

Mobile Homes Claims Avoidance *Webinar*

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MOBILE HOMES CLAIMS AVOIDANCE WEBINAR

I. Spotting Clues That There May Be a Mobile Home on the Property

- A. VIN's in the chain or prior policies
- B. Clues on property appraiser's website
- C. Clues in other title documents such as a declaration, or subdivision name
- D. Improperly retired mobile homes/Unretired mobile homes
- E. Survey

II. Why a Policy Issuing Agent Needs to Determine Whether there Is Mobile Home on the Property

- A. Insuring provisions of title policies
 - 1. "Land" as per 1(g) in the CONDITIONS portion of the policy
 - 2. As per the ALTA 7 Endorsement, "Land" includes the manufactured housing unit
 - 3. A mobile home is an "affixed improvement" if it is tied down and connected to the normal and usual utilities. § 193.075, Fla. Stat.
 - 4. "Unmarketable title" as per COVERED RISK 3 in the policy
 - 5. An owner does not obtain marketable title unless the certificate of title is delivered to him. § 319.22(1), Fla. Stat.
- B. Agent obligations in issuing a title commitment
 - 1. Primary Title Services and Premium as per Section 627.7711, Florida Statutes
 - 2. Requirement of determination of insurability as per Section 627.7845, Florida Statutes
- C. Claims scenarios

III. Mobile Homes, Manufactured Homes and Modular Homes: Definitions and Distinctions

- A. Definitions
 - 1. Mobile home as per Section 320.01(2)(a), Florida Statutes
 - 2. Manufactured home as per Section 320.01(2)(b), Florida Statutes
 - 3. Modular home as per Rule 12A-1.007(11)(g), Florida Administrative Code
- B. Distinctions
 - 1. Manufactured (mobile) homes have a data plate pursuant to 24 C.F.R. § 3280.5
 - 2. Manufactured (mobile) homes have a vehicle identification number either on the data plate or on the body of the structure
 - 3. Modular homes may have a sticker that they are built to code from the Department of Community Affairs, now the Department of Economic Opportunity

IV. Real Property Stickers

- A. To transfer a mobile (manufactured) home, proof must be presented that sales tax has been paid. § 319.23(8), Fla. Stat.
- B. A real property sticker is proof that the mobile home is taxed as real property. § 193.075, Fla. Stat.
- C. Titles to mobile homes must still be transferred regardless of whether an RP sticker is attached
- D. Dealing with situations in which there is no RP sticker

V. Transferring Title to a Mobile Home

- A. Obtain the certificates of title to the mobile homes
- B. Confirm the registration of owners and existence of any liens on the mobile homes
- C. Usage of outside vendors to transfer title
- D. Transfer title and place liens if necessary on the mobile home title
- E. Transferring mobile homes which have been foreclosed

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- A. Procedure to retire a mobile homes pursuant to Section 319.261, Florida Statutes
- B. How to deal with properly retired mobile homes
- C. Necessary requirements for unretired mobile homes



Introduction

Title agents may be overlooking a significant chunk of the housing market in Florida. According to the Florida Manufactured Housing Association, Inc., mobile, manufactured and modular homes represent one fifth of the new housing market in the state, and that doesn't even include resales.

Some agents avoid mobile homes due to the sometimes confusing and frustrating additional step of transferring the titles. And there is no shortage of confusion. The FNTG claims center has been opening approximately 20 new claims per month with an average cost between \$800 and \$1,000 per claim. This isn't acceptable. The purpose of this presentation is to give agents the tools to become mobile home experts in their market and to significantly reduce claims.

Clues That a Mobile Home Might Be On the Property

Mobile/manufactured home claims often occur because no one realized that there was a mobile/manufactured home on the property and no requirement was made for its transfer. Oftentimes, there may be clues that a mobile/manufactured home is on the property. Examiners, processors and closers all play a role in identifying these clues. If such a clue is found, err on the side of caution and require the mobile home to be transferred or mortgaged.

- Does the sales contract mention a trailer, mobile or manufactured home? Is there a mobile home rider?
- Are there deeds or mortgages in the chain which include a Vehicle Identification Number (VIN)?
- Does the property appraiser's website include a statement that a mobile/manufactured home is on the property or that such mobile/manufactured home is taxed as real property and contains a real property sticker?
- Does the property appraiser's website include a sketch of a rectangular building? Most single wide mobile/manufactured homes are 16' X 76' and doublewides are 32' X 76' not including any added carports or porches.
- Does it contain aerial photographs which may indicate the presence of a mobile/manufactured home?
- Does it give more subtle clues such as listing skirting as an extra feature? Many mobile/manufactured homes have vinyl or aluminum skirting covering the area below the chassis to the ground.
- Does the subdivision name include a reference to mobile/manufactured homes? If the subject property is in Barefoot Bay Mobile Home Subdivision, it's a good bet that there is a mobile/manufactured home on the property.
- How about the restrictions? Review the restrictions. They may contain clues that a mobile/manufactured home may be on the property.
- Is there evidence of an improperly retired or "unretired" mobile/manufactured home on the property?
- Does the mortgage contain a mobile home rider?
- Do the closing instructions mention a mobile/manufactured home?
- Does the survey provide any clues? A survey may specifically state that the building on the property is a mobile/manufactured home or that fact may be embedded in the surveyor's notes.

If any of these items create any indication that there may be a mobile/manufactured home on the property, a requirement should be made for transfer and/or placing a lien on the property or an exception made as per below stating that the term "Land" does not include any mobile homes.



Mobile Homes and the Title Policy

Some title agents may think they need not worry about mobile/manufactured home title transfer because they are only insuring the Land. They don't realize that most often the "Land" includes the mobile/manufactured home. "Land" is defined in Condition 1(g) of the policy as follows:

*"The land described in Schedule A, **and affixed improvements** that by law constitute real property."*

Under Florida law, a mobile home is permanently affixed if it is tied down and connected to the normal and usual utilities. § 193.075, Fla. Stat. The issuance of a Real Property (RP) sticker by the tax collector is evidence that the mobile home has been permanently affixed to the land so as to constitute part of the real property. § 320.0815, Fla. Stat.

Based on the definition of Land, if there is a permanently affixed mobile home on the subject property that an agent has insured, the agent has also insured title to the mobile home regardless of whether they intended to do so or even knew of its existence. In other words, unless the agent has made an exception for the mobile home, which we'll discuss later, the marketability of the mobile home has been insured.

Covered Risk 3 of the policy covers against loss or damage by reason of unmarketable title. While marketable title is sometimes an amorphous concept, it isn't when it comes to mobile home title transfer. As per section 319.22, Florida Statutes, a person acquiring title to a mobile home *does not acquire marketable title* unless the certificate of title for the mobile home is issued to him or her. Simply put, the Company could suffer a loss under the policy if the certificate of title is not properly delivered to the insured.

ALTA 7-06 Endorsement (Manufactured Housing Unit)

The ALTA 7-06 Endorsement is available in Florida for both owner's and loan policies. It states that the term "Land" as defined in the policy includes the manufactured housing unit located on the Land described in Schedule A at date of policy.

The endorsement is somewhat duplicative since the policy already covers any mobile home attached to the land at date of policy. Nonetheless, some insureds find it useful because it verifies that the definition of "Land" specifically includes a mobile home. The premium is a minimum of \$25.

Agent Obligations in Issuing a Title Commitment

Title agents should be aware that "Premium" is the charge for a title insurance policy and it includes the performance of "Primary Title Services." § 627.7711, Fla. Stat. Primary Title Services means:

- Determining insurability in accordance with sound underwriting practices based upon evaluation of a reasonable title search or search of the records of a Uniform Commercial Code filing office and other such information as may be necessary
- Determination and clearance of underwriting objections and requirements to eliminate risk
- Preparation and issuance of a title insurance commitment setting forth the requirements to insure
- Preparation and issuance of the policy

A commitment, endorsement or policy can't be issued until the title insurer has caused to be made a determination of insurability. § 627.7845, Fla. Stat. Thus, title agents have an obligation to review the title documents and any other information necessary before issuing a title insurance commitment.

Claims Scenarios

Many claims involving mobile/manufactured home titles arise because the agent did not realize that there was a mobile/manufactured home on the property or didn't realize it needed to be transferred. The failure to catch that important fact can create a domino effect when it comes to claims.

Let's take a look at what can happen if an agent is insuring a mortgage on a non-retired mobile/manufactured home, but the mortgage does not include the mobile home description. The lender will foreclose and eventually



a certificate of title will be issued to the successful bidder. The legal description on the certificate of title will most likely be the same as that which was on the mortgage with no reference to the mobile/manufactured home. If the lender were to try to obtain the title to the mobile/manufactured home through the Department of Highway Safety and Motor Vehicles, it would be unable to do so because it would have no proof of its entitlement to the mobile/manufactured home. What the lender will need to do is include a count to reform the mortgage in its foreclosure action. In a reformation, the plaintiff asks the court to change the legal description on the mortgage so as to include the mobile/manufactured home. That way when the certificate of title is issued, it will include the description of the mobile/manufactured home. Then the lender will be able to prove to the Department of Highway Safety and Motor Vehicles that it is entitled to a certificate of title to the mobile/manufactured home. Who pays for counsel to include this count for reformation? If the mortgage was insured by the Company, in many cases the Company pays.

Also, if there is no description of the mobile/manufactured home on the insured mortgage, other problems may arise if the borrower files for bankruptcy protection. A bankruptcy trustee may seek to set aside the mortgage as to the mobile/manufactured home since it was not included on the mortgage. The insured lender becomes an unsecured lender as to the mobile/manufactured home and the insured lender may have a claim on the policy.

What the Heck is a Mobile Home Anyway?

Understandably, there is a lot of confusion regarding the terms used to describe various non-traditionally built homes. Mobile, manufactured, modular? Which is which and what do we do with them?

A **mobile home** is defined as "a structure, transportable in one or more sections, which is eight body feet or more in width and which is *built on an integral chassis* and designed to be used as a dwelling when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein." § 320.01(2)(a), Fla. Stat. The Florida Department of Highway Safety and Motor Vehicles (HSMV) regulates mobile home titles. The HSMV website at <http://www.flhsmv.gov/offices/> contains useful information and forms. The HSMV regulates mobile homes because they are designed to travel on public highways.

A **manufactured home** is a mobile home fabricated on or after June 15, 1976, which is built to new or higher safety standards. § 320.01(2)(b) Fla. Stat.

All manufactured homes are mobile homes, but not all mobile homes are manufactured homes. Any mobile home built after June 15, 1976, which is the vast majority of them at this point, is a manufactured home. Back in 1976, the federal government created building standards for mobile/manufactured homes and changed the term from mobile homes to manufactured homes. Part of the confusion with respect to the names is that most people refer to manufactured homes as mobile homes. For our purposes, they are the same, so from here on out, in an effort to avoid confusion, they'll be referred to as mobile/manufactured homes.

Mobile/manufactured homes are to be distinguished from **prefabricated or modular housing units**. What's the difference? Unlike a mobile/manufactured home, a **modular housing unit** "is *not manufactured upon a chassis* or undercarriage as an integral part thereof." Florida Administrative Code 12A-1.007(11)(g). Since a modular housing unit is not manufactured upon an integral chassis or undercarriage for travel over the highways, it does not require a title issued by the HSMV.

To summarize, title agents must transfer titles to non-retired mobile/manufactured homes, but not to modular housing units. Modular housing units are treated the same way as traditionally built homes.

How does an agent determine whether they are dealing with a mobile/manufactured home or a modular housing unit or something else altogether? The agent should err on the side of caution and presume if the clues so indicate that they are dealing with a mobile/manufactured home until proven otherwise by evidence presented by the owner, surveyor, real estate licensee or other source.

The key is usually the data plate. Pursuant to 24 C.F.R. §3280.5 all mobile/manufactured homes must have a data plate. It is usually be found near the main electrical panel, in a kitchen cabinet or in the master bedroom closet and contains the vehicle identification number (VIN) and information about the manufacturer. The VIN is also located in the front steel beam cross member under the home, usually the beam into which the hitch is bolted. The steel I-beam frame with axles itself is also an indication that it is a mobile/manufactured home. These are



usually hidden under the skirting. If the building has a data plate or VIN it is a mobile/ manufactured home and title must be transferred. If not, it is likely a modular home which does not have a certificate of title.

Modular housing units usually have a concrete foundation and do not have a chassis. They are built according to local building codes and may have a sticker from the Florida Department of Community Affairs or the Department of Economic Opportunity. Modular housing units are treated like a traditionally built building. § 319.28(8)(a), Fla. Stat. No title transfer is necessary with HSMV and nothing needs to be noted on the deed or title policy other than the legal description of the land.

"RP" Stickers and Sales Tax

Real Property "RP" Stickers are important because HSMV will not transfer title to a mobile/manufactured home without proof of payment of taxes. § 319.23(8)(a), Fla. Stat. An RP Sticker is proof that the mobile home is already taxed as real property in which case additional sales tax is not due. § 193.075, Fla. Stat.

An RP sticker will be issued when:

1. The mobile/manufactured home is tied down and connected to the normal and usual utilities; and
2. The owner of the home is also the owner of the land on which the residence is situated and permanently affixed.

Proof of these conditions is presented to the property appraiser's office in a DR-402 form located at <http://dor.myflorida.com/dor/property/forms/>, but usually the tax collector's office issues the RP sticker.

The RP sticker "shall be affixed to the lower left window closest to the street or road providing access to such residence." § 320.0815, Fla. Stat.

Since proof of payment of taxes is necessary to transfer the title and an RP sticker is such proof, what do title agents actually have to take to the tag office to prove one was issued? Obviously, an agent doesn't have to remove the window to which the sticker is stuck. Instead, the agent would bring the card to which the sticker was originally attached which contains an identical number and states that the mobile/manufactured home is taxed as real property.

It is not necessary to obtain a new RP sticker with each title transfer unless the mobile/manufactured home is moved.

If there is no RP sticker, the title may still be transferrable. If the mobile/manufactured home is new, sales tax will be due and proof of payment will be necessary to transfer title. If it is not new, some property appraisers' offices will provide an affidavit stating that they have been collecting ad valorem taxes on the mobile home and the land. Some local tag offices will accept the affidavit and will transfer the title without requiring payment of additional sales tax.

If this procedure cannot be accomplished, the fair market value of the mobile/manufactured home must be determined. Some mobile home dealers will assist in this determination. All of the particulars of the mobile home should be considered such as make, model, length, width, year, condition and appurtenances such as carports and screened rooms. Then sales tax based on the value of the mobile/manufactured home should be collected from the seller, along with any other necessary fees. The title agent should seek direction from the tag office when remitting sales tax.

Contrary to popular belief, **title must still be transferred** regardless of whether there is an RP sticker on the home unless it is properly retired. The existence of an RP sticker does not necessarily mean that the title has been retired.



Transferring Title to a Non-Retired Mobile/Manufactured Home

Mobile/Manufactured Home Previously Titled in Florida

Application for a Certificate of Title

The purchaser of a mobile/manufactured home which has not been retired does not acquire marketable title until a certificate of title to the mobile home is issued to purchaser by the HSMV. § 319.22(1), Fla. Stat. If the HSMV previously issued a certificate of title for the home, the application for a certificate of title is made by filing with the HSMV:

1. The original certificate of title, duly assigned to the purchaser;
2. The Application for Certificate of Title Without Registration (HSMV form 82040) is located at: <http://www.flhsmv.gov/dmv/forms/BTR/82040.pdf>; and
3. The statutory fees.

§ 319.23, Fla. Stat.

The following is a standard requirement to transfer title to a non-retired mobile/manufactured home already located on the subject property.

With regard to the mobile/manufactured home located on the subject land, the following items are required:

1. Provide proof of a current "RP" sticker.
2. Present the original certificate of title for each side of the mobile / manufactured home.
3. Confirmation from the Florida Department of Highway Safety and Motor Vehicles (HSMV) that the title is registered in the name of the seller or mortgagor and disclosing any liens against the title.
4. Furnish all necessary documentation and fees to make proper application with the HSMV to transfer the title to the purchaser.
5. Satisfaction and release of any security interest encumbering the title.

Title agents who are not familiar with the transfer of mobile/manufactured home titles should confirm their documentation and calculation of fees with the HSMV prior to closing. Alternatively, agents may wish to engage the services of a third party vendor who specializes in these transfers.

Where to Go

The office of each county's tax collector commonly referred to as the "tag office," handles mobile/manufactured home transfers. Alternatively, mobile homes can be transferred through the HSMV in Tallahassee. However, most title agents, especially if they are inexperienced in mobile/manufactured home transfer procedures and fees find it advantageous to physically go to the local tag office to complete the transfer. Any Florida tag office can transfer a mobile/manufactured home title, regardless of whether the home is located in another Florida county.

Expedited Service

Pursuant to section 319.323, Florida Statutes, the HSMV maintains a separate title office which provides expedited service for title transfers, title issuances, duplicate titles, and recordation of liens and certificates or repossession. A fee of \$10 is charged for this service, in addition to other applicable fees.

Application for expedited services may be made by mail or in person. The HSMV is required to issue a title applied for by expedited service within 5 working days after receipt of the application. However, an exception exists for an application for a duplicate title for a mobile/manufactured home previously titled outside the State of Florida, in which case the title must be issued within 5 days after compliance with the HSMV's verification requirements.



New Mobile/Manufactured Home

Licensed mobile home dealers do not need to obtain a certificate of title before transferring a mobile/manufactured home to a buyer. Instead the manufacturer's statement of origin is presented to the HSMV with the application for issuance of a certificate of title in the name of the purchaser. The manufacturer's statement of origin must certify on its face that it is a new mobile home and must disclose the name and address of the manufacturer or person from whom it was acquired. § 319.21(3), Fla. Stat.

Here is an example of a standard requirement for transfer of a new mobile/manufactured home.

With regard to the mobile/manufactured home to be purchased, the following items are required:

1. Issuance of a certificate of title for each side of the mobile/manufactured home to the purchaser prior to closing, or alternatively, present the manufacturer's statement of origin or certificate of title (as applicable) and bill of sale.
2. Satisfactory evidence must be furnished that all necessary documentation has been completed, all fees paid and proper application made with the Florida Department of Highway Safety and Motor Vehicles (HSMV) to transfer the title to each side of the mobile/manufactured home to the purchaser.
3. Provide proof of a current "RP" sticker. Alternatively, proof that the mobile/manufactured home is located on the Land, is tied down and hooked to the normal and usual utilities and that all necessary documentation has been completed, all fees paid and proper application made with the office of the property appraiser/tax collector for the issuance of an RP sticker.

Mobile/Manufactured Homes Registered in Another State

The HSMV has special procedures for a mobile/manufactured home being brought into Florida. If a certificate of title has not been previously issued in Florida, the following items must be presented to obtain the Florida certificate of title:

1. A proper bill of sale or sworn statement of ownership, or a duly certified copy thereof; and
2. A certificate of title, bill of sale or other evidence of ownership required by the law of the state or county from which the mobile home was brought into Florida;

The application must also be accompanied by:

1. A sworn affidavit from the seller and purchaser verifying that the vehicle identification number shown on the affidavit is identical to the vehicle identification number shown on the mobile home; or
2. The HSMV form located at <http://www.flhsmv.gov/dmv/forms/BTR/82040.pdf> evidencing that a physical examination has been made of the mobile home by the owner and by a duly constituted law enforcement officer of any state, a licensed dealer, a licensed inspector or a notary public commissioned by the State of Florida and that the vehicle identification number shown on such form is identical to that shown on the mobile home. Verification of the vehicle identification number is not required for a new mobile home

Lost or Destroyed Certificates

If a certificate of title is lost or destroyed, application for a duplicate title can be made to the HSMV by the owner of the mobile/manufactured home or the holder of a lien on a form prescribed by the HSMV (Application for Duplicate or lost in Transit/Reassignment for a Motor Vehicle, Mobile Home or Vessel Title Certificate HSMV form 82101) located at <http://www.flhsmv.gov/dmv/forms/BTR/82101.pdf> and accompanied by the statutory fee. The application must be signed and sworn to by the applicant. § 319.29, Fla. Stat. For this reason, some local tag offices will not accept an application for duplicate title signed by a power of attorney.

Unless the original certificate of title is located each successive title will be stamped "Duplicate Copy." Any subsequent purchaser of the mobile/manufactured home will acquire only such rights in the home that the original holder of the duplicate had. If a buyer rejects such a title, the seller may consider indemnifying them for



any loss entailed with the duplicate title. Title agents are authorized to insure duplicate titles provided they aren't aware of any fraud with respect to the duplicate.

Transfer of Title Owned by Co-Owners

Use of the Word "or" Between Names

When a mobile/manufactured home is titled in the names of two or more persons as co-owners in the alternative by the use of the word "or," whether or not the co-owners are husband and wife, the following rules apply:

1. Each co-owner has the absolute right to dispose of the mobile/manufactured home title (i.e., transfer or mortgage the entire interest in the home without the signature of any other owner(s)).
2. Upon the death of a co-owner, the interest of the decedent passes to the survivor(s) as though title in the mobile home was held as a joint tenancy with rights of survivorship.

§§ 319.22(2)(a), 319.235, Fla. Stat. It is important to note that these statutory rules do not apply to the transfer of the underlying land.

Use of the Word "and" Between Names

When a mobile home is titled in the names of two or more persons as co-owners in the conjunctive by the use of the word "and", then the signature of each co-owner is required to transfer or place a mortgage on the title. §§ 319.22(2)(a), 319.235, Fla. Stat.

Transfer of Ownership Upon Death of Owner

Title in Husband and Wife

If a mobile/manufactured home title is registered in a husband and wife and one spouse has died, the question arises as to whether the surviving spouse alone can transfer the title. Anecdotal evidence suggests that the HSMV sometimes transfers title based on a death certificate and a continuous marriage affidavit. The title agent should consult with the HSMV or local tag agency to determine its requirements prior to closing.

Transfer of Ownership by Operation of Law

If the owner dies intestate (without a will), an heir may apply for a certificate of title. An order of a probate court is not required if the applicant filed with the HSMV an affidavit that the estate is not indebted and that the surviving spouse, if any, and the heirs have amicably agreed upon a division of the estate.

If the owner dies testate (with a will), and the will is probated, the application must be accompanied by a certified copy of the will, if probated, and an affidavit that the estate is solvent with sufficient assets to pay all just claims. If the will is not being probated, a sworn copy of the will must be submitted with the application and an affidavit that the estate is not indebted. § 319.28, Fla. Stat.

Transfer of Ownership after Foreclosure

In a foreclosure, the clerk of court issues a certificate of title for the real property to the highest bidder at the foreclosure sale. (A foreclosure certificate of title is different from a certificate of title issued by the HSMV for a mobile home, and the two should not be confused.) When insuring a sale of land and a mobile/manufactured home from a lender following foreclosure or deed in lieu of foreclosure, the title agent should require the lender to have title to the home transferred to its name prior to closing.

Transfer of Ownership Due to Repossession

Occasionally, a lender has a lien against the mobile/manufactured home title but does not have a mortgage on the land. Rather than filing a foreclosure action, the lender may repossess the mobile/manufactured home.

Section 319.28, Florida Statutes, recognizes transfer of ownership of a mobile/manufactured home by operation of law as upon replevin, attachment and execution. It provides that upon surrender of the prior certificate of title (or, when that is not possible, presentation of satisfactory proof of ownership), presentation of an application for certificate of title and upon payment of the fee prescribed by law, the DMV may issue a certificate of title to the



applicant. Further, the statute provides that only an affidavit by the applicant, or agent of the applicant, setting forth facts entitling him or her to such ownership, together with a copy of the journal entry, court order, or instrument upon which such claim of ownership is founded, shall be considered satisfactory proof of ownership.

Upon repossession of a mobile/manufactured home pursuant to the terms of a security agreement, an affidavit by the party to whom possession has passed stating that the home was repossessed upon default is considered satisfactory proof of ownership by the DMV. At least five (5) days before selling the repossessed vehicle, any subsequent lienholder named in the last issued certificate of title must be sent notice of the repossession by certified mail, on a form prescribed by the DMV. If such notice is given and no written protest to the DMV is presented by a subsequent lienholder within 15 days from the date on which the notice was mailed, the certificate of title or the certificate of repossession shall be issued showing no liens. If the former owner or any subsequent lienholder files a written protest under oath within such 15-day period, the DMV shall not issue the certificate of title or certificate of repossession for 10 days thereafter. If within the 10-day period no injunction or other order of a court of competent jurisdiction has been served on the DMV commanding it not to deliver the certificate of title or certificate of repossession, the DMV shall deliver the certificate of title or repossession to the applicant or as may otherwise be directed in the application showing no other liens than those shown in the application.

If asked to insure title to a lot and a repossessed mobile/manufactured home, the title agent should require the seller or borrower, as the case may be, to obtain a certificate of title from the DMV before the closing.

Powers of Attorney

It can be advantageous to have the seller or borrower grant you the agent a power of attorney. It is easy to transpose numbers or make a mistake on an application to transfer title. With a power of attorney, the title agent can fix those mistakes without the necessity of tracking down the parties. When using a power of attorney to transfer or otherwise deal with a mobile/manufactured home title, the title agent is cautioned as to the following:

1. The HSMV's power of attorney (Power of Attorney for a Motor Vehicle, Mobile home or Vessel HSMV form 82053) located at <http://www.flhsmv.gov/dmv/forms/BTR/82053.pdf> must be used.
2. A separate power of attorney must be used for each side of the mobile/manufactured home. Thus, a double-wide requires two powers of attorney and a triple-wide requires three.
3. If the seller is someone who is already acting in a representative capacity (i.e., a personal representative), the HSMV may not accept any documents signed by an attorney in fact.
4. Some tag offices will not accept an application for a duplicate title that is signed by a power of attorney because the application requires a sworn statement by the owner of the mobile home that the original title is lost.

Placing a Mortgage Lien on Certificate of Title

The following is the procedure for filing a lien on a mobile/manufactured home where the title has not been retired.

Each lien or mortgage on a mobile home must be noted upon the face of the Florida certificate of title. § 319.27, Fla. Stat. This is accomplished by submitting to the HSMV or local tag agency a signed notice of lien on the Application for Notice of Lien/Reassignment of Lien or Notice to First Lienholder of Subsequent Lien (HSMV form 82139) located at <http://www.flhsmv.gov/dmv/forms/BTR/82139.pdf>, along with the necessary fees, for each side of the home. After the mortgage lien is placed against the title, the certificate of title is delivered to the lienor unless it authorizes the HSMV to send the certificate to the owner by checking the applicable box on the notice of lien form.

Upon the filing of the notice of lien with the HSMV central office in Tallahassee, the county tax collector or their agents, the lien is perfected. § 319.27, Fla. Stat. However, since most lenders want to perfect a security interest in both the mobile home and the land, a mortgage should also be recorded.

As previously noted, where the certificate of title has been retired, liens and releases are filed in the public records of the county in the same manner as property which does not contain a mobile/manufactured home.



Placing Second Mortgage on Certificate of Title

Florida statutes set forth a procedure to follow when the owner of a mobile/manufactured home places a second or subsequent mortgage against the mobile/manufactured home, but the certificate of title is in the possession of the first lienholder. The owner must send the Application for Notice of Lien/Reassignment of Lien or Notice to First Lienholder of Subsequent Lien (HSMV form 82139) located at <http://www.flhsmv.gov/dmv/forms/BTR/82139.pdf> to the first lien holder. An original of that form, along with the return receipt signed by the first lienholder, is submitted to the county tax collector's office. By law, the first lienholder must forward the certificate of title to the HSMV for endorsement. If the title certificate is in the possession of the owner, the owner shall forward the certificate to the HSMV for endorsement.

Then HSMV returns the certificate of title to either the first lienholder or to the owner, as indicated in the notice of lien filed by the first lienholder, after endorsing the second or subsequent lien on the certificate of title. If the first lienholder fails, neglects or refuses to forward the certificate of title to the HSMV within 10 days from the date of the owner's request, HSMV, on the written request of the subsequent lienholder or an assignee thereof, will demand that the first lienholder return the certificate for the notation of the second or subsequent lien.

§ 319.24(4), Fla. Stat. The title agent should follow-up with the HSMV to confirm that the second mortgage has been notated on title.

Satisfaction of Lien on Mobile/Manufactured Home Title

A mortgage or other lien is released from a mobile/manufactured home title by filing a Lien Satisfaction Form (HSMV form 82260) located at <http://www.flhsmv.gov/dmv/forms/BTR/82260.pdf> promulgated by the HSMV with the HSMV or local tag office. When all liens are satisfied the original certificate of title should be delivered to the owner.

Forms and Fees for Mobile/Manufactured Home Titles

Forms and fees for issuing, transferring and mortgaging a mobile/manufactured home title can be found at the website for the HSMV at <http://www.flhsmv.gov>. The fee schedule is also set forth in section 319.32, Florida Statutes.

Exception Required if Mobile/Manufactured Home Not Insured

If no title insurance is to be provided for a mobile/manufactured home located on the land to be insured, an exception should be made on the commitment and policies as follows:

The insured "Land" as defined by the policy shall not include any mobile (manufactured) home which may be affixed to or located on the Land, and title to any such mobile (manufactured) home is not insured.

The exception should be disclosed to and approved by the buyer and lender, if any, prior to closing. The amount of the policy should not include the value of any mobile/manufactured home on the land. This exception should only be used if the title agent cannot transfer the title. It shouldn't be used as a default to avoid the extra work of transferring the title.

Retiring the Title

Effective June 10, 2004, the Florida Legislature created a method to "retire" the titles to mobile/manufactured homes. § 319.261, Fla. Stat. Retiring the title results in the mobile/manufactured home being treated as a traditional structure, and title to it automatically transfers with a transfer of the real property. After retirement of the title, it is no longer necessary to transfer the mobile/manufactured home title to a subsequent purchaser or to place a lien on the title in connection with a finance transaction. The commitment need not contain any requirements or exceptions pertaining to the mobile/manufactured home. Once the title is retired, it is presumed that the home will not be travelling on the highways so HSMV has no interest in regulating it.

The mobile/manufactured home will be retired if the same person who owns both the mobile/manufactured home and the real property (or holds a leasehold interest in the property for at least 30 years) performs the following tasks:



1. Record the following documents in the official records in the county in which the real property is located:
 - a. The original title to the mobile/manufactured home (or for a new home the manufacturer's certificate of origin), which includes a description of the home, including model year, make, width, length, and vehicle identification number, and a statement by any recorded lienholder on the title that the security interest in the home has been released, or that such security interest will be released upon retirement of the title.
 - b. The legal description of the real property, and in the case of a leasehold interest, a copy of the lease agreement.
 - c. A sworn statement by the owner of the real property, as shown on the real property deed or lease, that he or she is the owner of the mobile/manufactured home and that the home is permanently affixed to the real property in accordance with state law. An affidavit for this purpose are attached below.
2. The owner as shown on the certificate of title then files with the HSMV an Application for Retirement of a Mobile Home Certificate of Title (HSMV form 82109) located at <http://www.flhsmv.gov/dmv/forms/BTR/82109.pdf>, accompanied by the recorded documents listed above. The HSMV will then notify the applicant that the title has been retired.

The Company will not require a certificate of title to be issued to a proposed insured where the official records show that the title was retired if the current seller or borrower signs an affidavit stating that he or she has not applied for and has no knowledge of the issuance of a new certificate of title. The affidavit is necessary to establish that the mobile/manufactured home's title was not "un-retired" as permitted by section 319.261(6), Florida Statutes. A sample affidavit is included at the end of these materials.

Occasionally, there is a defect in documentation for retirement. If the HSMV can confirm that the title was retired despite the defect, the title may be treated as being retired. If not, the title should be transferred just as if there had been no attempt at retirement.



AFFIDAVIT SUPPORTING RETIREMENT OF MOBILE/MANUFACTURED HOME TITLES

STATE OF _____
COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared
_____ and _____ ("Affiants"), who deposes and says:

1. This affidavit is made in connection with an application to retire the
title(s) to a mobile home located upon the following described real property:

("Real Property")

2. Affiants are the owners of Real Property and are the owners of the
Mobile/manufactured home that is permanently affixed to the Real Property. The
mobile/manufactured home is described as follows:

("Mobile Home")

3. The following documents are attached hereto:

- a. **Original** Certificate(s) of Title for the Mobile Home;
- b. ☐ Lien Satisfaction for the lien on the face of the Mobile
Home title(s); or
☐ a statement from the lien holder that the security interest
will be released upon retirement of the mobile home title(s);
- c. ☐ Legal description of the Real Property.



FURTHER AFFIANT SAYETH NAUGHT

(Signature of Affiant)

(Signature of Affiant)

(Print Name of Affiant)

(Print Name of Affiant)

SWORN TO, SUBSCRIBED, and acknowledged before me, a Notary Public, this ____ day of _____, 20____, by _____ and _____ who are personally known to me _____ or who have produced the following as identification: _____ and who did take an oath

(Signature of Notary)

(Print Name of Notary)

Commission Expiration Date:
Commission Number:

(Record at County Recording Office.
After recording in Official Records
Book, then submit to License Plate Agency or
Tax Collector's Office)



**AFFIDAVIT CONFIRMING CONTINUED RETIREMENT OF
MOBILE (MANUFACTURED) HOME(S)**

Before me, the undersigned authority, personally appeared _____ (whether one or more, hereinafter referred to as "Affiant"), who, being duly sworn according to law deposes and says:

1. This affidavit is made in connection with the transfer of previously retired mobile (manufactured) title(s) located on the following described property:

("Real Property")

2. Affiant understands that the following mobile home titles have been retired:

("VIN number(s) of titles")

3. Affiant has no knowledge of the existence of any new title(s) to the mobile (manufactured) home(s) or application to issue a new title(s) to the mobile home(s) or any other efforts to "un-retire" the manufactured (mobile) home(s).
4. Under penalties of perjury, affiant declares that he/she has read the foregoing document and that the facts stated in it are true.

(Signature of Affiant)

(Print Name of Affiant)

State of _____

County of _____

Sworn to and subscribed before me this ____ day of _____, 20____, by _____ who

() is personally known to me or () presented _____ as identification.

(Notary Seal)

Notary Public

My Commission Expires:

