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Are mobile homes personal property or real property?



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This depends on a few criteria.

1. Who owns the mobile home?
2. Who owns the land?
3. Is the mobile home included in the legal description?
4. Does the mobile home still have a Title(s)?

If the mobile home and the land which the home sits on is owned by the same entity than there is a good chance the home is considered real property. However the home and land also have to be "legally joined" via a small amount of legal paperwork, a fee, the relinquishing of the home's physical Title. This home must be secured to a permanent foundation. In many states the owners will have to hand-over the original Title(s) of the home to the state and the VINs or Serial numbers are added to the **real property's** legal description.

If the mobile home is located on rented land the home is considered "Personal property" similar to automobiles and boats.

Exception: New Hampshire considers all mobile homes "real property" and therefore no Titles are available.

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SOLD !!!! The one we had listed, the doublewide just sold today. \$25,500 cash. I like cash.... Cindy likes payments... Paid \$3600 All in about \$6900. Looking at three more... THANK YOU JOHN FEDRO !!!

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I'm working on 4 deals right now (they just keep coming!!)

– Damarice G, NV

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MANUFACTURED HOUSING POLICY BRIEF

Titling Homes as Real Property

OVERVIEW

For more than 17 million people in the US, their pathway to homeownership was through manufactured housing. Modern manufactured homes are a high-quality and affordable option, particularly for low- and moderate-income families, and provide an entryway into asset and wealth building that promotes long-term economic opportunity and financial security.

A major hurdle that prevents many owners of manufactured homes from enjoying the same benefits as owners of site-built homes is classification of the home as "chattel," the legal term for personal property, as opposed to real property, or real estate. Although some manufactured homes are designated as real property, most are still considered personal property, either because the homeowner hasn't taken an affirmative action to convert the home, or because regulations prevent the home from being classified as real estate.

The personal property designation affects potential and existing owners of manufactured homes in a number of ways. There are limited options for financing personal property, resulting in higher-interest loans, shorter loan terms and a smaller pool of lenders from which to choose. Homeowners do not enjoy the same consumer protections in the event of loan default or bankruptcy, and in some cases are prevented from working with real estate agents and appraisers due to state restrictions regarding personal property. These factors make it difficult for potential and existing homeowners to reap the maximum benefit of investing in their homes.

While more than three-quarters of states have some statutory method for converting a manufactured home from personal property to real property, these statutes are often inadequate. The remainder of this brief outlines recommendations for a strong titling policy at the state level, and what the federal government can do to supplement these efforts.

ELEMENTS OF A STRONG CONVERSION POLICY

Conversion and conversion procedures should:

- Be available regardless of who owns the land upon which the home is placed.
- Make the home real property for all purposes, such as seeking financing for the home or participating in foreclosure prevention programs.
- Protect secured parties' interest in the home.
- Not require homes on rented land to have a specific lease term.
- Not impose requirements regarding the home's foundation beyond those required to site any manufactured home.
- Not affect the landowner's interests if the home is on rented land, nor should it require the permission of the landowner.
- Create a clear chain of ownership to facilitate title searches.
- Be user-friendly and permit homeowners to convert their homes without hiring a professional for assistance.
- Provide a bright-line rule for when a home is titled as real property to ensure predictable and consistent results.
- Include the cancellation of certificates of title in order to reduce the possibility of fraud.

As an alternative to conversion, automatic titling of homes as real property has several advantages, particularly in states where manufactured homes and site-built homes are already taxed at similar rates.

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

- Protections against Unfair, Deceptive or Abusive Practices (UDAP) should apply to manufactured home sales and state homestead exemption laws should apply to manufactured homes.
- Laws governing the practices of appraisers and real estate agents should not include restrictions that impede their involvement in manufactured home sales.
- The requirements of the federal Real Estate Settlement and Procedures Act should be incorporated into state law and applied to all loan transactions secured by a manufactured home.

WHAT STATES CAN DO

States, not the federal government, determine the titling of manufactured homes and define the process by which homes may be converted from personal to real property. Currently, 40 states have statutes that set forth a procedure to convert a manufactured home from personal to real property and document that conversion. However, many of these statutes are problematic.

- Many do not permit homes on leased land to be converted. Even when such conversion is permitted, it often requires the permission of the landowner, particular types of financing and long lease terms.
- The implications of conversion can be unclear, often specifying that the home will be taxed as real property without clarifying whether the home is subject to foreclosure as real property or treated as real property for other purposes.
- Some statutes have onerous foundation requirements. In addition to cost, this policy forces homeowners on leased land to invest in a permanent foundation absent guarantees about their right to remain on the land.
- Conversion statutes can be complex, and often necessitate hiring an attorney to assist in the process.

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

Specifically, states should adopt the Uniform Manufactured Housing Act (UMHA), a model law adopted by the Uniform Law Commission in 2012. The act provides a clean, simple conversion process that can be adapted to meet state taxing priorities, as well as other issues. The act would open up the manufactured housing market to new lenders who are limited by secondary market and other investor guidelines to making only real estate loans.

WHAT THE FEDERAL GOVERNMENT CAN DO

Although the classification of manufactured homes as real or personal property is a state issue, the federal government can also encourage states to provide equal rights and protections to owners of manufactured homes. Several years ago, Freddie Mac launched a home-only lending product, which required long-term leases in communities. It encouraged states to adopt laws allowing conversion of manufactured homes to real property to enable homeowners to obtain better loans. Although many states responded with policy changes, the resulting conversion procedures were overly narrow in many cases.

In August 2015, Fannie Mae announced its HomeReady™ mortgage, a new loan product for manufactured homes titled as real property. Coupled with regulatory requirements, such as Duty to Serve, these lending efforts provide tremendous incentive for states to improve conversion policy. Modification of underwriting by the Federal Housing Administration to promote liberal conversion of homes to real property—by providing more attractive loans to homes titled as real property—would be another positive step.

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 people in the US. The I'M HOME Network includes nonprofit and for-profit, national and local partners who together work to ensure that families who purchase manufactured homes are able to build wealth through homeownership. 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.



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 Resource Guide

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

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

MANUFACTURED HOMES ARE HOMES: THE IMPORTANCE OF REAL PROPERTY DESIGNATION

Black's Law Dictionary defines real property as "[...]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 Sasinoski*, 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. Picknell*, 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.111. 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.

West's Alaska Statutes Annotated

Title 13. Decedents' Estates, Guardianships, Transfers, Trusts, and Health Care Decisions (Refs & Annos)

Chapter 48. Uniform Real Property Transfer on Death Act

AS § 13.48.110

§ 13.48.110. Liability for creditor claims and statutory allowances

Currentness

(a) To the extent the transferor's probate estate is insufficient to satisfy an allowed claim against the estate, the costs of administration of the estate, or a statutory allowance to a surviving spouse or child, the estate may enforce the liability against property transferred at the transferor's death by a transfer on death deed.

(b) If more than one property is transferred by one or more transfer on death deeds, the liability under (a) of this section is apportioned among the properties in proportion to their net values at the transferor's death.

(c) A proceeding to enforce the liability under this section must be commenced not later than 12 months after the transferor's death. A proceeding to enforce the liability under (a) of this section may not be commenced unless the personal representative of the transferor's estate has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent.

Credits

Added by SLA 2014, ch. 10, § 2, eff. July 21, 2014.

AS § 13.48.110, AK ST § 13.48.110

Current through the 2015 First Regular Session through Third Special Session of the 29th Legislature

End of Document

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Bannister
3/10/16

CS FOR HOUSE BILL NO. 273(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the transfer of the title to a vehicle, including certain manufactured**
2 **homes and trailers, on the death of the owner; allowing a person to act for the surviving**
3 **spouse of a decedent to make a demand of the personal representative of the decedent's**
4 **estate related to enforcing a liability against real property or an interest in real property**
5 **transferred at death by a transfer on death deed; and providing for an effective date."**

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

7 * **Section 1.** AS 13.33.101(a) is amended to read:

8 (a) A provision for a nonprobate transfer on death in an insurance policy,
9 contract of employment, bond, mortgage, promissory note, certificated or
10 uncertificated security, account agreement, custodial agreement, deposit agreement,
11 compensation plan, pension plan, individual retirement plan, employee benefit plan,
12 trust, conveyance, deed of gift, marital property agreement, or other written instrument
13 of a similar nature is nontestamentary. This subsection includes [A WRITTEN

1 PROVISION THAT]

2 (1) **a written provision that**

3 (A) money or other benefits due to, controlled by, or owned by
4 a decedent before death must be paid after the decedent's death to a person
5 whom the decedent designates either in the instrument or in a separate writing,
6 including a will, executed either before or at the same time as the instrument,
7 or later;

8 (B) [(2)] money due or to become due under the instrument
9 ceases to be payable in the event of death of the promisee or the promisor
10 before payment or demand; or

11 (C) [(3)] property controlled by or owned by the decedent
12 before death that is the subject of the instrument passes to a person the
13 decedent designates either in the instrument or in a separate writing, including
14 a will, executed either before or at the same time as the instrument, or later;

15 **and**

16 (2) **a transfer of a vehicle by a transfer on death title under**17 **AS 28.10.275.**

18 * **Sec. 2.** AS 13.48.110(c) is amended to read:

19 (c) A proceeding to enforce the liability under this section must be
20 commenced not later than 12 months after the transferor's death. A proceeding to
21 enforce the liability under (a) of this section may not be commenced unless the
22 personal representative of the transferor's estate has received a written demand by the
23 surviving spouse, a creditor, a child, or a person acting for a child **or the surviving**
24 **spouse** of the decedent.

25 * **Sec. 3.** AS 28.10 is amended by adding a new section to read:

26 **Sec. 28.10.275. Transfer of certificate of title on death.** (a) In addition to the
27 transfer of a vehicle provided by AS 28.10.211, 28.10.271, or another statute, the
28 owner of a vehicle for which the department is required or allowed under
29 AS 28.10.201 to issue a certificate of title may obtain a transfer on death title for the
30 vehicle. A transfer on death title transfers the title to a designated beneficiary when the
31 sole owner or the last surviving joint owner dies.

1 (b) To obtain a transfer on death title for a vehicle, the owner of the vehicle
2 shall submit to the department an application on a form established by the department
3 and a fee for the transfer on death title. Each joint owner shall sign the application to
4 obtain, revoke, or change a transfer on death title.

5 (c) In addition to the requirements of AS 28.10.231 for the contents of a
6 certificate of title, a transfer on death title must contain the words "transfer on death
7 to" or the abbreviation "TOD," followed by the names of not more than two
8 designated beneficiaries.

9 (d) A transfer on death title obtained under this section is effective without

10 (1) notice to, delivery to, or acceptance by the designated beneficiary;

11 or

12 (2) consideration.

13 (e) A transfer on death title is a nontestamentary transfer on death.

14 (f) The owner may revoke a transfer on death title or change the designated
15 beneficiary on a transfer on death title at any time during the owner's life without the
16 consent of or notice to the designated beneficiary.

17 (g) To revoke or change a transfer on death title, the owner shall

18 (1) transfer the vehicle to another person and assign and deliver the
19 certificate of title for the vehicle to the other person; or

20 (2) file with the department an application on a form established by the
21 department and pay a fee to the department to reissue the certificate of title for the
22 vehicle without a designated beneficiary or with a different designated beneficiary.

23 (h) A designated beneficiary may disclaim the designated beneficiary's interest
24 in the vehicle under AS 13.70 (Uniform Disclaimer of Property Interests Act).

25 (i) Except as limited under (j) - (l) of this section, a designated beneficiary
26 takes the transfer on death title subject to the

27 (1) conveyances, encumbrances, assignments, contracts, liens, and
28 other interests to which the vehicle is subject at the owner's death; and

29 (2) claims of creditors against the owner or the owner's estate.

30 (j) To the extent the owner's probate estate is insufficient to satisfy an allowed
31 claim against the estate, the costs of administration of the estate, or a statutory

1 allowance to a surviving spouse or child, the estate may enforce the liability against a
2 vehicle transferred at the owner's death by a transfer on death title.

3 (k) If more than one vehicle is transferred by one or more transfer on death
4 titles, the liability under (j) of this section is apportioned among the vehicles in
5 proportion to the net values of the vehicles at the owner's death.

6 (l) A proceeding to enforce a liability under (j) of this section shall begin not
7 later than 12 months after the owner's death. A proceeding to enforce a liability under
8 (j) of this section may not begin unless the personal representative of the owner's
9 estate has received a written demand by the surviving spouse, a creditor, a child of the
10 decedent, or a person acting for a child or the surviving spouse of the decedent.

11 (m) During the life of the owner, a transfer on death title does not

12 (1) affect an interest or right of the sole owner or a joint owner of the
13 vehicle, including the right to transfer or encumber the vehicle;

14 (2) affect an interest or right of the designated beneficiary, even if the
15 designated beneficiary has actual or constructive notice of the transfer on death title;

16 (3) affect an interest or right of a secured or unsecured creditor or
17 future creditor of the sole owner or a joint owner, even if the creditor has actual or
18 constructive notice of the transfer on death title;

19 (4) affect the eligibility of the sole owner, a joint owner, or a
20 designated beneficiary for any form of public assistance;

21 (5) create a legal or equitable interest in favor of the designated
22 beneficiary; or

23 (6) subject the vehicle to the claims or service of process of a creditor
24 of the designated beneficiary.

25 (n) Except as otherwise provided in this section or in AS 13.12.203,
26 13.12.803, or 13.12.804, on the death of the owner, the title to the vehicle is
27 transferred to the designated beneficiary, if the designated beneficiary survives the
28 owner by 120 hours.

29 (o) The department shall issue a new certificate of title for a vehicle to the
30 designated beneficiary after the death of the owner if the designated beneficiary
31 otherwise satisfies this section and submits

1 (1) proof of the death of the owner by providing a death certificate,
2 another official record of the death, or other evidence of the death that is satisfactory
3 to the department; and

4 (2) an application on a form established by the department and pays a
5 fee to the department for the certificate of title.

6 (p) If a designated beneficiary obtains the title to a vehicle under (o) of this
7 section and if the designated beneficiary consists of more than one person, the persons
8 hold the title as joint tenants with the right of survivorship. Notwithstanding
9 AS 28.10.201(c), the department shall issue the new title in the conjunctive.

10 (q) Except as provided in this section, a transfer on death title may not be
11 changed or revoked by will or another instrument, by a change in circumstances, or in
12 any other manner.

13 (r) The department may adopt regulations under AS 44.62 (Administrative
14 Procedure Act) to implement this section, including regulations establishing the forms
15 to be used under this section and the fees to be paid.

16 (s) In this section,

17 (1) "designated beneficiary" means a person to whom a vehicle title is
18 transferred by a transfer on death title;

19 (2) "joint owner" means an individual who owns a vehicle with one or
20 more other individuals as joint tenants with a right of survivorship or as tenants by the
21 entirety;

22 (3) "owner" means

23 (A) the sole owner; or

24 (B) all joint owners;

25 (4) "person" includes a corporation, company, partnership, firm,
26 association, organization, trust, business trust, or society, as well as a natural person;

27 (5) "sole owner" means an individual who is the only person who owns
28 the vehicle;

29 (6) "transfer on death title" means a certificate of title obtained under
30 (a) of this section that transfers the title of a vehicle to a designated beneficiary when
31 the owner dies;

1 (7) "vehicle" means a vehicle for which the department is required or
2 allowed to issue a certificate of title under AS 28.10.201.

3 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 TRANSITION: REGULATIONS. The Department of Administration may adopt
6 regulations necessary to implement AS 28.10.275, enacted by sec. 3 of this Act. The
7 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
8 effective date of sec. 3 of this Act.

9 * **Sec. 5.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).

10 * **Sec. 6.** Sections 1 - 3 of this Act take effect July 1, 2017.

Representative Bob Lynn

March 10, 2016

Page 3

In (p), indicates that if the designated beneficiary who obtains the vehicle title under (o) of this section consists of more than one person, the persons take the title as joint tenants with the right of survivorship. Requires the department to issue the new title in the conjunctive.

In (q), prohibits a TOD title from being changed or revoked by will or another instrument, by a change in circumstances, or in another manner, except as provided in the new section.

In (r), authorizes the department to adopt regulations for the new section.

In (s), defines terms for the new section.

Bill Section 4. Authorizes the department to adopt regulations for the new section.

Bill Section 5. Gives bill sec. 4 an immediate effective date.

Bill Section 6. Gives bill secs. 1- 3 an effective date of July 1, 2017.

If I may be of further assistance, please advise.

TLB:lem:dla

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Library

Additional Documents *for*
HB 273

- New CS Version I
- Sectional Analysis
- Support Letter / Alaska Automobile Association

3-15-16



**Alaska Automobile
Dealers Association**

P.O. Box 201305
Anchorage, Alaska
99520-1305

January 28, 2016

The Honorable Bob Lynn
Chair
House State Affairs Committee
Alaska State Capitol
Juneau, Alaska

Re: House Bill 273

Dear Representative Lynn:

The Alaska Automobile Dealers Association wishes to respectfully inform you of our support for House Bill 273. The Alaska Automobile Dealers Association represents both new and used car dealers in Alaska.

This bill will simplify, speed up, and lower the cost of vehicle transfers on death. It will allow a vehicle owner to designate a beneficiary to take joint title to a vehicle upon their death. This designation can be changed at any time as a person's condition or intentions change. Beneficiaries can be any person, natural or artificial (e.g. corporations).

Transfer of title would be automatic upon presenting proof of death to the Alaska Division of Motor Vehicles. Vehicle liens remain protected and in force. The bill is similar to transfer on death vehicle laws in at least 15 other states.

We believe House Bill 273 will provide a benefit to Alaskans as they do estate planning and certainly for their heirs as they settle estates.

Sincerely,

Tim Toth
President

Alaska State Legislature

Representative Bob Lynn,
Chair



Representative Louise Stutes
Representative David Talerico
Representative Liz Vazquez
Representative Max Gruenberg
Representative Jonathan Kreiss-Tomkins

Representative Wes Keller
Vice-Chair

A Communication From

HOUSE STATE AFFAIRS COMMITTEE

SPONSOR STATEMENT HB 273

“An Act relating to the transfer of the title to a vehicle, including certain manufactured homes and trailers, on the death of the owner; and providing for an effective date.”

This bill will simplify, speed up, and lower the cost of vehicle transfers on death¹. It will allow a vehicle owner to designate up to two beneficiaries to take joint title to a vehicle upon his/her death. Designation is simple. The names and addresses of the designated beneficiaries are noted on the vehicle registration. This can be done or changed at any time. Transfer of title is automatic upon presenting proof of death to the Alaska Division of Motor Vehicles (DMV)². Vehicle liens remain. TODs can be revoked, superseded, or disclaimed. A small fee will be charged so the program will be self-supporting. Only owners who are natural persons can designate beneficiaries, because artificial owners (corporations, etc.) do not die. Beneficiaries can be any person, natural or artificial (e.g. corporations). The bill is similar to TOD vehicle laws in at least 15 other states. It is also similar to Alaska laws for TOD bank accounts, TOD brokerage accounts, and TOD real property deeds³.

The bill was drafted with input from the DMV, taking the best provisions from the other state laws.

We invite your comments, concerns, questions, criticisms and, of course, support! Please contact Deneen Tuck for further information at 465-4965 or deneen.tuck@akleg.gov.

¹ Although 4 states allow TODs for non-vehicles, we did not, because Alaska does not title vessels, outboard motors, aircraft or snow machines.

² See AS 13.06.035.

³ See AS 13.33.201-227; AS 13.33.301-310; AS 13.48.010-195.

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

January 27, 2016

SUBJECT: Sectional summary of HB 273 a bill relating to the transfer of the title to a vehicle on the death of the owner (HB 273; Work Order No. 29-LS0322\P)

TO: Representative Bob Lynn
Attn: Deneen Tuck

FROM: *TB*
Terry 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.

Bill Section 1. Amends AS 13.33.101(a), which describes transfers on death that are not considered testamentary. Adds a transfer on death (TOD) vehicle title from the new sec. 28.10.275.

Bill Section 2. Adds to the chapter that covers motor vehicle titles a new section that authorizes the transfer of a vehicle's certificate of title when the owner dies.

In (a), allows the owner of a vehicle to obtain a transfer on death (TOD) title for the vehicle. A TOD title transfers the vehicle's title to a designated beneficiary when the sole owner or the last surviving joint owner dies.

In (b), to obtain a TOD vehicle title, requires the owner to apply to the Department of Administration (department) on the department's form and to pay the transfer fee. Requires each joint owner to sign an application to obtain, revoke, or change a TOD title.

In (c), requires a TOD title to contain the words "transfer on death to" or "TOD," followed by the names of not more than two designated beneficiaries.

In (d), makes a TOD title effective without any notice to, delivery to, or acceptance by the designated beneficiary, and without consideration.

In (e), states that a TOD title is nontestamentary.

In (f), allows the owner to revoke a TOD title or change the designated beneficiary at any time during the owner's life without the consent of, or notice to, the designated beneficiary.

In (g), indicates how the owner can revoke or change a TOD title.

In (h), allows a designated beneficiary to disclaim the beneficiary's interest under AS 13.70 (Uniform Disclaimer of Property Interests Act).

In (i), states that the designated beneficiary takes the TOD title subject to all conveyances, liens, and other interests to which the vehicle is subject at the owner's death, and subject to claims of creditors against the owner or the owner's estate.

In (j), states that, while the owner is alive, the TOD title does not affect certain interests, rights, and other matters related to the owner, the designated beneficiary, creditors, and public assistance eligibility.

In (k), requires the beneficiary to survive the owner by 120 hours in order for the title to be transferred to the beneficiary. Makes certain exceptions related to (1) the calculation of the augmented estate of a deceased person under AS 13.12.203, (2) the effect of homicide under AS 13.12.803, and (3) the effect of divorce, annulment, and other changes of circumstances under AS 13.12.804.

In (l), sets up the criteria for when the department is required to issue a new certificate of title to the designated beneficiary after the owner's death.

In (m), indicates that if the designated beneficiary who obtains the vehicle title under (l) of this section consists of more than one person, the persons take the title as joint tenants with the right of survivorship. Requires the department to issue the new title in the conjunctive.

In (n), prohibits a TOD title from being changed or revoked by will or another instrument, by a change in circumstances, or in another manner, except as provided in the new section.

In (o), authorizes the department to adopt regulations for the new section.

In (p), defines terms for the new section.

Bill Section 3. Authorizes the department to adopt regulations for the new section.

Bill Section 4. Gives bill sec. 3 an immediate effective date.

Bill Section 5. Gives bill secs. 1 and 2 an effective date of July 1, 2017.

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If I may be of further assistance, please advise.

TLB:lem
16-046.lem

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version: HB 273
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB273-DOA-DMV-02-01-16
Title: VEHICLES: TRANSFER ON DEATH TITLE
Sponsor: STATE AFFAIRS
Requester: House State Affairs

Department: Department of Administration
Appropriation: Motor Vehicles
Allocation: Motor Vehicles
OMB Component Number: 2348

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates					
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
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 (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues

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Estimated SUPPLEMENTAL (FY2016) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 07/01/17

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Amy Erickson, Director	Phone:	(907)269-5574
Division:	Motor Vehicles	Date:	02/01/2016 08:30 AM
Approved By:	Sheldon Fisher, Commissioner	Date:	02/01/16
Agency:	Department of Administration		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2016 LEGISLATIVE SESSION

BILL NO. HB 273

Analysis

HB 273 amends Title 28 and will authorize the transfer of a certificate of vehicle title upon the death of the owner without the need for probate. The vehicle title must contain the words "transfer on death" or "TOD" and may name up to two beneficiaries. TOD titles are effective without the notification or acceptance of the beneficiary and may be revoked or changed any time during the owner's life without the consent of the beneficiary.

Associated costs to DMV: None

While no simple task to program changes to DMV's current business practices, DMV will complete programming internally and absorb the associated costs.

The bill takes effect July 1, 2017.