



OLD REPUBLIC
National Title Insurance Company

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Memorandum

To: All Agents, Direct Offices and Attorneys in the State of Texas
From: Shannon J. Savage
Date: 2/25/2002
Re: New Manufactured Housing Legislation

The last session of the Texas Legislature passed House Bill 1869 relating to the acquisition of manufactured housing, financing of the purchase of manufactured housing, and persons associated with the acquisition and financing of manufactured housing. The following is a summary of the pertinent portions of House Bill 1869.

I. **Notice of Improvement Attachment**

This section amends Section 19(1) of the Texas Manufactured Housing Act (the "**Housing Act**"). The first change is that if a manufactured home is permanently attached or becomes a fixture to real estate the manufacturer's certificate of origin or the document of title shall be surrendered for cancellation to the Texas Department of Housing and Community Affairs ("**TDHCA**"). Previously the word "may" was used instead of the word "shall." Secondly, the act states that before the issuance of a certificate of attachment, a title company which surrenders the manufacturer's certificate of origin or document of title shall file a "Notice of Improvement Attachment" in the real property records of the county in which the home is located. The Notice must include:

- A statement that the manufacturer's certificate of origin or document of title has been surrendered to TDHCA and a request has been made for a certificate of attachment;
- The serial number and label/or seal number of the home;
- Legal description of the property on which the home is located.

A sample Notice is attached hereto. The Notice is valid for all purposes until the certificate of attachment is recorded.

Shannon J. Savage

New Underwriting Guideline: The filing of the Notice of Improvement Attachment will allow you to immediately issue a title policy without any exceptions and without waiting for the return and recordation of the certificate of attachment. *Please note that if the title company does not actually submit the appropriate documentation to TDHCA, but relies on someone else to submit the documentation, then the title company cannot sign and record this Notice.

II. **Taxing and Location of Closing**

This section amends the Housing Act by adding a new section 19A. This section states that a manufactured home that is permanently attached to real estate (secured to a foundation and connected to a utility) is to be classified and taxed as real property as long as the property to which the home is attached is titled in the name of the consumer under a deed or contract for sale

The closing of a transaction for the acquisition of a manufactured home considered to be real property under the definition above must occur at 1) the office of a federally insured financial institution; 2) a title company; or 3) an attorney.

If the real property is purchased under a contract of sale, the contract of sale must be recorded.

This section is not applicable to homes permanently attached prior to January 1, 2002.

III. **Disclosure By Retailer and Lender**

This section amends the Housing Act by adding a Section 21. This section requires a statutory disclosure by the retailer and lender prior to completion of a credit application. The disclosure recommends the potential homeowner consider such things as zoning, restrictive covenants, water availability, sewer service, homeowner association fees, and taxes. In addition the section states that a retailer may not transfer title to a manufactured home to a consumer without providing another disclosure which provides information on total purchase price and interest, taxing issues, access, sewage etc. If available a person making a loan to a consumer to buy a manufactured home should make the same disclosures required of the retailer.

** Important: failure of the retailer or lender to provide these notices will not affect the validity of a transfer of title or impair a title or lien.

IV. **New Procedures For Cancelling Title Documents (Notice of Installation)**

This section amends Section 2.001 of the Property Code. The first important change is a change to the definition of when a manufactured home is considered real property and when it is considered personal property. Previously, this section stated that a manufactured home was personal property unless the home was permanently attached to real property and the certificate of origin or document of title was surrendered to TDHCA and a certificate of attachment was filed in the real property records. The new section states that a manufactured home is real property unless the home is placed on a lot not titled in the name of the consumer under either a deed or contract for sale or placed in a manufactured home rental community.

Sections (e) and (d) detail new shortened procedures for cancelling a manufacturer's certificate of origin or document of title to real estate. Section (e) deals with new home sales and states that TDHCA will not issue a title for a new and untitled home being installed directly by the retailer on real property that is titled in the name of the consumer. The consumer is required to provide the retailer with a legal description of the property where the home is to be located. The title company or attorney that closes the transaction or the retailer or retailer's agent shall file in the public land records a "Notice of Installation" not later than the 30th working day after the date the installation is complete and shall forward the manufacturer's certificate of origin along with a copy of the Notice of Installation to TDHCA. The Notice of Installation is supposed to serve as a completed cancellation application.

Section (f) simply outlines a similar procedure on a resale transaction except the document of title is sent to TDHCA instead of the manufacturer's certificate of origin. Similarly, sending a copy of the Notice of Installation and the document of title to TDHCA is supposed to serve as a completed cancellation application.

Section (g) states the requirements for the Notice of Installation including the requirement that the Notice of Installation be on a form proscribed by TDHCA.

PROBLEM: At this time TDHCA has not promulgated a new form for the Notice of Attachment. The only TDHCA form that meets the statutory requirements is the Form T, Manufactured Home Installation Report, with an acknowledgment added attached hereto. In addition, as of the date of this Bulletin, TDHCA is not complying with these simplified cancellation procedures.

Underwriting Guideline: Old Republic National Title will still require that the manufacturer's certificate of origin or the document of title be cancelled to real estate and the manufactured home be permanently attached to the land. Hopefully, the new statute will greatly shorten the cancellation process. This Form T should be used as the Notice of Installation.

Refinance of Lien and Deemed Mechanic's Lien Contract

As you are aware, Section 62.003 of the Property Code converted certain personal property liens to real estate liens once the manufactured home was attached to real estate. In addition, Section 62.004 then allowed the refinance of these converted liens. ; Old Republic National Title insured transactions where a lender was making a loan to the owner of a manufactured home and the loan renewed and extended: (1) the purchase money loan on the manufactured home; and/or (2) the purchase money loan on the real estate on which the manufactured home; and/or (3) a mechanic's lien contract executed for the purpose of installing the manufactured home on the land.

On March 27, 2001, Attorney General Opinion No. JC-0357 concluded that Section 62.003 of the Property Code which converted personal property liens to real estate liens did not create a valid purchase money lien on homestead under Article XVI Section 50 of the Texas Constitution. On November 6, 2001 voters approved a Constitutional Amendment which provides that such conversion does now create a valid lien on homestead.

New Underwriting Guideline: We are returning to the underwriting guidelines which were in place prior to Attorney General Opinion JC-0357 that will allow you to insure a refinance transaction involving a manufactured home renewing and extending the types of liens specified above.

V. **Taxation**

Finally, the Act amended Section 32.014 of the Tax Code to state that if ownership of the real property on which a manufactured home is affixed and the manufactured home are the same, then the manufactured home shall be appraised and taxed as an improvement to the real property and a tax lien attaches to the real property on which the home is located regardless of the home's classification as real or personal property under the Property Code.

Should you have any questions regarding the foregoing please feel free to call our Underwriting Department at 1-888-678-1700.

TDHCA forms can be obtained from the TDHCA website, www.TDHCA.state.tx.us

Notice of Improvement Attachment

Section 19(1), Texas Manufactured Housing Standards Act
(Article 5221f, Vernon's Texas Civil Statutes)

Date:

Owner:

Owner's Mailing Address:

Manufactured Home

Manufacturer:

Model:

Number of sections:

Label/Seal Number:

Serial Number:

Real Property:

Owner on oath swears that the following statements are true and are within the personal knowledge of Owner:

Owner owns the Manufactured Home and the Real Property.

The manufacturer's certificate or the original document of title to the Manufactured Home has been surrendered for cancellation and a request has been made for the issuance of a certificate of attachment to the Texas Department of Housing and Community Affairs.

The Manufactured Home is adapted to the use of the Real Property as a residence or dwelling.

Owner's intent in affixing the Manufactured Home to the Real Property is to make the Manufactured Home a part of the Real Property the same as if it were constructed on the Real Property by conventional construction methods.

Owner

STATE OF TEXAS
COUNTY OF _____)

This instrument was sworn to and acknowledged before me on _____ by

Notary Public, State of Texas