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8.2.3 Mobile Home Title Purging Statutes

8.2.3.1 Nature and Effect of Title Purging Statutes

About sixty percent of the states have statutes that set forth a procedure to convert the home to real property and document that conversion. These statutes create a bright-line rule: for at least the purposes listed in the statute, and possibly for other purposes as well, public records will show whether the home is real property. Lenders who want to be able to sell their loans on the secondary market may insist that a home be converted to real property. Fannie Mae, for example, requires a manufactured home to be legally clas-

sified as real property, and financing must be secured by a mortgage or deed of trust recorded in the jurisdiction's land records.⁴⁷

The procedure for converting a mobile home to real property usually involves surrendering the certificate of title or manufacturer's certificate of origin, and filing an affidavit in the local county land records. Typically, the home must be permanently affixed to the land, a concept that is often specifically defined, and the owner of the home must also own the land. Some states also allow a home to be converted to real property if it is permanently affixed to land that the owner is renting, as long as the lease is of at least a specified length, typically twenty years. Conversion may be limited to homes that meet certain size criteria.⁴⁸

Some of the statutes state that, once the title is surrendered and the home is converted to real property, foreclosure law applies. Others achieve the same result by stating that the home, upon conversion, is subject to all laws that apply to real estate.

On the other hand, some title purging statutes say nothing about the implications of the conversion, or state only some effect on the manner in which the home is taxed. The statute may be located among the state's mobile home statutes, or may be part of the state's certificate of title or tax laws. When a statute treats a mobile home as real property for one purpose, such as taxation, courts are likely to hold that it should be treated as real property for other purposes as well, even if the statute is silent.⁴⁹ (Treatment of the home for purposes of a homestead exemption law⁵⁰ is distinguishable, however, because of the purpose of those laws to protect debtors and their dependents from destitution and the rule that they are to be liberally construed.⁵¹)

under real property law or under any of the applicable provisions of Part 6, including sale or other disposition either before or after removal of the fixtures").

43 See § 8.2.3, *infra*.

44 See *Fuqua Homes, Inc. v. Evanston Bldg. & Loan Co.*, 370 N.E.2d 780 (Ohio Ct. App. 1977) (modular home was converted into real estate and could not be considered a motor vehicle under any provision of law once its two parts were joined and attached to a permanent foundation).

45 621 S.W.2d 317 (Mo. Ct. App. 1981).

46 470 S.E.2d 256 (Ga. Ct. App. 1996).

47 Fannie Mae Selling Guide § VII, 102.07.

48 See, e.g., Ohio Rev. Code §§ 3781.06(B)(6)(b), 4503.06, 4505.11.

49 *In re Cluxton*, 327 B.R. 612 (B.A.P. 6th Cir. 2005) (where home owner followed title purging procedure, home was real estate for purposes of bankruptcy anti-modification rule).

50 See § 8.10, *infra*.

51 *Green Tree Credit Corp. v. Thompson (In re Thompson)*, 217 B.R. 375 (B.A.P. 2d Cir. 1998) (N.Y. law) (state's inclusion of mobile homes within homestead exemption does not show intent to classify them as real property for other purposes; home is personal property eligible for cram-down in bankruptcy); *Carlson v. Southwest Mobile Homes (In re Melvin)*, 64 B.R. 104 (Bankr. W.D. Mo. 1986) (failure to follow statutory procedure to convert mobile home to real property does not prevent it from qualifying for homestead exemption; exemption laws are to be liberally construed to preserve shelter for debtors and dependents); *Ellis v. Dillon*, 345 So. 2d 1241 (La. Ct. App. 1977) (failure to follow statutory procedure for converting mobile home to real property does not prevent it from qualifying for homestead exemption). *But see In re White*, 287 B.R. 232 (Bankr. E.D. Mo. 2002) (mobile home did not qualify for homestead exemption where it was not attached to a permanent foundation situated on real estate owned by the owner of the home, as required by statute). See also *In re Harris*, 166 B.R. 163 (Bankr. D. Colo. 1994) (failure to purge title for tax

In states where title purging statutes exist, courts are likely to find that a home continues to be personal property until the statutory procedures are followed. Thus, even if a home is permanently affixed to the land, it may be considered personal property unless the owner has surrendered the title and filed the proper papers to convert it to real property.⁵²

Most title purging statutes are carefully written to protect secured parties. Typically the secured party must either release its security interest or accept a mortgage in substitution for the UCC security interest before the state authorities will allow the home to be converted to real property.

Title purging statutes generally also prescribe procedures to make sure that the certificate of title is cancelled when the home is converted to real property. Allowing two title documents—the certificate of title and the deed—to coexist would enable an unscrupulous owner to sell the mobile home twice, assigning the certificate of title to one buyer and conveying a deed to the other.

A state that does not have a title purging statute may still grant requests to cancel a mobile home's certificate of title. For example, Connecticut formerly issued titles to mobile homes but no longer does. If a home has a certificate of title, the Department of Motor Vehicles reportedly will grant a

purposes does not prevent court from finding mobile home to be real property for purposes of exemption statute).

52 *In re Nowlin*, 321 B.R. 678 (Bankr. E.D. Pa. 2005) (citing fact that owner had not surrendered title as factor in holding that mobile home was not real property for bankruptcy purposes); *Beneficial Consumer Discount Co. v. Gerard (In re Gerard)*, 70 B.R. 505 (Bankr. W.D. Pa. 1987) (even if mobile home is permanently attached to land, rule that security interest is perfected by notation on title continues to apply unless statutory procedure for surrender of title is followed); *Leader Fed. Bank v. Saunders*, 929 P.2d 1343 (Colo. 1997) (title purging law preempts common law regarding fixtures and is exclusive means of converting mobile home to real estate; however, here buyer who agreed to purge title but did not follow through is estopped from claiming that deed of trust did not convey mobile home); *ENT Fed. Credit Union v. Chrysler First Fin. Servs. Corp.*, 826 P.2d 430 (Colo. Ct. App. 1992) (citing fact that owner had not surrendered title in support of conclusion that notation on certificate of title was sufficient to perfect security interest, without fixture filing); *Notoco Indus., Inc. v. Powell*, 835 So. 2d 835 (La. Ct. App. 2002); *Mathieu v. Nettles*, 383 So. 2d 1337 (La. Ct. App. 1980); *Lee's Mobile Homes, Inc. v. Grogan*, 621 S.W.2d 317 (Mo. Ct. App. 1981) (rejecting buyer's argument that seller could not use replevin to recover mobile home; buyer had agreed it would remain personal property and had not followed title purging procedure); *Green Tree Fin. Servicing Corp. v. Sutton*, 650 N.W.2d 228 (Neb. 2002) (in priority dispute between financier of mobile home and third party buyer of land, perfection must be on certificate of title unless owner has followed former statutory procedure to surrender title); *Bankamerica Hous. Servs. v. P.D.N. & Assocs.*, 977 P.2d 396 (Or. Ct. App. 1999). *But see In re Oswalt*, 318 B.R. 817, 819 (W.D. Mich. 2004) (filing of mortgage covering land and mobile home in county registry of deeds is sufficient to perfect security interest even if title-purging procedure was not followed).

request to cancel the title upon a showing that the home is not capable of being operated on a public highway.⁵³ Other states may have administrative rules allowing cancellation of the title.⁵⁴ Even without a title purging statute, a state motor vehicle department may agree to cancel a title if the owner shows that a home no longer meets the jurisdiction's definition of motor vehicle because it has been attached to the land.⁵⁵

A few states specifically forbid title purging. A New York statute provides that the motor vehicle certificate of title for a mobile home shall not be suspended or revoked because the home has been attached to realty.⁵⁶

8.2.3.2 Listing of State Title Purging Statutes

The following states have statutes that specify a procedure to surrender the certificate of title and convert a mobile home to realty for at least some purposes.

Alabama: A mobile home title may be cancelled if the home is affixed to real property that the home owner owns. The owner must submit an application to the state department of revenue, including a release of any liens noted on the title. If the mobile home is later detached from the land, the owner must reapply for a new certificate of title.⁵⁷ This statute is part of the state title law and does not state whether the home is treated as real property for foreclosure or other purposes after the title is cancelled.

Arizona: A mobile home that is permanently affixed, i.e., installed on real property that the home owner owns,⁵⁸ and for which an affidavit of affixture has been recorded, shall be assessed as real property for tax purposes.⁵⁹ A mobile that is located in a mobile home park will, along with the leasehold interest, be treated as real property if the owner files an affidavit of affixture with the county recorder and: (1) the home has been installed on the real property with all wheels and axles removed in compliance with local and state installation standards; (2) the owner of the home has entered into a lease of at least twenty years for the lot and the lease specifically permits the recording of an affidavit of affixture; and (3) a memorandum of lease, signed by both landlord and tenant, is recorded that lists specified information.⁶⁰ Regard-

53 See Connecticut information at www.efanniema.com/sf/guides/ssg/relatedsellinginfo/manufachousing/. The same site reports that Illinois, New Jersey, and North Dakota also have informal procedures for surrendering mobile home titles.

54 See, e.g., N.M. Code R. § 18.19.3.16.

55 Cf. *In re Wester*, 229 B.R. 348 (Bankr. E.D.N.C. 1998) (mobile home that was permanently affixed to real estate before security interest was granted was not "intended to be operated upon . . . highway" so state law requiring security interest to be perfected by notation on title did not apply).

56 N.Y. Veh. & Traffic Law § 2124.

57 Ala. Code § 32-8-30.

58 Ariz. Rev. Stat. Ann. § 42-15201(2).

59 Ariz. Rev. Stat. Ann. § 42-15202.

60 Ariz. Rev. Stat. Ann. § 33-1501. A home recorded as real

less of whether the home is located in a park, the affidavit of affixture must identify the holder of any security interest in the home that is not terminated by the consent of the secured party, and any such interest survives recordation of the affidavit.⁶¹ When an affidavit of affixture is recorded, the owner must surrender the certificate of title.⁶² A lien on a mobile home for which an affidavit of affixture has been recorded may be perfected either in the manner provided by law for real property or in the manner provided for fixtures.⁶³

Arkansas: If a mobile or manufactured home is to be affixed to real estate, the title may be surrendered to the state department of finance and administration for cancellation. After cancellation, a security interest, lien, or encumbrance may be obtained in the same manner as for real property.⁶⁴

California: If a manufactured or mobile home is affixed to a permanent foundation in compliance with state standards,⁶⁵ default and sale are governed by California's mortgage foreclosure laws.⁶⁶ The home owner must own the land or be leasing it with a term of at least thirty-five years.⁶⁷ Any lienholders must consent to the attachment of the home to the land.⁶⁸ The owner must surrender the certificate of title, and a statement that the home has been affixed to real property is to be recorded in the county land records.⁶⁹ Once these procedures are completed, the home is deemed a fixture and an improvement to the real property.⁷⁰ Default and sale are also governed by the state mortgage foreclosure laws if the creditor has a security interest in the land as well as the home.⁷¹

Colorado: The owner of a manufactured home, once it is permanently affixed to the ground so that it can no longer be drawn over the public highways, may surrender the certificate of title and apply for purging of the title. The owner must also obtain the consent of the holders of any unreleased security interests in the home. The home then becomes real property, and subject to all laws that would apply to real estate.⁷²

Georgia: A manufactured or mobile home is personal property unless: (1) the home is or is to be permanently affixed to real property and one or more persons with an ownership interest in the home also has an ownership

interest in the real property; and (2) the owner and all holders of security interests sign and file a certificate of permanent location with the clerk of the local superior court and the state revenue commissioner. Once such a certificate has been properly filed, the home is a part of the real property for all legal purposes, including foreclosure.⁷³

Idaho: A manufactured home may constitute real property if the home is permanently affixed to a foundation and the running gear is removed. The home must be sited on land that the home owner owns, is purchasing, or, if the home is being financed in accordance with a federal housing agency's guidelines, is leasing. The home owner must record with the county recorder a statement of intent to declare the home as real property, and must turn over the certificate of title. Upon exercise of this option, lending institutions may treat the home as real property.⁷⁴ Physical removal of the home from the land is then prohibited unless the owner applies to have a new certificate of title issued.⁷⁵

Indiana: If the mobile home has been attached to real estate by a permanent foundation, the owner may submit the certificate of title and an affidavit to the bureau of motor vehicles.⁷⁶ The county recorder is then to record the affidavit in the county real estate records,⁷⁷ and the home is thereafter deemed to be an improvement to the real estate.⁷⁸

Iowa: Iowa has separate provisions depending on whether the home is in a manufactured home community. If the home is located in a manufactured home community and installed on a permanent foundation, the owner may surrender the certificate of title to the county treasurer for the purpose of assuring eligibility for federal mortgage lending programs. The title cannot be surrendered if there are unreleased security interests. A foreclosure action on a manufactured home whose title has been surrendered must be conducted as a real estate foreclosure. The owner may reapply for a certificate of title at a later date.⁷⁹ If the home is not in a manufactured home community, it must be placed on a permanent foundation. If a security interest is noted on the title, the home owner must tender a mortgage on the real estate to the creditor, or the secured party must consent to the conversion, in which case the secured party retains a security interest in the home that is separate from any interest in the land. This statute is a tax law that does not state whether foreclosure law applies after the home is converted to real property.⁸⁰

Kansas: Whenever a manufactured or mobile home is permanently affixed to real property by placement upon a permanent foundation that cannot be removed intact from

property under this statute is to be assessed as personal property for tax purposes, however. Ariz. Rev. Stat. § 42-15203(K).

61 Ariz. Rev. Stat. Ann. §§ 33-1501, 42-15203.

62 Ariz. Rev. Stat. Ann. § 28-2063.

63 Ariz. Rev. Stat. Ann. § 42-15205.

64 Ark. Code Ann. §§ 27-14-807, 27-14-1603.

65 Cal. Health & Safety Code § 18551 (West) (includes construction standards, plan approval, etc.).

66 Cal. Health & Safety Code § 18039.1 (West).

67 Cal. Health & Safety Code § 18551(a)(1)(A) (West).

68 Cal. Health & Safety Code § 18551(a)(1)(B) (West).

69 Cal. Health & Safety Code § 18551(a)(2), (3) (West).

70 Cal. Health & Safety Code § 18551(a)(4) (West).

71 Cal. Health & Safety Code § 18039.1 (West).

72 Colo. Rev. Stat. Ann. § 38-29-118.

73 Ga. Code Ann. §§ 8-2-180 to 8-2-183.

74 Idaho Code Ann. §§ 63-304(2), 63-305(1).

75 Idaho Code Ann. § 63-305.

76 Ind. Code § 9-17-6-15.1.

77 Ind. Code § 9-17-6-15.3.

78 Ind. Code § 9-17-6-15.5.

79 Iowa Code § 435.26A.

80 Iowa Code § 435.26.

the land, the owner may apply to have the certificate of title eliminated. The application must include an affidavit signed by the owner and all parties having a security interest in the home. If the application is approved, it is filed in the county registry of deeds. Once the certificate of title is eliminated, ownership of the home is an incident of ownership of the land under governing real property law, and the home is subject to a lien only as part of the real property.⁸¹

Kentucky: When a manufactured home is or is to be permanently affixed to real estate, the owner may file an affidavit of conversion with and surrender the certificate of title to the county clerk, who then is to record the affidavit. The home is then deemed an improvement of the real estate.⁸²

Louisiana: A manufactured home is considered immovable when a document describing the home and the land is recorded in the local parish records. The document must include a declaration by the owner of the home and any holder of a security interest in the home that the home is to remain permanently attached to the land. Once this document is recorded, the home is subject to all laws concerning immovable property.⁸³ However, the rights of the holder of a validly recorded chattel mortgage or a security interest perfected under Article 9 of the UCC are unaffected.⁸⁴ The owner may reverse the process so that the home is once again treated as movable property by filing another statement of intent and applying for a new certificate of title.⁸⁵

Michigan: The owner of a mobile home that is affixed to real property in which the owner has an ownership interest may apply for cancellation of the certificate of title. To be considered affixed to the real property, the wheels, towing hitches and running gear must be removed and the home must be attached to a foundation or other support system. The application must include the written consent of each holder of a security interest to termination of the security interest and cancellation of the title. Once the title is cancelled, the mobile home is considered part of the realty and a lienholder may perfect an enforce a new security interest or lien on the mobile home only in the manner prescribed by the real estate laws.⁸⁶ The owner may reapply for a certificate of title at a later date.⁸⁷

81 Kan. Stat. Ann. § 58-4214.

82 Ky. Rev. Stat. Ann. § 186A.297 (West).

83 La. Rev. Stat. Ann. § 9:1149.4. *See also* La. Rev. Stat. Ann. § 9:1146.3.

84 La. Rev. Stat. Ann. § 9:1149.4.

85 La. Rev. Stat. Ann. § 9:1149.6.

86 *Cf. In re Oswalt*, 318 B.R. 817, 819 (W.D. Mich. 2004) (interpreting statute to allow security interest in mobile home to be perfected by filing of mortgage with county registry even if title purging procedure has not been followed); *In re Gregory*, 316 B.R. 82 (Bankr. W.D. Mich. 2004) (interpreting title purging statute differently but finding security interest in home protected against bankruptcy trustee's strong-arm power because of Revised Article 9's changes to priority rules).

87 Mich. Comp. Laws Ann. § 125.2330i.

Minnesota: When a manufactured home is affixed to real property, and financed by a mortgage on the real property, the owner of the home must surrender the certificate of title to the registrar of motor vehicles for cancellation. The department then is to issue a notice of surrender, which may be recorded in the county recorder's office or the registrar of titles. The statute provides that the manufactured home is then deemed to be an improvement to real property. The department may not cancel the certificate of title, however, if an unsatisfied security interest is noted on it.⁸⁸

Mississippi: A manufactured home owner or mobile home owner who also owns the land on which the home is located has the option of declaring whether the home is to be classified as personal or real property. To be classified as real property, the wheels and axles must be removed and the home must be anchored and blocked in accord with rules adopted by the commissioner of insurance.⁸⁹ A certificate that the home has been classified as real property is then recorded in the county land records,⁹⁰ and the home's certificate of title may be sent to the state tax commission for cancellation.⁹¹ The home is then treated as real property for purposes of *ad valorem* taxation, and a security interest in the home and land may be obtained through the use of a mortgage or deed of trust.⁹²

Missouri: The owner of a manufactured home may convert it to real property by attaching it to a permanent foundation on real property that the owner of the home owns, and removing or modifying the transportation apparatus so that it is impractical to reconvert it to be readily movable.⁹³ Unlike the other statutes summarized in this subsection, this statute does not provide for surrender of the title or recordation of a document in the county land records.

Montana: A manufactured home is considered an improvement to real property if the running gear is removed, the home is attached to a permanent foundation on land that is owned or being purchased by the owner of the home (or that is placed on the land with the permission of the landowner), and a statement of intent declaring the manufactured home as an improvement to real property is recorded with the county. The statement of intent must include, *inter alia*, a description of any security interests in the home and approval from all lienholders to eliminate the certificate of title. After these steps are completed, the manufactured home may not be removed from the land unless the owner files a statement of reversal of this declaration. A manufactured home that has been declared an improvement to real

88 Minn. Stat. § 168A.141. *See also* Minn. Stat. § 273.125 (standards for taxing mobile homes as real property).

89 Miss. Code Ann. § 27-53-15.

90 *Id.*

91 Miss. Code Ann. § 63-21-30.

92 Miss. Code Ann. § 27-53-15.

93 Mo. Rev. Stat. §§ 700.111, 700.010(5) (definition of "manufactured home" as one that is, *inter alia*, readily movable).

property must be treated by lending institutions in the same manner as any other improvement to real property.⁹⁴

Nevada: A mobile or manufactured home is eligible to become real property if it becomes permanently affixed to land. The owner of the home must either own the land or, if the home is being financed in accordance with the guidelines of a federal housing program, lease it. The owner must record an affidavit of conversion in the county recorder's office, deliver a copy of the affidavit and all documents relating to the home to the manufactured housing division of the state department of business and industry, and pay the current year's personal property tax.⁹⁵ (But homes that are sited on lots outside mobile home parks in accordance with local zoning laws are automatically recorded as real property without the need for an affidavit.⁹⁶) Once the home is converted to real property, it is deemed to be a fixture and an improvement to the real property.⁹⁷

North Carolina: A manufactured home qualifies as real property if: it is a residential structure; the moving hitch, wheels, and axle have been removed; and the owner either owns the land on which it is located or has a lease of at least twenty years that expressly provides for disposition of the mobile home upon termination of the lease.⁹⁸ The owner of such a home may have the certificate of title cancelled by submitting it, along with an affidavit, to the division of motor vehicles.⁹⁹ If the certificate of title shows a security interest that has not been released, the division may not cancel the title without the written consent of all secured parties. The affidavit is then to be filed in the county registry of deeds. An owner who wishes to separate the home from the land after the title has been cancelled can apply for a new certificate of title. Once the certificate of title is cancelled and the affidavit is recorded, the manufactured home becomes an improvement to real property and any lien on the home shall be perfected and given priority in the manner provided for real property liens.¹⁰⁰

Ohio: To be taxed as real property, a manufactured or mobile home must be affixed to a permanent foundation and located on land that the owner of the home owns.¹⁰¹ The owner of a home that will be taxed as real property must surrender the certificate of title to the county auditor.¹⁰² The owner must either satisfy any liens on the home, or, with the lienholder's consent, give the lienholder a mortgage on the home and land. Once surrendered, the title is to be deactivated, but it can be reactivated upon application by the owner. These statutes do not state what effect the deactiva-

tion of the title has outside the context of taxation, but a bankruptcy case holds that if a home was converted to real property through this procedure for taxation purposes it is also real property for purposes of bankruptcy law.¹⁰³

Oregon: The owner of a manufactured structure, or the dealer selling it, may apply to the county assessor to have the structure recorded in the county deed records. The owner must either own the land on which the structure is located, or hold a recorded lease of twenty years or more that specifically permits the structure to be recorded in the county deed records. The owner must turn over any ownership document for cancellation. The deed records must list any unreleased security interest in the manufactured structure. Once recorded in the deed records, the manufactured structure is subject to the same provisions of law applicable to any other building, housing, or structure on the land, and may be sold separately from the land or leasehold estate only if the owner applies to have it removed from the deed records.¹⁰⁴

Pennsylvania: Upon application, the department of transportation may cancel a certificate of title for a mobile home that is affixed to real property.¹⁰⁵ The home must be permanently mounted on a foundation.¹⁰⁶ The owner must complete a form and return it, along with the title, to the department of transportation.¹⁰⁷ If a lien appears on the certificate of title, the title will not be cancelled until the home owner submits satisfactory evidence that the lien has been recorded against the land.¹⁰⁸ After cancellation, the ownership interest in the mobile home, together with all liens and encumbrances on it, is transferred to and encumbers the real property.¹⁰⁹

South Carolina: The owner of a manufactured home may affix the home to real property by installing it in accordance with the state installation standards, removing the wheels, axles, and towing hitch, and filing an affidavit for retirement of title.¹¹⁰ The owner of the home must either own the land on which it is located or have a leasehold estate of thirty-five years or more in the land. The local register of deeds or clerk of court must then record the affidavit as if it were a deed to real property. Upon completion of this process, the home is to be treated as real property for all purposes except condemnation.¹¹¹ The title certificate may be cancelled by presenting it to the division, along with a clocked and stamped copy of the affidavit.¹¹² Any party listed on the title

94 Mont. Code Ann. § 15-1-116.

95 Nev. Rev. Stat. § 361.244.

96 Nev. Rev. Stat. §§ 278.02095, 361.244(5).

97 Nev. Rev. Stat. § 361.244(3).

98 N.C. Gen. Stat. § 105-273(13).

99 N.C. Gen. Stat. § 20-109.2.

100 N.C. Gen. Stat. §§ 47-20.6, 47-20.7.

101 Ohio Rev. Code Ann. § 4503.06(B)(1), (2) (West).

102 Ohio Rev. Code Ann. § 4505.11 (West).

103 *In re Cluxton*, 327 B.R. 612 (B.A.P. 6th Cir. 2005).

104 Or. Rev. Stat. § 446.626. *See also* Or. Rev. Stat. § 446.611 (means of perfecting security interest in mobile home that still has an ownership document).

105 75 Pa. Cons. Stat. § 1140.

106 Pa. Code tit. 67, § 401.5(a).

107 *Id.*

108 Pa. Code tit. 67, § 401.5(b).

109 75 Pa. Cons. Stat. § 1140.

110 S.C. Code § 56-19-510. *See also* S.C. Code § 56-19-500(1).

111 S.C. Code § 56-19-510.

112 S.C. Code § 56-19-520.

certificate as having a security interest in the home must either lease the lien or consent to the cancellation of the title.¹¹³ Once a manufactured home has been converted to real property in this manner, a manufactured home severance affidavit must be filed before it can be severed from the land.

South Dakota: If a mobile home is fixed to real property, and the owner of the home also owns the land, the owner may request that the title to the home be surrendered.¹¹⁴ If the owner wants to remove the home from the real property at a later time, the owner may apply to have a title reissued.¹¹⁵ These statutes are part of the state motor vehicle titling laws and do not state the effect of surrendering the title.

Tennessee: If a mobile home is affixed to real property, and the owner of the home also owns the land, the owner may surrender the title to the state department of safety. The owner must submit an affidavit of affixation that, *inter alia*, certifies that all permits required by applicable governmental authorities have been obtained, the foundation system complies with the law and with the manufacturer's specifications, and the wheels and axles have been removed. All lienholders must have released their liens on the home. If the affidavit complies with all the statutory requirements, the county register of deeds is to record it. The home is then subject to taxation as an improvement to the land, but the statute does not specify the effect on foreclosure.¹¹⁶

Texas: A manufactured home can be treated as real property, if it is attached to land that the owner of the home owns, or which the owner is leasing under a long-term lease as defined by the state department of housing and community affairs.¹¹⁷ To be attached to land it must be installed in compliance with state rules and connected to a utility.¹¹⁸ The owner must file an application for a statement of ownership and location with the department. In addition, each lienholder must either release the lien or give written consent to the conversion of the home to real property.¹¹⁹ After the department issues the statement, the owner must file a certified copy in the county real estate records.¹²⁰ The home is then considered real property for all purposes.¹²¹

Utah: A manufactured home is considered an improvement to real property if the owner also owns the land to which it is permanently affixed, or leases the land and is financing the home in accordance with federal housing agency guidelines. The owner must surrender the title and complete an affidavit that, *inter alia*, identifies any security

interests in the home. The affidavit and the receipt for the surrender of the title are then recorded by the county recorder. The owner may acquire a new title upon removing the mobile home from the land. Since this statute is part of the state mortgage lending and servicing act, it is likely that it will govern whether foreclosure is the appropriate way for the lender to proceed in the event of default.¹²²

Virginia: The owner of a manufactured home or house trailer that exceeds the size permitted for highway travel must apply for a title within thirty days after purchase. Once the wheels and other equipment that made the home mobile are removed and the home has been attached to realty, then the owner may return the title to the department of motor vehicles for cancellation. The home that may be transferred only as real estate is transferred. Any security interest perfected on the title continues despite the cancellation of the title.¹²³

Washington: The owner of a manufactured home that is affixed to land (i.e., installed in accordance with state installation standards¹²⁴) may apply to have the title eliminated. The owner of the home must also own the land on which it is sited, have a lease of thirty-five years or more for the land, or be purchasing the land under a real estate contract.¹²⁵ The owner must submit the title and an application, which must identify any security interests, to the department of licensing for approval.¹²⁶ After approval, the title is to be cancelled and the approved application is to be recorded in the county real property records.¹²⁷ The statute provides that the manufactured home is then to be treated as real property as if it were a site-built structure,¹²⁸ except for purposes of taxation.¹²⁹ If the title has not been eliminated, the home is not real property.¹³⁰ The statute provides a procedure to obtain a new title if the home is to be removed from the land.¹³¹

West Virginia: The commissioner of motor vehicles may cancel a certificate of title for a mobile or manufactured home that is affixed to real property that the home owner owns.¹³² The owner must submit an application and the certificate of title. The cancellation certificate is then to be recorded in the county deed records. Upon recordation, the statute provides that the home is to be treated for all

113 *Id.*

114 S.D. Codified Laws § 32-3-3.2.

115 S.D. Codified Laws § 32-3-3.3.

116 Tenn. Code Ann. § 55-3-138. *See also* Tenn. Code Ann. § 55-3-138 (procedure for reapplying for new certificate).

117 Tex. Occ. Code Ann. § 1201.2055 (Vernon).

118 Tex. Occ. Code Ann. § 1201.003(2-a) (Vernon).

119 Tex. Occ. Code Ann. § 1201.2075 (Vernon).

120 Tex. Occ. Code Ann. § 1201.2055 (Vernon).

121 *Id.* *See also* Tex. Prop. Code Ann. § 2.001 (Vernon).

122 Utah Code Ann. § 70D-1-20. *See also* Utah Code Ann. § 41-1a-503.

123 Va. Code Ann. § 46.2-653.

124 Wash. Rev. Code § 65.20.020.

125 Wash. Rev. Code §§ 65.20.020, 65.20.040.

126 Wash. Rev. Code § 65.20.040.

127 Wash. Rev. Code § 65.20.050.

128 *Id.* *See also* Wash. Rev. Code §§ 65.20.030, 65.20.060 (manufactured home whose title has been eliminated may be conveyed only by deed or real estate contract).

129 Wash. Rev. Code § 65.20.910.

130 Wash. Rev. Code § 65.20.030.

131 Wash. Rev. Code § 65.20.070.

132 W. Va. Code § 17A-3-12b.

purposes as an appurtenance to the real estate to which it is affixed.¹³³

Wyoming: If a mobile home is installed on a permanent foundation and is taxable as real property,¹³⁴ and all liens have been paid, the certificate of title is to be surrendered to and cancelled by the county clerk.¹³⁵

8.2.4 State Statutes Specifying How Mobile Homes Are Treated in Credit Transactions

A few states have statutes that do not specify a procedure for purging a mobile home title, but direct how the home is to be treated in credit transactions.

A Florida statute provides that if the mobile home was classified as personal property by a seller or lender at the time a security interest in the home was granted, it shall continue to be so classified for all purposes relating to the loan and security agreement.¹³⁶ Florida also has a title purging statute.¹³⁷

In New Hampshire a statute allows any lending institution to treat a manufactured home the same as realty for the purposes of securing loans to finance the home. When a lending institution exercises this option, no certificate of title is required, and all of the provisions of real estate law, including conveyances, deeds, and foreclosure, apply to the home. The home must be placed on a foundation or slab and hooked up to all conventional and necessary utility systems and must be intended to be used as a permanent dwelling unit.¹³⁸

A Texas statute provides that, if a consumer buys real property and a manufactured home at the same time, and certain other conditions are met, the creditor may elect to treat the home as if it were residential real property for all purposes in connection with the credit transaction.¹³⁹ If the creditor so elects, and discloses this election conspicuously to the consumer, then the transaction is considered to be a

residential real property transaction for all purposes.¹⁴⁰ Texas also has a separate mobile home title purging statute.¹⁴¹

8.2.5 Other State Statutes

If a state does not have a title purging statute or one that directs how mobile homes are to be treated in credit transactions, it still may have a statute that sets forth criteria for treating a mobile home as real property for some other purpose. Many states have such statutes as part of their tax laws.¹⁴² In addition, a Vermont statute provides that a

¹⁴⁰ *Id.*

¹⁴¹ Tex. Occ. Code Ann. §§ 1201.2055, 1201.2075 (Vernon). See § 8.2.3, *supra*.

¹⁴² See Alaska Stat. § 29.45.070 (taxation: homes are realty if attached to land or connected to utilities unless expressly classified as personal property by ordinance); Ariz. Rev. Stat. Ann. §§ 42-15201 to 42-15205 (taxation); Ark. Code Ann. § 26-3-203 (taxation); Colo. Rev. Stat. § 42-3-106(6); Conn. Gen. Stat. § 12-63a (mobile home connected to utilities and used as residence is taxable as real property); Del. Code Ann. tit. 9, § 8351 (statute does not define mobile homes as real property, but states that they shall be assessed at same tax rate as real estate); Fla. Stat. §§ 193.075 (mobile home must be taxed as real property if it is permanently affixed to land that the owner of the home owns, i.e., tied down and connected to the normal and usual utilities; similar provision for RVs), 320.015 (taxation; also provides that if a seller or lender characterizes a mobile home as personal property for purposes of a security interest, it shall remain personal property for those purposes until debt is paid); Idaho Code Ann. §§ 63-303 to 63-305 (taxation); 35 Ill. Comp. Stat. Ann. § 515/1 (mobile home resting in whole on permanent foundation, with wheels, tongue and hitch removed, is to be assessed and taxed as real property); Ind. Code § 6-1.1-7-1 (taxation); Iowa Code § 435.26 (taxation); Kan. Stat. Ann. § 79-340 (taxation); Ky. Rev. Stat. Ann. § 132.751 (taxation); Me. Rev. Stat. Ann. tit. 36, § 551 (mobile homes affixed to land, whether or not owned by the home owner, are taxable as real estate); Md. Code, Tax-Property § 8-234 (West) (mobile home that is used or usable for residential purposes and permanently attached to land or connected to utility, water, or sewage facilities is taxable as real property unless it is unoccupied and for sale or located temporarily in rented space in trailer park or mobile home court); Minn. Stat. § 273.125 (taxation); Mo. Rev. Stat. § 137.090 (taxation); Mich. Comp. Laws § 257.801 (taxation); Miss. Code Ann. § 27-53-15 (taxation); Mont. Code Ann. § 15-6-134(1)(b) (taxation); Neb. Rev. Stat. §§ 77-103, 77-3701 (taxation: real property includes mobile homes not registered for highway use and used or usable for purposes such as residence or office, but not those that are unoccupied and for sale); Nev. Rev. Stat. § 361.035 (taxation: incorporates definition in title purging statute); N.H. Rev. Stat. Ann. §§ 72:7-a, 72:7-b (taxation), 78-B:1 (for purpose of real estate transfer tax, manufactured housing becomes real property when placed on site and tied into utilities); N.J. Stat. Ann. § 54:4-1.5 (West) (manufactured homes are taxed as real property if they are either affixed to the land by a permanent foundation or affixed by a non-permanent foundation and connected to utilities so the home is habitable on a permanent basis, but mobile home in a park is not taxable as real estate); N.Y. Real Prop. Tax Law § 102(12)(g) (McKinney) (taxation: real property includes mobile homes

¹³³ *Id.* See also W. Va. Code § 15-5-12 (tax statute providing that a mobile home sited on land owned by someone other than the home owner is classified as personal property whether or not it is permanently affixed to the land, unless the certificate of title has been cancelled).

¹³⁴ See Wyo. Stat. Ann. § 39-15-101(a)(v) (to be real property, must be physically or constructively annexed to the real property and adapted to the use of the real property, and there must be evidence of intent to make it a permanent part of the real property).

¹³⁵ Wyo. Stat. Ann. § 31-2-502.

¹³⁶ Fla. Stat. § 320.015.

¹³⁷ Fla. Stat. § 319.261. Florida also has a statute, Fla. Stat. § 193.075, regarding taxation of mobile homes and RVs as real property. See § 8.2.5, *infra*.

¹³⁸ N.H. Rev. Stat. Ann. § 384:16-d.

¹³⁹ Tex. Fin. Code Ann. § 347.455 (Vernon).

mobile home is to be financed as a residence if it is permanently sited in a manner intended for permanent residence on land owned by the owner of the home, but this statute's specific effect appears to be confined to state interest rate limitations and the state homestead exemption.¹⁴³ These statutes typically do not require surrender of the title or provide for recording a home in the local county real estate records. Nonetheless, if a home is treated as real estate for tax or interest rate purposes, it is more likely that a court will find that it is real estate for other purposes as well.¹⁴⁴

8.2.6 Whether Mobile Home Is Treated As Realty in Absence of a State Statute

If there is no state statute which specifically establishes the nature of mobile homes for purposes of security interests, courts must determine whether a mobile home remains personal property or has become a fixture. If the home remains personal property, then the only remedies available to the creditor are those provided by Article 9 or state replevin law. If, on the other hand, the home has become a

unless they are unoccupied and for sale, remain in the jurisdiction for less than 60 days, or are certain small RVs used for purposes such as camping); N.D. Cent. Code § 57-55-10 (personal property tax does not apply to mobile home that is permanently attached to foundation on land owned by home owner); Okla. Stat. tit. 68, § 2811 (manufactured home not registered under motor vehicle code is subject to *ad valorem* tax); Or. Rev. Stat. § 308.875 (taxation); statute specifically provides that change for purposes of *ad valorem* taxation does not change status of home with respect to any transactions between the owner and security interest holders or other persons); 72 Pa. Stat. Ann. § 5020-201 (West) (taxation); R.I. Gen. Laws §§ 34-44-4.1 (every deed, instrument, or other writing granting an interest in a mobile or manufactured home must be filed with local recorder of deeds), 44-3-2.2 (towns cannot tax trailer that is registered and taxed as a motor vehicle); S.C. Code Ann. §§ 31-17-310 to 31-17-410 (taxation and licensing); S.D. Codified Laws § 10-9-2 (taxation); Tenn. Code Ann. § 67-5-802 (taxation); Wis. Stat. § 70.043 (mobile home is an improvement to real property if it is set upon foundation and connected to utilities on land owned by home owner).

143 Vt. Stat. Ann. tit. 9, § 2603.

144 *In re Weaver*, 69 B.R. 554 (Bankr. W.D. Ky. 1987) (citing tax law standards as supporting conclusion that mobile home was fixture for purposes of perfection of security interest). *But see In re Harris*, 166 B.R. 163 (Bankr. D. Colo. 1994) (failure to purge title for tax purposes does not prevent court from finding mobile home to be real property for purposes of exemption statute). *But cf. Gen. Elec. Capital Corp. v. Sohn*, 566 So. 2d 841 (Fla. Dist. Ct. App. 1990) (classification of mobile home as realty for tax purposes does not affect seller's or lender's security interest, but applies here because this is a priority dispute between financier of mobile home and buyer of real estate at tax sale); *Onbank & Trust Co. v. Hannold*, 258 A.D.2d 720, 684 N.Y.S.2d 677 (1999) (county may institute tax foreclosure on mobile home as well as the land on which it is sited, regardless of whether home is personalty for other purposes).

fixture, UCC § 9-604 gives the creditor the option of proceeding either under Article 9 or under the state's real estate law.¹⁴⁵

Most courts look at several factors to determine whether a mobile home has become realty. Courts may also refer to these factors even in jurisdictions that have title purging statutes, to buttress their conclusion that the home is or is not real property. The factors include:

- Real or constructive annexation to the real estate in question;
- Appropriation or adaptation to the use or purposes of that part of the realty for which it is connected;
- The intention of the party making the annexation to make a permanent accession to the realty, this intention being inferred from the nature of the chattel, from the relation and situation of the party making the annexation, and from the structure and the purpose for which the annexation has been made; and
- The likelihood that removal would cause substantial injury to the realty.¹⁴⁶

145 U.C.C. § 9-604(b). *See* § 8.2.2, *supra*.

146 Cases reciting or applying these factors include: *In re MBA Poultry, Inc.*, 291 F.3d 528, 47 U.C.C. Rep. Serv. 2d 1488 (8th Cir. 2002) (Neb. law) (listing the first three factors); *In re Cluxton*, 327 B.R. 612 (B.A.P. 6th Cir. 2005) (reciting first three factors); *In re Schultz*, 2001 Bankr. LEXIS 587, at *15 (Bankr. D.N.H. Apr. 2, 2001); *Altegra Credit Co. v. Banks (In re Banks)*, 259 B.R. 848 (Bankr. E.D. Va. 2001) (whether a mobile home placed upon real property subject to foreclosure has become part of the realty must be decided on a case-by-case basis based on common law doctrine of fixtures, including intent of owner in annexing mobile home to realty); *In re Claxton*, 239 B.R. 598 (Bankr. N.D. Okla. 1999) (double-wide mobile home was a fixture and so covered by bank's mortgage on the real property, where it was permanently resting on a concrete foundation, had a stone skirting on three of its four sides, and was surrounded by porches, landscaping and a metal fence); *In re Painter*, 1998 WL 34070559 (Bankr. C.D. Ill. Feb. 27, 1998); *In re Harris*, 166 B.R. 163, 165 (Bankr. D. Colo. 1994) (home was real property for purposes of exemption law where it was attached to sewer, water, and electric systems and the debtor lived there for 12 years and owned the land); *In re Onyan*, 163 B.R. 21, 25 (Bankr. N.D.N.Y. 1993) (construing exemption statute; cost of site preparation was part of purchase price of mobile home that was permanently attached to the land); *In re Fink*, 4 B.R. 741, 743-744 (Bankr. W.D.N.Y. 1980); *Griswell v. Columbus Fin. Co.*, 470 S.E.2d 256 (Ga. Ct. App. 1996) (unless it is permanently attached to real property, mobile home is personal property that is subject to replevin); *Fuqua Homes, Inc. v. Evanston Bldg. & Loan Co.*, 370 N.E.2d 780 (Ohio Ct. App. 1977) (ownership dispute between manufacturer of mobile home and those with interest in the land where it was sited; manufacturer's certificate of ownership not controlling because home had become real property); *Parsons v. Lender Serv. Inc.*, 801 P.2d 739, 13 U.C.C. Rep. Serv. 2d (Okla. Ct. App. 1990); *Rourk v. Cameron Appraisal Dist.*, 131 S.W.3d 285, 296 (Tex. App. 2004) (RVs were not real property for tax purposes); *Hartford Nat'l Bank & Trust Co. v. Godin*, 398 A.2d 286 (Vt. 1979) (reciting these three factors in dispute between holder of secu-