

SB

104

<TARGET><BILL>SB 104</BILL><SUBJECT>SB
104</SUBJECT><COMM>SJUD27</COMM></TARGET>

SENATE COMMITTEE REPORT

DATE: 4/1/11

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered SENATE BILL NO. 104

SB 104-MANUFACTURED HOMES AS REAL PROPERTY

"An Act relating to manufactured homes, including manufactured homes permanently affixed to land, to the conversion of manufactured homes to real property, to the severance of manufactured homes from real property, to the titling, conveyance, and encumbrance of manufactured homes, and to manufacturers' certificates of origin for vehicles; and providing for an effective date."

and recommends:

- be replaced with CS SB 104 (JMD) Same Title New Title
- adopt previous CS _____ (_____) Same Title New Title
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

Dept Abbr.	
ADM	LEG
CED	LAW
COR	LWF
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
ADMIN			✓	

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	NO REC	AMEND
	Coghill	✓			
	W. Wlechowski	✓			
	PASKVAN	X			
CHAIR:	French	✓			

Alaska State Legislature



Senator Hollis French

SB 104 – MOBILE HOMES AS REAL PROPERTY

Sponsor Statement

Senate Bill 104 establishes procedures to convert manufactured homes to real property, through a defined process within the Division of Motor Vehicles. This change will give the owners of manufactured homes better access to traditional mortgage financing, which often features lower interest rates.

Currently, when a manufactured home is affixed to a permanent foundation on land owned by an individual, the vaguely defined title surrender procedure used by the Division of Motor Vehicles lacks a record notice. Without a record notice, homeowners are often left with unmarketable titles, and lenders hold unperfected security interests in the property, placing all parties in a real estate transaction – the buyer, the lender, and the seller - at risk.

Conversion will help increase home values for consumers, give security to lenders and provide fixed procedures for the DMV to follow. Nothing requires the conversion of a manufactured home in the legislation, leaving that choice to consumers.

Many Alaskans live in manufactured homes. This legislation treats residents that permanently affix a manufactured home to land they own the same as if their home was built on the property. I urge you to support this fair legislation.

CS FOR SENATE BILL NO. 104(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR FRENCH

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to manufactured homes, including manufactured homes permanently
2 affixed to land, to the conversion of manufactured homes to real property, to the
3 severance of manufactured homes from real property, to the titling, conveyance, and
4 encumbrance of manufactured homes, and to manufacturers' certificates of origin for
5 vehicles; and providing for an effective date."

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 FINDINGS AND PURPOSE. (a) The legislature finds the legal status of
10 manufactured homes affixed or to be affixed to real property in the state needs to be clarified.

11 (b) The purpose of this Act is to establish a clear statutory procedure for

12 (1) converting to real property manufactured homes that are affixed to real
13 property; and

1 (2) severing manufactured homes from real property.

2 * **Sec. 2.** AS 06.05.207 is amended by adding a new subsection to read:

3 (c) In this section, "real property" includes a manufactured home that has
4 become real property under AS 34.85.010. In this subsection, "manufactured home"
5 has the meaning given in AS 45.29.102.

6 * **Sec. 3.** AS 06.15.250 is amended by adding a new subsection to read:

7 (b) In this section, "real property" includes a manufactured home that has
8 become real property under AS 34.85.010. In this subsection, "manufactured home"
9 has the meaning given in AS 45.29.102.

10 * **Sec. 4.** AS 06.45.060(5)(A) is amended to read:

11 (A) loans to members shall be made in conformity with
12 regulations adopted by the commissioner, except that

13 (i) a residential real estate loan that is made to finance
14 the acquisition of a one- to four-family dwelling for the principal
15 residence of a credit union member that is secured by a first lien on the
16 dwelling may have a maturity not exceeding 30 years;

17 (ii) a loan to finance the purchase of a manufactured
18 [MOBILE] home that is secured by a first lien on the manufactured
19 [MOBILE] home, to be used as the residence of a credit union member,
20 or for the repair, alteration, or improvement of a residential dwelling
21 that is the residence of a credit union member must have a maturity not
22 to exceed 20 years unless the loan is insured or guaranteed under (iii) of
23 this subparagraph;

24 (iii) a loan secured by the insurance or guarantee of the
25 federal government, of a state government, or an agency of either may
26 be made for the maturity and under the terms and conditions specified
27 in the law under which the insurance or guarantee is provided;

28 (iv) a loan or aggregate of loans to a director or member
29 of the supervisory or credit committee of the credit union making the
30 loan that exceeds \$20,000 plus pledged shares shall be approved by the
31 board of directors;

1 (v) loans to other members for which directors or
2 members of the supervisory or credit committee act as guarantor or
3 endorser shall be approved by the board of directors when the loans
4 standing alone or when added to an outstanding loan or loans of the
5 guarantor or endorser exceed \$20,000;

6 (vi) the rate of interest may not exceed the greater of 15
7 percent a year or the rate specified in AS 45.45.010(b);

8 (vii) the taking, receiving, reserving, or charging of a
9 rate of interest greater than is allowed by this paragraph, when
10 knowingly done, is considered a forfeiture of the entire interest that the
11 note, bill, or other evidence of debt carries with it, or that has been
12 agreed to be paid on the note, bill, or other evidence of debt; if a greater
13 rate of interest has been paid, the person by whom it has been paid or
14 the person's legal representatives may recover back from the credit
15 union taking or receiving it the entire amount of interest paid, but the
16 action must be commenced within two years from the time the usurious
17 collection was made;

18 (viii) a borrower may repay a loan before maturity in
19 whole or in part on any business day without penalty;

20 (ix) loans shall be paid or amortized under regulations
21 adopted by the commissioner that consider the needs or conditions of
22 the borrowers, the amounts and duration of the loans, the interests of
23 the members and the credit union, and other factors established in
24 regulations adopted by the commissioner;

25 (x) the total dollar amount of real estate loans and
26 manufactured [MOBILE] home loans outstanding may not exceed 25
27 percent of the assets of the credit union without the written approval of
28 the commissioner;

29 (xi) a credit union with assets of less than \$3,000,000
30 may make real estate loans with maturities in excess of 15 years only
31 with the approval of the commissioner;

1 * **Sec. 5.** AS 06.45.060 is amended by adding a new subsection to read:

2 (b) In this section, "manufactured home" has the meaning given in
3 AS 45.29.102.

4 * **Sec. 6.** AS 06.60.990(33) is amended to read:

5 (33) "residential mortgage loan" means a loan that is primarily for
6 personal, family, or household use and that is secured by a mortgage, deed of trust, or
7 other equivalent consensual security interest on a dwelling or residential real estate
8 located in the state; in this paragraph,

9 (A) "manufactured home" has the meaning given in
10 AS 45.29.102;

11 (B) "residential real estate" means real property on which a
12 dwelling is constructed or intended to be constructed, including a
13 manufactured home that has become real property under AS 34.85.010;

14 * **Sec. 7.** AS 09.45 is amended by adding a new section to read:

15 **Article 13. General Provisions.**

16 **Sec. 09.45.990. Definitions.** In this chapter,

17 (1) "manufactured home" has the meaning given in AS 45.29.102;

18 (2) "real property" includes a manufactured home that has become real
19 property under AS 34.85.010.

20 * **Sec. 8.** AS 28.05.061(a) is amended to read:

21 (a) The Department of Administration shall file, maintain, and appropriately
22 index records of

23 (1) vehicle registrations under AS 28.10.071(a) - (c);

24 (2) stolen, converted, recovered, and unclaimed vehicles under
25 AS 28.10.071(d);

26 (3) titles and documents creating and evidencing liens or
27 encumbrances under AS 28.10.381;

28 (4) abandoned vehicles under AS 28.11.030(c); [AND]

29 (5) driver's license and driving records under AS 28.15.151;

30 (6) applications under AS 28.10.262 for cancellation of a
31 manufacturer's certificate of origin for a manufactured home;

1 (7) applications under AS 28.10.263 for cancellation of a certificate
 2 of title to a manufactured home;

3 (8) applications under AS 28.10.264 for confirmation of the
 4 nonapplication of AS 28.10 to a manufactured home;

5 (9) applications under AS 28.10.265 for a certificate of title to a
 6 severed manufactured home;

7 (10) manufacturer's certificates of origin accepted for cancellation
 8 by the department under AS 28.10.262 for a manufactured home; and

9 (11) certificates of title accepted for cancellation by the
 10 department under AS 28.10.263 for a manufactured home.

11 * **Sec. 9.** AS 28.05.061 is amended by adding new subsections to read:

12 (e) For cancelled manufacturer's certificates of origin, cancelled certificates of
 13 title, or applications for confirmation filed under (a)(8), (10), or (11) of this section,
 14 the department's record must state

15 (1) the name of each owner of the manufactured home;

16 (2) the date the manufacturer's certificate of origin or the certificate of
 17 title was accepted for cancellation if the certificate was cancelled under (a)(10) or (11)
 18 of this section; and

19 (3) the recording information for the affixation affidavit required by
 20 AS 28.10.266.

21 (f) For applications for certificates of title under (a)(9) of this section, the
 22 department's record must state the name of each owner of the manufactured home and
 23 the recording information for the severance affidavit recorded under AS 40.17.125.

24 (g) In this section, "recording information" means the district where the
 25 affidavit was recorded, and the date and serial numbers of the affidavit's recording in
 26 the recording district.

27 * **Sec. 10.** AS 28.10.201(b) is amended to read:

28 (b) The owner of a vehicle described in AS 28.10.011 as being exempt from
 29 registration and the owner of a snowmobile or off-highway vehicle may not apply for,
 30 nor may the department issue, a certificate of title for the vehicle. However, the
 31 department

1 (1) may issue a certificate of title to the owner of a vehicle exempt
2 from registration under AS 28.10.011(3), (6), (7), or (10) only upon application by that
3 owner; and

4 (2) except as provided in (e) of this section, shall issue a certificate of
5 title to the owner of a manufactured [MOBILE] home upon application, display of
6 evidence of ownership satisfactory to the department, and payment of a fee of \$100 by
7 the owner; a certificate of title issued under this paragraph must comply with
8 AS 28.10.231.

9 * **Sec. 11.** AS 28.10.201 is amended by adding a new subsection to read:

10 (e) The department may not issue a certificate of title to a manufactured home
11 if an application for the manufactured home has been filed under AS 28.10.262 -
12 28.10.264.

13 * **Sec. 12.** AS 28.10.211(c) is amended to read:

14 (c) When an application for title refers to a new vehicle, the application must
15 be accompanied by a "manufacturer's certificate [STATEMENT] of origin" and other
16 information reasonably required by the department.

17 * **Sec. 13.** AS 28.10.211 is amended by adding a new subsection to read:

18 (f) The holder of a manufacturer's certificate of origin for a manufactured
19 home may deliver the certificate to any person to facilitate conveying or encumbering
20 the manufactured home, and a person who receives the manufacturer's certificate of
21 origin holds it in trust for the person delivering it.

22 * **Sec. 14.** AS 28.10.221 is amended by adding a new subsection to read:

23 (d) Except as provided in AS 28.10.263, the department may not suspend or
24 revoke a certificate of title to a manufactured home based on the fact that the
25 manufactured home is affixed in any manner to real property.

26 * **Sec. 15.** AS 28.10.261 is amended by adding a new subsection to read:

27 (c) Notwithstanding another provision of law to the contrary, a certificate of
28 title to a manufactured home issued by the department is prima facie evidence of the
29 facts appearing on it, even if the manufactured home is affixed in any manner to real
30 property.

31 * **Sec. 16.** AS 28.10 is amended by adding new sections to article 2 to read:

1 **Sec. 28.10.262. Cancellation of manufacturer's certificate of origin for**
 2 **manufactured home.** (a) If a manufactured home is permanently affixed to real
 3 property under AS 34.85.150, or if the owner intends to permanently affix the
 4 manufactured home to real property under AS 34.85.150, the owner may submit to the
 5 department an application requesting that the department cancel the manufacturer's
 6 certificate of origin for a manufactured home and update the department's records
 7 under AS 28.05.061.

8 (b) The application under (a) of this section must comply with AS 28.10.266.

9 (c) Subject to AS 28.05.041, if the department is satisfied that the application
 10 filed under (a) of this section complies with (b) of this section, the department shall
 11 cancel the manufacturer's certificate of origin for the manufactured home, update the
 12 department's records under AS 28.05.061, and issue a written acknowledgment that
 13 the department has cancelled the certificate of origin under this section. The
 14 department shall deliver the written acknowledgment to the owner of the
 15 manufactured home and to a person identified under AS 28.10.266(12).

16 (d) When the department has cancelled the manufacturer's certificate of origin
 17 under (c) of this section, the manufactured home is not subject to this chapter.

18 **Sec. 28.10.263. Cancellation of certificate of title to manufactured home.**

19 (a) If a manufactured home is permanently affixed to real property under
 20 AS 34.85.150, or if the owner intends to permanently affix the manufactured home to
 21 real property under AS 34.85.150, the owner may submit to the department an
 22 application requesting that the department cancel the certificate of title to a
 23 manufactured home and update the department's records under AS 28.05.061.

24 (b) The application under (a) of this section must comply with AS 28.10.266.

25 (c) Subject to AS 28.05.041, if the department is satisfied that the application
 26 filed under (a) of this section complies with (b) of this section and that there are no
 27 outstanding liens or encumbrances filed against the manufactured home under
 28 AS 28.10.381, the department shall cancel the certificate of title to the manufactured
 29 home, update the department's records under AS 28.05.061, and issue a written
 30 acknowledgment that the department has cancelled the certificate of title under this
 31 section. The department shall deliver the written acknowledgment to the owner of the

1 manufactured home and to a person identified under AS 28.10.266(12).

2 (d) When the department has cancelled a certificate of title under (c) of this
3 section, the manufactured home is not subject to this chapter.

4 **Sec. 28.10.264. Confirmation of nonapplication of chapter.** (a) The owner
5 of a manufactured home may submit an application to the department requesting that
6 the department indicate on the department's records that the manufactured home is not
7 subject to this chapter if

8 (1) the manufactured home is permanently affixed to real property
9 under AS 34.85.150, or the owner intends to permanently affix the manufactured
10 home to real property under AS 34.85.150; and

11 (2) the manufactured home

12 (A) is not covered by a manufacturer's certificate of origin or a
13 certificate of title;

14 (B) is covered by a manufacturer's certificate of origin, but the
15 owner of the manufactured home, after diligent search and inquiry, is unable to
16 produce the certificate of origin; or

17 (C) is covered by a certificate of title, but the owner of the
18 manufactured home, after diligent search and inquiry, is unable to produce the
19 certificate of title.

20 (b) The application under (a) of this section must comply with AS 28.10.266
21 and be accompanied by a bond or cash deposit described in (c) of this section.

22 (c) The bond that accompanies the application under (b) of this section must
23 be in the form prescribed by the department and executed by the applicant. The
24 amount of the bond or cash deposit that accompanies the application under (b) of this
25 section must be equal to one and one-half times the value of the manufactured home as
26 determined by the department and must be conditioned to indemnify former owners,
27 secured parties, and subsequent purchasers of the manufactured home and their
28 successors against loss resulting from a defect in or undisclosed security interest on
29 the title of the applicant. An injured party may bring a court action against the bond or
30 cash deposit for a breach of the conditions of the bond or cash deposit, but the liability
31 of the bond surety or the department may not exceed the amount of the bond or cash

1 deposit. The department shall return the bond or cash deposit at the end of three years
2 after the submission under (b) of this section, except that service on the department of
3 notice that an action is pending against the bond or cash deposit extends that period
4 until 45 days after a final decision in the action on the bond or cash deposit.

5 (d) If the department is satisfied that the application filed under (a) of this
6 section complies with (b) of this section, the department shall, subject to
7 AS 28.05.041, indicate under AS 28.05.061 on the department's records that the
8 manufactured home is not subject to this chapter and shall provide to the owner a
9 written confirmation that the owner of the manufactured home has submitted an
10 application that complies with (b) of this section and that the manufactured home is
11 not subject to this chapter. The department shall deliver the written confirmation to the
12 owner of the manufactured home and to a person identified under AS 28.10.266(12).

13 (e) When the department has provided a written confirmation under (d) of this
14 section, the manufactured home is not subject to this chapter.

15 **Sec. 28.10.265. Certificate of title to severed manufactured home.** (a) The
16 owner of a manufactured home may submit an application to the department
17 requesting that the department issue a certificate of title to a manufactured home and
18 update the department's records under AS 28.05.061 if

19 (1) the manufactured home was permanently affixed to real property
20 under AS 34.85.150;

21 (2) an affixation affidavit was recorded for the manufactured home
22 under AS 40.17.125; and

23 (3) after the occurrence of (1) and (2) of this subsection, the
24 manufactured home was severed from the real property to which it was affixed.

25 (b) The application under (a) of this section must comply with AS 28.10.266.

26 (c) Subject to AS 28.05.041, if the department is satisfied that the application
27 filed under (a) of this section complies with (b) of this section, the department shall
28 issue a certificate of title to the manufactured home under AS 28.10.231 - 28.10.241,
29 update the department's records under AS 28.05.061, and issue to the owner and to a
30 person identified under AS 28.10.266(12) a written acknowledgment that the
31 department has issued a certificate of title under this section.

1 (d) When the department has issued a certificate of title under (c) of this
 2 section, the manufactured home is subject to this chapter.

3 **Sec. 28.10.266. Application provisions.** An application under AS 28.10.262 -
 4 28.10.265 must provide

5 (1) the name, residence, and mailing address of the owner of the
 6 manufactured home;

7 (2) a description of the manufactured home, including the name of the
 8 manufacturer, the make, the model name, the model year, the manufacturer's serial
 9 number for the manufactured home, and other information required by the department
 10 about the manufactured home;

11 (3) whether the manufactured home is new or used;

12 (4) for an application under AS 28.10.262 - 28.10.264, the date of
 13 purchase by the owner of the manufactured home and the name and address of the
 14 person from whom the home was acquired;

15 (5) for an application under AS 28.10.262 - 28.10.264, the name and
 16 address of any person who holds a lien or an encumbrance against the manufactured
 17 home and the order of apparent priority;

18 (6) a statement signed by the owner, stating

19 (A) any facts or information known to the owner that could
 20 reasonably affect the validity of the title to the manufactured home or the
 21 existence or nonexistence of a lien or encumbrance on it; or

22 (B) that the owner does not know any facts or information that
 23 could reasonably affect the validity of the title to the manufactured home or the
 24 existence or nonexistence of a lien or encumbrance on the manufactured home;

25 (7) subject to AS 28.10.268, for an application under AS 28.10.262 -
 26 28.10.264, a certified copy of an affixation affidavit that complies with AS 34.85.060
 27 and that has been recorded under AS 40.17.125 for the manufactured home;

28 (8) for an application under AS 28.10.265, a certified copy of a
 29 severance affidavit that complies with AS 34.85.120 and that has been recorded under
 30 AS 40.17.125 for the manufactured home;

31 (9) for an application under AS 28.10.262, the original manufacturer's

1 certificate of origin;

2 (10) for an application under AS 28.10.263, the original certificate of
3 title;

4 (11) for an application under AS 28.10.264 or 28.10.265, a declaration
5 that complies with AS 28.10.267;

6 (12) if desired by the applicant, the name and mailing address of one
7 person, in addition to the owner, to receive a written acknowledgment from the
8 department under AS 28.10.262, 28.10.263, or 28.10.265 or a written confirmation
9 under AS 28.10.264; and

10 (13) other information and documents the department reasonably
11 requires

12 (A) to identify the owner of the manufactured home;

13 (B) to determine the existence or nonexistence of liens or
14 encumbrances on the manufactured home;

15 (C) for an application under AS 28.10.262 - 28.10.264, to
16 enable the department to determine whether the owner satisfied the applicable
17 requirements of AS 34.85.010; and

18 (D) for an application under AS 28.10.265, to enable the
19 department to determine whether the owner of the manufactured home is
20 entitled to a certificate of title.

21 **Sec. 28.10.267. Declaration.** (a) The declaration required by
22 AS 28.10.266(11) must be made under oath or affirmation by an attorney authorized
23 under AS 08.08 to practice law in the state or an agent of a title insurance company
24 entitled under AS 21.66 to transact a title insurance business in this state.

25 (b) The declaration must state that the manufactured home is free and clear of
26 all liens and encumbrances and

27 (1) any facts or information known to the attorney or agent that could
28 reasonably affect the validity of the title to the manufactured home or the existence or
29 nonexistence of a lien or encumbrance on the manufactured home; or

30 (2) that the attorney or agent does not know any facts or information
31 that could reasonably affect the validity of the title to the manufactured home or the

1 existence or nonexistence of a lien or encumbrance on the manufactured home.

2 **Sec. 28.10.268. Time of satisfaction.** If a person delivers an application under
3 AS 28.10.262 - 28.10.264 for a manufactured home to the department within 30 days
4 after an affixation affidavit for the manufactured home is recorded under
5 AS 40.17.125, and if the application is accepted by the department, the requirements
6 of AS 28.10.262 - 28.10.264 are considered to be satisfied on the date the affixation
7 affidavit is recorded, and, if the manufactured home is conveyed or encumbered on
8 and after that date, the manufactured home shall be conveyed and encumbered as real
9 property.

10 **Sec. 28.10.269. Definitions.** In AS 28.10.201 - 28.10.269, unless the context
11 indicates otherwise,

12 (1) "affixation affidavit" means an affixation affidavit under
13 AS 34.85.060;

14 (2) "severance affidavit" means a severance affidavit under
15 AS 34.85.120.

16 * **Sec. 17.** AS 28.10.371 is amended by adding new subsections to read:

17 (b) Notwithstanding (a) of this section, a lien on a manufactured home for the
18 purchase of the manufactured home is valid against judicial lien creditors and
19 execution creditors on and after the date the lien attaches under AS 45.29 against the
20 manufactured home.

21 (c) Notwithstanding (a) of this section, the holder of a lien on a manufactured
22 home may deliver a lien release document to a person to facilitate conveying or
23 encumbering the manufactured home. A person receiving the lien release document
24 holds the document in trust for the lienholder.

25 * **Sec. 18.** AS 28.10.381 is amended by adding a new subsection to read:

26 (c) Except as otherwise provided in AS 28.10.262, 28.10.263, and AS 34.85,
27 after a certificate of title to a manufactured home has been issued and while the
28 manufactured home is subject to a lien or encumbrance under (a) of this section,

29 (1) the department may not cancel the manufacturer's certificate of
30 origin for the manufactured home under AS 28.10.262, or cancel the certificate of title
31 to the manufactured home under AS 28.10.263; and

1 (2) the validity and priority of the lien or encumbrance continues.

2 * **Sec. 19.** AS 28.10.391 is amended by adding a new subsection to read:

3 (e) Notwithstanding another provision of this section, the creation or
4 termination of a lien or encumbrance with respect to a manufactured home that has
5 been converted to real property under AS 34.85.010 is governed by the laws that apply
6 to real property.

7 * **Sec. 20.** AS 28.10.661(2) is amended to read:

8 (2) "vehicle" includes mobile homes for the purposes of provisions
9 relating to certificates of title; in this paragraph, "mobile home" means a
10 manufactured home.

11 * **Sec. 21.** AS 28.10.661 is amended by adding a new paragraph to read:

12 (3) "manufactured home" has the meaning given in AS 45.29.102.

13 * **Sec. 22.** AS 29.45.070 is amended to read:

14 **Sec. 29.45.070. Mobile homes.** Mobile homes, trailers, house trailers, trailer
15 coaches, and similar property used or intended to be used for residential, office, or
16 commercial purposes and permanently affixed [ATTACHED] to real property
17 under AS 34.85.150 [THE LAND OR CONNECTED TO WATER, GAS,
18 ELECTRIC, OR SEWAGE FACILITIES] are classified as real property for tax
19 purposes unless expressly classified as personal property by ordinance. This section
20 does not apply to house trailers and mobile homes that are unoccupied and held for
21 sale by persons engaged in the business of selling mobile homes. In this section,
22 "mobile home" has the meaning given to "manufactured home" in AS 45.29.102.

23 * **Sec. 23.** AS 34.03.360 is amended by adding a new paragraph to read:

24 (23) "mobile home" has the meaning given to "manufactured home" in
25 AS 45.29.102.

26 * **Sec. 24.** AS 34.70.200(3) is amended to read:

27 (3) "residential real property" means real property whose primary
28 purpose is to provide a single-family dwelling, or two single-family dwellings in one
29 building, including a manufactured home that has become real property under
30 AS 34.85.010; in this paragraph, "manufactured home" has the meaning given in
31 AS 45.29.102;

1 * **Sec. 25.** AS 34.80.090(6) is amended to read:

2 (6) "residential real property" means real property on which there are
 3 one to four attached or detached dwelling units, or any number of apartments if the
 4 apartments are in a horizontal property regime formed under AS 34.07 or any number
 5 of units if the units are in a common interest community created under AS 34.08;
 6 **"residential real property" includes a manufactured home that has become real**
 7 **property under AS 34.85.010; in this paragraph, "manufactured home" has the**
 8 **meaning given in AS 45.29.102;**

9 * **Sec. 26.** AS 34 is amended by adding a new chapter to read:

10 **Chapter 85. Manufactured Home Property Act.**

11 **Sec. 34.85.010. Real property characterization.** A manufactured home
 12 becomes real property if

13 (1) the home is permanently affixed to land under AS 34.85.150;

14 (2) an affixation affidavit has been recorded under AS 40.17.125;

15 (3) the ownership interests in the manufactured home and in the real
 16 property to which the manufactured home is permanently affixed are identical, except
 17 as provided by AS 34.85.040; and

18 (4) the manufactured home is

19 (A) covered by a manufacturer's certificate of origin that the
 20 owner of the manufactured home is able to produce, and the department has
 21 cancelled the manufacturer's certificate of origin under AS 28.10.262;

22 (B) covered by a certificate of title that the owner of the
 23 manufactured home is able to produce, and the department has cancelled the
 24 certificate of title under AS 28.10.263; or

25 (C) not covered by a manufacturer's certificate of origin or a
 26 certificate of title, or if the manufactured home is covered by a manufacturer's
 27 certificate of origin or a certificate of title but the owner of the manufactured
 28 home, after diligent search and inquiry, was unable to produce the
 29 manufacturer's certificate of origin or certificate of title, and the department
 30 has provided a written confirmation under AS 28.10.264.

31 **Sec. 34.85.020. Effect of real property characterization.** (a) When a

1 manufactured home becomes real property under AS 34.85.010, a mortgage, deed of
 2 trust, lien, or security interest that can attach to land, buildings erected on land, or
 3 fixtures affixed to land or buildings attaches to the manufactured home in the same
 4 manner as if the manufactured home were built from ordinary building materials on
 5 the land where the manufactured home is located.

6 (b) If the title to a manufactured home is transferred after the manufactured
 7 home becomes real property under AS 34.85.010, title to the manufactured home,
 8 together with the land to which the converted manufactured home is affixed, shall be
 9 transferred by deed or other form of conveyance that is effective to transfer an interest
 10 in real property.

11 (c) When a manufactured home becomes real property under AS 34.85.010,
 12 the manufactured home is governed by the laws applicable to real property in effect on
 13 the date the manufactured home satisfies AS 34.85.010.

14 **Sec. 34.85.040. Ownership interest exception.** If the owner of a
 15 manufactured home is not the owner of the real property on which the manufactured
 16 home is located, the requirement under AS 34.85.010(3) that the ownership interests
 17 be identical is satisfied if the owner possesses the real property under

18 (1) a lease in a recordable form that has a term that continues for at
 19 least 20 years after the date of execution of the affixation affidavit; and

20 (2) the lessor of the real property consents.

21 **Sec. 34.85.060. Affixation affidavit requirements.** An affixation affidavit
 22 must provide

23 (1) the name of the manufacturer, the make, the model name, the
 24 model year, the dimensions, and the manufacturer's serial number of the manufactured
 25 home;

26 (2) whether the manufactured home is new or used;

27 (3) a statement that the person executing the affidavit is

28 (A) the owner of the real property described in the affixation
 29 affidavit; or

30 (B) not the owner of the real property described in the
 31 affixation affidavit, and the person

1 (i) is in possession of the real property under a lease in
2 recordable form that has a term that continues for at least 20 years after
3 the date of execution of the affidavit; and

4 (ii) the lessor of the real property consents;

5 (4) if (3)(B)(ii) of this section applies, the consent of the lessor of the
6 real property endorsed on or attached to the affidavit and acknowledged or proved in
7 the manner required for the conveyance to be recorded;

8 (5) the street address and the legal description of the real property to
9 which the manufactured home is or shall be permanently affixed;

10 (6) if the manufactured home is not covered by a certificate of title, a
11 statement by the owner to that effect;

12 (7) an owner's statement under AS 34.85.070;

13 (8) a statement whether or not the manufactured home is subject to a
14 lien or encumbrance;

15 (9) if the manufactured home is subject to a lien or encumbrance, a
16 statement giving the name and address of each person who holds a lien or
17 encumbrance on the manufactured home, including each holder of a lien or
18 encumbrance shown on a certificate of title issued by the department, the original
19 principal amount secured by each lien and encumbrance, and a statement that

20 (A) the lien or encumbrance shall be released; or

21 (B) each lien or encumbrance on the manufactured home has
22 been released and proof of the release;

23 (10) if the manufactured home is not covered by a manufacturer's
24 certificate of origin or a certificate of title, a statement by the owner of the
25 manufactured home that the manufactured home is not covered by a manufacturer's
26 certificate of origin or a certificate of title and that the owner of the manufactured
27 home will apply to the department under AS 28.10.264;

28 (11) a statement that the manufactured home is or will be permanently
29 affixed to the real property; and

30 (12) the name and address of a person designated for filing the
31 certified copy of the affixation affidavit with the department.

1 **Sec. 34.85.070. Owner's statement for affixation affidavit.** (a) An owner's
2 statement for an affixation affidavit must comply with (b) or (c) of this section.

3 (b) If a manufactured home is covered by a manufacturer's certificate of
4 origin, the owner of the manufactured home shall

5 (1) state that the manufactured home is covered by a manufacturer's
6 certificate of origin, provide the date the manufacturer's certificate of origin was
7 issued, provide the manufacturer's serial number, state that the original manufacturer's
8 certificate of origin for the manufactured home is annexed to the affixation affidavit
9 and is endorsed to the owner of the manufactured home, and state that the owner of the
10 manufactured home will surrender the manufacturer's certificate of origin for
11 cancellation under AS 28.10.262; or

12 (2) state that the owner of the manufactured home, after diligent search
13 and inquiry, has been unable to produce the original manufacturer's certificate of
14 origin for the manufactured home and shall apply to the department under
15 AS 28.10.264.

16 (c) If a manufactured home is covered by a certificate of title, the owner of the
17 manufactured home shall

18 (1) state that the manufactured home is covered by a certificate of title,
19 provide the date the title was issued and the title number, and state that the owner shall
20 surrender the title for cancellation under AS 28.10.263; or

21 (2) state that the owner, after diligent search and inquiry, has been
22 unable to produce the certificate of title to the manufactured home and shall apply to
23 the department under AS 28.10.264.

24 **Sec. 34.85.080. Effect on liens and encumbrances.** Permanently affixing a
25 manufactured home to real property or recording an affixation affidavit under
26 AS 40.17.125 does not impair the rights of a holder of, or the character of, a lien or
27 encumbrance on a manufactured home under AS 28.10.381 unless an application to
28 cancel the title is filed with the department under AS 28.10.263 and the lien or
29 encumbrance is released under AS 28.10.401.

30 **Sec. 34.85.090. Filing affixation affidavit with department.** When a person
31 designated in an affixation affidavit to file the affixation affidavit with the department

1 receives a certified copy of the recorded affixation affidavit, the person shall deliver
 2 the certified copy of the affixation affidavit to the department for filing under
 3 AS 28.10.262 - 28.10.264.

4 **Sec. 34.85.100. Use of affidavit.** (a) Except as provided in AS 34.85.010,
 5 34.85.020, 34.85.090, and AS 40.17.125, an affixation affidavit is not necessary or
 6 effective to convey or encumber a manufactured home or to change the character of a
 7 manufactured home to real property.

8 (b) A conveyance of land on which a manufactured home is located must
 9 recite that the conveyance does not affect the title to the manufactured home and that
 10 the transfer or encumbrance of the manufactured home can only be made under
 11 AS 28.10 if

12 (1) an affixation affidavit has not been recorded for the manufactured
 13 home; or

14 (2) a severance affidavit has been recorded for the manufactured home.

15 (c) An agreement that waives the requirements of (a) or (b) of this subsection
 16 is void.

17 **Sec. 34.85.110. Severance of manufactured home.** If an affixation affidavit
 18 has been recorded for a converted manufactured home and if the converted
 19 manufactured home is severed from the real property to which it was affixed, each
 20 person having an interest in the real property shall record a severance affidavit in the
 21 recording district where the affixation affidavit was recorded.

22 **Sec. 34.85.120. Severance affidavit.** The severance affidavit must contain or
 23 be accompanied by

24 (1) the name, residence, and mailing address of the owner of the
 25 manufactured home;

26 (2) a description of the manufactured home, including the name of the
 27 manufacturer, the make, the model name, the model year, the dimensions, and the
 28 manufacturer's serial number of the manufactured home;

29 (3) whether the manufactured home it is new or used;

30 (4) the serial numbers and date when the affixation affidavit was
 31 recorded;

1 (5) a statement

2 (A) of any facts or information known to the person signing the
3 affidavit that could reasonably affect the validity of the title to the
4 manufactured home or the existence or nonexistence of a lien or encumbrance
5 on the manufactured home; or

6 (B) that the person signing the affidavit does not know any
7 facts or information that could reasonably affect the validity of the title to the
8 manufactured home or the existence or nonexistence of a lien or encumbrance
9 on the manufactured home;

10 (6) a declaration made under oath or affirmation by an attorney
11 authorized under AS 08.08 to practice law in the state or an agent of a title insurance
12 company entitled under AS 21.66 to transact a title insurance business in this state that
13 the manufactured home is free and clear of all liens and encumbrances, and

14 (A) stating any facts or information known to the attorney or
15 agent that could reasonably affect the validity of the title to the manufactured
16 home or the existence or nonexistence of a lien or encumbrance on the
17 manufactured home; or

18 (B) that the attorney or agent does not know any facts or
19 information that could reasonably affect the validity of the title to the
20 manufactured home or the existence or nonexistence of a lien or encumbrance
21 on the manufactured home; and

22 (7) the name and address of the person designated to file the certified
23 copy of the severance affidavit with the department under AS 28.10.265.

24 **Sec. 34.85.130. Filing of severance affidavit.** On receipt of a certified copy of
25 the severance affidavit by the person designated in the affidavit for filing with the
26 department, the person shall file the certified copy with the department under
27 AS 28.10.262 - 28.10.264.

28 **Sec. 34.85.140. Affidavit form and acknowledgment.** (a) An affixation
29 affidavit and a severance affidavit must be acknowledged in the same manner as a
30 conveyance of real property and must be in a form that may be recorded under
31 AS 40.17.

1 (b) The department shall establish by regulation the forms for an affixation
2 affidavit and a severance affidavit.

3 **Sec. 34.85.150. Permanently affixed.** A manufactured home is permanently
4 affixed when it is

5 (1) anchored to real property by attachment to a permanent foundation;

6 (2) constructed in accordance with applicable state and local building
7 codes and manufacturer's specifications as provided in the Model Manufactured Home
8 Installation Standards of the federal Department of Housing and Urban Development
9 (24 C.F.R. 3285); and

10 (3) connected to a residential utility, including water, gas, electricity,
11 sewer, or septic service.

12 **Sec. 34.85.190. Definitions.** In this chapter, unless the context requires
13 otherwise,

14 (1) "affixation affidavit" means an affixation affidavit under
15 AS 34.85.060;

16 (2) "department" means the Department of Administration;

17 (3) "manufactured home" has the meaning given in AS 45.29.102;

18 (4) "permanently affixed" means when a manufactured home is
19 permanently affixed under AS 34.85.150;

20 (5) "severance affidavit" means a severance affidavit under
21 AS 34.85.120.

22 **Sec. 34.85.195. Short title.** This chapter may be cited as the Manufactured
23 Home Property Act.

24 * **Sec. 27.** AS 40.17 is amended by adding a new section to read:

25 **Sec. 40.17.125. Recording affidavits related to manufactured homes.** (a) A
26 recorder shall record an affixation affidavit and a severance affidavit if the affidavit
27 meets the requirements for recording under AS 40.17.030 and is offered for recording
28 in the recording district where the real property to which the manufactured home
29 affixed is located.

30 (b) A recording officer shall place on the recorded affidavit

31 (1) the indexing information for the recorded affidavit; and

1 (2) an indication that the recorded affidavit was recorded.

2 (c) In this section,

3 (1) "affidavit" means an affixation affidavit or a severance affidavit;

4 (2) "affixation affidavit" has the meaning given in AS 34.85.190;

5 (3) "manufactured home" has the meaning given in AS 45.29.102;

6 (4) "recorded affidavit" means an affidavit recorded under this section;

7 (5) "severance affidavit" has the meaning given in AS 34.85.190.

8 * **Sec. 28.** AS 45.10.220(2) is amended to read:

9 (2) "goods" means personal chattels purchased primarily for personal,
10 family, or household use and not for commercial or business use, but does not include
11 money or, except as provided in the next phrase, chose in action; "goods" includes
12 [BUT IS NOT LIMITED TO] merchandise certificates or coupons issued by a retail
13 seller to be used in their face amount instead of cash in exchange for goods or services
14 sold by the seller and goods, including a manufactured home, that, at the time of
15 sale or subsequently, are to be so affixed to real property as to become a part of it,
16 whether or not severable from it; in this paragraph, "manufactured home" has the
17 meaning given in AS 45.29.102;

18 * **Sec. 29.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 TRANSITION: REGULATIONS. The Department of Administration shall adopt
21 regulations necessary to implement this Act. The regulations must take effect under AS 44.62
22 (Administrative Procedure Act) on January 1, 2013.

23 * **Sec. 30.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 SAVING CLAUSE. This Act may not be interpreted to impair a right or claim
26 existing under law before January 1, 2013, of a person claiming an interest in a manufactured
27 home. In this section, "manufactured home" has the meaning given in AS 45.29.102.

28 * **Sec. 31.** Section 29 of this Act takes effect immediately under AS 01.10.070(c).

29 * **Sec. 32.** Except as provided in sec. 31 of this Act, this Act takes effect January 1, 2013.

AMENDMENT # 1

OFFERED IN THE SENATE

TO: CSSB 104(), Draft Version "D"

- 1 Page 21, line 22:
- 2 Delete "2012"
- 3 Insert "2013"
- 4
- 5 Page 21, line 26:
- 6 Delete "2012"
- 7 Insert "2013"
- 8
- 9 Page 21, line 29:
- 10 Delete "2012"
- 11 Insert "2013"

FISCAL NOTE

STATE OF ALASKA cost # codes
 2012 LEGISLATIVE SESSION

Bill Version SB104
 Fiscal Note Number _____
 Publish Date _____

Identifier (file name) SB104-DOA-DMV-12-6-2011 Dept. Affected Administration
 Title Manufactured Homes as Real Property Appropriation Motor Vehicles
 Allocation Motor Vehicles
 Sponsor Senator French
 Requester Senate Judiciary OMB Component Number 2348

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS								
Full-time								
Part-time								
Temporary								

CHANGE IN REVENUES								

Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Update for session

Prepared by Whitney Brewster, Director
 Division Motor Vehicles
 Approved by John Cramer, Deputy Commissioner
Department of Administration

Phone 907-269-5559
 Date/Time 12/1/11 4:30 PM
 Date 12/6/2011

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. SB104

Analysis

The effective date of this bill is January 1, 2012.

This bill will have only a small financial impact on the Division of Motor Vehicles (DMV). DMV will absorb any implementation costs in its operating budget.

Senator Hollis French

Capitol Room 417
465-3892
465-6595 fax



MEMORANDUM

Date: April 14, 2011

To: Senate Judiciary Committee Members

From: Senator Hollis French

RE: Changes in CS for Senate Bill 104 (version \D)

Section 27 of the bill, starting on page 20 of the legislation, was modified in this draft, responding to feedback received from the Department of Natural Resources recorder's office. The changes to Sec. 27 are as follows:

Sec. 40.17.125(a) was modified so that the recorder's office won't have to determine whether an affixation or severance affidavit meets requirements under sec. 34.85 in this legislation. Under AS 40.17.035, the recorder's office cannot be tasked with determining whether the contents of a document are legally sufficient to achieve the purposes of the document; instead, as clarified under regulation, the person submitting documents for recording must ensure that the prerequisites for recording as established by regulation and statute are met.

Sec. 40.17.125(b) received two minor changes in the CS. The first modifies the action taken by the recorder on the recording affidavit, changing 'write' to 'place' on page 20 line 30 of the legislation. This change reflects that the recording office no longer writes on recorded affidavits - instead, they affix bar codes that contain relevant information. In addition, the original draft required an affidavit to be recorded in land records; in the CS, Sec. 40.17.125(b) changes 'in land records' to 'the public record,' to match where the recorder files land records today.

Sec. 40.17.125(c) in the original draft (version \I) was removed in the CS. This language required the recorder's office to automatically send a certified copy of

the recorded affidavit to a person designated on an affidavit. This doesn't match current recording office procedures, which require an individual to request and pay for certified copies of affidavits.

In regards to this last change, conforming amendments were made to Sec. 34.85.060(12) and Sec. 34.85.120(7) in Section 26 of the CS to remove references to the automatic mailing of a certified affidavit. In addition, sec 28.10.266(7) and sec. 28.10.266(8) of the CS, found in section 16 on page 10 of the legislation, were modified to ensure that an affidavit complies with affixation requirements under sec. 34.85 of the legislation.

In section 16 of the legislation, the original draft required DMV to notify a primary lienholder of completed conversion procedures, in instances when the conversion involved cancelling a manufacturer's certificate of origin or title. Yet under sec. 28.10.267 of the legislation, a conversion cannot take place until a manufactured home is free and clear of all liens and encumbrances. Because a primary lienholder would never exist through a conversion procedure, the lienholder notification provisions were replaced in the CS with language that allows the applicant to indicate one person, in addition to the owner, that receives written acknowledgement of completed conversions under sec. 28.10.262-265. This change is reflected in sec. 28.10.262(c), 28.10.263(c), 28.10.264(d), 28.10.265(c) and 28.10.266(12) of CS version \D.

If you have any questions about these changes, please contact Andy Moderow in my office at 907-465-4923.

27-LS0467AD
Bannister
4/7/11

CS FOR SENATE BILL NO. 104()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): SENATOR FRENCH

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to manufactured homes, including manufactured homes permanently**
2 **affixed to land, to the conversion of manufactured homes to real property, to the**
3 **severance of manufactured homes from real property, to the titling, conveyance, and**
4 **encumbrance of manufactured homes, and to manufacturers' certificates of origin for**
5 **vehicles; and providing for an effective date."**

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 **FINDINGS AND PURPOSE.** (a) The legislature finds the legal status of
10 manufactured homes affixed or to be affixed to real property in the state needs to be clarified.

11 (b) The purpose of this Act is to establish a clear statutory procedure for
12 (1) converting to real property manufactured homes that are affixed to real
13 property; and

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(2) severing manufactured homes from real property.

* **Sec. 2.** AS 06.05.207 is amended by adding a new subsection to read:

(c) In this section, "real property" includes a manufactured home that has become real property under AS 34.85.010. In this subsection, "manufactured home" has the meaning given in AS 45.29.102.

* **Sec. 3.** AS 06.15.250 is amended by adding a new subsection to read:

(b) In this section, "real property" includes a manufactured home that has become real property under AS 34.85.010. In this subsection, "manufactured home" has the meaning given in AS 45.29.102.

* **Sec. 4.** AS 06.45.060(5)(A) is amended to read:

(A) loans to members shall be made in conformity with regulations adopted by the commissioner, except that

(i) a residential real estate loan that is made to finance the acquisition of a one- to four-family dwelling for the principal residence of a credit union member that is secured by a first lien on the dwelling may have a maturity not exceeding 30 years;

(ii) a loan to finance the purchase of a manufactured [MOBILE] home that is secured by a first lien on the manufactured [MOBILE] home, to be used as the residence of a credit union member, or for the repair, alteration, or improvement of a residential dwelling that is the residence of a credit union member must have a maturity not to exceed 20 years unless the loan is insured or guaranteed under (iii) of this subparagraph;

(iii) a loan secured by the insurance or guarantee of the federal government, of a state government, or an agency of either may be made for the maturity and under the terms and conditions specified in the law under which the insurance or guarantee is provided;

(iv) a loan or aggregate of loans to a director or member of the supervisory or credit committee of the credit union making the loan that exceeds \$20,000 plus pledged shares shall be approved by the board of directors;

1 (v) loans to other members for which directors or
2 members of the supervisory or credit committee act as guarantor or
3 endorser shall be approved by the board of directors when the loans
4 standing alone or when added to an outstanding loan or loans of the
5 guarantor or endorser exceed \$20,000;

6 (vi) the rate of interest may not exceed the greater of 15
7 percent a year or the rate specified in AS 45.45.010(b);

8 (vii) the taking, receiving, reserving, or charging of a
9 rate of interest greater than is allowed by this paragraph, when
10 knowingly done, is considered a forfeiture of the entire interest that the
11 note, bill, or other evidence of debt carries with it, or that has been
12 agreed to be paid on the note, bill, or other evidence of debt; if a greater
13 rate of interest has been paid, the person by whom it has been paid or
14 the person's legal representatives may recover back from the credit
15 union taking or receiving it the entire amount of interest paid, but the
16 action must be commenced within two years from the time the usurious
17 collection was made;

18 (viii) a borrower may repay a loan before maturity in
19 whole or in part on any business day without penalty;

20 (ix) loans shall be paid or amortized under regulations
21 adopted by the commissioner that consider the needs or conditions of
22 the borrowers, the amounts and duration of the loans, the interests of
23 the members and the credit union, and other factors established in
24 regulations adopted by the commissioner;

25 (x) the total dollar amount of real estate loans and
26 manufactured [MOBILE] home loans outstanding may not exceed 25
27 percent of the assets of the credit union without the written approval of
28 the commissioner;

29 (xi) a credit union with assets of less than \$3,000,000
30 may make real estate loans with maturities in excess of 15 years only
31 with the approval of the commissioner;

1 * **Sec. 5.** AS 06.45.060 is amended by adding a new subsection to read:

2 (b) In this section, "manufactured home" has the meaning given in
3 AS 45.29.102.

4 * **Sec. 6.** AS 06.60.990(33) is amended to read:

5 (33) "residential mortgage loan" means a loan that is primarily for
6 personal, family, or household use and that is secured by a mortgage, deed of trust, or
7 other equivalent consensual security interest on a dwelling or residential real estate
8 located in the state; in this paragraph,

9 **(A) "manufactured home" has the meaning given in**
10 **AS 45.29.102;**

11 **(B) "residential real estate" means real property on which a**
12 **dwelling is constructed or intended to be constructed, including a**
13 **manufactured home that has become real property under AS 34.85.010;**

14 * **Sec. 7.** AS 09.45 is amended by adding a new section to read:

15 **Article 13. General Provisions.**

16 **Sec. 09.45.990. Definitions.** In this chapter,

17 (1) "manufactured home" has the meaning given in AS 45.29.102;

18 (2) "real property" includes a manufactured home that has become real
19 property under AS 34.85.010.

20 * **Sec. 8.** AS 28.05.061(a) is amended to read:

21 (a) The Department of Administration shall file, maintain, and appropriately
22 index records of

23 (1) vehicle registrations under AS 28.10.071(a) - (c);

24 (2) stolen, converted, recovered, and unclaimed vehicles under
25 AS 28.10.071(d);

26 (3) titles and documents creating and evidencing liens or
27 encumbrances under AS 28.10.381;

28 (4) abandoned vehicles under AS 28.11.030(c); [AND]

29 (5) driver's license and driving records under AS 28.15.151;

30 **(6) applications under AS 28.10.262 for cancellation of a**
31 **manufacturer's certificate of origin for a manufactured home;**

1 (7) applications under AS 28.10.263 for cancellation of a certificate
2 of title to a manufactured home;

3 (8) applications under AS 28.10.264 for confirmation of the
4 nonapplication of AS 28.10 to a manufactured home;

5 (9) applications under AS 28.10.265 for a certificate of title to a
6 severed manufactured home;

7 (10) manufacturer's certificates of origin accepted for cancellation
8 by the department under AS 28.10.262 for a manufactured home; and

9 (11) certificates of title accepted for cancellation by the
10 department under AS 28.10.263 for a manufactured home.

11 * **Sec. 9.** AS 28.05.061 is amended by adding new subsections to read:

12 (e) For cancelled manufacturer's certificates of origin, cancelled certificates of
13 title, or applications for confirmation filed under (a)(8), (10), or (11) of this section,
14 the department's record must state

15 (1) the name of each owner of the manufactured home;

16 (2) the date the manufacturer's certificate of origin or the certificate of
17 title was accepted for cancellation if the certificate was cancelled under (a)(10) or (11)
18 of this section; and

19 (3) the recording information for the affixation affidavit required by
20 AS 28.10.266.

21 (f) For applications for certificates of title under (a)(9) of this section, the
22 department's record must state the name of each owner of the manufactured home and
23 the recording information for the severance affidavit recorded under AS 40.17.125.

24 (g) In this section, "recording information" means the district where the
25 affidavit was recorded, and the date and serial numbers of the affidavit's recording in
26 the recording district.

27 * **Sec. 10.** AS 28.10.201(b) is amended to read:

28 (b) The owner of a vehicle described in AS 28.10.011 as being exempt from
29 registration and the owner of a snowmobile or off-highway vehicle may not apply for,
30 nor may the department issue, a certificate of title for the vehicle. However, the
31 department

1 (1) may issue a certificate of title to the owner of a vehicle exempt
2 from registration under AS 28.10.011(3), (6), (7), or (10) only upon application by that
3 owner; and

4 (2) except as provided in (e) of this section, shall issue a certificate of
5 title to the owner of a manufactured [MOBILE] home upon application, display of
6 evidence of ownership satisfactory to the department, and payment of a fee of \$100 by
7 the owner; a certificate of title issued under this paragraph must comply with
8 AS 28.10.231.

9 * **Sec. 11.** AS 28.10.201 is amended by adding a new subsection to read:

10 (e) The department may not issue a certificate of title to a manufactured home
11 if an application for the manufactured home has been filed under AS 28.10.262 -
12 28.10.264.

13 * **Sec. 12.** AS 28.10.211(c) is amended to read:

14 (c) When an application for title refers to a new vehicle, the application must
15 be accompanied by a "manufacturer's certificate [STATEMENT] of origin" and other
16 information reasonably required by the department.

17 * **Sec. 13.** AS 28.10.211 is amended by adding a new subsection to read:

18 (f) The holder of a manufacturer's certificate of origin for a manufactured
19 home may deliver the certificate to any person to facilitate conveying or encumbering
20 the manufactured home, and a person who receives the manufacturer's certificate of
21 origin holds it in trust for the person delivering it.

22 * **Sec. 14.** AS 28.10.221 is amended by adding a new subsection to read:

23 (d) Except as provided in AS 28.10.263, the department may not suspend or
24 revoke a certificate of title to a manufactured home based on the fact that the
25 manufactured home is affixed in any manner to real property.

26 * **Sec. 15.** AS 28.10.261 is amended by adding a new subsection to read:

27 (c) Notwithstanding another provision of law to the contrary, a certificate of
28 title to a manufactured home issued by the department is prima facie evidence of the
29 facts appearing on it, even if the manufactured home is affixed in any manner to real
30 property.

31 * **Sec. 16.** AS 28.10 is amended by adding new sections to article 2 to read:

1 **Sec. 28.10.262. Cancellation of manufacturer's certificate of origin for**
2 **manufactured home.** (a) If a manufactured home is permanently affixed to real
3 property under AS 34.85.150, or if the owner intends to permanently affix the
4 manufactured home to real property under AS 34.85.150, the owner may submit to the
5 department an application requesting that the department cancel the manufacturer's
6 certificate of origin for a manufactured home and update the department's records
7 under AS 28.05.061.

8 (b) The application under (a) of this section must comply with AS 28.10.266.

9 (c) Subject to AS 28.05.041, if the department is satisfied that the application
10 filed under (a) of this section complies with (b) of this section, the department shall
11 cancel the manufacturer's certificate of origin for the manufactured home, update the
12 department's records under AS 28.05.061, and issue a written acknowledgment that
13 the department has cancelled the certificate of origin under this section. The
14 department shall deliver the written acknowledgment to the owner of the
15 manufactured home and to a person identified under AS 28.10.266(12).

16 (d) When the department has cancelled the manufacturer's certificate of origin
17 under (c) of this section, the manufactured home is not subject to this chapter.

18 **Sec. 28.10.263. Cancellation of certificate of title to manufactured home.**

19 (a) If a manufactured home is permanently affixed to real property under
20 AS 34.85.150, or if the owner intends to permanently affix the manufactured home to
21 real property under AS 34.85.150, the owner may submit to the department an
22 application requesting that the department cancel the certificate of title to a
23 manufactured home and update the department's records under AS 28.05.061.

24 (b) The application under (a) of this section must comply with AS 28.10.266.

25 (c) Subject to AS 28.05.041, if the department is satisfied that the application
26 filed under (a) of this section complies with (b) of this section and that there are no
27 outstanding liens or encumbrances filed against the manufactured home under
28 AS 28.10.381, the department shall cancel the certificate of title to the manufactured
29 home, update the department's records under AS 28.05.061, and issue a written
30 acknowledgment that the department has cancelled the certificate of title under this
31 section. The department shall deliver the written acknowledgment to the owner of the

1 manufactured home and to a person identified under AS 28.10.266(12).

2 (d) When the department has cancelled a certificate of title under (c) of this
3 section, the manufactured home is not subject to this chapter.

4 **Sec. 28.10.264. Confirmation of nonapplication of chapter.** (a) The owner
5 of a manufactured home may submit an application to the department requesting that
6 the department indicate on the department's records that the manufactured home is not
7 subject to this chapter if

8 (1) the manufactured home is permanently affixed to real property
9 under AS 34.85.150, or the owner intends to permanently affix the manufactured
10 home to real property under AS 34.85.150; and

11 (2) the manufactured home

12 (A) is not covered by a manufacturer's certificate of origin or a
13 certificate of title;

14 (B) is covered by a manufacturer's certificate of origin, but the
15 owner of the manufactured home, after diligent search and inquiry, is unable to
16 produce the certificate of origin; or

17 (C) is covered by a certificate of title, but the owner of the
18 manufactured home, after diligent search and inquiry, is unable to produce the
19 certificate of title.

20 (b) The application under (a) of this section must comply with AS 28.10.266
21 and be accompanied by a bond or cash deposit described in (c) of this section.

22 (c) The bond that accompanies the application under (b) of this section must
23 be in the form prescribed by the department and executed by the applicant. The
24 amount of the bond or cash deposit that accompanies the application under (b) of this
25 section must be equal to one and one-half times the value of the manufactured home as
26 determined by the department and must be conditioned to indemnify former owners,
27 secured parties, and subsequent purchasers of the manufactured home and their
28 successors against loss resulting from a defect in or undisclosed security interest on
29 the title of the applicant. An injured party may bring a court action against the bond or
30 cash deposit for a breach of the conditions of the bond or cash deposit, but the liability
31 of the bond surety or the department may not exceed the amount of the bond or cash

1 deposit. The department shall return the bond or cash deposit at the end of three years
2 after the submission under (b) of this section, except that service on the department of
3 notice that an action is pending against the bond or cash deposit extends that period
4 until 45 days after a final decision in the action on the bond or cash deposit.

5 (d) If the department is satisfied that the application filed under (a) of this
6 section complies with (b) of this section, the department shall, subject to
7 AS 28.05.041, indicate under AS 28.05.061 on the department's records that the
8 manufactured home is not subject to this chapter and shall provide to the owner a
9 written confirmation that the owner of the manufactured home has submitted an
10 application that complies with (b) of this section and that the manufactured home is
11 not subject to this chapter. The department shall deliver the written confirmation to the
12 owner of the manufactured home and to a person identified under AS 28.10.266(12).

13 (e) When the department has provided a written confirmation under (d) of this
14 section, the manufactured home is not subject to this chapter.

15 **Sec. 28.10.265. Certificate of title to severed manufactured home.** (a) The
16 owner of a manufactured home may submit an application to the department
17 requesting that the department issue a certificate of title to a manufactured home and
18 update the department's records under AS 28.05.061 if

19 (1) the manufactured home was permanently affixed to real property
20 under AS 34.85.150;

21 (2) an affixation affidavit was recorded for the manufactured home
22 under AS 40.17.125; and

23 (3) after the occurrence of (1) and (2) of this subsection, the
24 manufactured home was severed from the real property to which it was affixed.

25 (b) The application under (a) of this section must comply with AS 28.10.266.

26 (c) Subject to AS 28.05.041, if the department is satisfied that the application
27 filed under (a) of this section complies with (b) of this section, the department shall
28 issue a certificate of title to the manufactured home under AS 28.10.231 - 28.10.241,
29 update the department's records under AS 28.05.061, and issue to the owner and to a
30 person identified under AS 28.10.266(12) a written acknowledgment that the
31 department has issued a certificate of title under this section.

1 (d) When the department has issued a certificate of title under (c) of this
2 section, the manufactured home is subject to this chapter.

3 **Sec. 28.10.266. Application provisions.** An application under AS 28.10.262 -
4 28.10.265 must provide

5 (1) the name, residence, and mailing address of the owner of the
6 manufactured home;

7 (2) a description of the manufactured home, including the name of the
8 manufacturer, the make, the model name, the model year, the manufacturer's serial
9 number for the manufactured home, and other information required by the department
10 about the manufactured home;

11 (3) whether the manufactured home is new or used;

12 (4) for an application under AS 28.10.262 - 28.10.264, the date of
13 purchase by the owner of the manufactured home and the name and address of the
14 person from whom the home was acquired;

15 (5) for an application under AS 28.10.262 - 28.10.264, the name and
16 address of any person who holds a lien or an encumbrance against the manufactured
17 home and the order of apparent priority;

18 (6) a statement signed by the owner, stating

19 (A) any facts or information known to the owner that could
20 reasonably affect the validity of the title to the manufactured home or the
21 existence or nonexistence of a lien or encumbrance on it; or

22 (B) that the owner does not know any facts or information that
23 could reasonably affect the validity of the title to the manufactured home or the
24 existence or nonexistence of a lien or encumbrance on the manufactured home;

25 (7) subject to AS 28.10.268, for an application under AS 28.10.262 -
26 28.10.264, a certified copy of an affixation affidavit that complies with AS 34.85.060
27 and that has been recorded under AS 40.17.125 for the manufactured home;

28 (8) for an application under AS 28.10.265, a certified copy of a
29 severance affidavit that complies with AS 34.85.120 and that has been recorded under
30 AS 40.17.125 for the manufactured home;

31 (9) for an application under AS 28.10.262, the original manufacturer's

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certificate of origin;

(10) for an application under AS 28.10.263, the original certificate of title;

(11) for an application under AS 28.10.264 or 28.10.265, a declaration that complies with AS 28.10.267;

(12) if desired by the applicant, the name and mailing address of one person, in addition to the owner, to receive a written acknowledgment from the department under AS 28.10.262, 28.10.263, or 28.10.265 or a written confirmation under AS 28.10.264; and

(13) other information and documents the department reasonably requires

(A) to identify the owner of the manufactured home;

(B) to determine the existence or nonexistence of liens or encumbrances on the manufactured home;

(C) for an application under AS 28.10.262 - 28.10.264, to enable the department to determine whether the owner satisfied the applicable requirements of AS 34.85.010; and

(D) for an application under AS 28.10.265, to enable the department to determine whether the owner of the manufactured home is entitled to a certificate of title.

Sec. 28.10.267. Declaration. (a) The declaration required by AS 28.10.266(11) must be made under oath or affirmation by an attorney authorized under AS 08.08 to practice law in the state or an agent of a title insurance company entitled under AS 21.66 to transact a title insurance business in this state.

(b) The declaration must state that the manufactured home is free and clear of all liens and encumbrances and

(1) any facts or information known to the attorney or agent that could reasonably affect the validity of the title to the manufactured home or the existence or nonexistence of a lien or encumbrance on the manufactured home; or

(2) that the attorney or agent does not know any facts or information that could reasonably affect the validity of the title to the manufactured home or the

1 existence or nonexistence of a lien or encumbrance on the manufactured home.

2 **Sec. 28.10.268. Time of satisfaction.** If a person delivers an application under
3 AS 28.10.262 - 28.10.264 for a manufactured home to the department within 30 days
4 after an affixation affidavit for the manufactured home is recorded under
5 AS 40.17.125, and if the application is accepted by the department, the requirements
6 of AS 28.10.262 - 28.10.264 are considered to be satisfied on the date the affixation
7 affidavit is recorded, and, if the manufactured home is conveyed or encumbered on
8 and after that date, the manufactured home shall be conveyed and encumbered as real
9 property.

10 **Sec. 28.10.269. Definitions.** In AS 28.10.201 - 28.10.269, unless the context
11 indicates otherwise,

12 (1) "affixation affidavit" means an affixation affidavit under
13 AS 34.85.060;

14 (2) "severance affidavit" means a severance affidavit under
15 AS 34.85.120.

16 * **Sec. 17.** AS 28.10.371 is amended by adding new subsections to read:

17 (b) Notwithstanding (a) of this section, a lien on a manufactured home for the
18 purchase of the manufactured home is valid against judicial lien creditors and
19 execution creditors on and after the date the lien attaches under AS 45.29 against the
20 manufactured home.

21 (c) Notwithstanding (a) of this section, the holder of a lien on a manufactured
22 home may deliver a lien release document to a person to facilitate conveying or
23 encumbering the manufactured home. A person receiving the lien release document
24 holds the document in trust for the lienholder.

25 * **Sec. 18.** AS 28.10.381 is amended by adding a new subsection to read:

26 (c) Except as otherwise provided in AS 28.10.262, 28.10.263, and AS 34.85,
27 after a certificate of title to a manufactured home has been issued and while the
28 manufactured home is subject to a lien or encumbrance under (a) of this section,

29 (1) the department may not cancel the manufacturer's certificate of
30 origin for the manufactured home under AS 28.10.262, or cancel the certificate of title
31 to the manufactured home under AS 28.10.263; and

1 (2) the validity and priority of the lien or encumbrance continues.

2 * **Sec. 19.** AS 28.10.391 is amended by adding a new subsection to read:

3 (e) Notwithstanding another provision of this section, the creation or
4 termination of a lien or encumbrance with respect to a manufactured home that has
5 been converted to real property under AS 34.85.010 is governed by the laws that apply
6 to real property.

7 * **Sec. 20.** AS 28.10.661(2) is amended to read:

8 (2) "vehicle" includes mobile homes for the purposes of provisions
9 relating to certificates of title; in this paragraph, "mobile home" means a
10 manufactured home.

11 * **Sec. 21.** AS 28.10.661 is amended by adding a new paragraph to read:

12 (3) "manufactured home" has the meaning given in AS 45.29.102.

13 * **Sec. 22.** AS 29.45.070 is amended to read:

14 **Sec. 29.45.070. Mobile homes.** Mobile homes, trailers, house trailers, trailer
15 coaches, and similar property used or intended to be used for residential, office, or
16 commercial purposes and permanently affixed [ATTACHED] to real property
17 under AS 34.85.150 [THE LAND OR CONNECTED TO WATER, GAS,
18 ELECTRIC, OR SEWAGE FACILITIES] are classified as real property for tax
19 purposes unless expressly classified as personal property by ordinance. This section
20 does not apply to house trailers and mobile homes that are unoccupied and held for
21 sale by persons engaged in the business of selling mobile homes. In this section,
22 "mobile home" has the meaning given to "manufactured home" in AS 45.29.102.

23 * **Sec. 23.** AS 34.03.360 is amended by adding a new paragraph to read:

24 (23) "mobile home" has the meaning given to "manufactured home" in
25 AS 45.29.102.

26 * **Sec. 24.** AS 34.70.200(3) is amended to read:

27 (3) "residential real property" means real property whose primary
28 purpose is to provide a single-family dwelling, or two single-family dwellings in one
29 building, including a manufactured home that has become real property under
30 AS 34.85.010; in this paragraph, "manufactured home" has the meaning given in
31 AS 45.29.102;

1 * **Sec. 25.** AS 34.80.090(6) is amended to read:

2 (6) "residential real property" means real property on which there are
3 one to four attached or detached dwelling units, or any number of apartments if the
4 apartments are in a horizontal property regime formed under AS 34.07 or any number
5 of units if the units are in a common interest community created under AS 34.08;
6 **"residential real property" includes a manufactured home that has become real**
7 **property under AS 34.85.010; in this paragraph, "manufactured home" has the**
8 **meaning given in AS 45.29.102;**

9 * **Sec. 26.** AS 34 is amended by adding a new chapter to read:

10 **Chapter 85. Manufactured Home Property Act.**

11 **Sec. 34.85.010. Real property characterization.** A manufactured home
12 becomes real property if

13 (1) the home is permanently affixed to land under AS 34.85.150;

14 (2) an affixation affidavit has been recorded under AS 40.17.125;

15 (3) the ownership interests in the manufactured home and in the real
16 property to which the manufactured home is permanently affixed are identical, except
17 as provided by AS 34.85.040; and

18 (4) the manufactured home is

19 (A) covered by a manufacturer's certificate of origin that the
20 owner of the manufactured home is able to produce, and the department has
21 cancelled the manufacturer's certificate of origin under AS 28.10.262;

22 (B) covered by a certificate of title that the owner of the
23 manufactured home is able to produce, and the department has cancelled the
24 certificate of title under AS 28.10.263; or

25 (C) not covered by a manufacturer's certificate of origin or a
26 certificate of title, or if the manufactured home is covered by a manufacturer's
27 certificate of origin or a certificate of title but the owner of the manufactured
28 home, after diligent search and inquiry, was unable to produce the
29 manufacturer's certificate of origin or certificate of title, and the department
30 has provided a written confirmation under AS 28.10.264.

31 **Sec. 34.85.020. Effect of real property characterization.** (a) When a

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manufactured home becomes real property under AS 34.85.010, a mortgage, deed of trust, lien, or security interest that can attach to land, buildings erected on land, or fixtures affixed to land or buildings attaches to the manufactured home in the same manner as if the manufactured home were built from ordinary building materials on the land where the manufactured home is located.

(b) If the title to a manufactured home is transferred after the manufactured home becomes real property under AS 34.85.010, title to the manufactured home, together with the land to which the converted manufactured home is affixed, shall be transferred by deed or other form of conveyance that is effective to transfer an interest in real property.

(c) When a manufactured home becomes real property under AS 34.85.010, the manufactured home is governed by the laws applicable to real property in effect on the date the manufactured home satisfies AS 34.85.010.

Sec. 34.85.040. Ownership interest exception. If the owner of a manufactured home is not the owner of the real property on which the manufactured home is located, the requirement under AS 34.85.010(3) that the ownership interests be identical is satisfied if the owner possesses the real property under

(1) a lease in a recordable form that has a term that continues for at least 20 years after the date of execution of the affixation affidavit; and

(2) the lessor of the real property consents.

Sec. 34.85.060. Affixation affidavit requirements. An affixation affidavit must provide

(1) the name of the manufacturer, the make, the model name, the model year, the dimensions, and the manufacturer's serial number of the manufactured home;

(2) whether the manufactured home is new or used;

(3) a statement that the person executing the affidavit is

(A) the owner of the real property described in the affixation affidavit; or

(B) not the owner of the real property described in the affixation affidavit, and the person

1 (i) is in possession of the real property under a lease in
2 recordable form that has a term that continues for at least 20 years after
3 the date of execution of the affidavit; and

4 (ii) the lessor of the real property consents;

5 (4) if (3)(B)(ii) of this section applies, the consent of the lessor of the
6 real property endorsed on or attached to the affidavit and acknowledged or proved in
7 the manner required for the conveyance to be recorded;

8 (5) the street address and the legal description of the real property to
9 which the manufactured home is or shall be permanently affixed;

10 (6) if the manufactured home is not covered by a certificate of title, a
11 statement by the owner to that effect;

12 (7) an owner's statement under AS 34.85.070;

13 (8) a statement whether or not the manufactured home is subject to a
14 lien or encumbrance;

15 (9) if the manufactured home is subject to a lien or encumbrance, a
16 statement giving the name and address of each person who holds a lien or
17 encumbrance on the manufactured home, including each holder of a lien or
18 encumbrance shown on a certificate of title issued by the department, the original
19 principal amount secured by each lien and encumbrance, and a statement that

20 (A) the lien or encumbrance shall be released; or

21 (B) each lien or encumbrance on the manufactured home has
22 been released and proof of the release;

23 (10) if the manufactured home is not covered by a manufacturer's
24 certificate of origin or a certificate of title, a statement by the owner of the
25 manufactured home that the manufactured home is not covered by a manufacturer's
26 certificate of origin or a certificate of title and that the owner of the manufactured
27 home will apply to the department under AS 28.10.264;

28 (11) a statement that the manufactured home is or will be permanently
29 affixed to the real property; and

30 (12) the name and address of a person designated for filing the
31 certified copy of the affixation affidavit with the department.

1 **Sec. 34.85.070. Owner's statement for affixation affidavit.** (a) An owner's
2 statement for an affixation affidavit must comply with (b) or (c) of this section.

3 (b) If a manufactured home is covered by a manufacturer's certificate of
4 origin, the owner of the manufactured home shall

5 (1) state that the manufactured home is covered by a manufacturer's
6 certificate of origin, provide the date the manufacturer's certificate of origin was
7 issued, provide the manufacturer's serial number, state that the original manufacturer's
8 certificate of origin for the manufactured home is annexed to the affixation affidavit
9 and is endorsed to the owner of the manufactured home, and state that the owner of the
10 manufactured home will surrender the manufacturer's certificate of origin for
11 cancellation under AS 28.10.262; or

12 (2) state that the owner of the manufactured home, after diligent search
13 and inquiry, has been unable to produce the original manufacturer's certificate of
14 origin for the manufactured home and shall apply to the department under
15 AS 28.10.264.

16 (c) If a manufactured home is covered by a certificate of title, the owner of the
17 manufactured home shall

18 (1) state that the manufactured home is covered by a certificate of title,
19 provide the date the title was issued and the title number, and state that the owner shall
20 surrender the title for cancellation under AS 28.10.263; or

21 (2) state that the owner, after diligent search and inquiry, has been
22 unable to produce the certificate of title to the manufactured home and shall apply to
23 the department under AS 28.10.264.

24 **Sec. 34.85.080. Effect on liens and encumbrances.** Permanently affixing a
25 manufactured home to real property or recording an affixation affidavit under
26 AS 40.17.125 does not impair the rights of a holder of, or the character of, a lien or
27 encumbrance on a manufactured home under AS 28.10.381 unless an application to
28 cancel the title is filed with the department under AS 28.10.263 and the lien or
29 encumbrance is released under AS 28.10.401.

30 **Sec. 34.85.090. Filing affixation affidavit with department.** When a person
31 designated in an affixation affidavit to file the affixation affidavit with the department

1 receives a certified copy of the recorded affixation affidavit, the person shall deliver
2 the certified copy of the affixation affidavit to the department for filing under
3 AS 28.10.262 - 28.10.264.

4 **Sec. 34.85.100. Use of affidavit.** (a) Except as provided in AS 34.85.010,
5 34.85.020, 34.85.090, and AS 40.17.125, an affixation affidavit is not necessary or
6 effective to convey or encumber a manufactured home or to change the character of a
7 manufactured home to real property.

8 (b) A conveyance of land on which a manufactured home is located must
9 recite that the conveyance does not affect the title to the manufactured home and that
10 the transfer or encumbrance of the manufactured home can only be made under
11 AS 28.10 if

12 (1) an affixation affidavit has not been recorded for the manufactured
13 home; or

14 (2) a severance affidavit has been recorded for the manufactured home.

15 (c) An agreement that waives the requirements of (a) or (b) of this subsection
16 is void.

17 **Sec. 34.85.110. Severance of manufactured home.** If an affixation affidavit
18 has been recorded for a converted manufactured home and if the converted
19 manufactured home is severed from the real property to which it was affixed, each
20 person having an interest in the real property shall record a severance affidavit in the
21 recording district where the affixation affidavit was recorded.

22 **Sec. 34.85.120. Severance affidavit.** The severance affidavit must contain or
23 be accompanied by

24 (1) the name, residence, and mailing address of the owner of the
25 manufactured home;

26 (2) a description of the manufactured home, including the name of the
27 manufacturer, the make, the model name, the model year, the dimensions, and the
28 manufacturer's serial number of the manufactured home;

29 (3) whether the manufactured home it is new or used;

30 (4) the serial numbers and date when the affixation affidavit was
31 recorded;

1 (5) a statement

2 (A) of any facts or information known to the person signing the
3 affidavit that could reasonably affect the validity of the title to the
4 manufactured home or the existence or nonexistence of a lien or encumbrance
5 on the manufactured home; or

6 (B) that the person signing the affidavit does not know any
7 facts or information that could reasonably affect the validity of the title to the
8 manufactured home or the existence or nonexistence of a lien or encumbrance
9 on the manufactured home;

10 (6) a declaration made under oath or affirmation by an attorney
11 authorized under AS 08.08 to practice law in the state or an agent of a title insurance
12 company entitled under AS 21.66 to transact a title insurance business in this state that
13 the manufactured home is free and clear of all liens and encumbrances, and

14 (A) stating any facts or information known to the attorney or
15 agent that could reasonably affect the validity of the title to the manufactured
16 home or the existence or nonexistence of a lien or encumbrance on the
17 manufactured home; or

18 (B) that the attorney or agent does not know any facts or
19 information that could reasonably affect the validity of the title to the
20 manufactured home or the existence or nonexistence of a lien or encumbrance
21 on the manufactured home; and

22 (7) the name and address of the person designated to file the certified
23 copy of the severance affidavit with the department under AS 28.10.265.

24 **Sec. 34.85.130. Filing of severance affidavit.** On receipt of a certified copy of
25 the severance affidavit by the person designated in the affidavit for filing with the
26 department, the person shall file the certified copy with the department under
27 AS 28.10.262 - 28.10.264.

28 **Sec. 34.85.140. Affidavit form and acknowledgment.** (a) An affixation
29 affidavit and a severance affidavit must be acknowledged in the same manner as a
30 conveyance of real property and must be in a form that may be recorded under
31 AS 40.17.

1 (b) The department shall establish by regulation the forms for an affixation
2 affidavit and a severance affidavit.

3 **Sec. 34.85.150. Permanently affixed.** A manufactured home is permanently
4 affixed when it is

5 (1) anchored to real property by attachment to a permanent foundation;

6 (2) constructed in accordance with applicable state and local building
7 codes and manufacturer's specifications as provided in the Model Manufactured Home
8 Installation Standards of the federal Department of Housing and Urban Development
9 (24 C.F.R. 3285); and

10 (3) connected to a residential utility, including water, gas, electricity,
11 sewer, or septic service.

12 **Sec. 34.85.190. Definitions.** In this chapter, unless the context requires
13 otherwise,

14 (1) "affixation affidavit" means an affixation affidavit under
15 AS 34.85.060;

16 (2) "department" means the Department of Administration;

17 (3) "manufactured home" has the meaning given in AS 45.29.102;

18 (4) "permanently affixed" means when a manufactured home is
19 permanently affixed under AS 34.85.150;

20 (5) "severance affidavit" means a severance affidavit under
21 AS 34.85.120.

22 **Sec. 34.85.195. Short title.** This chapter may be cited as the Manufactured
23 Home Property Act.

24 * **Sec. 27.** AS 40.17 is amended by adding a new section to read:

25 **Sec. 40.17.125. Recording affidavits related to manufactured homes.** (a) A
26 recorder shall record an affixation affidavit and a severance affidavit if the affidavit
27 meets the requirements for recording under AS 40.17.030 and is offered for recording
28 in the recording district where the real property to which the manufactured home
29 affixed is located.

30 (b) A recording officer shall place on the recorded affidavit

31 (1) the indexing information for the recorded affidavit; and

1 (2) an indication that the recorded affidavit was recorded.

2 (c) In this section,

3 (1) "affidavit" means an affixation affidavit or a severance affidavit;

4 (2) "affixation affidavit" has the meaning given in AS 34.85.190;

5 (3) "manufactured home" has the meaning given in AS 45.29.102;

6 (4) "recorded affidavit" means an affidavit recorded under this section;

7 (5) "severance affidavit" has the meaning given in AS 34.85.190.

8 * **Sec. 28.** AS 45.10.220(2) is amended to read:

9 (2) "goods" means personal chattels purchased primarily for personal,
10 family, or household use and not for commercial or business use, but does not include
11 money or, except as provided in the next phrase, chose in action; "goods" includes
12 [BUT IS NOT LIMITED TO] merchandise certificates or coupons issued by a retail
13 seller to be used in their face amount instead of cash in exchange for goods or services
14 sold by the seller and goods, including a manufactured home, that, at the time of
15 sale or subsequently, are to be so affixed to real property as to become a part of it,
16 whether or not severable from it; in this paragraph, "manufactured home" has the
17 meaning given in AS 45.29.102;

18 * **Sec. 29.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 TRANSITION: REGULATIONS. The Department of Administration shall adopt
21 regulations necessary to implement this Act. The regulations must take effect under AS 44.62
22 (Administrative Procedure Act) on January 1, 2012.

23 * **Sec. 30.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 SAVING CLAUSE. This Act may not be interpreted to impair a right or claim
26 existing under law before January 1, 2012, of a person claiming an interest in a manufactured
27 home. In this section, "manufactured home" has the meaning given in AS 45.29.102.

28 * **Sec. 31.** Section 29 of this Act takes effect immediately under AS 01.10.070(c).

29 * **Sec. 32.** Except as provided in sec. 31 of this Act, this Act takes effect January 1, 2012.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version SB 104II
 () Publish Date _____

Identifier (file name) SB104-DOA-DMV-03-25-11 Dept. Affected Administration
 Title Manufactured Homes as Real Property Appropriation Motor Vehicles
 Allocation Motor Vehicles
 Sponsor Senator French
 Requester Senate State Affairs OMB Component Number 2348

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES								
---------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable; initial version

Prepared by Whitney Brewster, Director
 Division Motor Vehicles
 Approved by John Cramer, Director
Department of Administration

Phone 907-269-5574
 Date/Time 3/25/11 4:00 PM
 Date 3/25/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. SB 104I

Analysis

This bill will have only a small financial impact on the Division of Motor Vehicles (DMV). DMV will absorb any implementation costs in its operating budget.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 28, 2011

SUBJECT: Sectional summary for SB 104 relating to manufactured homes
(Work Order No. 27-LS0467I)

TO: Senator Hollis French
Attn: Andy Moderow

FROM:  Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. States the findings and purpose for the bill.

Section 2. Adds a new subsection to AS 06.05.207 of the banking code. Defines "real property" to include a manufactured home that has become real property under new sec. 34.85.010.

Section 3. Adds a new subsection to AS 06.15.250 of the mutual savings bank chapter. Defines "real property" to include a manufactured home that has become real property under new sec. 34.85.010.

Section 4. Amends AS 06.45.060(5)(A) of the credit union chapter to change "mobile home" to "manufactured home."

Section 5. Adds a new subsection to AS 06.45.060 of the credit union chapter to provide a definition of "manufactured home."

Section 6. Amends the definition of "mortgage loan" in AS 06.60.990(19) of the mortgage lending regulation chapter to include a manufactured home that has become real property under new sec. 34.85.010.

Section 7. Adds a new definition section to AS 09.45, the chapter relating to real property actions, to define "real property" to include a manufactured home that has become real property under new sec. 34.85.010 and to define "manufactured home."

Section 8. Amends AS 28.05.061(a), which relates to vehicle records, to list manufactured home documents as records that the Department of Administration is to file, maintain, and index.

Section 9. Adds new subsections to AS 28.05.061, which relates to vehicle records, to indicate what the department record must state for certain documents relating to manufactured homes. Defines "recording information" for AS 28.05.061.

Section 10. Amends AS 28.10.201(b) to reference a new subsection added by bill sec. 11 and to change "mobile home" to "manufactured home."

Section 11. Adds a new subsection to AS 28.10.201. Prohibits the department from issuing a certificate of title to a manufactured home if an application has been filed under secs. 28.10.262 - 28.10.264.

Section 12. Amends AS 28.10.211(c) to substitute "manufacturer's certificate of origin" for "manufacturer's statement of origin."

Section 13. Adds a new subsection to AS 28.10.211, relating to applications for vehicle titles. Allows the holder of a manufacturer's certificate of origin for a manufactured home to deliver the certificate to a person to facilitate the home's conveyance or encumbrance. The recipient holds it in trust.

Section 14. Adds a new subsection to AS 28.10.221, which relates to the refusal, suspension, or revocation of a vehicle title. Prohibits the department, with an exception for new sec. 28.10.263, from suspending or revoking a certificate of title to a manufactured home because the home is affixed to real property.

Section 15. Adds a new subsection to AS 28.10.261, which relates to evidence. Makes a manufactured home's certificate of title issued by the department prima facie evidence of what it says, even if the home is affixed to real property.

Section 16. Adds new sections to AS 28.10.

Sec. 28.10.262. Directs the department to cancel a manufacturer's certificate of origin to a manufactured home if an application is filed and certain other conditions are met. States that when a person satisfies this section, the manufactured home is not subject to AS 28.10.

Sec. 28.10.263. Directs the department to cancel a certificate of title to a manufactured home if an application is filed and certain other conditions are met. States that when a person satisfies this section, the manufactured home is not subject to AS 28.10.

Sec. 28.10.264. Directs the department, if an application is filed and certain other conditions are met, to confirm that the owner of a manufactured home has submitted an application that complies with (b) of this section and that the manufactured home is not subject to AS 28.10.

Sec. 28.10.265. Directs the department to issue a certificate of title for a manufactured home if an application is filed and certain other conditions are met. States that when a person satisfies this section, the manufactured home is subject to AS 28.10.

Sec. 28.10.266. Lists what an application under secs. 28.10.262 - 28.10.265 must provide.

Sec. 28.10.267. Establishes the requirements for the declaration required by sec. 28.10.266(11) for an application under sec. 28.10.264 or 28.10.265.

Sec. 28.10.268. Indicates the time when the requirements of secs. 28.10.262 - 28.10.264 are considered to be satisfied if an application under one of those sections is delivered to the department within 30 days after an affixation affidavit is recorded.

Sec. 28.10.269. Defines terms for AS 28.10.201 - 28.10.269.

Section 17. Adds new subsections to AS 28.10.371, which relates to liens and encumbrances on vehicles, to address certain situations involving liens on manufactured homes.

Section 18. Adds a new subsection to AS 28.10.381, which relates to liens and encumbrances on vehicles, to generally prohibit cancelling certificates while a lien or encumbrance is outstanding, and to state that the validity and priority of the liens and encumbrances continue.

Section 19. Adds a new subsection to AS 28.10.391, which relates to liens and encumbrances on vehicles, to indicate that the liens and encumbrances of converted manufactured homes are governed by real property law.

Section 20. Amends AS 28.10.661(2) to define "mobile home" as a "manufactured home" for the chapter.

Section 21. Adds a new paragraph to AS 28.10.661 to define "manufactured home" for the chapter.

Section 22. Amends AS 29.45.070, which relates to municipal taxation, to reflect the conversion to real property allowed by the new chapter in AS 34.85.

Section 23. Amends AS 34.03.360 of the state's uniform residential landlord and tenant act to add a definition of "mobile home."

Section 24. Amends AS 34.70.200(3) of the chapter dealing with disclosures in residential real property transfers to include as residential real property manufactured homes that have become real property under AS 34.85.010.

Section 25. Amends AS 34.80.090(6) of the chapter that deals with escrow transactions for residential real property to include converted manufactured homes as residential real property.

Section 26. Adds a new chapter relating to converting manufactured homes to real property.

Sec. 34.85.010. Lists the criteria for a manufactured home to become real property.

Sec. 34.85.020. Describes the effects of converting a manufactured home to real property.

Sec. 34.85.040. Describes how the ownership interest requirement of sec. 34.85.010 can be satisfied when the manufactured home owner does not own the real property where the home is located.

Sec. 34.85.060. Establishes what an affixation affidavit must provide.

Sec. 34.85.070. Describes what an owner's statement required for an affixation affidavit must state.

Sec. 34.85.080. Indicates that permanently affixing a manufactured home to real property or recording an affixation affidavit does not affect liens and encumbrances on the manufactured home unless certain conditions are met.

Sec. 34.85.090. Directs the recipient of a certified copy of an affidavit to deliver the copy to the department under secs. 28.10.262 - 28.10.264.

Sec. 34.85.100. States that, except as provided by certain statutes, an affixation affidavit is not necessary or effective to convey or encumber a manufactured home or to change the character of a manufactured home to real property. Indicates what a conveyance of land on which a manufactured home is located must recite. Voids an agreement that waives this section.

Sec. 34.85.110. Directs each person having an interest in the real property from which a converted manufactured home is severed to record a severance affidavit.

Sec. 34.85.120. Establishes what a severance affidavit must contain or be accompanied by.

Sec. 34.85.130. Directs the recipient of a certified copy of a severance affidavit to deliver the copy to the department under secs. 28.10.262 - 28.10.264.

Sec. 34.85.140. Requires an affixation affidavit and a severance affidavit to be acknowledged like real property conveyances and be in a recordable form. Directs the department to establish the forms for the affidavits.

Senator Hollis French
March 28, 2011
Page 5

Sec. 34.85.150. Establishes when a manufactured home is considered to be permanently affixed to real property.

Sec. 34.85.190. Defines terms for the new chapter.

Sec. 34.85.195. Gives the chapter a short title.

Section 27. Adds a new section to the state's chapter on the recording of real property documents. Directs the recorder to record an affixation affidavit and a severance affidavit if they meet specified requirements. Indicates what the recording officer must write on the recorded affidavit. Directs the recording officer to send a certified copy to the person designated in the affidavit.

Section 28. Amends the definition of "goods" in the Alaska Retail Installment Sales Act to include manufactured homes.

Section 29. Directs the Department of Administration to adopt regulations for this Act.

Section 30. Preserves rights and claims existing before January 1, 2012.

Section 31. Sets an immediate effective date for bill sec. 29, which authorizes the adoption of implementing regulations.

Section 32. Sets the effective date for all of the bill except bill sec. 29, which authorizes the adoption of implementing regulations.

If I may be of further assistance, please advise.

TLB:ljw
11-196.ljw

March 21, 2011

Senator French
State Capitol
Room 417
Juneau, AK 99801

RE: SB-104 Manufactured Housing Conversion Procedure Process

Dear Senator French:

Wells Fargo is writing to support SB-104, the Manufactured Housing Conversion Procedure Process bill.

SB-104 will amend state law in Alaska to provide a formal method of eliminating the certificate of title to a manufactured home, converting the home to real property when the home is or will be permanently affixed to real property, and obtaining a new certificate of title when a home previously affixed to real property is severed.

Alaska's current statutes do not meet the eligibility requirements to sell a mortgage loan for a manufactured home to Fannie Mae or Freddie Mac, including the process to legally classify the home as real property and placing the lender in first lien position.

Wells Fargo has had to turn away business to potential borrowers because Alaska does not have a clear method of converting a factory built home to real property, especially older manufactured homes that come back on the market for resale.

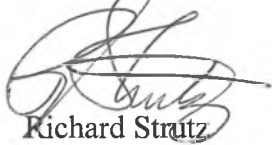
SB-104 would bring state definitions of manufactured homes into accordance with HUD definitions to create a system for title transfer and property conversion. Additionally, it would create a means for titling manufactured homes that have been affixed to property, but the title cannot be found.

We feel the bill will: (1) Help manufactured homeowners who have their manufactured home already affixed to real property be better able to gain access to credit and be able to more easily sell their homes; (2) Help manufactured homeowners in the state increase the value of their homes by allowing them to convert their manufactured homes to real property, including manufactured homes not covered by certificates of title or for which the certificates of title cannot be found; (3) Help lenders gain perfected security interests in manufactured homes; and (4) Help the Alaska Division of Motor Vehicles by putting

in place a formalized procedure for canceling a title when a manufactured home is put on a permanent foundation.

Thank you for the opportunity to provide comment on SB-104.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Strutz', written over a printed name.

Richard Strutz
Regional President
Wells Fargo Bank, N.A.
Anchorage, AK

Alaska Bankers Association

P.O. Box 241489 • Anchorage, Alaska 99524-1489 • Ph. 907-261-3525 • Fax 907-562-1758

March 25, 2011

Senator French
State Capitol
Room 417
Juneau, AK 99801

RE: SB-104 Manufactured Housing Conversion Procedure Process

Dear Senator French:

The Alaska Bankers Association consists of the following eight member banks: Alaska Pacific Bank, Denali State Bank, First Bank Ketchikan, First National Bank Alaska, KeyBank, Mt. McKinley Bank, Northrim Bank, and Wells Fargo Bank.

The Alaska Bankers Association supports SB-104, the Manufactured Housing Conversion Procedure Process bill.

SB-104 will amend state law in Alaska to provide a formal method of eliminating the certificate of title to a manufactured home, converting the home to real property when the home is or will be permanently affixed to real property, and obtaining a new certificate of title when a home previously affixed to real property is severed.

Alaska, unlike the vast majority of states, has no formal statutory procedure for converting a manufactured home to real property. Under current Alaska law including Alaska's Uniform Commercial Code, a security interest in a manufactured home permanently affixed to land can be perfected only by noting the secured party's interest on the home's certificate of title and recording a deed of trust with a fixtures clause and an appropriate description of the home. The need for legislation arises from the fact that the Alaska Division of Motor Vehicles ("DMV") will not issue a title for a manufactured home that is affixed to a permanent foundation, notwithstanding the requirements of the Uniform Commercial Code, and has created and administers a vaguely defined procedure with no record notice. The result for many Alaska manufactured homeowners is an unmarketable title to their home and for many lenders an unperfected security interest in their collateral.

In addition, Alaska's current statute does not meet the eligibility requirements to sell a mortgage for a manufactured home to Fannie Mae or Freddie Mac, including the process to legally classify the home as real property and placing the lender in first lien position. Alaska also does not have a clear method to convert a factory built home to real property, especially older manufactured homes that come back on the market for resale.

Alaska Bankers Association

P.O. Box 241489 • Anchorage, Alaska 99524-1489 • Ph. 907-261-3525 • Fax 907-562-1758

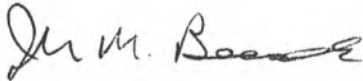
AK SB-104 will bring state definitions of manufactured housing into accordance with HUD definitions to create a system for title transfer and property conversion. Additionally, the bill will create a means for titling manufactured homes that have been affixed to property, but the title can't be found.

This bill is good for manufactured home owners and good for lenders that finance manufactured homes.

Thank you for the opportunity to provide comment on SB-104.

Sincerely,

ALASKA BANKERS ASSOCIATION



Joe Beedle
President



First American Title

TERRY E. BRYAN
VICE PRESIDENT
ALASKA STATE MANAGER

Transmitted via Fax

907-465-6595

Attention: Andy Moderow

April 6, 2011

Senator Hollis French

State Capitol Room 417

Juneau, AK 99801

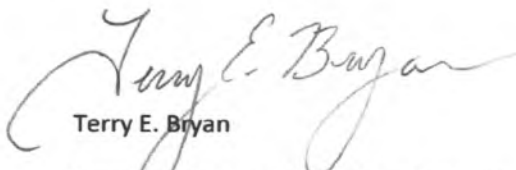
First American Title Insurance Company supports Alaska Senate Bill 104.

First American Title has been operating, in multiple locations within the great state of Alaska for more than 30 years and feels that we are an integral part of the economic community. Passage of SB 104 is truly in the best interest of the citizens of Alaska.

In addition, as a representative of the Alaska Land Title Association's Legislative Committee, I feel confident that they will acknowledge their support following a membership poll, later today. The Alaska Land Title Association is made up of more than 25 statewide member companies, within Alaska.

If anyone from your office or committee wishes to discuss this issue, please feel free to contact myself, at your earliest convenience.

Respectfully Submitted,


Terry E. Bryan
Vice President – Alaska State Manager

3035 C Street, Anchorage, AK 99503

TEL 907.561.1844 ▼ FAX 907.561.1948

terbryan@firstam.com ▼ www.firstam.com

ALASKA LAND TITLE ASSOCIATION

P.O. Box 241811 • Anchorage, Alaska 99524

April 6, 2011

Senator Hollis French
Alaska State Capitol Room 417
Juneau, AK 99801

Re: Senate Bill 104

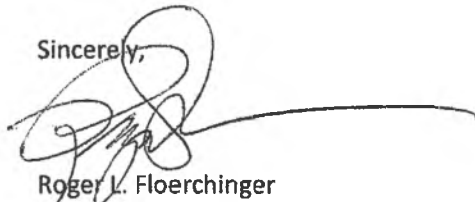
Dear Senator French,

As Past President of the Alaska Land Title Association and current Chairman of the Legislative and Regulatory Committee I have polled the members of my committee and with unanimous consent I offer that committees support of Senate Bill 104. ALTA's bylaws require 30 days notice before the board can hold a meeting and pass a resolution of support but I can assure you that that vote would be unanimous as well. That board represents 25 member companies throughout the state of Alaska.

We believe that Senate Bill 104 will protect the interest of Alaska's homeowners as well as the interest of the real estate finance industry and the land title industry.

If you or anyone in your office has any questions regarding my industry's take on this proposed legislation please do not hesitate to call me at my office.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Floerchinger', with a long horizontal flourish extending to the right.

Roger L. Floerchinger
Legislative and Regulatory Affairs Committee
Alaska Land Title Association
(907) 456-3474

Senator Hollis French

Capitol Room 417
465-3892
465-6595 fax



MEMORANDUM

Date: April 4, 2011

To: Senator Hollis French
Chair, Senate Judiciary Committee

From: Andy Moderow, Staff to Senator French

RE: Potential Witnesses for SB 104

The following individuals have expressed interest in the Senate Bill 104 hearing scheduled for April 6, 2011 in front of the Senate Judiciary Committee:

Ethan Hormann - Branch Manager, Wells Fargo Home Mortgage - Anchorage, AK

George Ginsberg - Wells Fargo Outside Counsel, McGlinchey Stafford, PLLC

Jeff Harris, Loan Administration Manager, Wells Fargo Home Mortgage

Patrick Green, Regional Director, State Government Relations, Wells Fargo & Company

Senator Hollis French

Capitol Room 417
465-3892
465-6595 fax



MEMORANDUM

Date: April 4, 2011

To: Senator Hollis French
Chair, Senate Judiciary Committee

From: Andy Moderow, Staff to Senator French

RE: Potential Witnesses for SB 104

The following individuals have expressed interest in the Senate Bill 104 hearing scheduled for April 15, 2011 in front of the Senate Judiciary Committee:

Ethan Hormann - Branch Manager, Wells Fargo Home Mortgage - Anchorage, AK

Jeff Harris, Loan Administration Manager, Wells Fargo Home Mortgage

Patrick Green, Regional Director, State Government Relations, Wells Fargo & Company



MANUFACTURED HOUSING RESOURCE GUIDE

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 is a high-quality and affordable 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 as personal property. Whether a home is classified as real or personal property significantly affects the home's asset-building potential, mostly due to financing and tax implications. In lending as well as state and local public policy, manufactured homes are often treated as if they are cars, even though they look as good, are built as well and last as long as traditionally built homes. 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 makes manufactured homes more expensive to finance and lowers resale values, reducing homeowners' opportunities to enjoy property appreciation and build equity.

About This Legislative 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 DESIGNATION

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 and despite 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, even if they take affirmative action in an attempt to do so.

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
Increased availability of favorable financing	Possible greater tax burden
More favorable titling options	Possible loss of some consumer protections
Equitable taxation	Limitations on bankruptcy cram down
Possibility of homestead exemptions	
Better consumer protections	
Stronger protections for heirs	
More vibrant resale market	
Equitable safeguards upon default	

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

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

I. 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, and sometimes 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 severely 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.

Imprecise conversion statutes make it harder for appraisers 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.

2. 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 include shorter loan terms (typically 20 years instead of 30), higher interest rates (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 can improve financing options, but it does not automatically permit the owner or purchaser to obtain conventional financing terms. However, designation of a manufactured home as personal property is almost certain to preclude favorable, conventional financing terms.

3. 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, in states without a sales tax reduction or exemption for buyers of manufactured homes homebuyers 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 are significant revenue consequences for government entities when the classification of homes is changed; the fact that changing the classification of manufactured homes creates winners and losers in regard to tax revenue can make reform difficult.

Exempt or protected property, which may not be subject to taxation or may be unavailable to creditors seeking to enforce judgments, is also affected. A home’s classification as real or personal property may also affect the owner’s ability to claim the property as exempt. One such issue that many states have addressed is the homestead exemption. 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.

4. 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 federal Truth in Lending Act (TILA) requires certain disclosures in any consumer credit transaction. It only applies to loans over \$25,000 if the creditor takes a security interest in the borrower’s principal dwelling. This is true for both real and personal property, and it covers manufactured homes. Thus, TILA covers credit secured by a manufactured home that is the consumer’s principal dwelling regardless of whether the home is considered real or personal property.
- **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. The U.S. Department of Housing and Urban Development (HUD) regulations interpreting RESPA limit the Act's coverage to certain mortgage loans and to real property.

The regulations do provide RESPA protection to certain owners of manufactured homes, as they include coverage for 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. Loans on homes classified as personal property on leased land are clearly not covered by RESPA.

- **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, and its guidelines defer how the dwelling is treated to state law, but if it is considered real property then the transaction would be exempt from this rule. 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.

- **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.
- **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.
- **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." Although Article 9 of the UCC makes more specific reference to the definition of goods to be inclusive of manufactured homes, the Article 2 definition appears to be 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.** All 50 states have at least one enacted statute applicable to most consumer transactions designed to prevent deception and abuse, though not all apply 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. In other states, however, such language includes real property. Some statutes explicitly cover real property or all property. In other states, courts have found legislative intent to cover real property where the statute is silent about coverage of real estate. 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.

5. 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 still have protections for real property not available for 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.

Furthermore, there are different ways by which two or more people can jointly hold title to property. The co-owners may have an undivided interest in the property that each owner may transfer or bequeath, or the ownership may include a right of survivorship, which provides that upon the death of one owner, the other takes full title to the property, subject to the liabilities of the decedent. At common law, married couples may hold real property as “tenants by the entirety.” 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 to manufactured homes. 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. This is a significant disadvantage for owners of manufactured homes classified as personal property and not allowed to be held by the entirety.

6. Rights 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. Several 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.

7. Bankruptcy

Bankruptcy Code Section 1322 enables bankruptcy courts to modify the rights of holders of most secured claims and may modify the payment amount, defer payments, or eliminate a creditor’s lien. The modification may allow a consumer filing bankruptcy to keep a possession that secures a loan while reducing the monthly payment. This right to modify has limitations, including the limitation that applies to debts secured by real property that is the debtor’s principal residence. This limitation means that owners of manufactured homes classified as real property will generally not be allowed to modify a first mortgage on their home. Although a homeowner whose home is not real property was previously eligible for such a modification, recent changes to bankruptcy law make it unclear whether the homeowner can modify a personal property loan on their primary residence.

For now, real property designation may be a disadvantage to some homeowners if courts continue to use the distinction between real and personal property to determine whether a loan is eligible for modification. Homeowners whose manufactured homes are classified as real property may not be able to modify debts secured by the home, whereas they would be eligible for a cram down if the home were personal property. However, several recently introduced bills propose permitting bankruptcy courts to modify the terms of real property loans on a borrower's principal residence, which would make the home's classification less important.

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 key, 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 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.

A Special Note on State Automatic Conversion Laws

Many issues must be considered before creating a new conversion statute or modernizing existing statutes. A list of recommendations is available at the end of this legislative guide. However, 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.

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 conversions 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 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 straight-forward 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.
- Automatic treatment of homes as real property should be considered in states where manufactured and site-built homes are taxed at substantially the same rate.

ABOUT I'M HOME

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

ABOUT THE NATIONAL CONSUMER LAW CENTER

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

Appendix A

EXISTING STATE CONVERSION STATUTES

In the following summaries of state statutes that specify a procedure for the conversion of a manufactured home to real property, the terminology of the statutes as to manufactured or mobile homes is retained.

Alabama

A mobile home title may be cancelled if the home is affixed to real property owned by the homeowner — ownership of both the home and the land must be identical. The owner must submit an application to the state department of revenue, including a release of any liens noted on the title. If the mobile home is later detached from the land, the owner must reapply for a new certificate of title.¹ This statute is part of the state title law and does not state whether the home is treated as real property for foreclosure or other purposes after the title is cancelled.

Arizona

A mobile home permanently affixed, i.e., installed on real property owned by the homeowner,² and for which an affidavit of affixture is recorded, shall be assessed as real property for tax purposes.³ A mobile located in a mobile home park will, along with the leasehold interest, be treated as real property if the homeowner files an affidavit of affixture with the county recorder and: (1) the home was 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 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.⁴ 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.⁵ When an affidavit of affixture is recorded, the owner must surrender the certificate of title.⁶ A lien on a mobile home for which an affidavit of affixture is recorded may be perfected either in the manner provided by law for real property or in the manner provided for fixtures.⁷

Arkansas

If a mobile or manufactured home is 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.⁸

California

If a manufactured or mobile home is affixed to a permanent foundation in compliance with state standards,⁹ default and sale are governed by California's mortgage foreclosure laws.¹⁰ The homeowner must own the land or have a minimum 35-year lease.¹¹ Any lienholders must consent to the attachment of the home to the land.¹² The owner must surrender the certificate of title, and a statement that the home was affixed to real property is to be recorded in the county land records.¹³ Once these procedures are completed, the home is deemed a fixture and an improvement to the real property.¹⁴ Default and sale are also governed by the state mortgage foreclosure laws if the creditor has a security interest in the land in addition to the home.¹⁵

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, may surrender the certificate of title and apply for purging of the title. The owner must also obtain the consent of the holders of any unreleased security interests in the home. The home then becomes real property, and subject to all laws that would apply to real estate.¹⁶ Although the statute does not

explicitly state that the homeowner must also own the land upon which the home is placed, it appears that after conversion the home is taxed as part of the land upon which it sits, and so conversion would only be practical when the homeowner also owns the land. Although the statute does not address retitling, the Colorado Division of Motor Vehicles, Department of Revenue, currently permits a bonding procedure to allow homeowners to reestablish title.¹⁷

Connecticut

Title conveyances to manufactured homes are recorded on the land records with the town clerk's office of municipality.¹⁸ While the document conveying title to homes on leased land must recite information about the land or park where the home is located,¹⁹ 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.²⁰

Florida

The owner of a mobile home permanently affixed to land also owned by the homeowner, or in which the homeowner has a recorded leasehold interest of at least 30 years, may retire title to the home.²¹ 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.²² A new title may be obtained if the home is to be removed from the land.²³

Another Florida statute provides that if the mobile home is 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.²⁴

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 is properly filed, the home is a part of the real property for all legal purposes, including foreclosure.²⁵

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 owned (or being purchased) by the homeowner or, if the home is being financed in accordance with a federal housing agency's guidelines, is leased by the homeowner. 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.²⁶ Physical removal of the home from the land is then prohibited unless the owner applies to have a new certificate of title issued.²⁷

Indiana

If a manufactured home is 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.²⁸ The county recorder is then to record the affidavit in the county real estate records,²⁹ and the home is thereafter deemed to be an improvement to the real estate.³⁰

Iowa

Iowa has separate provisions depending on whether or not the home is in a manufactured home community. 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.³¹ If the home is not in a manufactured home community, it must be placed on a permanent foundation. 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.³²

Kansas

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.³³

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 is then to record the affidavit. The home is then deemed an improvement of the real estate.³⁴

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.³⁵ 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.³⁶ 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.³⁷

Michigan

The owner of a mobile home affixed to real property in which the owner also 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 mobile home is considered part of the realty and a lienholder may perfect a new security interest or lien on the mobile home only in the manner prescribed by the real estate laws.³⁸ The owner may reapply for a certificate of title at a later date.³⁹

In 2003, the Sixth Circuit had 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.⁴⁰ The legislature responded by amending its titling laws to recognize both methods.⁴¹ It amended the statute again two years later to make this rule retroactive.⁴²

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 is then 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.⁴³

Mississippi

An owner of a manufactured or mobile home, 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.⁴⁴ A certificate that the home has been classified as real property is then recorded in the county land records,⁴⁵ and the home's certificate of title may be sent to the state tax commission for cancellation.⁴⁶ 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.⁴⁷

Missouri

The owner of a manufactured home may convert it to real property by attaching it to a permanent foundation on real property that the owner of the home also owns, and removing or modifying the transportation apparatus so that it is impractical to reconvert it to be readily movable.⁴⁸ Unlike the other statutes summarized in this subsection, this statute does not provide for surrender of the title or recordation of a document in the county land records.

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.⁴⁹

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 where the title is issued or to the Department of Motor Vehicles if title is issued by the department. 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.⁵⁰ The statute also provides a method for returning the home to the status of personal property.⁵¹

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.⁵² (But homes that are sited on lots outside mobile home parks in accordance with local zoning laws are automatically recorded as real property without the need for an affidavit.⁵³) Once the home is converted to real property, it is deemed to be a fixture and an improvement to the real property.⁵⁴

New Hampshire

A manufactured home placed on a site not owned by the homeowner but 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.⁵⁵ However, security interests in manufactured housing may also be created and perfected under the U.C.C. as adopted by New Hampshire.⁵⁶ 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.⁵⁷

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.⁵⁸ A manufactured home is taxed as real property when it is affixed to the land by a permanent foundation, or if by a nonpermanent foundation but connected to utility systems so as to render it habitable on a permanent basis.⁵⁹ However, a manufactured home installed in a park is not taxed as real property.⁶⁰ When a mobile or manufactured home is relocated from a park to land which the owner of the home also has an interest in or title to, the owner must file a notice with the Director of the Division of Motor Vehicles at least 10 days before the move. If the director accepts the notice as complete, the certificate of ownership is canceled on the date of relocation.⁶¹

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 mobile home upon termination of the lease.⁶² 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.⁶³ 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. 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. 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.⁶⁴

Ohio

To be taxed as real property, a manufactured or mobile home must be affixed to a permanent foundation and be located on land that the owner of the home also owns.⁶⁵ The owner of a home, which will be taxed as real property, must surrender the certificate of title to the county auditor.⁶⁶ 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 homeowner. 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.⁶⁷

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.⁶⁸

Pennsylvania

Upon application, the department of transportation may cancel a certificate of title for a mobile home that is affixed to real property.⁶⁹ The home must be permanently mounted on a foundation.⁷⁰ The owner must complete a form and return it, along with the title, to the department of transportation.⁷¹ If a lien appears on the certificate of title, the title will not be cancelled until the home owner submits satisfactory evidence that the lien has been recorded against the land.⁷² After cancellation, the ownership interest in the mobile home, together with all liens and encumbrances on it, is transferred to and encumbers the real property.⁷³

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.⁷⁴ The homeowner 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.⁷⁵ The title certificate may be cancelled by presenting it to the division, along with a clocked and stamped copy of the affidavit.⁷⁶ 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.⁷⁷ 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.⁷⁸ 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.⁷⁹ 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.⁸⁰

Texas

A manufactured home can be treated as real property, if it is attached to land that the homeowner also owns, or which the homeowner is leasing under a long-term lease as defined by the state department of housing and community affairs.⁸¹ To be attached to land it must be installed in compliance with state rules and connected to

a utility.⁸² 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.⁸³ 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.⁸⁴ The home is then considered real property for all purposes.⁸⁵

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.⁸⁶ 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.⁸⁷

Utah

A manufactured or mobile home is considered an improvement to real property if the homeowner 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 homeowner may acquire a new title upon removing the mobile 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.⁸⁸

Vermont

If a mobile home is financed while the home is permanently sited in a manner intended for continuous residential occupancy by the homeowner on land also owned by the homeowner, it shall be financed as a residence.⁸⁹ Otherwise a mobile home may be financed under 9 V.S.A. § 41a(b)(4) or 9 V.S.A. 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 may then be transferred only as real estate. Any security interest perfected on the title continues despite the cancellation of the title.⁹⁰ A bankruptcy court has held that the determination of whether a mobile 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.⁹¹

Washington

The owner of a manufactured home that is affixed to land (i.e., installed in accordance with state installation standards⁹²) 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.⁹³ The owner must submit the title and an application, which must identify any security interests, to the department of licensing for approval.⁹⁴ After approval, the title is to be cancelled and the approved application is to be recorded in the county real property records.⁹⁵ The statute provides that the manufactured home is then to be treated as real property as if it were a site-built structure,⁹⁶ except for purposes of taxation.⁹⁷ If the title has not been eliminated, the home is not real property.⁹⁸ The statute provides a procedure to obtain a new title if the home is to be removed from the land.⁹⁹

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 owned by the homeowner.¹⁰⁰ The homeowner 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.¹⁰¹

Wisconsin

The owner of a manufactured home must obtain a certificate of title,¹⁰² unless the homeowner is not a resident of Wisconsin¹⁰³ or the homeowner intends to make the home a fixture to land in which the homeowner has an ownership or leasehold interest.¹⁰⁴ The leasehold interest must be subject to Wisconsin's real property statutes which exclude leases for a term limited to one year or less.¹⁰⁵

Wyoming

If a mobile home is installed on a permanent foundation and is taxable as real property,¹⁰⁶ and all liens have been paid, the certificate of title is to be surrendered to and cancelled by the county clerk.¹⁰⁷

ENDNOTES

¹ Ala. Code § 32-8-30.

² Ariz. Rev. Stat. Ann. § 42-15201(2).

³ Ariz. Rev. Stat. Ann. § 42-15202.

⁴ 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).

⁵ Ariz. Rev. Stat. Ann. §§ 33-1501, 42-15203.

⁶ Ariz. Rev. Stat. Ann. § 28-2063.

⁷ Ariz. Rev. Stat. Ann. § 42-15205.

⁸ Ark. Code Ann. §§ 27-14-807, 27-14-1603.

⁹ Cal. Health & Safety Code § 18551 (West) (includes construction standards, plan approval, etc.).

¹⁰ Cal. Health & Safety Code § 18039.1 (West).

¹¹ Cal. Health & Safety Code § 18551(a)(1)(A) (West).

¹² Cal. Health & Safety Code § 18551(a)(1)(B) (West).

¹³ Cal. Health & Safety Code § 18551(a)(2), (3) (West).

¹⁴ Cal. Health & Safety Code § 18551(a)(4) (West).

¹⁵ Cal. Health & Safety Code § 18039.1 (West).

¹⁶ Colo. Rev. Stat. Ann. § 38-29-118.

¹⁷ http://www.dola.state.co.us/dpt/dpt_news/docs/Bulletins/2007%20bulletins/BULLEINNO04-07.pdf

¹⁸ Conn. Gen. Stat. Section 21-67a

¹⁹ Conn. Gen. Stat. Section 21-67a(c)

²⁰ Connecticut information at www.efanniema.com/sf/guides/ssg/relatedsellinginfo/manufachousing/.

²¹ Fla. Stat. § 319.261

²² Fla. Stat. § 319.261(5)

²³ Fla. Stat. § 319.261(6)

²⁴ Fla. Stat. § 320.015.

²⁵ Ga. Code Ann. §§ 8-2-180 to 8-2-183.

²⁶ Idaho Code Ann. §§ 63-304(2), 63-305(1). Cf. *In re Sasinouski*, 52 B.R. 67 (Bankr. Idaho 1985) (even though home owner did not comply with Idaho title purging statute, land and mobile home were both encumbered by the deed of trust on land, where deed of trust did not explicitly exclude mobile home and lender relied upon appraisal that included both the home and land when making the loan).

- 27 Idaho Code Ann. § 63-305.
- 28 Ind. Code § 9-17-6-15.1.
- 29 Ind. Code § 9-17-6-15.3.
- 30 Ind. Code § 9-17-6-15.5.
- 31 Iowa Code § 435.26A.
- 32 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 mobile home to real property and that common-law methods of converting personal to real property remained).
- 33 Kan. Stat. Ann. § 58-4214.
- 34 Ky. Rev. Stat. Ann. § 186A.297 (West).
- 35 La. Rev. Stat. Ann. § 9:1149.4. See also La. Rev. Stat. Ann. § 9:1146.3.
- 36 La. Rev. Stat. Ann. § 9:1149.4.
- 37 La. Rev. Stat. Ann. § 9:1149.6.
- 38 Mich. Comp. Laws Ann. § 125.2330i(5).
- 39 Mich. Comp. Laws Ann. § 125.2330i.
- 40 *Boyd v. Chase Manhattan Mortg. Corp.* (In re Kroskie), 315 F.3d 644 (6th Cir. 2003).
- 41 Mich. Pub. Act No. 44, S.B. 425 (2003), enacting Mich. Comp. Laws Ann. § 125.2330i.
- 42 Mich. Comp. Laws Ann. § 125.2330i, 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 mobile home to be perfected by filing of mortgage with county registry, without notation on title, even when transaction occurred before statutory amendments); *MERS 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 mobile home either under the Act or under real estate law, even for home that was affixed to real estate before earlier amendments in 2003); 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). 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).
- 43 Minn. Stat. § 168A.141. See also Minn. Stat. § 273.125 (standards for taxing mobile homes as real property).
- 44 Miss. Code Ann. § 27-53-15.
- 45 Id. See also Opinion Miss. Att'y Gen., Miller, No. 2005-0131, 2005 WL 1220419 (Miss. Att'y Gen. Apr. 8, 2005).
- 46 Miss. Code Ann. § 63-21-30.
- 47 Miss. Code Ann. § 27-53-15.
- 48 Mo. Rev. Stat. §§ 700.111, 700.010(5) (definition of "manufactured home" as one that is, inter alia, readily movable). See In re Estate of Parker, 25 S.W.3d 611 (Mo. Ct. App. 2000) (mobile 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).
- 49 Mont. Code Ann. § 15-1-116.
- 50 Neb. Rev. Stat. § 60-169.
- 51 Neb. Rev. Stat. § 60-169.
- 52 Nev. Rev. Stat. § 361.244. See In re Colver, 13 B.R. 521 (Bankr. D. Nev. 1981) (mobile 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).
- 53 Nev. Rev. Stat. §§ 278.02095, 361.244(5).
- 54 Nev. Rev. Stat. § 361.244(3).
- 55 N.H. Rev. Stat. § 477:44; see also N.H. Rev. Stat. § 80:18-a (defining "mortgage" for tax collection purposes to include security interests in manufactured housing created and perfected under N.H. Rev. Stat. § 477:44).
- 56 N.H. Rev. Stat. § 477:44 IV.
- 57 N.H. Rev. Stat. Ann. § 384:16-d.
- 58 N.J. Stat. Ann. § 39:10-2, § 39:10-6.
- 59 N.J. Stat. Ann. § 39:10-2, § 54:4-1.5-a.
- 60 N.J. Stat. Ann. § 39:10-2, § 54:4-1.5-b.
- 61 N.J. Stat. Ann. § 39:10-2, § 39:10-11.1.
- 62 N.C. Gen. Stat. § 105-273(13).
- 63 N.C. Gen. Stat. § 20-109.2.
- 64 N.C. Gen. Stat. §§ 47-20.6, 47-20.7.

- ⁶⁵ Ohio Rev. Code Ann. § 4503.06(B)(1), (2) (West).
- ⁶⁶ Ohio Rev. Code Ann. § 4505.11 (West).
- ⁶⁷ *In re Cluxton*, 327 B.R. 612 (B.A.P. 6th Cir. 2005). See also *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).
- ⁶⁸ Or. Rev. Stat. § 446.626. See also Or. Rev. Stat. § 446.611 (means of perfecting security interest in mobile home that still has an ownership document).
- ⁶⁹ 75 Pa. Cons. Stat. § 1140.
- ⁷⁰ Pa. Code tit. 67, § 401.5(a).
- ⁷¹ *Id.*
- ⁷² Pa. Code tit. 67, § 401.5(b).
- ⁷³ 75 Pa. Cons. Stat. § 1140.
- ⁷⁴ S.C. Code § 56-19-510. See also S.C. Code § 56-19-500(1).
- ⁷⁵ S.C. Code § 56-19-510.
- ⁷⁶ S.C. Code § 56-19-520.
- ⁷⁷ *Id.*
- ⁷⁸ S.D. Codified Laws § 32-3-3.2.
- ⁷⁹ S.D. Codified Laws § 32-3-3.3.
- ⁸⁰ Tenn. Code Ann. § 55-3-138. See also Tenn. Code Ann. § 55-3-138 (procedure for reapplying for new certificate).
- ⁸¹ Tex. Occ. Code Ann. § 1201.2055 (Vernon).
- ⁸² Tex. Occ. Code Ann. § 1201.003(2-a) (Vernon).
- ⁸³ Tex. Occ. Code Ann. § 1201.2075 (Vernon).
- ⁸⁴ Tex. Occ. Code Ann. § 1201.2055 (Vernon).
- ⁸⁵ *Id.* See also Tex. Prop. Code Ann. § 2.001 (Vernon).
- ⁸⁶ Tex. Fin. Code Ann. § 347.455 (Vernon).
- ⁸⁷ *Id.*
- ⁸⁸ Utah Code Ann. § 70D-1-20. See also Utah Code Ann. § 41-1a-503.
- ⁸⁹ Vt. Stat. Ann. tit. 9, § 2603 (b).
- ⁹⁰ Va. Code Ann. § 46.2-653.
- ⁹¹ *In re Banks*, 259 B.R. 848 (Bankr. E.D. Va. 2001).
- ⁹² Wash. Rev. Code § 65.20.020.
- ⁹³ Wash. Rev. Code §§ 65.20.020, 65.20.040.
- ⁹⁴ Wash. Rev. Code § 65.20.040.
- ⁹⁵ Wash. Rev. Code § 65.20.050.
- ⁹⁶ *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).
- ⁹⁷ Wash. Rev. Code § 65.20.910.
- ⁹⁸ Wash. Rev. Code § 65.20.030.
- ⁹⁹ Wash. Rev. Code § 65.20.070.
- ¹⁰⁰ W. Va. Code § 17A-3-12b.
- ¹⁰¹ *Id.* See also W. Va. Code § 15-5-12 (tax statute providing that a mobile home sited on land owned by someone other than the home owner is classified as personal property whether or not it is permanently affixed to the land, unless the certificate of title has been cancelled).
- ¹⁰² Wis. Stat. § 101.9203 (1)
- ¹⁰³ Wis. Stat. § 101.9203 (3)
- ¹⁰⁴ Wis. Stat. § 101.9203 (4)
- ¹⁰⁵ Wis. Stat. § 706.001
- ¹⁰⁶ 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).
- ¹⁰⁷ Wyo. Stat. Ann. § 31-2-502.