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## Listing, Advertising Legalities

# Mobile Home Dilemmas

**Legal terms rather than physical qualities distinguish mobile homes, manufactured homes and house trailers. At issue is whether the laws of personalty or realty govern their ownership, taxation and transfer. The real estate broker's right to list mobile homes depends directly on these distinctions.**

By Judon Fambrough

**M**obile homes are a major source of single-family housing in Texas. A large number are located on private property as permanent residences. Unlike conventional dwellings, however, mobile homes may or may not be firmly attached to the ground. This feature creates a legal dilemma—that is, do the laws of personalty (personal property) or realty (real property) govern their ownership, taxation and transfer?

These and other issues depend on certain legal definitions established for mobile homes, manufactured homes and house trailers. In Texas, manufactured homes are regulated by the Texas Civil Statutes, Article 5221f, better known as the Texas Manufactured Housing Standards Act (MHSA).

A mobile home is a structure constructed before June 15, 1976 (MHSA, Section 3 [1]). It is transportable in one or more sections not less than eight feet wide and 40 feet long. When assembled, a mobile home contains no less than 320 square feet. It is built on a permanent chassis and may or may not have a permanent foundation when connected to the required utilities that include the plumbing, heating, air conditioning and electrical systems.

The definition of a manufactured home parallels that of a mobile home as to the length, width and square footage when assembled. The difference, though, is that a manufactured home is constructed after June 15, 1976, according to the rules of the U.S. Department of Housing and Urban Development. For this reason, they are also referred to as "HUD-code manufactured homes." According to MHSA, Sections 3 (17 and 19), the term does not include recreational vehicles as defined in 24 C.F.R. Section 3282.8(g).

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the division) governs the administration of the Texas Manufactured Housing Standards Act. To provide evidence of ownership, the division issues documents of title both for mobile and manufactured homes, similar to certificates of title issued for motor vehicles. The owner's name and address, the manufacturer's name and address, the identification number of the home and any liens on the unit are among the items noted on the document of title.

**Note.** According to the rules, when the manufacturer transfers a manufactured home to a retailer, a *Certificate of Origin* is issued. When the retailer sells the home to a consumer, the

consumer must apply for initial title to the home with the division. The division then issues a Texas Original Certificate of Ownership: Manufactured Home Document of Title. Hereinafter the use of the term "document of title" includes both.

A *house trailer* is "a trailer designed for human habitation. The term does not include manufactured housing" (Texas Transportation Code, Section 501.002[6]).

Basically a house trailer is a small, mobile structure for short-term residential use. Title to house trailers is shown by a certificate of title issued by the Department of Motor Vehicles. The certificate of title contains, among other things, the names and addresses of both the owners and lienholders.

With either a document of title for manufactured and mobile homes or certificate of title for house trailers, liens are secured on the units by being noted on the title and having the original title delivered to the lienholders.

Obviously, the difference between mobile homes, manufactured homes and house trailers is based on both legal distinctions and manufactured physical qualities. Consequently, one of the best ways to identify them is to examine the title. Manufactured and mobile homes have manufacturer's certificate of origin or a document of title while house trailers have certificates of title. The terms mobile home or manufactured home (the home or a home) are used here to refer collectively to these two types of units unless indicated otherwise.

As long as a home remains unattached to the ground, its ownership, taxation and transfer of title are governed by the rules of personalty similar to a motor vehicle. Once the home becomes stationary and affixed to the land, it may become what is known as a *fixture*.

A fixture is literally personal property so attached to the soil that it becomes part of the realty. However, the annexation does not in itself make a home a fixture. The Texas Supreme Court has promulgated a three-factor test for making the determination:

- mode and sufficiency of attachment,
- adaptation of the personalty to the use or purpose of the realty and
- intent of the affixing party (*Logan v. Mullis*, 686 S.W.2d 605 [Tex. 1985]).

However, rules and regulations of the division contain exact procedures for compliance. Basically, to transform a manufactured home from personalty to a fixture, the manufactured

home must be affixed to the ground, the title surrendered and a certificate of attachment issued by the division.

The manufactured home must be attached to the ground by an approved permanent or nonpermanent anchoring and support system specified by the manufacturer or by the state's generic standards found in 10 Texas Administrative Code, Section 80.54.

Once so attached, the owner must apply to the division to have the manufacturer's certificate of origin or the document of title surrendered. (MHSA, Section 19[a] [13] [1]).

If the person seeking cancellation is not the owner named on the title, Form A, better known as the Application for Transfer of Title, must be filed.

The division will not cancel title if an outstanding lien has been registered with the division or noted on the title. Instead, the division will notify the owner and each lienholder that application to surrender title has been received and that title will not be canceled until each lien is released.

When all the liens have been released, the title will be canceled. However, the division must generate another form, the Certificate of Attachment, before the process is complete. The certificate, among other things, contains the legal description of the land to which the home attaches. The certificate is sent to the owner (or title company handling closing) for recording in the deed records.

Thus, constructive notice is given to subsequent buyers of the real property and to the taxing authorities that the home has now become a part of a particular parcel of real estate. The title to the home is included in subsequent title insurance policies issued for the tract. Also, the value of the home is taxed as part of the realty for property tax purposes.

Permanently attaching a home to real estate does not in itself affect existing liens against the title nor make it a fixture. The rights of prior lienholders and the rights of the state pursuant to a tax lien are preserved (MHSA, Section 19[a] [13] [1]). Once the mobile home is permanently attached to the ground, the liens retired and the title canceled, the mobile home then becomes subject to any pre-existing liens on the real estate.

There are no statutes regarding the cancellation of a certificate of title for a house trailer once it becomes permanently affixed to realty. Texas Transportation Code, Sections 501.091 and 501.093, provides for cancellation of a certificate of title when the house trailer is junked, dismantled, destroyed, flood-damaged or loses its character as a house trailer. The latter could be interpreted to include a permanent annexation to realty.

Regardless of whether or not the home is a fixture, it qualifies for the homestead tax exemption under Texas law if it serves as the claimant's primary residence. If it is not a fixture, however, the claimant must produce the document of title showing ownership of the unit when applying for the tax exemption.

The home is taxed as personalty as long as the document of title has not been canceled. The Texas Tax Code, Section 32.014, provides that a tax lien on a home does not attach to the real property to which the home is permanently affixed if on January 1 of each year there remains a lien of record on the document of title. Instead, the tax lien attaches to the home and is noted on any subsequent document of title issued by the division (MHSA, Section 19[a] [13] [1]). The document of title cannot be canceled until the tax lien is retired.

Controversies may arise among various lienholders and creditors as to whose interest is superior. For instance, can a mortgage lienholder who has foreclosed on a unit located in a mobile home park remove the unit without first paying the landlord the delinquent rent? Whose right is superior?

The answer is found in Texas Revised Statutes, Article 5069-6A.18.

According to this law, the landlord must notify the mortgage lienholder of any delinquent rent by certified mail. Any unpaid rent accruing 15 days after receipt of the notice must be paid before the unit can be removed.

Finally, the real estate broker's right to list homes is a constant concern. Unquestionably, real estate brokers have the right to list real estate along with attached homes as long as the mobile homes

- have been permanently attached and affixed to real property,
- have had their documents of title canceled and
- a certificate of attachment has been issued and recorded.

When these three conditions are met, the broker's right to list the real estate, including the mobile home, is unqualified.

This fact is supported by MHSA, Section 3(6), where it is stated that ". . . if the manufactured home is affixed to a permanent foundation, the manufacturer's certificate or the document of title is canceled, and the home is offered as real estate . . . the provisions of the Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes) shall apply."

Real estate brokers may advertise real estate on which a manufactured home has been "permanently attached and affixed" (MHSA, Section 6[f]). The statute does not mention cancellation of the document of title nor inclusion of the home in the advertisement. Basically, the real estate can be advertised but not the home.

*The statute defines the terms advertising and advertisement to include any commercial message by any medium that promotes the sale, exchange or lease-purchase of a mobile home (MHSA, Section 3[20]). The statute does not define the phrase "permanently attached and affixed."*

For homes that have not become fixtures, real estate brokers may not sell, exchange, lease-purchase; may not offer to sell, exchange or lease-purchase; nor offer to negotiate or negotiate for others a bargain or contact for the sale, exchange or lease-purchase two or more homes to consumers in the state during any consecutive 12-month period (MHSA, Sections 7[b] and 7[c]).

Effective September 1, 1999, the Texas Legislators changed the rules whenever the landowner listing the property also owns the home that has not become a fixture. The no-more-than-one-home-per-12-month rule does not apply when dual ownership occurs. The home does not necessarily have to rest on the listed property according to the statute (MHSA, Section 7[s]).

Three possible conclusions can be derived from these statutes.

**F**irst, if the home has been permanently attached and affixed to real property, the document of title has been canceled, and a certificate of attachment has been issued and recorded, the home is a fixture. A listing of the realty will automatically include the home. A title policy on the realty will automatically include the value of the home. The value of the home is taxed as part of the real estate to which it is attached.

Second, if the home has been permanently attached and affixed to real property, but the document of title has not been canceled, the home, in all probability, is still personalty. A real estate licensee should not list more than one such home during any consecutive 12-month period unless the landowner owns the home. A title policy on the real property will not include the value of the home. The home is taxed as personalty, separate and apart from the real estate to which it is attached.

Third, if the home has not been permanently attached and affixed to real property nor the document of title canceled, the home is without question, personalty.

The same three conditions should be applied by real estate appraisers to determine when a home becomes a fixture in Texas. The cancellation of the document of title appears to be the critical factor. ☐

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