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## Bringing Manufactured Housing into the Real Estate Finance System

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# Bringing Manufactured Housing into the Real Estate Finance System

Ann M. Burkhart\*

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Eight percent of the United States population—more than twenty-three million people—live in manufactured homes<sup>1</sup> (also called mobile homes).<sup>2</sup> In some states, the percentage is substantially higher. For example, in

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1. Robert B. Avery, Glenn B. Canner & Robert E. Cook, *New Information Reported Under HMDA and Its Application in Fair Lending Enforcement*, 91 FED. RES. BULL. 344, 358 (2005).

2. "Manufactured homes" are homes built in a factory on or after June 15, 1976, which was the effective date of HUD's construction standards for them. JOHN RAO, ODETTE WILLIAMSON & TARA TWOMEY, *FORECLOSURES: DEFENSES, WORKOUTS, AND MORTGAGE SERVICING*, § 11.1, at 287 (2007); *Manufactured Hous. Inst., The Definition of a Manufactured Home*, [http://www.manufacturedhousing.org/lib/showtemp\\_detail.asp?id=446&cat+1](http://www.manufacturedhousing.org/lib/showtemp_detail.asp?id=446&cat+1) (last visited Nov. 7, 2009). "Mobile homes" are homes manufactured before that date. RAO, *supra*, § 11.1, at 287; *Manufactured Hous. Inst., supra*.

Alabama and in Mississippi, fifteen percent of the homes are manufactured.<sup>3</sup> In South Carolina, almost twenty percent are manufactured.<sup>4</sup> In some years, more than thirty percent of the new homes sold have been manufactured.<sup>5</sup> Moreover, manufactured housing is the most important form of unsubsidized affordable housing in this country.<sup>6</sup> Up to two-thirds of the new affordable homes built each year have been manufactured.<sup>7</sup> In recognition of its importance, the U.S. House of Representatives declared the third week of June to be Manufactured Housing Week.<sup>8</sup> However, despite its importance, the government has done relatively little to assist the manufactured housing market as it struggles to recover from a devastating meltdown while the government spends hundreds of billions of dollars to strengthen the mortgage market and to prevent home foreclosures.

The primary reason for the relative lack of aid is that the government's attention has been focused almost exclusively on mortgages, and the great majority of manufactured homes are not financed with them. Even when a manufactured home no longer constitutes inventory because it has been purchased for use as a home, state law usually classifies it as personal property. As such, the purchase is financed with a chattel loan, rather than with a mortgage loan. Chattel loans are not included in most of the recent

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3. AARP PUB. POLICY INST., MANUFACTURED HOUSING COMMUNITY TENANTS: SHIFTING THE BALANCE OF POWER 61 (2004), [http://assets.aarp.org/rgcenter/consume/d18138\\_housing.pdf](http://assets.aarp.org/rgcenter/consume/d18138_housing.pdf).

4. *Id.*

5. See *infra* chart in text accompanying notes 73–74.

6. ALLAN D. WALLIS, WHEEL ESTATE 20 (1991); Katherine MacTavish, Michelle Eley & Sonya Salamon, *Housing Vulnerability Among Rural Trailer-Park Households*, 13 GEO. J. ON POVERTY L. & POL'Y 95, 95 (2006).

7. WILLIAM APGAR, ALLEGRA CALDER, MICHAEL COLLINS & MARK DUDA, NEIGHBORHOOD REINVESTMENT CORP., AN EXAMINATION OF MANUFACTURED HOUSING AS A COMMUNITY- AND ASSET-BUILDING STRATEGY 1 (2002), available at [http://www.jchs.harvard.edu/publications/communitydevelopment/W02-11\\_apgar\\_et\\_al.pdf](http://www.jchs.harvard.edu/publications/communitydevelopment/W02-11_apgar_et_al.pdf) [hereinafter ASSET-BUILDING STRATEGY]; MILLENNIAL HOUS. COMM'N, PURSUING THE AMERICAN DREAM: HOMEOWNERSHIP AND THE ROLE OF FEDERAL HOUSING POLICY 40 (2002), available at <http://govinfo.library.unt.edu/mhc/papers/collins.pdf>.

8. 154 CONG. REC. H5160 (daily ed. June 10, 2008) (statement of Rep. Donnelly). Mr. Donnelly stated:

Whereas manufactured housing plays a vital role in meeting the housing needs of the people of the United States and is an important source of quality, affordable housing, including both homeownership and rental housing;

....

Whereas because it is an important source of affordable housing, manufactured housing is a critical part of the solution to the ongoing crisis in the housing market in this Nation;

....

Whereas the laws of the United States...encourage manufactured housing homeownership and should continue to do so in the future;

....

[T]he third week of June is recognized as Manufactured Housing Week . . . .

*Id.*

government programs to relieve the current financial crisis and to prevent a recurrence.<sup>9</sup>

For example, although the Federal Reserve has purchased over \$700 billion of mortgage backed securities to prop up the mortgage market and has said that it will purchase up to another \$550 billion of these securities, it is not investing in securities backed by manufactured home chattel loans. Similarly, to support Fannie Mae and Freddie Mac, the government-sponsored enterprises that purchase and guarantee mortgages, the Fed has purchased \$200 billion of their bonds;<sup>10</sup> Fannie Mae and Freddie Mac do not purchase chattel loans.<sup>11</sup> To encourage lenders to modify or to refinance home mortgages, rather than to foreclose, President Obama has committed \$75 billion for the Making Home Affordable Program of 2009;<sup>12</sup> this program does not include chattel loans. Congress also has provided incentives for lenders to modify or to refinance home mortgages in the HOPE for Homeowners Act<sup>13</sup> and has provided legal protection for loan

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9. In the recent spate of new legislation, Congress did attempt to assist the manufactured housing (MH) market in two ways, though the success of both is subject to question. First, to increase the amount of manufactured housing financing and secondary market purchases, Congress made FHA insurance more readily available for MH personal property ("chattel") loans. See 12 U.S.C.A. § 1703 (West Supp. 2009) (listing the purposes of FHA Manufactured Housing Loan Modernization Act of 2008). The MH industry is hopeful that the increased availability of FHA insurance will help the MH market. MANUFACTURED HOUS. INST., QUARTERLY ECONOMIC REPORT 2 (Jan. 2009). However, administrative inefficiencies and complexity have caused lenders to avoid the FHA insurance program in the past. ASSET-BUILDING STRATEGY, *supra* note 7, at 14; DIANE R. SUCHMAN, MANUFACTURED HOUSING: AN AFFORDABLE ALTERNATIVE 11-12 (1995). Second, Congress directed Fannie Mae and Freddie Mac "to provide leadership to the market in developing loan products and flexible underwriting guidelines to facilitate a secondary market for . . . manufactured housing." Duty to Serve Underserved Markets for Enterprises, 74 Fed. Reg. 38,572, 38,573 (Aug. 4, 2009) (to be codified at 12 C.F.R. pt. 1282). Fannie Mae and Freddie Mac currently buy MH loans only if the relevant state law categorizes the home as real property. Fannie Mae, Manufactured Housing Requirements, Clarifications, and New Forms, at 6 (June 15, 2007), <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2007/0706.pdf>; Freddie Mac, Manufactured Homes Underwriting Reminders, at 1 (Dec. 2008), [http://www.FreddieMac.com/learn/pdfs/uw/manuf\\_home.pdf](http://www.FreddieMac.com/learn/pdfs/uw/manuf_home.pdf). However, Fannie Mae's and Freddie Mac's regulator, the Federal Housing Finance Agency, has requested comments on whether they also should purchase MH chattel loans. 74 Fed. Reg. at 38,573.

10. Edmund L. Andrews & David E. Sanger, *U.S. Is Finding Its Role in Business Hard to Unwind*, N.Y. TIMES, Sept. 14, 2009, at A10, available at <http://www.nytimes.com/2009/09/14/business/14big.html>.

11. Fannie Mae, *supra* note 9, at 6; Freddie Mac, *supra* note 9.

12. *Obama Outlines \$275 Billion Plan to Stem Mortgage Foreclosures*, 77 U.S.L.W. 2500 (Feb. 24, 2009); Press Release, U.S. Treasury Dep't, Making Home Affordable: Summary of Guidelines (Mar. 4, 2009), [http://www.ustreas.gov/press/releases/reports/guidelines\\_summary.pdf](http://www.ustreas.gov/press/releases/reports/guidelines_summary.pdf).

13. 12 U.S.C. §§ 1715z-23 to 1715z-25 (2009).

servicers that modify home mortgages in the Helping Families Save Their Homes Act of 2009.<sup>14</sup> These programs also do not apply to chattel loans.<sup>15</sup>

The government's general failure to assist the manufactured housing market extends beyond the new programs that address the current financial crisis.<sup>16</sup> Chattel loans also are not included in new government programs designed to prevent a future crisis, such as the S.A.F.E. Mortgage Licensing Act of 2008 (Secure and Fair Enforcement of Mortgage Licensing Act of 2008),<sup>17</sup> which will reduce fraud by mortgage loan originators, and the Fraud Enforcement and Recovery Act of 2009,<sup>18</sup> which will reduce fraudulent and predatory lending practices by private mortgage companies. Similarly, Fannie Mae's and Freddie Mac's new Home Valuation Code of Conduct,<sup>19</sup> which attempts to eliminate fraudulent appraisal practices in connection with mortgage loans, does not apply to chattel loans.

Like the federal government, many state governments have enacted new programs to address the current financial crisis.<sup>20</sup> Unfortunately, also like the federal programs, the state programs largely omit aid to manufactured homes. As a result, the manufactured housing industry has continued to decline as the mortgage market has shown some hopeful signs of recovery.

The omission of manufactured housing from government relief and reform efforts is particularly inappropriate because after the home has been purchased from a dealer and sited on land, it no longer has the characteristics of personal property. Rather, it has the same characteristics as a site-built home and should have the same legal classification. The failure to classify it as real property is an anachronistic vestige of an earlier era when manufactured homes were actually mobile homes. Although manufactured homes have evolved tremendously from their origins, the law concerning them has not.

To demonstrate that manufactured homes should be classified as real property upon purchase from a dealer, this article begins by showing that

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14. Preventing Mortgage Foreclosures and Enhancing Mortgage Credit, Pub. L. No. 111-022, 123 Stat. 1632 (2009).

15. *Id.*

16. See *infra* notes 17-19 and accompanying text.

17. 12 U.S.C. §§ 5101-5116 (2008).

18. 18 U.S.C. § 27 (2009).

19. The Code became effective on May 1, 2009. Home Value Protection Program and Cooperation Agreement (Mar. 3, 2008), [http://www.fanniemae.com/media/pdf/030308\\_agreement.pdf](http://www.fanniemae.com/media/pdf/030308_agreement.pdf); Freddie Mac, Home Valuation Code of Conduct, [http://www.freddiemac.com/singlefamily/home\\_valuation.html](http://www.freddiemac.com/singlefamily/home_valuation.html) (last visited Nov. 5, 2009); *GSEs May Loosen HVCC to Allow Brokers to Contact AMCs to Request Appraisals*, INSIDE MORTGAGE FIN., Apr. 10, 2009, at 11.

20. See John L. Opar & Ryan Knutson, *State Legislative Responses to the Residential Mortgage Crisis*, REAL EST. FIN. J., Spring 2009, at 68; *States, U.S. Launch Coordinated Effort to Combat Mortgage, Foreclosure Scams*, 77 U.S.L.W. 2616 (Apr. 14, 2009).

today's manufactured home is functionally equivalent to a site-built home.<sup>21</sup> The article then describes the meltdown of the manufactured housing market and the need for increased access to credit for the market to recover.<sup>22</sup> The third section analyzes the obstacles that many states' laws create to the operation of an efficient finance market and argues that classifying all manufactured homes as real estate will increase credit availability and affordability.<sup>23</sup> The final two sections address the consequences of classifying these homes as real estate and the feasibility of doing so.<sup>24</sup>

### I. TODAY'S MANUFACTURED HOMES

The personal property classification of manufactured homes stems from their origin as travel trailers in the 1920s. The earliest travel trailer had two wheels, was hitched to the back of a car, and often was homemade.<sup>25</sup> With the widespread poverty produced by the Great Depression in the 1930s, people increasingly used travel trailers as permanent homes.<sup>26</sup> By 1937, 200,000 families lived in them.<sup>27</sup> Housing shortages during and after World War II provided the greatest impetus for travel trailers' evolution into trailer homes, because they could be produced faster and cheaper than site-built housing.<sup>28</sup> By 1950, ninety percent of all trailers were used as homes, rather than as travel vehicles.<sup>29</sup>

The increasingly common use of trailers as permanent residences increased market demand for homes with more livable space. To meet this demand, manufacturers began increasing the homes' size to make them more suitable for year-round occupancy.<sup>30</sup> As a result, though the trailers were now called "mobile homes," moving them became increasingly difficult. But they were a popular form of housing not because they actually were mobile but because they were affordable.<sup>31</sup> In 1953, the number of

21. See *infra* notes 41–70 and accompanying text.

22. See *infra* notes 71–120 and accompanying text.

23. See *infra* notes 121–61 and accompanying text.

24. See *infra* notes 162–232 and accompanying text.

25. ARTHUR D. BERNHARDT, *BUILDING TOMORROW: THE MOBILE/MANUFACTURED HOUSING INDUSTRY* 29 (1980); JOHN FRASER HART, MICHELLE J. RHODES & JOHN T. MORGAN, *THE UNKNOWN WORLD OF THE MOBILE HOME* 6 (2002).

26. BERNHARDT, *supra* note 25, at 30.

27. *Id.*

28. *Id.*; HART ET AL., *supra* note 25, at 11.

29. BERNHARDT, *supra* note 25, at 30.

30. See *ASSET-BUILDING STRATEGY*, *supra* note 7, at 2.

31. BERNHARDT *supra* note 25, at 31; HART ET AL., *supra* note 25, at 17; SUCHMAN, *supra* note

manufactured home residents who lived in their home all year had increased to almost 2,000,000, and the number of homes increased to 700,000.<sup>32</sup>

As the popularity of mobile homes continued increasing in response to affordable housing shortages, Congress responded to concerns about the homes' safety and durability by directing HUD in 1974 to establish construction and safety standards and by preempting state and local laws in the area.<sup>33</sup> Two years later, HUD promulgated the regulations.<sup>34</sup> Similar concerns about the safety of manufactured home installation methods prompted Congress to direct HUD to promulgate installation standards, which it did.<sup>35</sup>

In 1975, to reflect the fundamentally changed character of manufactured housing, the Mobile Home Manufacturers Association, the national trade association, changed its name to the Manufactured Housing Institute.<sup>36</sup> Five years later, Congress replaced the term "mobile home" in federal housing acts with the term "manufactured home."<sup>37</sup> Unfortunately, the name change and the vast improvements in manufactured housing have failed to dispel many people's negative perceptions about it.

Based on manufactured housing's earlier incarnations, many people associate it with transiency and with an attendant lack of social stability.<sup>38</sup> The perception also lingers that manufactured homes are unsafe, unsightly, and reduce neighboring property values.<sup>39</sup> Many negative reactions to manufactured homes are based on misperceptions about their residents. Images from the earliest trailer parks, with their often poor residents in crowded conditions, cause many people today to believe that manufactured home residents are undesirable as neighbors.<sup>40</sup>

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9, at 3; WALLIS, *supra* note 6, at 133; *see also* ASSET-BUILDING STRATEGY, *supra* note 7, at 9.

32. BERNHARDT, *supra* note 25, at 30.

33. National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. §§ 5401–5426 (2006).

34. Mobile Home Construction and Safety Standards, 24 C.F.R. § 280 (1976).

35. 42 U.S.C. § 5404; Model Manufactured Home Installation Standards, 24 C.F.R. § 3285 (2008).

36. Julia O. Beamish, Rosemary C. Goss, Jorge H. Atilas & Youngjoo Kim, *Not a Trailer Anymore: Perceptions of Manufactured Housing*, 12 HOUSING POL'Y DEBATE 373, 374 (2001).

37. Community and Neighborhood Development and Conservation, Pub. L. No. 96-399, § 308, 94 Stat. 1614, 1640–41 (1981).

38. U.S. DEP'T OF HOUS. & URBAN DEV., FACTORY AND SITE-BUILT HOUSING: A COMPARISON FOR THE 21ST CENTURY 117 (1998) [hereinafter FACTORY AND SITE-BUILT HOUSING]; WALLIS, *supra* note 6, at 21; James Milton Brown & Molly A. Sellman, *Manufactured Housing: The Invalidity of the "Mobility" Standard*, 19 URB. LAW. 367, 372–73 (1987).

39. FACTORY AND SITE-BUILT HOUSING, *supra* note 38, at 117; WALLIS, *supra* note 6, at 21; Beamish et al., *supra* note 36, at 378.

40. HART ET AL., *supra* note 25, at 127; Beamish et al., *supra* note 36, at 378; Brown & Sellman, *supra* note 38, at 372–73.

These perceptions do not reflect modern reality. Perhaps most importantly, manufactured homes today normally are immobile. Only one percent are moved after being sited on a lot.<sup>41</sup> Although manufactured homes are manufactured with wheels, they usually are used only to move the home to its site,<sup>42</sup> after which they are removed.<sup>43</sup> Though some manufactured homes are moved, site-built homes are sometimes moved, too. Therefore, mobility is an inadequate reason for treating these two types of homes differently.

Moreover, manufactured home residents are less transient than residents of site-built housing. Whereas the average period of ownership for a site-built home is six years,<sup>44</sup> sixty percent of manufactured home residents live in their home for more than ten years.<sup>45</sup> Furthermore, a greater percentage of manufactured housing is owner-occupied than site-built housing. While almost seventy-eight percent of manufactured homes are owner-occupied, only sixty-eight percent of site-built home owners live in the home.<sup>46</sup> Like manufactured home owners, manufactured home tenants are less transient than their site-built counterparts. The annual resident turnover in manufactured home rental communities is only five percent, compared to sixty percent for apartments.<sup>47</sup>

Concerns about manufactured housing's safety, appearance, and impact on neighboring property values are similarly misplaced. The HUD construction and installation standards have virtually eliminated the

41. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 38, at 108; Sean West, *Manufactured Housing Finance and the Secondary Market*, 2 COMMUNITY DEV. INVESTMENT REV., 35, 38 (2006); Ronald A. Wirtz, *Dealer, Heal Thyself*, FEDGAZETTE, July 2005, at 7, 7.

42. WALLIS, *supra* note 6, at 221–22; Nat'l Conference of State Legislatures, *Manufactured Housing: Not What You Think* (Apr. 2007), <http://www.ncsl.org/programs/econ/housing/manufacturedhousing.htm> (“Technically, some types of manufactured housing can be moved to different locations if the need arises, although moving is generally not recommended.”).

43. ASSET-BUILDING STRATEGY, *supra* note 7, at 5 (“Once placed, the wheels, axles and hitch are removed . . . .”); CAROLYN L. CARTER, ODETTE WILLIAMSON & JOHN RAO, REPOSSESSIONS AND FORECLOSURES § 16.12.1, at 559 (5th ed. 2002); Brown & Sellman, *supra* note 38, at 376 (“[A]ll elements of mobility—the axle, wheels and connecting ‘tongue’—are removable. While a sited manufactured home is technically capable of being moved (as is true of any single-family detached or conventional housing unit), ‘the contemporary reality is that there is only one move, from factory to site.’”) (footnote omitted).

44. Nat'l Ass'n of Realtors, *5 Facts About Today's Sellers* (Mar. 1, 2007), <http://www.realtor.org/archives/listbuzzmarch07>.

45. See Richard Genz, *Why Advocates Need to Rethink Manufactured Housing*, 12 HOUSING POL'Y DEBATE 393, 394 (2001).

46. U.S. CENSUS BUREAU, AMERICAN HOUSING SURVEY FOR THE UNITED STATES: 2007, Table 2-1, available at <http://www.census.gov/hhes/www/housing/ahs/ahs07/ahs07.html>.

47. FACTORY AND SITE-BUILT HOUSING, *supra* note 38, at 21.



difference in construction quality and safety between manufactured homes and site-built homes.<sup>48</sup> As a result, the life expectancy and deterioration rate of manufactured housing are now equivalent to those for site-built housing.<sup>49</sup> When the home owner also owns the land on which it sits, the rate of appreciation in value is the same whether the home is manufactured or site-built.<sup>50</sup> Contrary to popular belief, manufactured home communities do not affect neighboring property values.<sup>51</sup>

Although manufactured housing is only half as expensive as site-built housing,<sup>52</sup> the difference is not attributable to the relative quality of their construction. Instead, it is due to the considerable efficiencies and economies of scale attendant on building homes in a factory rather than at the home site.<sup>53</sup> Bad weather does not hamper production or damage building materials.<sup>54</sup> Materials often cost less because large quantities are shipped to a single location.<sup>55</sup> The homes are all built according to a single national HUD standard rather than to a variety of local building codes that depend on the home's location, and they are built using assembly-line techniques.<sup>56</sup>

As with construction quality, the appearance of manufactured homes can be virtually indistinguishable from site-built housing.<sup>57</sup> Today, a manufactured home can have three or more bedrooms, two stories, vaulted ceilings,<sup>58</sup> and an attached garage.<sup>59</sup> Interior amenities can include a

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48. *Id.* at 14; ASSET-BUILDING STRATEGY, *supra* note 7, at 2; SUCHMAN, *supra* note 9, at 13; WALLIS, *supra* note 6, at 21; West, *supra* note 41, at 42.

49. Thomas P. Boehm & Alan Schlottmann, *Is Manufactured Owned Housing a Good Alternative for Low-Income Households? Evidence from the American Housing Survey*, 10 CITYSCAPE: J. POL'Y DEV. & RES. 159, 163 (2008); West, *supra* note 41, at 42 (stating that manufactured housing's "quality of construction . . . has risen dramatically over the years to the point where . . . manufactured housing's life expectancy today approximates that of comparable site-built housing").

50. ASSET-BUILDING STRATEGY, *supra* note 7, at 8; CONSUMERS UNION, MANUFACTURED HOUSING APPRECIATION: STEREOTYPES AND DATA 12 (2003), available at <http://129.3.20.41/eps/urb/papers/0305/0305001.pdf>; Boehm & Schlottmann, *supra* note 49, at 164; Christopher E. Herbert & Eric S. Belsky, *The Homeownership Experience of Low-Income and Minority Households: A Review and Synthesis of the Literature*, 10 CITYSCAPE: J. POL'Y DEV. & RES. 5, 32 (2008).

51. ASSET-BUILDING STRATEGY, *supra* note 7, at 6; SUCHMAN, *supra* note 9, at 7.

52. U.S. CENSUS BUREAU, COST & SIZE COMPARISONS FOR NEW MANUFACTURED HOMES AND NEW SINGLE FAMILY SITE BUILT HOMES (1994–2008), available at <http://www.census.gov/const/mhs/sitebuiltvsmh.pdf>.

53. Nat'l Conference of State Legislatures, *supra* note 42.

54. *Id.*

55. *Id.*

56. ASSET-BUILDING STRATEGY, *supra* note 7, at 2; FACTORY AND SITE-BUILT HOUSING, *supra* note 38, at 58, 102–03.

57. U.S. DEP'T OF HOUS. & URBAN DEV., MANUFACTURED HOUSING: A HUD USER RESOURCE GUIDE 1 (1994); Beamish et al., *supra* note 36, at 386.

58. ASSET-BUILDING STRATEGY, *supra* note 7, at 7.

fireplace, sauna, whirlpool tub, and even an indoor swimming pool. The exterior may be built of stucco, wood shingles, or other high-cost materials.<sup>60</sup> In stark contrast to the crowded trailer park of decades past, modern manufactured home rental communities often include a variety of amenities, such as a pool, clubhouse, and open green spaces.<sup>61</sup>

Also unlike the original trailer parks, the lot sizes for homes sited on the owner's land often are larger for manufactured homes than for site-built homes.<sup>62</sup> The average lot size for a manufactured home on the owner's land is .88 acre; the average lot size for all detached houses is .43 acre.<sup>63</sup> Contrary to popular belief, most new manufactured homes are on the owner's land rather than on rented land. In 2008, seventy-five percent were sited on the owner's land.<sup>64</sup>

Misperceptions about manufactured homes are not limited to the homes but also exist about their residents. Probably the most common misperception is that people live in them only because they cannot afford site-built housing. The truth is that manufactured homes appeal to a wide range of income groups. In 2005, thirty-two percent of manufactured home residents had a net worth exceeding \$100,000, and four percent had a net worth exceeding \$500,000.<sup>65</sup> As of this writing, Realtor.com has listings for manufactured homes on leased land in Malibu, California, with asking prices of \$2.895 million, \$2.499 million, and \$1.795 million.<sup>66</sup>

The perception that manufactured home residents are predominantly young, noisy, and crime-prone also is false. Manufactured homes appeal to a wide range of age groups. People who are fifty years of age or older occupy almost half of all manufactured homes.<sup>67</sup> Ten percent of the homes

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59. MILLENNIAL HOUS. COMM'N, *supra* note 7, at 40.

60. Cascade Corporate Mgmt., Value for Residents, [http://cascadecorporatemanagement.com/housing\\_needs/value\\_for\\_residents/](http://cascadecorporatemanagement.com/housing_needs/value_for_residents/) (last visited Nov. 7, 2009).

61. HART ET AL., *supra* note 25, at 25; SUCHMAN, *supra* note 9, at 9.

62. *See* FACTORY AND SITE-BUILT HOUSING, *supra* note 38, at 22–23.

63. *Id.*

64. U.S. CENSUS BUREAU, COST & SIZE COMPARISONS FOR NEW MANUFACTURED HOMES AND NEW SINGLE FAMILY SITE BUILT HOMES (1994–2008), *supra* note 52. *See infra* chart in text accompanying note 140.

65. FOREMOST INS. CO., MANUFACTURED HOMES: THE MARKET FACTS 3 (2005), available at [http://cp.foremost.com/marketfacts2005/965558\\_NFO\\_Report.pdf](http://cp.foremost.com/marketfacts2005/965558_NFO_Report.pdf).

66. *See* <http://www.realtor.com> (results from search for manufactured homes in Malibu, California) (last accessed Nov. 1, 2009).

67. AMERICAN HOUSING SURVEY FOR THE UNITED STATES, *supra* note 46.

are occupied by people seventy-five years or older.<sup>68</sup> These residents clearly are not young and presumably do not fit the other stereotypes.

In sum, despite the negative misperceptions, manufactured homes are functionally equivalent to site-built homes. The building codes for both types of homes are similar, and they can look the same.<sup>69</sup> Manufactured homes are seldom moved, and manufactured home residents are less transient than their site-built home counterparts.<sup>70</sup> The primary distinction between manufactured and site-built homes is where they are built, but this difference is insufficient reason to characterize them as different forms of property. Both are real property.

## II. MANUFACTURED HOUSING FINANCE MARKET

Manufactured home chattel loans should be included in the government relief programs not only because the homes are functionally equivalent to site-built homes.<sup>71</sup> They also should be included because the manufactured home finance market and, therefore, the rest of the manufactured housing industry, has been struggling to recover from a meltdown that is virtually identical to the mortgage market meltdown.<sup>72</sup> Although the manufactured housing bubble burst several years before the mortgage market bubble, the mortgage market disastrously failed to learn from that earlier experience and repeated all the same bad practices that caused it.

As shown on the following chart, the demand for new manufactured homes more than doubled from 1991 to 1998.<sup>73</sup> Manufactured housing's market share of new single-family homes sold during those years remained consistently above twenty-five percent. Initially, the increased sales were attributable to improved product design and construction standards, the rapidly increasing cost of site-built homes, and the expanding national economy.<sup>74</sup>

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68. See FOREMOST INS. CO., *supra* note 65, at 2.

69. See *supra* notes 33, 48–51, 57–61.

70. See *supra* notes 41–47.

71. See *supra* notes 33, 48–51, 57–61.

72. See *infra* notes 75–120.

73. U.S. CENSUS BUREAU, U.S. SHIPMENTS OF NEW MANUFACTURED HOMES (2009), available at <http://www.census.gov/const/mhs/ship.html>; U.S. CENSUS BUREAU, SINGLE-FAMILY SITE-BUILT HOMES SOLD BY REGION, available at <http://www.census.gov/const/www/newressalesindex.html> (last visited Nov. 1, 2009).

74. ADAM RUST & PETER SKILLERN, NINE MYTHS OF MANUFACTURED HOUSING: WHAT 2004 HMDA DATA SAYS ABOUT A MISUNDERSTOOD SECTOR 6 (2006), available at <http://www.crannc.org/files/Download/The%20Myths%20and%20Realities%20of%20Manufactured%20Housing%20Paper.pdf>; Ronald A. Wirtz, *Home, Sweet (Manufactured?) Home*, 17 FEDGAZETTE 1, 3 (2005) [hereinafter *Home, Sweet (Manufactured?) Home*].

<b>Year</b>	<b>MH Shipments</b>	<b>Percent of All New SF Homes Sold</b>
<b>1991</b>	170,900	25.1%
<b>1992</b>	210,500	25.7%
<b>1993</b>	254,300	27.6%
<b>1994</b>	303,903	31.2%
<b>1995</b>	339,889	33.8%
<b>1996</b>	363,345	32.4%
<b>1997</b>	353,676	30.6%
<b>1998</b>	373,143	29.6%
<b>1999</b>	348,102	28.3%
<b>2000</b>	250,419	22.2%
<b>2001</b>	193,120	17.5%
<b>2002</b>	168,489	14.8%
<b>2003</b>	130,815	10.8%
<b>2004</b>	130,748	9.8%
<b>2005</b>	146,881	10.3%
<b>2006</b>	117,373	10.0%
<b>2007</b>	95,752	11.0%
<b>2008</b>	81,907	14.4%

However, the increased demand also was driven by the same bad lending practices that created the mortgage market bubble and that caused it to burst. Risky behavior by manufactured home loan brokers, lenders, borrowers, and the secondary market created the conditions for a profound market meltdown. Without the types of government assistance rendered to the mortgage market, the manufactured housing market continues to decline.

Like the mortgage market, the problems in the manufactured housing finance market began with the economic incentives for loan originators to increase both loan volume and the interest rates on loans. Manufactured housing dealers often act as loan brokers for their buyers.<sup>75</sup> To secure loans for buyers, dealers predominantly worked with national finance companies

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75. ASSET-BUILDING STRATEGY, *supra* note 7, at 4.

that specialized in manufactured home loans and that often provided the dealers' inventory financing.<sup>76</sup> These lenders paid origination fees to the dealers and often paid a premium if the dealer got the borrower to agree to an above-market rate loan.<sup>77</sup> Many borrowers were susceptible to paying an above-market rate because they did not shop for their loan.<sup>78</sup> They preferred the convenience and speed of relying on the dealer to find a loan.<sup>79</sup>

When consumer demand for manufactured homes boomed, new lenders flooded into the market.<sup>80</sup> The higher interest rates on manufactured home chattel loans than on mortgage loans were particularly attractive to them.<sup>81</sup> Often, these lenders had little or no experience with manufactured housing financing, including its unique servicing requirements.<sup>82</sup> In the resulting competition for borrowers, lenders began relaxing underwriting standards and loan terms.<sup>83</sup> Down payments decreased and the number of years over which the loan could be repaid increased.<sup>84</sup> Both changes significantly enhanced the default risk. As with the mortgage market, lenders also began financing homes for borrowers who clearly could not afford them.<sup>85</sup>

As manufactured home sales increased, the secondary market greatly increased its purchases of manufactured home loans, thereby providing much of the capital for the increased lending activity.<sup>86</sup> As a result, securitizations of manufactured home loans also greatly increased—from \$184 million in 1987<sup>87</sup> to \$15 billion in 1999.<sup>88</sup>

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76. *Id.* at 6; Steven Davidson, *Financing Manufactured Housing*, 6 AM. COMMUNITY BANKER 38 (1997); Lew Sichelman, *Manufactured Called "Opportunity,"* NAT'L MORTGAGE NEWS, Feb. 26, 2001, at 7 [hereinafter *Manufactured Called "Opportunity"*].

77. ASSET-BUILDING STRATEGY, *supra* note 7, at 4 ("Retailers serving as loan brokers may earn more on the transaction for charging borrowers higher interest rates, leading retailers to push buyers into higher-cost loans."); BERNHARDT, *supra* note 25, at 313–14; U.S. GOV'T ACCOUNTABILITY OFFICE, FEDERAL HOUSING ADMINISTRATION: AGENCY SHOULD ASSESS THE EFFECTS OF PROPOSED CHANGES TO THE MANUFACTURED HOME LOAN PROGRAM 2 (2007), available at <http://www.gao.gov/new.items/d07879.pdf>; James R. Hagerty, *Tough Hitch: Mobile-Home Industry Tries to Haul Itself out of Big Slump*, WALL ST. J., Mar. 30, 2004, at A-1.

78. U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 77, at 2.

79. ASSET-BUILDING STRATEGY, *supra* note 7, at 12; see West, *supra* note 41, at 37.

80. Martin V. Lavin, *It's the Affordability, Stupid*, MANUFACTURED HOME MERCHANDISER, Mar. 2002, at 1, 1 [hereinafter *It's the Affordability*].

81. Martin V. Lavin, *New Hope for Lending*, MANUFACTURED HOME MERCHANDISER, Feb. 2001, at 31, 31.

82. Brad Finkelstein, *Fitch: Servicing Challenges Doomed Manufactured Housing Lenders*, NAT'L MORTGAGE NEWS, May 13, 2002, at 36; *Home, Sweet (Manufactured?) Home*, *supra* note 74, at 3.

83. *Home, Sweet (Manufactured?) Home*, *supra* note 74, at 1.

84. See ASSET-BUILDING STRATEGY, *supra* note 7, at 11–13.

85. See MacTavish et al., *supra* note 6, at 99.

86. Davidson, *supra* note 76, at 39.

87. Sec. Indus. and Fin. Mkts. Ass'n, US ABS Issuance by Asset Type, <http://www.sifma.org> (follow "Research—Statistical Tables" hyperlink; then follow "Structured Finance—US ABS Issuance 1985–1995 Issuance and Outstanding" hyperlink).

As with the secondary market for mortgages, these loan securitizations had some destructive side effects. With the secondary market injecting more capital into the finance market, competition for borrowers became more heated. Lenders engaged in riskier lending practices because they no longer kept the loans they made but sold them. Additionally, the secondary market's appetite for loans caused it to focus more on the quantity than on the quality of the loans it purchased. Moreover, to increase the returns on the securities, the market wanted higher interest rate loans.<sup>89</sup>

As a result, sales and lending practices in the manufactured housing market deteriorated further in the late 1990s.<sup>90</sup> Hyper-aggressive sales<sup>91</sup> and predatory lending practices became more common.<sup>92</sup> Some dealers sold homes for as much as twice their fair market value.<sup>93</sup> Apparently unaware of or unconcerned about these inflated prices, lenders financed the sales.<sup>94</sup> Lenders increasingly made subprime loans and "high cost" loans, which often bear a higher interest rate than subprime loans.<sup>95</sup> To make these loans, underwriting standards declined even further.<sup>96</sup> And then demand for manufactured homes began to slow as decreasing interest rates on mortgage loans made site-built homes more affordable. Despite the decreased demand, manufactured home production continued to increase.<sup>97</sup>

By 1999, the factory-built housing world stood on the edge of annihilation, but in spite of repeated warnings from wise loan men, few would listen. Ego, greed and lack of knowledge drove the industry to a precipice from which few could pull back and many would perish. Even the survivors were injured, many grievously.<sup>98</sup>

88. Sec. Indus. and Fin. Mkts. Ass'n, US ABS Issuance by Asset Type, <http://www.sifma.org> (follow "Research—Statistical Tables" hyperlink; then follow "Structured Finance—US ABS Issuance" hyperlink).

89. RUST & SKILLERN, *supra* note 74, at 1–2.

90. See, e.g., *It's the Affordability*, *supra* note 80, at 1; *Home, Sweet (Manufactured?) Home*, *supra* note 74, at 1.

91. CAROLYN L. CARTER & JONATHAN SHELDON, CONSUMER WARRANTY LAW 717 (3d ed. 2006).

92. ASSET-BUILDING STRATEGY, *supra* note 7, at 4; MacTavish et al., *supra* note 6, at 98.

93. *It's the Affordability*, *supra* note 80, at 2.

94. See *Home, Sweet (Manufactured?) Home*, *supra* note 74, at 1.

95. RUST & SKILLERN, *supra* note 74, at 1–2.

96. Neil J. Morse, *Manufacturing the Dream*, MORTGAGE BANKING, Aug. 2004, at 50, 53; *Home, Sweet (Manufactured?) Home*, *supra* note 74, at 1; Hagerty, *supra* note 77, at A-1, A-12.

97. Morse, *supra* note 96, at 53.

98. *It's the Affordability*, *supra* note 80, at 1.

The extent of the market problems did not become clear immediately because lenders and others attempted to hide them. But, as with the mortgage market meltdown, the problems were too enormous to hide for long. By 2000, loan defaults and manufactured home repossessions dramatically increased.<sup>99</sup> In 2001, one-fifth of the homes that were sold were repossessed.<sup>100</sup> The inventory of repossessed homes more than quadrupled from 1999 to 2002.<sup>101</sup> Lenders were recovering only a quarter of the outstanding loan amount from the repossessed homes.<sup>102</sup> Meanwhile, the flood of repossessed homes on the market dramatically decreased the sales of new and used homes and substantially depressed their sales prices.<sup>103</sup> Many retailers went out of business.<sup>104</sup>

The large surge in defaults also caused many lenders to leave the business, to declare bankruptcy, or to shut down.<sup>105</sup> By one estimate, only one-third of the lenders remained in the manufactured housing market after the meltdown,<sup>106</sup> and many manufactured home loan brokers perished.<sup>107</sup> As a result, credit availability decreased substantially,<sup>108</sup> which further diminished manufactured home sales.<sup>109</sup>

Unsurprisingly, manufacturers were hit hard by the plummeting sales. Many went out of business, and the number of manufacturing plants has declined virtually every year since its peak in 1998.<sup>110</sup> By 2007, the number of manufacturing plants had declined by forty-one percent since the 1998 peak.<sup>111</sup>

The secondary market for manufactured home loans also has been a casualty of the meltdown for the same reason that the secondary market for

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99. See RUST & SKILLERN, *supra* note 74, at 6; Martin V. Lavin, *Chattel Lending Today: Is it Dead or Alive?*, MODERN HOMES, Nov.–Dec. 2004, at 13, 13, available at <http://www.martylavin.com/writings/Feat-Chattel%20Today.pdf> [hereinafter *Chattel Lending Today*]; Home, *Sweet (Manufactured?) Home*, *supra* note 74, at 1.

100. MacTavish et al., *supra* note 6, at 99.

101. See RUST & SKILLERN, *supra* note 74, at 6.

102. *Id.*

103. CONSUMERS UNION, MANUFACTURED HOUSING: A HOME THAT THE LAW STILL TREATS LIKE A CAR 5 (2005), <http://www.consumersunion.org/mh/docs/feb2005/mh.html> [hereinafter STILL TREATS LIKE A CAR]; RUST & SKILLERN, *supra* note 74, at 6; West, *supra* note 41, at 42.

104. Lew Sichelman, *Fannie Willing to Buy 5% Downpayment Manufactured Home Loans*, NAT'L MORTGAGE NEWS, Feb. 16, 2004, at 3.

105. Hagerty, *supra* note 77, at A-1.

106. ADAM RUST, THIS IS MY HOME: THE CHALLENGES AND OPPORTUNITIES OF MANUFACTURED HOUSING 3 (2007); *It's the Affordability*, *supra* note 80, at 1.

107. *It's the Affordability*, *supra* note 80, at 1.

108. U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 77, at 2.

109. RUST & SKILLERN, *supra* note 74, at 6.

110. See Manufactured Hous. Inst., *Manufactured Home Corporations and Plants (1990–2007)* (2008), <http://www.manufacturedhousing.org/admin/template/subbrochures/395temp.pdf>.

111. See *id.*

mortgages has suffered; both markets bought large quantities of loans that should never have been made. Fannie Mae bought approximately \$10 billion in manufactured home loan securities before the market crash. However, it stopped buying them in 2000 after experiencing massive losses.<sup>112</sup> Freddie Mac also incurred large losses, as did the other manufactured housing secondary market purchasers.<sup>113</sup> As a result, investors, including Fannie Mae and Freddie Mac, have been slow to re-enter the market, and those investors that have reentered are proceeding very cautiously.<sup>114</sup> Manufactured home loan securitizations have plunged from \$15 billion in 1999 to \$307 million in 2008. As of November 2009, no securitizations have occurred in 2009.<sup>115</sup>

The absence of an active secondary market has reduced the available credit for manufactured housing and has substantially hampered the industry's recovery.<sup>116</sup> To restore confidence in manufactured home loans, the manufactured housing industry has implemented a number of reforms to improve underwriting and servicing standards.<sup>117</sup> For example, lenders now apply more exacting standards before making a loan.<sup>118</sup> As a result, the default rate on manufactured home loans has declined.<sup>119</sup> But, despite the reforms, manufactured home lenders are still going out of business due to a lack of credit availability and the resultant lack of sales.<sup>120</sup>

### III. INCREASING CREDIT AVAILABILITY FOR MANUFACTURED HOUSING

Credit for manufactured home purchases would increase by characterizing all such homes as real property.<sup>121</sup> Prospective borrowers would have a wider choice of lenders, and credit often would be available on

112. Hagerty, *supra* note 77, at A-12; Ronald A. Wirtz, *Ginnie Mae I Buy a Manufactured Home?*, 17 FEDGAZETTE 6, 6 (2005).

113. Morse, *supra* note 96, at 50; Patrick Barta & Gregory Zuckerman, *Mobile-Home Loans Hang Over Fannie Mae*, WALL ST. J., Nov. 3, 2003, at C1; Hagerty, *supra* note 77, at A-1.

114. RUST, *supra* note 106, at 3; Morse, *supra* note 96, at 54; *see* RUST & SKILLERN, *supra* note 74, at 12; West, *supra* note 41, at 41; Erik Bergquist & Jody Shenn, *Prefab Woes*, AM. BANKER, Aug. 12, 2004, at 10.

115. Sec. Indus. and Fin. Mkts. Ass'n, *supra* note 88.

116. ASSET-BUILDING STRATEGY, *supra* note 7, at 11.

117. *Chattel Lending Today*, *supra* note 99, at 14-15; Morse, *supra* note 96, at 56.

118. RUST & SKILLERN, *supra* note 74, at 6; Avery et al., *supra* note 1, at 364 (percent of manufactured home loan applications denied compared with site-built home loan applications); Bergquist & Shenn, *supra* note 114, at 10.

119. MANUFACTURED HOUS. INST., QUARTERLY ECONOMIC REPORT 7 (Apr. 2006).

120. MANUFACTURED HOUS. INST., QUARTERLY ECONOMIC REPORT 1 (Jan. 2009).

121. *See* Genz, *supra* note 45, at 408.



more affordable terms.<sup>122</sup> Characterizing manufactured homes as real property also would provide greater access to the secondary market, thereby increasing the flow of capital to lenders and lowering lending costs.<sup>123</sup> Moreover, treating all manufactured homes as real property would eliminate the confusing amalgam of state laws that significantly impede the efficiency of the manufactured housing finance market.<sup>124</sup>

#### A. Current State Laws

State laws differ dramatically in the classification of manufactured homes. Depending on the state, manufactured homes are (1) personal property even after they are attached to the land, (2) real property for all purposes, (3) real property for some purposes and personal property for others, or (4) personal property until they become a fixture or until the completion of statutorily specified procedures for “converting” the title from personal to real.<sup>125</sup> The great variety of laws and the ambiguities in many of them hinder the manufactured housing finance market.<sup>126</sup> For example, uncertainty as to whether a particular home is real or personal property generates a significant amount of litigation and causes cautious lenders to comply with the procedures for perfecting a security interest for real and personal property,<sup>127</sup> both of which obviously increase the costs of lending.

The greatest potential for uncertainty exists in states that treat a manufactured home as personal property until it becomes a fixture or until the title has been converted to real property. Almost every state permits one or both methods of reclassification.<sup>128</sup>

The uncertainty with respect to characterization as a fixture stems from the fact-specific inquiry necessary to determine whether an item of personal property has become a fixture.<sup>129</sup> Section 9-102(a)(41) of the Uniform Commercial Code (U.C.C.) defines fixtures as “goods that have become so related to particular real property that an interest in them arises under real

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122. See ASSET-BUILDING STRATEGY, *supra* note 7, at 12.

123. See *id.* at 11.

124. See NAT’L CONSUMER LAW CTR., TITLING HOMES AS REAL PROPERTY 6 (Jan. 2009), available at [http://www.cfed.org/imageManager/\\_documents/mh\\_realproperty.pdf](http://www.cfed.org/imageManager/_documents/mh_realproperty.pdf) [hereinafter TITLING HOMES AS REAL PROPERTY].

125. RAO ET AL., *supra* note 2, § 11.2.1, at 289; Genz, *supra* note 45, at 408; see MANUFACTURED HOMES DESK GUIDE (U.S. Foreclosure Network ed. 2006).

126. RAO ET AL., *supra* note 2, § 11.2.1, at 289; James M. Milano, *An Overview and Update on Legal and Regulatory Issues in Manufactured Housing Finance*, 60 CONSUMER FIN. L.Q. REP. 379, 383 n.33 (2006).

127. RAO ET AL., *supra* note 2, § 11.2.1, at 290.

128. TITLING HOMES AS REAL PROPERTY, *supra* note 124, at 6.

129. *In re Banks*, 259 B.R. 848, 850 (Bankr. E.D. Va. 2001).

property law.”<sup>130</sup> When applying this definition to manufactured housing, courts consider a variety of facts, such as the method by which the home is annexed to the land, the home’s adaptation to its location, the parties’ intent, and the physical damage that removal would cause.<sup>131</sup> These inquiries provide little advance guidance to owners and lenders in attempting to assess whether a court will characterize the manufactured home as personal property or as a fixture.<sup>132</sup>

The title conversion laws also present difficulties.<sup>133</sup> The statutory language often is unclear or incomplete in one or more of four ways. First, most statutes do not specify the purposes for which the home is to be considered real property.<sup>134</sup> Therefore, whether the home is real property for purposes of defining a secured creditor’s rights or only for a different purpose, such as the tax or homestead laws, is uncertain.<sup>135</sup> Second, in deciding whether the statutory conversion requirements have been satisfied, courts often rely on the fixture cases, which introduces the element of uncertainty described in the preceding paragraph.<sup>136</sup> Third, title conversion does not occur until all the statutory procedures have been satisfied, which can be unclear because many statutes inadequately describe the process.<sup>137</sup> Finally, the conversion statute may not preempt the common law of fixtures or may be unclear about preemption.<sup>138</sup> Even statutes that provide for automatic conversion of a manufactured home from personal to real property may impose preconditions, such as connection to utilities, that require a physical inspection of the home.<sup>139</sup>

As shown on the following table, despite the considerable benefits that the real property classification confers, only a quarter of manufactured homes are classified as such even though the great majority are sited on the home owner’s land.<sup>140</sup> The statutory conversion process is often

130. U.C.C. § 9-102(a)(41) (2009).

131. CARTER ET AL., *supra* note 43, § 5.2.2, at 142; RAO ET AL., *supra* note 2, at 300–02.

132. R. Wilson Freyermuth, *Legal and Regulatory Issues in the Creation, Perfection, and Enforcement of Security Interests in Manufactured Homes*, in ALI-ABA COURSE OF STUDY: COMMERCIAL LENDING AND BANKING LAW 263, 274 (2009).

133. See Milano, *supra* note 126, at 383–90.

134. TITLING HOMES AS REAL PROPERTY, *supra* note 124, at 6.

135. *Id.*

136. See *supra* notes 129–32 and accompanying text.

137. See Milano, *supra* note 126, at 389–90.

138. See, e.g., Ford v. Venard, 340 N.W.2d 270, 273 (Iowa 1983); TITLING HOMES AS REAL PROPERTY, *supra* note 124, at 7.

139. TITLING HOMES AS REAL PROPERTY, *supra* note 124, at 7.

140. U.S. CENSUS BUREAU, COST & SIZE COMPARISONS FOR NEW MANUFACTURED HOMES AND

complicated, and the owner may be unwilling or unable to spend the time and money to complete this process or to obtain legal assistance. Bringing judicial action to have the home legally recognized as a fixture is even more burdensome. Moreover, home purchasers may be unaware of the classification's importance, particularly because neither manufactured home dealers nor lenders are legally obligated to explain it.<sup>141</sup>

Year	Location		Legal Characterization	
	In Rental Communities	On Private Property	Personal Property	Real Property
1994	32%	68%	89%	9%
1995	32%	68%	89%	10%
1996	32%	68%	88%	11%
1997	32%	68%	86%	13%
1998	33%	67%	85%	13%
1999	32%	68%	81%	16%
2000	31%	69%	75%	21%
2001	33%	67%	76%	21%
2002	33%	67%	70%	26%
2003	30%	70%	64%	32%
2004	31%	69%	64%	31%
2005	35%	65%	63%	29%
2006	29%	71%	64%	28%
2007	26%	74%	64%	28%
2008	25%	75%	63%	28%

Recognizing all manufactured homes as realty from the moment they are sold to a consumer would eliminate the obstacles that have prevented so many owners from obtaining the benefits of that classification. Additionally, as described in the next section, it would increase the availability and affordability of credit to purchase, remodel, or repair a

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NEW SINGLE FAMILY SITE BUILT HOMES (1994–2008), *supra* note 52. According to the Census Bureau, the numbers do not always total 100% because some jurisdictions “register” manufactured homes, rather than title them as real or as personal property. See E-mail from John J. Tremblay, Section Chief, Construction Expenditures Branch, Manufacturing and Construction Division, Bureau of the Census, to George R. Jackson, University of Minnesota Law Library (June 25, 2008) (on file with author).

141. See West, *supra* note 41, at 39.

home.<sup>142</sup> Universal treatment of manufactured housing as real property also would benefit lenders by creating national uniformity and by eliminating uncertainty.

### *B. Manufactured Home Financing*

Loans for manufactured homes that are characterized as personal property more closely resemble car loans than home mortgage loans.<sup>143</sup> Interest rates on chattel loans are significantly higher than the rates for mortgage loans, and the loan terms normally are considerably shorter.<sup>144</sup> Because the interest rate and loan term significantly impact the amount of monthly loan payments,<sup>145</sup> borrowers pay substantially more each month with a chattel loan than they would with a mortgage loan.<sup>146</sup> With a higher monthly loan payment, fewer prospective home purchasers can qualify for a loan and the risk of default increases. These effects have hampered the manufactured housing market's recovery. Nevertheless, chattel loans finance approximately eighty percent of manufactured home sales because the home is classified as personal property.<sup>147</sup>

Of course, recharacterizing manufactured homes as real property would not eliminate all the differences between loans for manufactured and site-built housing. For example, if the manufactured home is sited on leased land, the home will depreciate in value because home value appreciation normally is attributable to the land on which it sits. Therefore, in the event of a loan default, the lender is less likely to recover the full amount of its loan. Additionally, after repossessing the home, the lender will have to pay rent for the land until it can resell the home.<sup>148</sup> Furthermore, default rates for manufactured home chattel borrowers are traditionally higher than for

142. See *infra* notes 143–161 and accompanying text.

143. NAT'L CONSUMER LAW CTR., FINANCING HOMES IN COMMUNITIES 1 (2008), [http://www.cfed.org/imageManager/\\_documents/Conventional\\_Financing.pdf](http://www.cfed.org/imageManager/_documents/Conventional_Financing.pdf) [hereinafter FINANCING HOMES IN COMMUNITIES]; U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 77, at 9; Davidson, *supra* note 76, at 39.

144. FINANCING HOMES IN COMMUNITIES, *supra* note 143, at 1 (term is ten years shorter; interest rate is two to five percent higher); FACTORY AND SITE-BUILT HOUSING, *supra* note 38, at 108; *Home, Sweet (Manufactured?) Home*, *supra* note 74, at 6 (interest rates are two to five percent higher).

145. GRANT S. NELSON, DALE A. WHITMAN, ANN M. BURKHART & R. WILSON FREYERMUTH, REAL ESTATE TRANSFER, FINANCE, AND DEVELOPMENT 102 (8th ed. 2009).

146. BERNHARDT, *supra* note 25, at 309–10.

147. Daniel Walker Guido, *Manufactured Mess*, BUILDER, Oct. 2001, at 51, 52; MacTavish et al., *supra* note 6, at 98.

148. RUST, *supra* note 106, at 2.

mortgage borrowers.<sup>149</sup> However, these are only loan underwriting issues and should not affect a home's classification as real or personal property.

Moreover, the differences between manufactured home chattel loans and mortgage loans are not attributable solely to these different types of risk factors. The relative number of lenders also significantly affects loan affordability. As described earlier, far fewer lenders make manufactured home chattel loans than make mortgage loans, especially since the manufactured housing market meltdown.<sup>150</sup> Without the beneficial effects of competition, chattel loan terms are higher than they otherwise would be. Additionally, as personal property, a manufactured home does not qualify for state home mortgage programs.<sup>151</sup>

Manufactured home chattel loan terms are also less favorable because the secondary market for chattel loans is miniscule compared to the secondary market for mortgages. This difference significantly affects loan availability and affordability. By purchasing loans, the secondary market provides capital for lenders and assumes some of the loan's risks, thereby enabling lenders to offer more affordable loan terms.<sup>152</sup> Moreover, the mortgage market has benefited tremendously from the efficiencies that Fannie Mae and Freddie Mac have created, such as standardized loan documents and underwriting standards.<sup>153</sup>

In addition to making all manufactured home loans eligible for purchase by the secondary mortgage market, characterizing the homes as real property would make the loans more attractive to the secondary market for two reasons. First, if a manufactured home constitutes real property, holder in due course (HDC) status would protect manufactured home loan purchasers from most of the borrower's defenses to enforcement of the loan.<sup>154</sup> In contrast, if the manufactured home is personal property, the Federal Trade Commission Rule on the Preservation of Consumers' Claims and Defenses<sup>155</sup> would often eliminate this protection.<sup>156</sup>

Second, § 1322(b)(2) of the Bankruptcy Code permits the court to modify the terms of a loan for the borrower's benefit unless the loan is "secured only by a security interest in real property that is the debtor's

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149. Avery et al., *supra* note 1, at 358.

150. FINANCING HOMES IN COMMUNITIES, *supra* note 143; *It's the Affordability*, *supra* note 80, at 1.

151. MILLENNIAL HOUS. COMM'N, *supra* note 7, at 41; UNIV. OF MICH. MANUFACTURED HOUS. RESEARCH PROJECT REPORTS, MANUFACTURED HOUSING FINANCE (REPORT #2) 22, 25 (1993).

152. U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 77, at 6; WALLIS, *supra* note 6, at 215; West, *supra* note 41, at 46.

153. See, e.g., Milano, *supra* note 126, at 385 n.50.

154. U.C.C. § 3-305 (2009).

155. 16 C.F.R. § 433.2 (2009).

156. Freyermuth, *supra* note 132, at 289-90.

principal residence.”<sup>157</sup> Permitted modifications include extending the loan’s due date, reducing the interest rate, and changing an adjustable interest rate to a fixed interest rate.<sup>158</sup> By reclassifying manufactured homes as real property, manufactured home loans would no longer be subject to these types of modifications should the borrower go bankrupt.

Beyond making manufactured home credit more affordable and available, which would facilitate the manufactured housing industry’s recovery, bringing manufactured housing finance into the mortgage market would help prevent a recurrence of the market crash. As mortgagors, manufactured home borrowers would benefit from the protections provided by the new federal and state laws that are designed to curb fraudulent and other wrongful lending activities.<sup>159</sup> Borrowers would also benefit from the borrower protection laws that were in effect before the mortgage crisis. For example, the Real Estate Settlement Procedures Act (RESPA),<sup>160</sup> which protects borrowers from abusive lending practices, generally applies only to mortgages.<sup>161</sup>

#### IV. OTHER CONSEQUENCES OF CHARACTERIZING MANUFACTURED HOUSING AS REAL ESTATE

Classifying manufactured housing as real property has a number of consequences in addition to the type of financing that is available. As described in this section, the reclassification will significantly change the methods for creating, perfecting, and enforcing a security interest in manufactured homes and has important implications for property taxation, marital property rights, and homestead protections.<sup>162</sup> Depending on state law, treating manufactured homes as real property also may subject them for the first time to other types of creditor liens, such as judgment liens and mechanic’s liens.<sup>163</sup>

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157. 11 U.S.C. § 1322(b)(2) (2006).

158. 3 BANKRUPTCY DESK GUIDE § 29:14 (2009).

159. *See supra* text accompanying notes 17–19.

160. 12 U.S.C. §§ 2601–2617 (2006).

161. Congress recently extended RESPA’s anti-kickback provision to FHA-insured chattel loans for manufactured homes. 12 U.S.C.A. § 1706f (West 2009). However, the new law applies only to FHA-insured loans, and it did not extend RESPA’s other protections even to those loans.

162. *See infra* notes 164–213.

163. *See* POWELL ON REAL PROPERTY §§ 38.02[2], 38.10 (2009).

### A. Creating and Perfecting Security Interests

The methods for creating and perfecting security interests in a manufactured home differ depending on whether it is personal or real property. If the home is personal property, the borrower creates the interest by executing a security agreement in favor of the lender.<sup>164</sup> The method for perfecting the interest varies by state.

In forty-two states, the security interest is perfected in the same manner as it is for a car.<sup>165</sup> In these states, the home purchaser, like a car purchaser, receives a certificate of title.<sup>166</sup> To perfect its security interest, the lender must apply to the relevant state agency to have the lien noted on the certificate.<sup>167</sup> In at least two states, the lender also must file an Article 9 financing statement.<sup>168</sup> If the owner subsequently wants to convert the home from personal to real property and if the lender assents, the lender normally must return the certificate of title that it has been holding and must execute a document indicating its assent.<sup>169</sup> Because of the significant potential for error, the lender also should verify that the home owner has properly completed the conversion process.<sup>170</sup> Finally, the lender should obtain and record a mortgage on the land.

In the eight jurisdictions that do not title manufactured homes, the lender perfects its security interest by filing a financing statement in the central U.C.C. filing system.<sup>171</sup> The lender also must address the possibility that the home is or will become a fixture by recording a fixture filing in the real estate records.<sup>172</sup> If the home is located on or is going to be located on land owned by the home owner and if the lender wants a security interest in the land, it also must obtain and record a mortgage.

This process would be simpler and less expensive if the manufactured home were classified as real estate from the moment of sale, because only one document, a mortgage, would be needed throughout the life of the loan. Lenders no longer would have to file their security interest in both the real

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164. U.C.C. § 9-203(b) (2009).

165. Freyermuth, *supra* note 132, at 267.

166. Milano, *supra* note 126, at 385.

167. U.C.C. § 9-311(a)(3) (2009); CARTER ET AL., *supra* note 43, § 3.5.2, at 71; Mark R. Koontz, Note, *Manufactured Homes Under U.C.C. Revised Article 9: A New Conflict Between Certificates of Title and Financing Statements*, 80 N.C. L. REV. 1829, 1834 (2002).

168. LA. REV. STAT. ANN. § 10:9-501(a) (2008); WYO. STAT. ANN. § 31-2-801(a) (2009); Freyermuth, *supra* note 132, at 272 n.44.

169. Freyermuth, *supra* note 132, at 277–78.

170. Milano, *supra* note 126, at 383.

171. U.C.C. §§ 9-310(a), 9-501(a)(2) (2009). As noted by Professor Freyermuth, filing normally is not required to perfect a purchase-money security interest in a manufactured home but is necessary to preserve the interest against a bona fide purchaser of the home. Freyermuth, *supra* note 132, at 267–68 n.15.

172. U.C.C. §§ 9-334, 9-501(a)(1)(B) (2009).

and personal property records or go through the conversion process to recharacterize the home, including obtaining and recording a mortgage. Creating and perfecting multiple security instruments obviously increases the time and cost of lending.

Additionally, treating all homes as real estate from the time of sale would create certainty for lenders.<sup>173</sup> They would no longer have to attempt to determine whether a particular home has become a fixture or whether the owner has properly converted it to real property. An incorrect determination may cause the lender to be unsecured if, for example, it took a mortgage on a home that is still personal property. Treating all homes as real estate would eliminate this risk and also would decrease the costs of lending.

### *B. Enforcing Security Interests*

As described in the preceding section, the great majority of states treat a manufactured home like a car for purposes of perfecting a security interest.<sup>174</sup> In these states, the methods for enforcing the security interest are also often the same. Some states even permit secured lenders to use self-help repossession to recover a manufactured home when the borrower defaults,<sup>175</sup> which often results in the lender's wrongful conversion of the owner's furniture and other belongings.<sup>176</sup> Occasionally, a lender even moves the home with the owner still inside.<sup>177</sup>

Fortunately, lenders seldom use self-help, even when it does not involve physical removal of the home, in part because some states do not permit it.<sup>178</sup> Even in states that do allow self-help, a lender cannot create a "breach of the peace" when exercising it.<sup>179</sup> Courts have significantly limited the remedy's availability in those states by interpreting that term quite broadly to include actions such as changing the home's locks. However, lenders frequently use

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173. Koontz, *supra* note 167, at 1829 ("Creating and perfecting a security interest in manufactured homes has long been an uncertain process.").

174. *See supra* notes 164–73.

175. STILL TREATS LIKE A CAR, *supra* note 103, at 1.

176. *See* CARTER ET AL., *supra* note 43, § 7.1, at 195.

177. *See, e.g., In re Smith*, 296 B.R. 46 (Bankr. M.D. Ala. 2003); STILL TREATS LIKE A CAR, *supra* note 103, at 2, 3.

178. CARTER ET AL., *supra* note 43, § 1.3.11, at 8; *see also* U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 77, at 27 (explaining that it may be difficult for lenders to use self-help repossession without creating a breach of peace).

179. U.C.C. § 9-609 (2009).



this remedy when the owner has abandoned or voluntarily surrendered the home.<sup>180</sup>

If the lender does not use self-help when the borrower defaults, judicial action is necessary for repossession.<sup>181</sup> After repossessing the home, the lender can sell it in a judicial or private sale or at a public auction.<sup>182</sup> The issue of whether the home has become a fixture can complicate this process because it creates additional issues concerning the priority of competing liens and may prevent the lender from selling the home at all.<sup>183</sup>

Although Article 9 requires a lender to conduct the sale in a commercially reasonable manner,<sup>184</sup> it generally does not provide the same level of protection for landowners as mortgage law. Self-help repossession is unavailable, and states provide a variety of tools for a borrower to avoid losing the home in a mortgage foreclosure sale. Every state recognizes the equity of redemption, which enables an owner to stop the foreclosure by paying the debt in full.<sup>185</sup> Many states also statutorily permit an owner to stop the foreclosure by paying just the amount that is past due.<sup>186</sup> About half the states provide the owner a period of time after the sale to recover the property by repaying the foreclosure purchaser.<sup>187</sup> Some states extend this right to junior lienors.<sup>188</sup> Several states also limit or eliminate the foreclosing lender's right to recover a judgment against the debtor if the foreclosure sale proceeds do not pay the secured debt in full.<sup>189</sup>

In virtually every jurisdiction, a mortgage foreclosure provides the borrower with more time than repossession pursuant to Article 9. The following chart includes a representative sample of states:

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180. Freyermuth, *supra* note 132, at 281 & n.85.

181. U.C.C. § 9-601(a) (2009).

182. U.C.C. § 9-609(a) (2009).

183. Freyermuth, *supra* note 132, at 281–84.

184. U.C.C. § 9-610(b) (2009).

185. GRANT S. NELSON & DALE A. WHITMAN, *REAL ESTATE FINANCE LAW* § 7.1 (5th ed. 2007).

186. *Id.* § 7.7.

187. *Id.*

188. *Id.* § 7.1.

189. *Id.* § 8.3.

State	Foreclosure Time	Replevin Time	Self Help Time
California	Nonjudicial: 120 days <sup>190</sup>	45-60 days <sup>191</sup>	45 days; <sup>192</sup> must wait 15 days before disposing of the home and must give owner an additional 10 days to redeem if the owner requests it
Illinois	Judicial: 345 days (includes 45-day redemption period) <sup>193</sup>	45-60 days <sup>194</sup>	45 days; <sup>195</sup> must wait additional 21 days before disposing of home
Minnesota	Nonjudicial: 270-280 days (includes 180-day redemption period) <sup>196</sup>	45-60 days once replevin is commenced <sup>197</sup>	Self help repossession of manufactured homes is not allowed
Mississippi	Nonjudicial: 90 days <sup>198</sup>	60-90 days <sup>199</sup>	30-45 days <sup>200</sup>
North Carolina	Nonjudicial: 120 days <sup>201</sup>	30-60 days <sup>202</sup>	Unclear
Pennsylvania	Judicial: 230 days (includes 60-day redemption period) <sup>203</sup>	120-180 days <sup>204</sup>	Immediately if will not cause breach of peace but cannot sell for 15 days <sup>205</sup>

When a manufactured home is security for a loan, the additional protections that mortgage law provides owners are particularly important because they may be unable to afford a new home. The median monthly

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190. THE NATIONAL MORTGAGE SERVICER'S REFERENCE DIRECTORY 1-37 (U.S. Foreclosure Network ed., 24th ed. 2007) [hereinafter MORTGAGE SERVICER'S DIRECTORY].

191. MANUFACTURED HOMES DESK GUIDE, *supra* note 125, at 22.

192. *Id.*

193. MORTGAGE SERVICER'S DIRECTORY, *supra* note 190, at 1-110.

194. MANUFACTURED HOMES DESK GUIDE, *supra* note 125, at 42.

195. *Id.*

196. MORTGAGE SERVICER'S DIRECTORY, *supra* note 190, at 1-181.

197. MANUFACTURED HOMES DESK GUIDE, *supra* note 125, at 65.

198. MORTGAGE SERVICER'S DIRECTORY, *supra* note 190, at 1-189.

199. MANUFACTURED HOMES DESK GUIDE, *supra* note 125, at 67.

200. *Id.*

201. MORTGAGE SERVICER'S DIRECTORY, *supra* note 190, at 1-246.

202. MANUFACTURED HOMES DESK GUIDE, *supra* note 125, at 87.

203. MORTGAGE SERVICER'S DIRECTORY, *supra* note 190, at 1-277.

204. MANUFACTURED HOMES DESK GUIDE, *supra* note 125, at 100.

205. 69 PA. STAT. ANN. § 623 (2008) (lienor can repossess a motor vehicle if it can be done without breach of the peace; must then send a notice of repossession to owner and retain the vehicle for 15 days before selling it).

housing cost for manufactured home owners is \$407.<sup>206</sup> For tenants, it is \$755.<sup>207</sup> Therefore, when manufactured home owners lose their home, they not only lose the benefits of home ownership, but they also may be unable to rent a new place to live. In this situation, the legal protections afforded owners of manufactured homes should equal those afforded owners of site-built homes.

Although the mortgage laws may impose a greater burden on lenders, they also can benefit from the home's characterization as real estate. For example, when the home and land are owned by the same person, the lender will have to bring two actions to enforce its security interests if the home is personal property—repossession pursuant to Article 9 for the home and foreclosure for the land. By treating the home as real property, only foreclosure is necessary.

### C. Taxation

The relative advantage of taxing manufactured homes as real or personal property varies from state to state. Manufactured home owners in some states will pay lower taxes if their home is real estate, but owners in other states will pay more. Reclassifying manufactured homes as real estate also may affect which government entity receives the taxes. Real property taxes often are paid to a local government entity, whereas personal property taxes often are paid to the state. A state legislature that enacts legislation to classify manufactured housing as real property obviously must address the issue.<sup>208</sup>

However, in many states, classifying manufactured homes as real estate as of the purchase date will provide one clear tax benefit. In states where a manufactured home can be converted from personal to real property, the home purchaser has to pay sales tax when purchasing the home and then real estate taxes when the home is reclassified. The sales tax rate usually substantially exceeds the tax rate for real estate transfers, and the annual property tax rate for real estate is substantially higher than for personal property.<sup>209</sup> Therefore, by treating a manufactured home as personal property when it is purchased and then recharacterizing it as real estate, the owner pays the higher tax rate for both types of property.<sup>210</sup> Treating manufactured homes as real estate when they are purchased will eliminate this disparity.

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206. U.S. CENSUS BUREAU, AMERICAN HOUSING SURVEY FOR THE UNITED STATES: 2007, Selected Housing Costs—Occupied Units, Table 2-13, *supra* note 46.

207. *Id.*

208. TITLING HOMES AS REAL PROPERTY, *supra* note 124, at 3.

209. *Id.*

210. *Id.*

*D. Marital Property Rights*

To protect families upon a husband's or wife's death, desertion, or destitution, every state provides one or more forms of protection for the family's assets. However, in some states, these protections extend only to real property. For example, every state gives a surviving spouse a share of the decedent's estate as a matter of law. However, the survivor's rights may be limited to the decedent's real property.<sup>211</sup> Similarly, some states permit spouses to own property as tenants by the entirety, which generally prevents one spouse from transferring or encumbering the property without the other's consent. In some of these states, tenancy by the entirety cannot be used for personal property.<sup>212</sup> To protect the family home, some states prevent it from being transferred without both spouses' signatures even if title is in the name of only one. States often also protect the home from being sold to satisfy certain types of creditors' claims. Both types of homestead protection may be limited to real estate or to manufactured homes located on the home owner's land.<sup>213</sup> Therefore, treating manufactured homes as personal property can deny these protections for manufactured home owners though their income level may create the greatest need for them.

#### V. IS IT FEASIBLE TO CLASSIFY ALL MANUFACTURED HOMES AS REAL ESTATE?

The answer unequivocally is "yes." Not only is it feasible, it is desirable. By classifying all manufactured homes as real estate from the moment of purchase from a dealer, the uncertainties and costs of the current system will be substantially eliminated. Additionally, there is the not inconsiderable issue of according manufactured home owners the same legal rights and status as other homeowners.

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211. See, e.g., N.C. GEN. STAT. § 29-30 (2007); R.I. GEN. LAWS § 33-25-2 (2008); VT. STAT. ANN. tit. 14, §§ 461, 474 (2007).

212. See, e.g., FLA. STAT. § 689.11 (2008); 765 ILL. COMP. STAT. ANN. 1005/1c (2008); IND. CODE ANN. § 32-17-3-1 (2008); KY. REV. STAT. ANN. § 381.050 (2008); MASS. ANN. LAWS Ch. 184, § 7 (2008); MISS. CODE ANN. § 89-1-7 (2008); N.Y. EST. POWERS & TRUSTS LAW § 6-2.1 (2008); N.C. GEN. STAT. § 39-13.6 (2007); OR. REV. STAT. § 93.180 (2007); *Whitlock v. Pub. Servs. Co. of Ind.*, 159 N.E.2d 280, 284 (1959).

213. ARK. CODE ANN. § 16-66-210 (2008); HAW. REV. STAT. ANN. §§ 651-91 to -92 (2009); IOWA CODE § 561.1 (2008); LA. REV. STAT. § 20:1 (2008); MINN. STAT. § 510.01 (2007); R.I. GEN. LAWS § 9-26-4.1 (2008); TENN. CODE ANN. § 26-2-301 (2008); TEX. PROP. CODE ANN. § 41.002 (2007); VT. STAT. ANN. tit. 27, § 101 (2007).

The feasibility of treating manufactured homes as real property is clearly demonstrated by the fact that the great majority of states already permit it. Of the states that title manufactured homes like cars, thirty-eight permit the home to be converted to real property.<sup>214</sup> In other states, a manufactured home can become real estate by virtue of becoming a fixture.<sup>215</sup> As a result, more than a quarter of manufactured homes have been classified as real estate in the past several years.<sup>216</sup>

However, three-quarters remain personal property in large part because these methods of reclassification are burdensome. For example, to convert a manufactured home from personal to real property in Georgia: (1) the owner and all security interest holders must file a Certificate of Permanent Location with the clerk of the superior court and must record it in the real property records; (2) the Certificate of Permanent Location and the certificate of title for the home must be filed with the county tax commissioner; (3) the county tax commissioner must forward the documents to the Department of Motor Vehicle Safety; (4) the Department of Motor Vehicle Safety must file the Certificate of Permanent Location and issue a confirmation to the clerk of superior court that the Certificate of Permanent Location has been filed and that the certificate of title has been surrendered; and (5) the clerk of court must give a copy of the Certificate of Permanent Location to the county tax assessor.<sup>217</sup> If a statutory title conversion process is unavailable, the owner would have to go to the greater trouble and expense of bringing judicial action to establish that the home has become a fixture.

In addition to being burdensome, most conversion statutes are unnecessarily restrictive. For example, many conversion statutes are limited to homes that are placed on a permanent foundation or that are permanently affixed to the ground.<sup>218</sup> This limitation is designed to ensure that the home is no longer mobile.<sup>219</sup> However, because such a small number of homes are moved, this requirement unnecessarily restricts the ability to convert a home to real property. The statutorily required methods can be costly, and the home owner's land lease may prohibit them.<sup>220</sup>

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214. TITLING HOMES AS REAL PROPERTY, *supra* note 124, at 6; Milano, *supra* note 126, at 385.

215. RAO ET AL., *supra* note 2, at 300.

216. See *supra* note 140 and chart accompanying text.

217. Freyermuth, *supra* note 132, at 269.

218. E.g., CAL. HEALTH & SAFETY CODE § 18551 (2009); IOWA CODE §§ 435.26–26A (2008); KAN. STAT. ANN. § 58-4214 (2008); MO. ANN. STAT. §§ 700.111, 700.010(5) (West 2006); MONT. CODE § 15-1-116 (2009); OHIO REV. CODE § 4503.06(B)(1)–(2) (2009); 67 PA. CODE § 401.5(a) (1999).

219. COLO. REV. STAT. § 38-29-14(2) (2009) (the home must be “permanently affixed to the ground so that it is no longer capable of being drawn over the public highways”).

220. TITLING HOMES AS REAL PROPERTY, *supra* note 124, at 8.

Many state statutes also prohibit<sup>221</sup> or restrict a home owner's ability to convert it to real property if it is sited on leased land. The two most common restrictions are that the landowner must consent to the conversion<sup>222</sup> and the land lease must be for a long term, such as twenty-five or thirty-five years.<sup>223</sup> Like the permanent foundation requirement, these limitations are unduly restrictive.

The requirement that the home owner also own the land on which the home is sited automatically and unnecessarily excludes about one-quarter of manufactured homes from being converted to real property.<sup>224</sup> In several parts of the United States and in countries throughout the world, homes built on leased land are classified as real estate.<sup>225</sup> Moreover, many state conversion statutes permit manufactured homes on leased land to be classified as real estate, which demonstrates that the land ownership restriction is unnecessary.

The statutes that require the landowner's permission seem to be premised on the misconception that conversion of the home to real property will cause it to become part of the land for legal purposes and, therefore, that the landowner and its creditors can acquire rights in the home. However, a site-built home on leased land remains separate from the land for ownership purposes.<sup>226</sup> Therefore, the landowner's rights in the home are unaffected by the conversion.

The statutory requirement for a long-term lease addresses the concern that the owner will have to move the home in the relatively near future because, for example, the lease term has expired and the tenant cannot afford a rent increase. This concern is misplaced for two reasons. First, even if the lease is for a long term, it can provide for periodic rent increases and for early termination, such as upon the tenant's default. Second, when a lease terminates, the home is usually left in place and is sold to a new owner,

221. *E.g.*, ALA. CODE § 32-8-30 (2009); ARIZ. REV. STAT. § 42-15201(2) (2008); GA. CODE § 8-2-181(b)(1) (2009); MICH. COMP. LAWS § 125.2330i (2009); MISS. CODE § 27-53-15 (2009); VT. STAT. tit. 9, § 2603(b) (2009).

222. *E.g.*, ARIZ. REV. STAT. § 33-1501 (2009); OR. REV. STAT. ANN. § 446.626 (West 1989).

223. *E.g.*, CAL. HEALTH & SAFETY CODE § 18551(a)(1)(A) (2009); FLA. STAT. § 319.261 (2009); S.C. CODE § 56-19-510 (2008); WASH. REV. CODE §§ 65.20.020, 65.20.040 (2009).

224. *See supra* note 140 and chart accompanying text.

225. *A Guide to Hawaii's Residential Leasehold*, available at [http://www.coastalhawaii.com/Leasehold-Fee\\_Explained.htm](http://www.coastalhawaii.com/Leasehold-Fee_Explained.htm); Sumner J. La Croix, James Mak & Louis A. Rose, *The Political Economy of Urban Land Reform in Hawaii*, 32 URB. STUDIES 999 (1995); Benjamin A. Neil, *Ground Rents from Maryland to Hawaii: Leasehold Interests in Residential Real Estate*, REAL EST. ISSUES, Fall 2006, at 55, 58.

226. Neil, *supra* note 225, at 55.

because the cost of moving and the potential for damage are so great. Although the length of the lease term is a loan underwriting consideration, it should not prevent a home from being classified as real property.

Aside from eliminating the complexities, uncertainties, and costs that currently exist because a particular manufactured home may be either real or personal property, reforming the law to treat all homes as real estate can be accomplished quite efficiently because the necessary legal and administrative apparatuses already are well established. Deeds are used for title transfers. In fact, at least two states already have statutory form deeds for manufactured homes.<sup>227</sup> Mortgages are used to secure loans, as they already are for about twenty percent of the manufactured home loans. Both types of documents are recorded in the existing real property recording system.

An objection to treating a manufactured home as real property immediately upon purchase from a dealer is that the buyer normally has to transport it to another location. As a movable object, the home is personal property.<sup>228</sup> Although strict application of the movable/immovable distinction in this situation is legally proper, it creates the inefficiencies and difficulties described above.

Rather than rigidly adhere to the movable/immovable distinction when dealing with manufactured homes, a number of state legislatures and lenders have found pragmatic means to address this issue.<sup>229</sup> Because state law defines what property rights exist, approximately seventeen state legislatures have created statutory methods for titling manufactured homes as real estate from the time of purchase.<sup>230</sup> Lenders have adapted a long-standing finance tool, the multi-draw construction loan, to ensure that the mortgage the buyer executes at the time of purchase has priority from that moment.<sup>231</sup>

State legislatures have also provided methods for dealing with a manufactured home that is moved from the land on which the purchaser sited it. State statutes specify procedures that an owner must follow before moving a home. Some provide penalties for failing to do so. Georgia goes so far as to make it a misdemeanor.<sup>232</sup> To prevent a manufactured home from being classified as real property because of the small possibility that it might be moved would be a classic case of letting the tail wag the dog.

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227. *E.g.*, CONN. GEN. STAT. § 21-67a (2008); N.H. REV. STAT. § 477:44 (2009).

228. BLACK'S LAW DICTIONARY 251 (8th ed. 2004).

229. Milano, *supra* note 126, at 385.

230. *Id.*

231. ASSET-BUILDING STRATEGY, *supra* note 7, at 11; *Manufactured Called "Opportunity," supra* note 76, at 7.

232. *E.g.*, GA. CODE § 8-2-183 (2009); *see also, e.g.*, IDAHO CODE § 63-305 (2009); LA. REV. STAT. § 9:1149.6 (2009); MONT. CODE § 15-1-116 (2009); NEB. REV. STAT. § 60-169 (2009); OR. REV. STAT. § 446.626 (2007).

## VI. CONCLUSION

Manufactured homes have changed dramatically since the introduction of their earliest counterparts in the 1920s.<sup>233</sup> Unfortunately, the law has not kept pace. As a result, financing and other aspects of ownership are needlessly complex and uncertain, and access to affordable credit is limited, which has been a major obstacle to the industry's recovery.<sup>234</sup> Manufactured home owners are not accorded the same rights as the owners of site-built homes, though they often need greater protection. The failure to classify manufactured homes in the same manner as site-built homes has also caused the federal and state governments to overlook manufactured homes in the efforts to stabilize the home finance markets and to prevent similar crises in the future.<sup>235</sup> Classifying all manufactured homes as real property from the time of sale to a consumer is a feasible and effective remedy for these problems.<sup>236</sup>

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233. *See supra* notes 25–37.

234. *See supra* notes 75–120.

235. *See supra* notes 17–19.

236. *See supra* notes 214–32.



