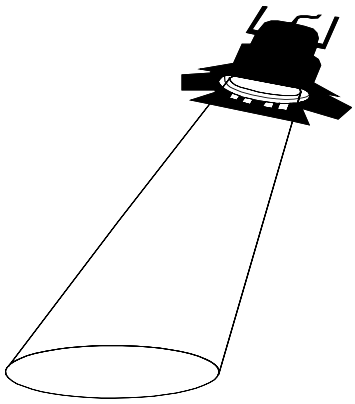
The University of Tennessee
County Technical Assistance Service



SPOTLIGHT on CURRENT ISSUES

Executive Director's Memo
May 30, 2003

Manufactured Homes - to Title or Not?

Chapter 76 of the Public Acts of 2003 became law on May 5, 2003. This new legislation deals with the manner in which ownership of a "manufactured home" (also known as mobile home or house trailer) is to be legally recorded. These types of structures have caused problems because they generally are considered personal property and are titled in a manner similar to motor vehicles by certificate of title. However, under certain circumstances these structures may be so permanently affixed to the land that they become more like a house, which is real property. Whether the structure is considered personal property or real property is very important to lenders who are trying to perfect a security interest in these structures. The lender must decide whether to note its security interest as a lien on the certificate of title, or whether it should be recorded as a deed of trust on real property. If the lender is wrong, its security interest is jeopardized. This legislation appears to be an attempt to clarify whether a manufactured home is to be considered real property or personal property to assist lenders in filing security interests. Also, this legislation attempts to clarify when a manufactured home is considered real property for bankruptcy law purposes, because a debtor in bankruptcy is allowed certain preferences with regard to real property that is the debtor's principal residence. For now, however, this legislation appears to have caused quite a lot of confusion among county clerks and registers of deeds.

Affidavit of Affixation. The most significant change that comes with this new legislation is the "Affidavit of Affixation." When the real estate and the manufactured home are owned by the same owner(s), and the manufactured home is affixed to the real estate, the owners) may record an Affidavit of Affixation. The law provides that the recording of an Affidavit of Affixation in the register of deeds' office will be prima facie evidence that the manufactured home is affixed to real property as an improvement to the property. This means that lenders will be able to rely on the affidavit to file and properly perfect their liens, and bankruptcy judges may rely on the affidavit in connection with determining whether a manufactured home qualifies as a principal residence. This also means that the manufactured home is to be taxed as part of the real property to which it is affixed, so the assessor of property will need to know when these affidavits are filed so that the property may be added to the county's tax rolls.

The Affidavit of Affixation is required to be substantially in the form set out in the new law. The owner of the manufactured borne and real property must answer the questions listed on the affidavit under oath, and then file the completed affidavit in the office of the register of deeds. The register records the instrument with the real estate records after receiving the proper fees. The legislation requires that a copy of the affidavit also be filed with the completed affidavit in the office of the register of deeds. The register records the instrument with the real estate records after receiving the proper fees. The legislation requires that a copy of the affidavit also be filed with the assessor of property. While the legislation does not specify who is to file the affidavit with the assessor, this should be done by the owner. The register of deeds may want to make copies available for the assessor to ensure that the information is received.

Please note that the Affidavit of Affixation is to be used only when tile owner of the manufactured home also owns the real estate to which the home is affixed. If the land is owned by someone other than the owner of the manufactured home, a certificate of title must be obtained regardless of whether the home is affixed to the land.

Certificate of Title. Manufactured homes which are not affixed to land, and those which are affixed to land owned by someone other than the owner of the manufactured home, will continue to be issued certificates of title as they have been in the past. For manufactured homes that are affixed to the owner's land and for which an Affidavit of Affixation has been recorded, no certificate of title is necessary. For example, it is not necessary to issue a certificate of title for a new manufactured home purchased by a land owner to be affixed to that land if the owner is filing an Affidavit of Affixation with the register.

If a certificate of title previously has been issued for a manufactured home that is affixed to the owner's land, the owner may surrender the title to the Department of Safety for cancellation by providing the following documentation to the county clerk:

(1) Certificate of title to the manufactured home duly endorsed to show release of any lienholders;
(2) Certified copy of deed to real property to which the manufactured home as been affixed as recorded in tile register's office; and
(3) Certified copy of affidavit of affixation recorded in the register's office.

No fee was specified in the legislation for either the county clerk oh tile state for the surrender of the certificate of title.

Please note that the surrender of the certificate of title is not mandatory. The owner may choose to continue to hold a certificate of title for the manufactured home, even though it is affixed to real estate owned by him or her.

If the owner of a manufactured home who has surrendered the certificate of title later wants to have the title reissued (which may happen if the owner sells the manufactured home without selling the real property), this may be done by applying for a new certificate of title with the county clerk and providing the following:

(1) An abstract of title showing legal ownership of the manufactured home and real property and any mortgages recorded on the real property;
(2) For every lienholder shown on the title abstract, either a release of the lien or a lienor's statement that the lien is to be recorded on the certificate of title; and
(3) Payment of the required fees for issuance of the certificate of title.

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