

The Mobile Home as Real Property

By Robin M. Barefoot, Esq.

The practicing real property lawyer routinely encounters personal property issues as he examines the title for real estate and prepares for loan closing. The quintessential "real of personal property" question arises when the survey, which has come in the morning scheduled for closing, depicts a trailer or mobile home on the premises. What follows is intended to guide the title lawyer through an understanding of the issues raised by that mobile home, and to assist him in properly subjecting that mobile home to the lien of the deed of trust.

Definition

A mobile/manufactured home (hereinafter "m/m home") is a dwelling which is built in a factory and transported to the building site either on its own chassis or on a flat bed truck, and which is built to the specifications of the national Manufactured Housing Construction and Safety Code as promulgated by the U.S. Department of Housing and Urban Development.

In recent case law, *Starr v. Thompson*, 96 N.C. App. 369, 385 S.E. 2d 535 (1989), the North Carolina Court of Appeals held that a factory-build modular home, designed and constructed to travel on wheels from place to place is a "mobile home" within the meaning of restrictive covenants prohibiting such structures, even though the axles, wheels and tongues were removed after the structure was placed on the lot.

North Carolina courts have uniformly held that the term "trailer" within a restrictive covenant includes "mobile homes." North Carolina General Statutes § 160A-383.1 (f) provides further interpretation, as follows:

[t]he terms "mobile home" and "trailer" in any valid restrictive covenants running with the land shall include the term "manufactured home" as defined [in section 143-145 (7)].

M/M Homes as Motor Vehicles

Every m/m home is treated initially as a motor vehicle, and at the time the m/m home is sold or transferred from the manufacturer to a retailer, ownership of the home is evidenced by a manufacturer's Certificate of Origin.

When the home is sold by a retailer, the customer or the retailer acting on behalf of the customer, will apply for and receive a Certificate of Title from the Division of Motor Vehicles based upon the manufacturer's Certificate of Origin. If the home is subsequently resold, the Certificate of Title is assigned to the new purchaser.

The majority of all m/m homes are sold and financed as personal property, just like motor vehicles. Ownership of the home is evidenced by a Certificate of Title, and any lien or security interest in the home is evidenced by a notation on the face of that certificate or perfected by the filing of a UCC financing statement.

M/M Homes as Real Property

More and more frequently, however m/m homes are being placed on permanent foundations in residential subdivisions or on individual tracts of land. In these situations, the homes are being sold and financed as real estate, and a loan used to purchase or refinance the m/m home or the land to which the m/m home has been affixed is secured by a deed of trust.

There are legal and practical implications when an m/m home is sold and financed as real estate. First, information relative to whether the m/m home has been placed on a permanent, enclosed foundation with the wheels, moving hitch and axles removed is often requested by the lender. An affidavit from the owner or his attorney relative to these points is recommended.

Where the m/m home is new and placed directly on a lot foundation by the manufacturer and not sold by a retailer, there will likely be a manufacturer's Certificate of Origin, but no Certificate of Title. While recognizing that it is the intention of the new owner to treat the m/m home as real estate, it is nonetheless recommended by the Registration Section of the DMV that the new owner apply for a Certificate of Title. Once the Certificate of Title is issued, it can be readily canceled where the m/m home is to be treated as real estate, but having issued the Certificate of Title puts the owner in the proper posture to have the title re-issued should he decide in the future to sell the m/m home independent of the land.

Once the Certificate of Title is canceled, no independent intervening liens can arise on the m/m home. Title to the m/m home and lot can be transferred together by deed and any loan can be secured by a deed of trust. The home should also be listed as real property for city/county ad valorem taxes. If the owner chooses not to follow the recommendation of the DMV and does not apply for and obtain a Certificate of Title, the Certificate of Origin must be destroyed to prevent a subsequent issuance of the Certificate of Title.

Similarly, where the m/m home is purchased from a retail dealer or a prior owner to be placed on a lot already owned by the purchaser, and a Certificate of Title has been issued, the purchaser or his attorney must cancel the Certificate of Title. It is suggested by the DMV that a new owner should first have a Certificate of Title issued in his name before canceling the same. The DMV explains that when a Certificate of Title is assigned on purchase of an m/m home and then canceled for treatment as real property, that it cannot be reissued to the assignee, nor upon his request, but only to the name appearing on the face of the certificate (presumably, the seller) and only upon his request. The home should also be listed as real property for city/county ad valorem taxes.

Cancellation of Certificate of Title

Cancellation of the title is effectuated by writing the following information on the face of the Certificate of Title: "This home has been placed on a permanent foundation and declared to be real estate." The owner should then sign and date the title certificate immediately beneath this statement. If there are any liens noted on the title, these liens must be satisfied or with the consent of the lienholder, transferred to other collateral,

(perhaps the property where the home is to be located, evidenced by a note and deed of trust.) Satisfaction or transfer of a lien must also be noted on the face of the title.

The owner should then send the Certificate of Title, along with a short cover letter to:

Registration Section
Division of Motor Vehicles
1100 New Bern Avenue
Raleigh, NC 27697
(919) 733-3025

Where the Certificate of Title is lost the DMV requires that a replacement Certificate of Title be issued to the owner, and then canceled for treatment of the m/m home as real property.

Conclusion

The importance of complying with the steps outlined above will be dictated in each case by whether the lender considers the m/m home as part of its collateral, or whether the loan was made on the basis of the land value exclusive of the m/m home. Failure to subject the m/m home to the lien of the lender's deed of trust will prevent the lender from exercising its right of foreclosure against the m/m home and will ultimately bring the lender to the attorney or the title insurer for redress.