sixty days after the department issues a statement of ownership, the owner must file a certified copy in the real property records of the county in which the home is located and notify the department and the tax assessor-collector that the certified copy has been filed.<sup>96</sup> The home is then considered real property for all purposes.<sup>97</sup>

Another Texas statute provides that, if a consumer buys real property and a manufactured home at the same time, and certain other conditions are met, the creditor may elect to treat the home as if it were residential real property for all purposes in connection with the credit transaction.<sup>98</sup> If the creditor so elects, and discloses this election conspicuously to the consumer, then the transaction is considered to be a residential real property transaction for all purposes.<sup>99</sup> Bankruptcy courts seeking to determine if a home is real or personal property have looked only to the statutory conversion process to the exclusion of any general fixture analysis.<sup>100</sup>

## Utah

A manufactured or mobile home is considered an improvement to real property if the owner also owns the land to which it is permanently affixed, or leases the land and is financing the home in accordance with federal housing agency guidelines. The owner must surrender the title and complete an affidavit that, *inter alia*, identifies any

security interests in the home. The affidavit and the receipt for the surrender of the title are then recorded by the county recorder. The owner may acquire a new title upon removing the manufactured home from the land. Since this statute is part of the state mortgage lending and servicing act, it is likely that it will govern whether foreclosure is the appropriate way for the lender to proceed in the event of default.<sup>101</sup>

## Vermont

If a manufactured home is financed while the home is permanently sited in a manner intended for continuous residential occupancy by the owner on land owned by the owner of the home, it shall be financed as a residence.<sup>102</sup> Otherwise a manufactured home may be financed under Vt. Stat. Ann. tit. 9, § 41a(b)(4) or Vt. Stat. Ann. tit. 9, pt. 3, ch. 59, both of which regulate chattel loans.

## Virginia

The owner of a manufactured home or house trailer that exceeds the size permitted for highway travel must apply for a title within thirty days after purchase. Once the wheels and other equipment that made the home mobile are removed and the home has been attached to realty, then the owner may return the title to the department of motor vehicles for cancellation. The home then may be transferred only as real estate is transferred. Any security interest perfected on the title continues despite the cancellation of the title.<sup>103</sup> A bankruptcy court has held that the determination of whether a manufactured home is real or personal property must be made on a case-by-case basis and an owner's failure to comply with the statute, while it might be indicative of the owner's intent that home remain personal property, is not conclusive.<sup>104</sup>

## Washington

The owner of a manufactured home that is affixed to land (i.e., installed in accordance with state installation standards<sup>105</sup>) may apply to have the title eliminated. The owner of the home must also own the land on which it is sited, have a lease of thirty-five years or more for the land, or be purchasing the land under a real estate contract.<sup>106</sup> The owner must submit the title and an application, which must identify any security interests, to the department of licensing for approval.<sup>107</sup> After approval, the title is to be cancelled and the approved application is to be recorded in the county real property records.<sup>108</sup> The statute provides that the manufactured home is then to be treated as real property as if it were a site-built structure,<sup>109</sup> except for purposes of taxation.<sup>110</sup> If the title has not been eliminated, the home is not real property.<sup>111</sup> The statute provides a procedure to obtain a new title if the home is to be removed from the land.<sup>112</sup>

## West Virginia

The commissioner of motor vehicles may cancel a certificate of title for a mobile or manufactured home that is affixed to real property that the homeowner owns.<sup>113</sup> The owner must submit an application and the certificate of title. The cancellation certificate is then to be recorded in the county deed records. Upon recordation, the statute provides that the home is to be treated for all purposes as an appurtenance to the real estate to which it is affixed.<sup>114</sup>

## Wisconsin

The owner of a manufactured home must obtain a certificate of title,<sup>115</sup> unless the owner is not a resident of Wisconsin<sup>116</sup> or the owner intends to make the home a fixture to land in which the homeowner has an ownership or leasehold interest.<sup>117</sup> The leasehold interest must be subject to Wisconsin's real property statutes which exclude leases for a term limited to one year or less.<sup>118</sup>

## Wyoming

If a manufactured home is installed on a permanent foundation and is taxable as real property,<sup>119</sup> and all liens have been paid, the certificate of title is to be surrendered to and cancelled by the county clerk.<sup>120</sup>

## ENDNOTES

- 1 Ala. Code § 32-20-20(b) (effective Jan. 1, 2010).
- 2 Ala. Code § 32-20-20(a) (effective Jan. 1, 2010).
- 3 Ala. Code § 40-11-1.
- 4 *Green Tree-AL LLC v. Dominion Resources, LLC*, 104 So.3d 177 (Ala. Civ. App. 2011) (manufactured home did not convey at tax lien sale of real property despite being taxed as real property for ad valorem taxes as its certificate of title had not been canceled pursuant to state conversion statute).
- 5 Ariz. Rev. Stat. Ann. § 42-15201(2).
- 6 Ariz. Rev. Stat. Ann. § 42-15202.
- 7 Ariz. Rev. Stat. Ann. § 33-1501. A home recorded as real property under this statute is to be assessed as personal property for tax purposes, however: Ariz. Rev. Stat. § 42-15203(K).
- 8 Ariz. Rev. Stat. Ann. §§ 33-1501, 42-15203.
- 9 Ariz. Rev. Stat. Ann. § 28-2063.
- 10 Ariz. Rev. Stat. Ann. § 42-15205.
- 11 Ark. Code Ann. §§ 27-14-807, 27-14-1603.
- 12 Cal. Health & Safety Code § 18551 (West) (includes construction standards, plan approval, etc.).
- 13 Cal. Health & Safety Code § 18039.1 (West).
- 14 Cal. Health & Safety Code § 18551(a)(1)(A) (West).
- 15 Cal. Health & Safety Code § 18551(a)(1)(B) (West).
- 16 Cal. Health & Safety Code § 18551(a)(2), (3) (West).
- 17 Cal. Health & Safety Code § 18551(a)(4) (West).
- 18 Cal. Health & Safety Code § 18039.1 (West).
- 19 Colo. Rev. Stat. Ann. § 38-29-202 (2)(m).
- 20 Colo. Rev. Stat. Ann. § 38-29-118 (2).
- 21 Colo. Rev. Stat. Ann. § 38-29-114.
- 22 Colo. Rev. Stat. Ann. § 38-29-118 (2).
- 23 Colo. Rev. Stat. Ann. § 38-29-203.
- 24 Conn. Gen. Stat. § 21-67a.
- 25 Conn. Gen. Stat. § 21-67a(c).
- 26 Connecticut information at [www.efanniemae.com/sf/guides/ssg/relatedsellinginfo/manufacturing](http://www.efanniemae.com/sf/guides/ssg/relatedsellinginfo/manufacturing).
- 27 Fla. Stat. § 319.261.
- 28 Fla. Stat. § 319.261(5).
- 29 Fla. Stat. § 319.261(6).
- 30 Fla. Stat. § 320.015.
- 31 Ga. Code Ann. §§ 8-2-180 to 8-2-183.
- 32 Idaho Code Ann. §§ 63-304(2), 63-305(1). *Cf. In re Sasinouski*, 52 B.R. 67 (Bankr. Idaho 1985) (even though homeowner did not comply with Idaho title purging statute, land and manufactured home were both encumbered by the deed of trust on land, where deed of trust did not explicitly exclude manufactured home and lender relied upon appraisal that included both the home and land when making the loan); *Spencer v. Jameson*, 211 P.3d 106 (Idaho 2009) (manufactured home connected to well, septic tank and utilities was a fixture subject to foreclosure on deeds of trust secured by the real property).
- 33 Idaho Code Ann. § 63-305.
- 34 Ind. Code § 9-17-6-15.1.
- 35 Ind. Code § 9-17-6-15.3.
- 36 Ind. Code § 9-17-6-15.5.
- 37 Iowa Code § 435.26A.
- 38 Iowa Code § 435.26. See also *Ford v. Venard*, 340 N.W.2d 270 (Iowa 1983) (holding that Iowa's title purging statute was not intended to be the exclusive method to convert manufactured home to real property and that common-law methods of converting personal to real property remained).
- 39 Kan. Stat. Ann. § 58-4203.
- 40 Kan. Stat. Ann. § 58-4204.
- 41 Kan. Stat. Ann. § 58-4214.
- 42 Ky. Rev. Stat. Ann. § 186A.297 (West).
- 43 La. Rev. Stat. Ann. § 9:1149.4. See also La. Rev. Stat. Ann. § 9:1146.3.
- 44 La. Rev. Stat. Ann. § 9:1149.4.
- 45 La. Rev. Stat. Ann. § 9:1149.6.
- 46 S.B. 591, 2012 Leg., 430<sup>th</sup> Sess. (Md. 2012).
- 47 Mich. Comp. Laws Ann. § 125.2330i(5) (West).

- 48 Mich. Comp. Laws Ann. § 125.2330i (West).
- 49 *Boyd v. Chase Manhattan Mortgage Corp.* (*In re Kroskie*), 315 F.3d 644 (6th Cir. 2003).
- 50 Mich. Pub. Act No. 44, S.B. 425 (2003), *enacting* Mich. Comp. Laws Ann. § 125.2330i (West).
- 51 Mich. Comp. Laws Ann. § 125.2330i (West), *as amended by* Mich. Pub. Act No. 162, H.B. 4484 (2005). See *In re Ozwalt*, 444 F.3d 524 (6th Cir. 2006) (interpreting statute to allow security interest in manufactured home to be perfected by filing of mortgage with county registry, without notation on title, even when transaction occurred before statutory amendments); *In re Hoggard*, 330 B.R. 595, 605 (Bankr. W.D. Mich. 2005) (concluding that 2003 legislation overruled *Kroskie*; also finding security interest in home protected by Revised Article 9's priority rules); *Mortgage Elec. Registration Sys. v. Pickrell*, 721 N.W.2d 276 (Mich. Ct. App. 2006) (in light of 2005 statutory amendment, creditor has option of perfecting security interest in manufactured home either under the Act or under real estate law, even for home that was affixed to real estate before earlier amendments in 2003). *But cf. In re Gregory*, 316 B.R. 82 (Bankr. W.D. Mich. 2004) (interpreting title purging statute not to have retroactive effect, a conclusion rejected by Sixth Circuit in *In re Ozwalt*, but finding security interest in home protected against bankruptcy trustee's strong-arm power because of Revised Article 9's changes to priority rules).
- 52 Minn. Stat. § 168A.141. See also Minn. Stat. § 273.125 (standards for taxing manufactured homes as real property).
- 53 Miss. Code Ann. § 27-53-15.
- 54 *Id.* See also *Opinion Miss. Att'y Gen.*, Miller; No. 2005-0131, 2005 WL 1220419 (Miss. Att'y Gen. Apr. 8, 2005).
- 55 Miss. Code Ann. § 63-21-30.
- 56 Miss. Code Ann. § 27-53-15.
- 57 Mo. Rev. Stat. §§ 700.111, 442.015. See *In re Estate of Parker*, 25 S.W.3d 611 (Mo. Ct. App. 2000) (manufactured home not converted to real property when the home was held jointly by married couple and placed on land held by only by one spouse as it was not placed on land held by the owner of the home). See also *Citizens Nat'l Bank v. Maries Cty. Bank*, 244 S.W.3d 266 (Mo. Ct. App. 2008) (despite the fact that the home had been affixed to the consumer's real estate, consumer not entitled to receive manufacturer's statement of origin from floor plan financier that had a perfected security interest in dealer's inventory, when floor plan financier was not paid by dealer).
- 58 Mo. Rev. Stat. §§ 442.015, 700.320.
- 59 Mont. Code Ann. § 15-1-116.
- 60 Neb. Rev. Stat. § 60-169.
- 61 Neb. Rev. Stat. § 60-169.
- 62 Neb. Rev. Stat. § 60-137.
- 63 Nev. Rev. Stat. § 361.244. See *In re Colver*, 13 B.R. 521 (Bankr. D. Nev. 1981) (manufactured home placed on land owned by owner of home with its wheels removed remained personal property in absence of compliance with statute and when lender stated in security instrument that home would remain person property over the life of the loan).
- 64 Nev. Rev. Stat. §§ 278.02095, 361.244(5).
- 65 Nev. Rev. Stat. § 361.244(3).
- 66 N.H. Rev. Stat. Ann. § 477:44. See also N.H. Rev. Stat. Ann. § 80:18-a (defining "mortgage" for tax collection purposes to include security interests in manufactured housing created and perfected under N.H. Rev. Stat. Ann. § 477:44).
- 67 N.H. Rev. Stat. Ann. § 477:44 IV.
- 68 N.H. Rev. Stat. Ann. § 384:16-d.
- 69 N.J. Stat. Ann. §§ 39:10-2, 39:10-6 (West).
- 70 N.J. Stat. Ann. § 54:4-1.5 (West).
- 71 N.J. Stat. Ann. § 54:4-1.5 (West).
- 72 N.J. Stat. Ann. §§ 39:10-2, 39:10-11.1 (West).
- 73 N.C. Gen. Stat. § 105-273(13).
- 74 N.C. Gen. Stat. § 20-109.2.
- 75 N.C. Gen. Stat. §§ 47-20.6, 47-20.7.
- 76 N.D. Cent. Code § 47-10-27.
- 77 Ohio Rev. Code Ann. § 4503.06(B)(1), (2) (West).
- 78 Ohio Rev. Code Ann. § 4505.11 (West).
- 79 *In re Cluxton*, 327 B.R. 612 (B.A.P. 6th Cir. 2005). See also *In re Davis*, 386 B.R. 182 (B.A.P. 6th Cir. 2008) (for the purpose of determining if home is real property under bankruptcy law, home may be converted by statutory procedure or a traditional fixture analysis); *Benner v. Hammond*, 673 N.E.2d 205 (Ohio Ct. App. 1996) (holding that home that had title purged under revenue statute and was considered real property under the owner's mortgage was not a "trailer" for the purposes of a restrictive covenant).
- 80 Or. Rev. Stat. § 446.626. See also Or. Rev. Stat. § 446.611 (means of perfecting security interest in manufactured home that still has an ownership document).
- 81 75 Pa. Cons. Stat. § 1140.
- 82 Pa. Code tit. 67, § 401.5(a).
- 83 *Id.*
- 84 Pa. Code tit. 67, § 401.5(b).
- 85 75 Pa. Cons. Stat. § 1140.
- 86 S.C. Code § 56-19-510. See also S.C. Code § 56-19-500(1).
- 87 S.C. Code § 56-19-510.



- 88 S.C. Code § 56-19-520.
- 89 *Id.*
- 90 S.D. Codified Laws § 32-3-3.2.
- 91 S.D. Codified Laws § 32-3-3.3.
- 92 Tenn. Code Ann. § 55-3-138. See also Tenn. Code Ann. § 55-3-138 (procedure for reapplying for new certificate).
- 93 Tex. Occ. Code Ann. § 1201.2055 (West).
- 94 Tex. Occ. Code Ann. § 1201.003(2-a) (West).
- 95 Tex. Occ. Code Ann. § 1201.2075 (West). See *Pokorne Private Capital Group, L.L.C. v. 21st Mortgage Corp.*, 2008 WL 963296 (Tex. App. Apr. 10, 2008) (application for statement of ownership and location was defective when application was filed by previous owner after transfer of home and failed to note existing lien).
- 96 Tex. Occ. Code Ann. § 1201.2055 (West).
- 97 *Id.* See also Tex. Prop. Code Ann. § 2.001 (West).
- 98 Tex. Fin. Code Ann. § 347.455 (West).
- 99 *Id.*
- 100 See, e.g., *In re Lara*, 2008 WL 961892 (Bankr. S.D. Tex. Apr. 8, 2008).
- 101 Utah Code Ann. § 70D-1-20. See also Utah Code Ann. § 41-1a-503.
- 102 Vt. Stat. Ann. tit. 9, § 2603 (b).
- 103 Va. Code Ann. § 46.2-653.
- 104 *In re Banks*, 259 B.R. 848 (Bankr. E.D. Va. 2001).
- 105 Wash. Rev. Code § 65.20.020.
- 106 Wash. Rev. Code §§ 65.20.020, 65.20.040.
- 107 Wash. Rev. Code § 65.20.040.
- 108 Wash. Rev. Code § 65.20.050.
- 109 *Id.* See also Wash. Rev. Code §§ 65.20.030, 65.20.060 (manufactured home whose title has been eliminated may be conveyed only by deed or real estate contract).
- 110 Wash. Rev. Code § 65.20.910.
- 111 Wash. Rev. Code § 65.20.030.
- 112 Wash. Rev. Code § 65.20.070.
- 113 W.Va. Code § 17A-3-12b.
- 114 *Id.* See also W.Va. Code § 15-5-12 (tax statute providing that a manufactured home sited on land owned by someone other than the homeowner is classified as personal property whether or not it is permanently affixed to the land, unless the certificate of title has been cancelled).
- 115 Wis. Stat. § 101.9203 (1).
- 116 Wis. Stat. § 101.9203 (3).
- 117 Wis. Stat. § 101.9203 (4).
- 118 Wis. Stat. § 706.001.
- 119 See Wyo. Stat. Ann. § 39-15-101(a)(v) (to be real property, must be physically or constructively annexed to the real property and adapted to the use of the real property, and there must be evidence of intent to make it a permanent part of the real property).
- 120 Wyo. Stat. Ann. § 31-2-502.