

Statutory De-Titling and a Declaration of Realty, The New Manufactured Home Act

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The passage of the new Manufactured Home Act was an action by the legislature to clarify the process of permanently attaching manufactured homes to real estate. This statute was not designed as a panacea for all the manufactured home issues, but a means to move forward and provide a definable legal declaration of realty. The passage of the Manufactured Home Act (hereinafter the Act) was intended to give owners and lenders a clear and unambiguous procedure to de-title permanently attached manufactured homes. The Act, in addition to a statutory de-titling plan, also details a method to declare non-titled manufactured homes realty. The Act's passage also clarifies several very important presumptions or points of law.

The Act prospectively eliminates the need to search the Division of Motor Vehicle Records once its provisions have been met. The Act provides for a recorded declaration of real estate and recordation of an affidavit that de-titles manufactured homes. Practitioners, unless they discover one of these monuments of title, must, however, still search the Divisions records when they discover a manufactured home on the real estate, if the home is intended to be real estate.

De-Titling the Permanently Attached Manufactured Home

The existence of a title on a manufactured home does not automatically warrant that the home be de-titled. The practitioner must first discover what the intentions of the parties are. If the parties intend that the manufactured home be a permanent improvement on the real estate and be transferred as real estate, then the practitioner must discover if the manufactured home meets the statutory definitions.

The Acts statutorily defines that real estate can include a manufactured home permanently placed upon the real estate. "These terms also mean a manufactured home as defined in G.S.143-143.9 (6) if it is a multi-section residential structure (consisting of two or more sections); structure has the moving hitch, wheels, and axles removed; and is placed upon a permanent enclosed foundation on land owned by the owner of the manufactured home."

The Act states that if the manufactured home meets the above definition then the ". . . owner shall (emphasis added) submit an affidavit to the Division that the manufactured home meets this definition and surrender the certificate of title to the Division." This affidavit that is to be submitted to the DMV must be approved by them (an approved form is attached to this article) and contain the following: "(1) The manufacturer and, if applicable, the model name of the manufactured home. (2) The vehicle identification number and serial number of the manufactured home. (3) The legal description of the real property on which the manufactured home is placed, stating that the owner of the manufactured home also owns the real property. (4) A description of any security

interests in the manufactured home. (5) A section for the Division's notation or statement that the title has been surrendered and cancelled by the Division.

The affidavit is then filed with the Division, which cancels the title, notes that the title has been surrendered and cancelled, and returns the original affidavit to the owner, or to the secured party having the first lien position. The affidavit, upon its return, must be recorded in the office of the register of deeds in the county where the real estate is located. The affidavit is to be indexed in the grantor index in the name of the owner and the grantee index in the name of the lien holder.

After recordation of the affidavit, the manufactured home is deemed real estate and as such can only be encumbered in the same fashion as a lien on real estate. The Act also concludes that any existing liens on the real estate now include the manufactured home as security. Moreover, the Act states that these provisions control over the provisions of N.C.G.S. § 25-9-334 relation to the priority of a security interest in fixtures as it pertains to manufactured homes.

The Act protects holders of liens on a motor vehicle title by requiring them to consent to the de-titling on the manufactured home. It would be essential for these lien holders to protect their interest during the change to real property. This can be accomplished by the recordation of a deed of trust, prior to the recordation of the affidavit. Once the affidavit is recorded the manufactured home statutorily becomes real property.

The Act appears to mandate that an owner de-title his manufactured home and record the affidavit if the home qualifies as real estate. The statute provides for civil sanctions for those who violate this section. It would appear that these sanctions are in place not only to prevent a manufactured home owner from using the motor vehicle code and mortgage law to his advantage and to another's detriment by continuing to confuse the issue, but to force home owners to correctly classify their home to avoid confusion. There is, however, nothing requiring a lender to agree to the classification of the home as real estate. De-titling requires mutual consent by lien holder and owner to be effective. The new Act, however, encourages such a course by providing the lender with statutory conclusions as to its lien priority.

Declaring a Non-Titled Manufactured Home Realty

The Act details a method to declare non-titled manufactured homes realty. The Act allows the owner to file a declaration if the manufactured home meets the statutory definition as stated earlier, and the home has never been titled, or has been de-titled. The owner records this declaration of intent to affix the home to realty in the office of the register of deeds for the county in which the real estate and home are located. Thereafter, the owner may convey or encumber the real estate and manufactured home by deed or deed of trust. The manufactured home, after recordation of the declaration, becomes an improvement to the real estate. This legal conclusion gives owners and lenders a reliable means to insure a valid legal transfer without fear that there may be an intervening title or lien interest. This conclusion, however, still requires the search of Division records to insure there is not an intervening title and/or lien.

This declaration of intent may be on a deed, deed of trust, or a separate instrument, such as an affidavit (an example is attached hereto). This declaration shall contain the name of the manufacturer, the model name, serial number if applicable, and a statement of the owner's intent that the manufactured home be treated as real estate.

The practitioner should find this section a valuable tool when dealing with a manufactured home that is permanently attached to the realty. If a search of DMV records and the records of the register of deeds do not reveal a title and do not reveal a declaration of intent, then the practitioner should place one on record. A declaration placed on record prior to recordation of a deed of trust during a refinance, or on a deed during transfer, will give the lender and the owner the protection of the statutory scheme.

The declaration of intent also provides a statutory presumption that the unit is real estate when a new manufactured home is being placed on real estate. Execution and recordation of the declaration allows the lender to be secured immediately when the home is being permanently attached to the real estate. The certificate of origin, however, should always be received as evidence of the transfer from the manufacturer or dealer to the owner and/or lender. The certificate of origin may or may not be recorded with the declaration. Careful practitioners may prefer to record the certificate of origin with the declaration. This action gives historical evidence of a proper transfer from the manufacturer or dealer and is also further evidence of intent not to title.

Conclusion

The passage of the act provides a statutory de-titling scheme that will protect both owners and lenders of manufactured homes. The Act gives real estate practitioners many useful statutory presumptions as to priority of deeds of trusts securing a properly de-titled manufactured home. More importantly the act gives statutory protection for manufactured homes that have never been titled. The Act allows owners and lenders to record monuments of title in the form of a Declaration of Intent and an Affidavit for Removal from Vehicle Registration Files that will give the parties the presumption of an improvement to real estate. Practitioners, however, can only rely on the Act prospectively and must still research the motor vehicle records for titles and liens. Careful practitioners will disclose these findings to their title insurer and let the title insurance companies assume the risk, rather than keep the burden on themselves, and ultimately their clients.