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TitleTRACK

Manufactured homes: Is it a house or a Honda?

Manufactured homes — pre-fabricated or factory built housing — are a perplexing area governed by some odd rules and laws. Today, many manufactured homes are constructed comparably to some onsite built homes. However, to the surprise of many, these units are not deemed real property.

Under New York state law, manufactured housing built after July 1994 is personal property, classified as a motor vehicle and given a vehicle identification number. As the law stands today, manufactured homes can never be converted to real property.

Just because it looks like a house and doesn't have bucket seats, ABS and a set of Michelin tires doesn't mean New York state hasn't classified it as a motor vehicle.

When you encounter a transaction involving a mobile home, your initial instinct is to follow the traditional steps performed in a real estate transaction. While many of the facets of a traditional sale exist, several others steps must be taken. It is important to verify the date the improvement(s) were built to determine if it can be classified as real property and confirm that a certificate of title and a vehicle identification number has been issued. The certificate of title must be registered to the homeowner and can be applied for through the New York State Department of Motor Vehicles.

If the improvement was built prior to July 1994 and is being transferred or sold today, a new certificate of title will need to be issued. When financing is involved, the lender has to take several steps for homes built after July 1994, to ensure it holds a valid lien unlike traditional financing of real property where a mortgage encumbers the land and improvements.

The owner/borrower must sign the DMV-900 form which lists upon the certificate of title that there is a lien against the unit in favor of a lending institution. The lender must also file a UCC financing statement with the county where the property is located and a mortgage that secures the land only.

From a title insurance perspective, the title agent needs to

be cognizant there is satisfactory evidence that the building has been permanently affixed to a foundation and no axles or wheels still are present. Traditionally this is obtained by virtue of an affidavit from the owner; however, it wouldn't hurt to verify this information by an inspection of the property and collection of any information pertaining to permanent water supply/hookups and sewer lines/septic systems being present.

Additionally, the title agent should review the existing certificate of title (if there is one) and verify no lien is listed. A lender can only place a lien against the certificate of title. You can verify if a lien is listed upon a certificate of title online at www.dmv.ny.gov/titlestat.

Issuance of the Manufactured Housing Unit Endorsement (TIRSA 7) can sometimes create a false sense of security for counsel and lenders. Often this is issued without properly verifying and gathering the affidavit that the building was permanently affixed to a foundation, the property has been correctly assessed, proof of sewer/water hookups, physical inspection and review of the certificate of title.

Review of these materials with underwriting counsel is advised to confirm issuance is appropriate. Most likely the lender will state issuance of the Manufactured Housing Endorsement as a requirement as a condition of the loan. The endorsement states the "land" covered under the policy includes the manufactured housing unit. The language on the endorsement seemingly contradicts how the laws in New York are currently written and should make a title agent cautious prior to issuance of the endorsement.

Counsel should review variances that arise from these transactions. These include but are not limited to the following:

- Taxation — sales will be subject to New York sales tax vs. transfer taxes;
- Exemption status — a creditor seeking to enforce a judg-

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ment against an individual doesn't have co-ownership/tenancy by the entireties affecting their ability to enforce their lien upon personal property;

- There are less lending options available for manufactured housing which adversely affects the future sale or refinance options;

- Traditionally, financing that is available is also at higher interest rates and less favorable terms; and

- Foreclosure by the lender is also governed by the UCC and state laws dealing with repossession not state foreclosure laws. This format is typically non-judicial in nature and doesn't allow for the homeowner to assert any claims or present a

defense to a foreclosure action

For most parties not actively involved in real estate there is no distinction between real property with improvements vs. a manufactured house. The importance of real estate professionals to identify these transactions and review the legal ramifications of the property type with their clients is crucial.

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