

MODULAR HOME AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Financial Institution Mortgage Financing Regulation Act to address modular homes.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ exempts modular homes from provisions that address manufactured or mobile homes;
- ▶ provides a process by which modular homes are treated as real property; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

70D-2-102, as last amended by Laws of Utah 2011, Chapter 14

70D-2-401, as renumbered and amended by Laws of Utah 2009, Chapter 72

ENACTS:

70D-2-401.5, Utah Code Annotated 1953



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Be it enacted by the Legislature of the state of Utah:

Section 1. Section **70D-2-102** is amended to read:

70D-2-102. Definitions.

As used in this chapter:

(1) (a) Except as provided in Subsection (1)(b), "broker" means a person who in the regular course of business assists a person in obtaining a mortgage loan for a fee or other consideration paid directly or indirectly.

(b) "Broker" does not include a person solely because of the person's:

(i) real estate brokerage activities; or

(ii) activities as an attorney licensed to practice law in this state who, in the course of the attorney's practice as an attorney, assists a person in obtaining a mortgage loan.

(2) "Business as a lender, broker, or servicer" means a person who engages in an act for compensation or in the expectation of compensation that makes the person a lender, broker, or servicer.

(3) (a) Except as provided in Subsection (3)(b), "lender" means a person who in the regular course of business originates a loan secured by a mortgage.

(b) "Lender" does not include a person who:

(i) as a seller only receives one or more mortgages as security for a purchase money obligation; or

(ii) only receives a mortgage as security for an obligation:

(A) payable on an installment or deferred payment basis; and

(B) arising out of materials furnished or services rendered in the improvement of real property.

(4) "Manufactured home" means a transportable factory built housing unit that:

(a) is constructed:

(i) on or after June 15, 1976, according to the National Manufactured Housing Construction and Safety Standards Act of 1974; and

(ii) in one or more sections, which:

(A) in the traveling mode, is eight body feet or more in width or 40 body feet or more in length; or

- 59 (B) when erected on site, is 400 or more square feet;
- 60 (b) is built on a permanent chassis;
- 61 (c) is designed to be used as a dwelling with or without a permanent foundation when
- 62 connected to the required utilities; and
- 63 (d) includes the plumbing, heating, air-conditioning, and electrical systems.

64 (5) "Mobile home" means a transportable factory built housing unit built before June
 65 15, 1976, in accordance with a state mobile home code that existed before the National
 66 Manufactured Housing Construction and Safety Standards Act of 1974.

67 (6) "Modular home" means a modular unit as defined in Section 15A-1-302.

68 [~~(6)~~] (7) "Permanently affixed" means anchored to, and supported by, a permanent
 69 foundation or installed in accordance with the manufactured housing installation standard code
 70 referred to in Section 15A-1-202.

71 [~~(7)~~] (8) "Servicer" means a person who in the regular course of business assumes
 72 responsibility for servicing and accepting payments for a mortgage loan.

73 Section 2. Section **70D-2-401** is amended to read:

74 **70D-2-401. Qualification of manufactured home or mobile home as improvement**
 75 **to real property -- Requirements -- Removal from property -- Exception for modular**
 76 **home.**

77 (1) Except as provided in this section, for purposes of this chapter, a manufactured
 78 home or mobile home is considered personal property.

79 (2) Notwithstanding Subsection (1), for purposes of this chapter, if the requirements of
 80 this section are met, a manufactured home or mobile home is:

- 81 (a) considered to be an improvement to real property; and
- 82 (b) considered as real property.

83 (3) A manufactured home or mobile home is considered to be an improvement to real
 84 property if:

- 85 (a) the manufactured home or mobile home is permanently affixed to real property;
- 86 (b) the person seeking to have the manufactured home or mobile home considered to
- 87 be an improvement to real property:
 - 88 (i) owns the manufactured home or mobile home;
 - 89 (ii) (A) owns the real property to which the manufactured home or mobile home is

90 permanently affixed; or

91 (B) leases the real property to which the manufactured home or mobile home is
92 permanently affixed and the real property is financed in accordance with Subsection (4); and

93 (iii) meets the requirements of Subsections (5) and (6); and

94 (c) in accordance with Subsection (7), the following are recorded by the county
95 recorder:

96 (i) the affidavit of affixture described in Subsection (7); and

97 (ii) the receipt of surrender described in Subsection (7).

98 (4) For purposes of Subsection (3)(b)(ii)(B), a manufactured home or mobile home
99 shall be financed in accordance with the guidelines established by:

100 (a) the Federal Home Loan Mortgage Corporation;

101 (b) the Federal National Mortgage Association;

102 (c) the United States Department of Agriculture; or

103 (d) another entity that requires as part of the entity's financing program restrictions:

104 (i) on:

105 (A) ownership; and

106 (B) actions affecting title and possession; and

107 (ii) if the restrictions described in Subsection (4)(d)(i) are similar to restrictions

108 imposed by one or more of the entities described in Subsections (4)(a) through (c).

109 (5) (a) An owner of a manufactured home or mobile home seeking to have the
110 manufactured home or mobile home considered to be an improvement to real property and
111 considered real property shall complete an affidavit of affixture.

112 (b) An affidavit of affixture described in Subsection (5)(a) shall contain:

113 (i) the vehicle identification numbers of the manufactured home or mobile home;

114 (ii) the legal description of the real property to which the manufactured home or mobile
115 home is permanently affixed;

116 (iii) a statement certified by the assessor of the county in which the manufactured home
117 or mobile home is located that the owner of the manufactured home or mobile home:

118 (A) is not required to pay personal property tax in this state on the manufactured home
119 or mobile home; or

120 (B) if the manufactured home or mobile home is subject to personal property tax in this

121 state, has paid all current and prior year personal property taxes assessed on the manufactured
122 home or mobile home;

123 (iv) a description of any security interests in the manufactured home or mobile home;
124 and

125 (v) a receipt of surrender issued by the Motor Vehicle Division of the State Tax
126 Commission in accordance with Subsection (6).

127 (6) (a) The Motor Vehicle Division of the State Tax Commission shall issue a receipt
128 of surrender under Subsection (5)(b)(v) if an owner described in Subsection (5) surrenders to
129 the Motor Vehicle Division the:

130 (i) manufacturer's original certificate of origin; or
131 (ii) title to the manufactured home or mobile home.

132 (b) After issuing the receipt of surrender in Subsection (6)(a), the Motor Vehicle
133 Division shall maintain a permanent record of:

134 (i) the receipt of surrender; and
135 (ii) the certificate or title described in Subsection (6)(a)(ii).

136 (7) (a) An owner shall present to the county recorder:

137 (i) the affidavit of affixture described in Subsection (5); and
138 (ii) the receipt of surrender described in Subsection (6).

139 (b) A county recorder who receives an affidavit of affixture and receipt of surrender
140 described in Subsection (7)(a) shall record the receipt of surrender and affidavit of affixture.

141 (c) An owner of property described in Subsection (5) shall provide a copy of the
142 recorded affidavit of affixture to:

143 (i) the Motor Vehicle Division of the Tax Commission; and
144 (ii) the assessor of the county in which the manufactured home or mobile home is
145 located.

146 (8) A lien on the manufactured home or mobile home that is considered to be an
147 improvement to real property shall be perfected in the manner provided for the perfection of a
148 lien on real property.

149 (9) If a manufactured home or mobile home owner separates the manufactured home or
150 mobile home from the real property, the owner may acquire a new title by submitting to the
151 Motor Vehicle Division of the State Tax Commission:

152 (a) a recorded affidavit that the manufactured home or mobile home is removed from
153 the real property; and

154 (b) an application for a new title.

155 (10) The determination of whether a manufactured home or mobile home is considered
156 real property or personal property under this section may not be considered in determining
157 whether the manufactured home or mobile home is real property or personal property for
158 purposes of taxation under Title 59, Chapter 2, Property Tax Act.

159 (11) This section does not apply to a modular home.

160 Section 3. Section **70D-2-401.5** is enacted to read:

161 **70D-2-401.5. Qualification of modular home as improvement to real property --**

162 **Requirements.**

163 (1) Except as provided in this section, for purposes of this chapter, a modular home is
164 considered personal property.

165 (2) Once a modular home is constructed on real property and the modular home is
166 taxed as real property, it is presumed that the owner of the real property also owns the modular
167 home.

168 (3) For purposes of this chapter, if the requirements of this section are met, a modular
169 home is:

170 (a) considered to be an improvement to real property; and

171 (b) considered as real property.

172 (4) A modular home is considered to be an improvement to real property if:

173 (a) the modular home is permanently affixed to real property;

174 (b) the person seeking to have the modular home considered to be an improvement to
175 real property:

176 (i) (A) owns the real property or is in the process of obtaining financing for the real
177 property to which the modular home is or will be permanently affixed; or

178 (B) leases the real property to which the modular home is permanently affixed and the
179 real property is financed in accordance with Subsection (5); and

180 (ii) controls the use and possession of the modular home or is in the process of
181 obtaining financing for the purchase of the modular home;

182 (c) records the document required to be recorded under Subsection (7); and

183 (d) the modular home is assessed or is intended to be assessed as real property for
184 purposes of property taxes.

185 (5) For purposes of Subsection (4)(b)(i)(B), a modular home shall be financed in
186 accordance with the guidelines established by:

187 (a) the Federal Home Loan Mortgage Corporation;

188 (b) the Federal National Mortgage Association;

189 (c) the United States Department of Agriculture; or

190 (d) another entity that requires, as part of the entity's financing program, restrictions:

191 (i) on:

192 (A) ownership; and

193 (B) actions affecting title and possession; and

194 (ii) if the restrictions described in Subsection (5)(d)(i) are similar to restrictions
195 imposed by one or more of the entities described in Subsections (5)(a) through (c).

196 (6) (a) The person seeking to have a modular home considered to be an improvement
197 to real property and considered real property shall complete an affidavit of real property.

198 (b) An affidavit of real property described in Subsection (6)(a) shall contain:

199 (i) the legal description of the real property to which the modular home is or will be
200 permanently affixed;

201 (ii) (A) a statement certified by the assessor of the county in which the modular home
202 is located that the modular home is taxed as real property for purposes of property taxes; or

203 (B) a statement that the person obtaining financing for the modular home intends that
204 the modular home be taxed as real property; and

205 (iii) a statement that all liens or security interests in the modular home under Title 70A,
206 Uniform Commercial Code, as personal property have been released.

207 (7) (a) The person seeking treatment of a modular home as real property shall present
208 to the county recorder the affidavit of real property described in Subsection (6).

209 (b) A county recorder who receives an affidavit of real property described in
210 Subsection (7)(a) shall record the affidavit of real property.

211 (c) A person described in Subsection (7)(a) shall provide a copy of the recorded
212 affidavit of real property to the assessor of the county in which the modular home is located.

213 (8) A lien on a modular home that is considered to be an improvement to real property

214 shall be perfected in the manner provided for the perfection of a lien on real property.
215 (9) The determination of whether a modular home is considered real property or
216 personal property under this section may not be considered in determining whether the modular
217 home is real property or personal property for purposes of taxation under Title 59, Chapter 2,
218 Property Tax Act.

Legislative Review Note
as of 2-28-13 2:58 PM

Office of Legislative Research and General Counsel