

Welcome to today's webinar!

Fixin' to Get Affixed—

**Manufactured Housing, Tiny Homes,
Boat Houses and Other Oddities**

Zoiliss Rios

September 19, 2019

- Phones are muted for a clear recording.

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- AM John Rothermel (Host)
- AM Ada Motherspau
- BB Becky Ballinger
- DN David Norris
- HF Heather Foster
- JC Jeanine Choate
- JR Joyce Rigoli
- LG Lisa Gonzalez
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- MA Margie Jace
- S Sandi
- TM Thomas McNew
- TJ Tonia Jenkins
- WB William Kaston Blackburn

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Welcome to today's webinar!

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Heidi Junge

August 15, 2019

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- CB Cheryl Bills
- CW Chrissy Witmer
- Everyone
- John Rothermel (Host & Presenter)
- Ada Motherspau
- Adriana Tobias
- Anna Dittmore
- Ashley
- Barbara Blassingame
- Becky Ballinger
- Bethany Hamilton

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Underwriting Counsel
Senior Underwriter
SW Regional Underwriting Office
Stewart Title Guaranty Company

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- Log on to WebEx for at least 55 minutes.
- Call into the conference line for at least 55 minutes.
- Provide **4 passwords** given throughout webinar in exact order stated.

CLE Requirements

- Provide **final password** given at conclusion of webinar
- Notate affiliation with Stewart Title
 - We welcome any other lawyers to listen, but cannot provide continuing education credit to you.



Fixin' to Get Affixed—

Manufactured Housing,
Tiny Homes, Boat Houses
& Other Oddities

Zoiliss Rios

Underwriting Counsel

SW Regional Underwriting Office
Stewart Title Guaranty Company

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To better understand the title of this presentation, we must go back to the basics to get a little refresher...

What do we insure?

Title 11 of the Insurance Code defines title insurance as

- A. insurance that insures, guarantees, or indemnifies an owner of **real property**, or another interested in the real property, against loss or damage resulting from
 - i. a lien or encumbrance on or defect in the title to the real property; or
 - ii. the invalidity or impairment of a lien on the real property;

Also, the Conditions and Stipulations section of a Texas Owner or Loan policy defines land as follows:

- d) "land": the land described or referred to in Schedule A, and **improvements affixed** thereto that by law constitute real property.

Why am I reviewing the definition of title insurance and land?

To hone in on the fact that we insure **real property** which is land and any **improvements permanently affixed**.

How do we determine if it is affixed?

Determining whether a house or dwelling unit located on the land constitutes real property at times may not be an easy task.

FIXTURES

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A fixture, as a legal concept, means any physical property that is **permanently attached** (affixed) to real property/land.

Fixtures are treated as part of real property. Property not affixed to real property is considered **chattel property or personal property**.

Is it easy to determine?

Houses or dwelling units that are totally built on the land present no problem in qualifying as real property as it is built and attached to the land.



Chattel property (personal property) can be converted into a fixture by the process of attachment.

Example, if a piece of lumber sits in a lumber yard it is a chattel i.e. personal possession.



Take that same piece of lumber and use it to build a fence in your backyard, it becomes a fixture to that real property.



The determination of whether property is a fixture or a chattel turns on the degree to which the property is attached to the land.

Dwellings built off-site can present difficulty in determining if they are divested of their personal property condition due to degree that they can attach to the land.

TYPES OF OFF-SITE BUILT DWELLINGS

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Modular Homes



Modular Homes

Prefabricated structures that arrive on-site in units, preassembled at the factory, and includes plumbing, heating, air-conditioning, and electrical systems.

It is designed for erection or installation on a site-built permanent foundation and is not designed to be moved once erected or installed.

Governed by applicable local and state on-site building requirements.

Automatically real property once installed.

Manufactured Housing Units (MHU)



Manufactured Housing Units (MHU)

Dwelling built on chassis in which the chassis support the floors, walls, and roof.

The chassis rest on wheels, axles, and brakes for the purposes of transportation to any site and includes plumbing, heating, air-conditioning, and electrical systems.

Mobile-Component Houses (Prior to June 15, 1976)



Mobile-Component Houses (Prior to June 15, 1976)

Prefabricated structures consisting of two or more, three-dimensional components that are joined together at the site, at least 320 square feet and includes plumbing, heating, air-conditioning, and electrical systems.

Depends on the delivery method whether it is by definition a mobile home or a modular.

Recreational Vehicles (RVs)



Recreational Vehicles (RVs)

Old law—Not much different than an MHU except it had to be less than 320 sq. ft. in area.

New Law—Effective January 15, 2019

- Vehicles or vehicular structures not certified as manufactured homes designed only for recreational use and not as a primary residence or for permanent occupancy.

New Federal distinction between MHUs and RVs

Manufactured Housing Units (MHU) –

- dwelling structures designed for primary residence or
- permanent dwelling built on the chassis and includes
 - plumbing,
 - heating,
 - air-conditioning, and
 - electrical systems
 - meeting the housing standards as set by the Department of Housing and Urban Development (HUD).

Recreational Vehicles (RVs) –

- Vehicles or vehicular structures not certified as manufactured homes and
- designed only for recreational use and not as a primary residence or for permanent occupancy; and either:
 - built and certified in accordance with NFPA 1192-15 or ANSI A119.5-15; or
 - self-propelled vehicles.

Background of the Distinction

Manufactured housing and RVs are both derived from 'mobile homes' of the 1960s and 1970s. In the 1970s the two products evolved along different paths.

Manufactured housing became larger and more like a wood frame home. RVs became more mobile and more like a vehicle than a house.

Manufactured homes are required to be built to comprehensive housing standards set by the Department of Housing and Urban Development (HUD).

Why did HUD amend the definition of recreational vehicles?

The RV exemption from HUD regulation was widely criticized for not having a clear distinction between **RVs**, which are designed for temporary, recreational use and **manufactured housing** which is designed for permanent, year-round dwelling.

The amendment allows manufacturers of RVs and MHUs to choose the standards to which they produce the dwellings.

Why did HUD amend the definition of recreational vehicles? (cont.)

The manufacturer can decide whether the design will be for a permanent dwelling and regulated under HUD's Manufactured Home Construction and Safety Standards, procedures, and enforcement regulations.

OR

To design an RV for recreational use and not as a permanent dwelling that has to conform to National Fire Protection Association (NFPA) or American National Standards Institute (ANSI) standards.

Required Notice for RV Manufacturers

“The Manufacturer of this unit certifies that it is a Park Model Recreational Vehicle designed only for recreational use, and not for use as a primary residence or for permanent occupancy. The manufacturer of this unit further certifies that this unit has been built in accordance with the ANSI 119.5-15 consensus standard for Park Model Vehicles.”

HUD does not regulate the use of MHUs or RVs.

The regulation of use and occupancy of RVs is in the purview of state and local authorities.

Why do we need to know the distinction?

MHUs are allowed to be converted into real property in Texas.

TEXAS HISTORY ON MHUs & CONVERSION INTO REAL PROPERTY

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MHU Homes installed before 1985

- Were not regulated by Texas Department of Housing and Community Affairs (TDHCA)
- Must be located on permanent foundation and attached permanently to utilities
- The wheels, tongue, hitch, axles, and anything that allows it to be transportable removed.
- Inspection must be done, and someone competent executes an affidavit that home is permanently installed.
- Nothing required from TDHCA nor sent to the TDHCA.
- T-31 endorsement
- The newest amendments to the law do not affect these homes.

MHU Homes installed after 1985 but before 1999

- The certificate of attachment process was devised.
- Must be located on a permanent foundation and attached permanently to utilities.
- The exact type of foundation or number of utilities is determined by the TDHCA and confirmed by an inspection by either the TDHCA or the lender.
- The certificate of attachment from the TDHCA is required.
 - It is obtained by sending the forms required to the TDHCA.
- Homes with a certificate of attachment and no chattel liens may be insured.
- Homes that were installed using a mechanic's lien contract may be insured.

MHU Homes installed after 1999, but before 1-1-2002

- Were allowed to convert the chattel liens to purchase money liens
- The deed of trust renews, extends and converts the lien on the home from personal property lien to a real property lien
- The other requirements stayed the same.

MHU Homes installed after 1-1-2002 to 9-1-03

- Attorney General rendered an opinion that the conversion from chattel lien to purchase money liens was most likely unconstitutional.
- A lot of foreclosures were occurring due to the chattel lending industry practices.
- Eliminated chattel loans except on leased land and provided that homes were real property for tax purposes and changed the titling rules.
- Must be located on permanent foundation and attached permanently to utilities.

MHU Homes installed after 1-1-2002 to 9-1-03 (cont.)

- The wheels, tongue, hitch, axles, and anything that allows it to be transportable removed.
- Within 30 days after the installation of the home, a notice of installation must be filed in the land records of the county where the home is located and a copy filed with the TDHCA.
- T-31.1 supplemental endorsement had a \$50.00 premium authorized by Texas Insurance Department

MHU Homes installed after 9-1-03

- Stewart concentrated on revamping the licensing of MHUs.
- No longer require certificates of attachment or notices of installation.
- Must be attached to a foundation that complies with the regulations of the TDHCA and must be connected to at least one utility (water, electric, natural gas, propane or wastewater).
- New Multipurpose Form Statement of Ownership and Location (SOL)
- All homes whenever installed subject to SOL filing

MHU Homes installed after 9-1-03 (cont.)

- Not later than 30 days after the home has been transferred to a new owner, the seller must forward all documents to the buyer who shall apply for a SOL.
 - This applies to retailer as well as a residential seller.
- The new TDHCA regulations require the retailer to complete the forms and send them to the TDHCA.
- The title agent will probably need to assist with the forms in the case of sale of a home that has not been previously attached
- T-31 and T-31.1 can be issued

MHU Homes installed after 9-1-03 (cont.)

- Homes installed as realty must use a mechanic's lien contract.
- Homes installed as personalty must use a retail installment contract.
- Conversion of a personalty home into real property requires a SOL and a renewal, extension, and conversion deed of trust that includes the below language:

This deed of trust is given in renewal, extension and conversion under Article XVI, Section 50(a)(8) of the Texas Constitution of a retail installment contract dated _____, in the amount of \$_____, payable to _____.

What should you do to assist with conversion of a MHU or similar housing unit to real property?

- Search the TDHCA ownership records
- Ownership of both the manufactured housing unit (SOL) and the ownership of the land (deed) are in the same party.
- The permanent affixation of the MHU or similar housing unit to land has completed
- This affixation entails, among others, the following steps:
 - Removal of the axles and wheels.
 - Setting on a permanent foundation.
 - Connection to at least one public utility, such as water, electricity, storm sewer, natural gas, propane, or butane.
 - Compliance with any other statutory requirements.

What should you do to assist with conversion of an MHU or similar housing unit to real property?

- Make sure that all taxes are paid on the real property and the MHU, including all personal property taxes.
- Complete and submit all forms and fees necessary for issuance of a SOL **within 60 days of closing**; and
- **Within 60 days of receiving the SOL** from TDHCA:
 - file the SOL in the real property records;
 - notify the tax assessor-collector of the real property election; and
 - provide TDHCA with copy of the clerk's stamped filed SOL, attached with evidence that the tax assessor-collector received notice of the real property election.
 - Agents must complete and issue policies even before SOL process is completed.

STATEMENT OF OWNERSHIP AND LOCATION (SOL) FORM

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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

**STATUS:
INCOMPLETE**

MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Internet Address: www.tdhca.state.tx.us/mh/index.htm

Check Status & Print

Clear all form fields

APPLICATION FOR STATEMENT OF OWNERSHIP

The filing of an application for the issuance of a Statement of Ownership later than sixty (60) days after the date of a sale to a consumer for residential use, may result in a fee of up to one hundred dollars (\$100). Any such application that is submitted late may be delayed until the fee is paid in full.

BLOCK 1: Transaction Identification

Type of Transaction		Type of Handling (Check One)	(For Department Use Only) Coding:
<u>Personal Property Transaction</u> <input type="checkbox"/> New <input type="checkbox"/> Used <input type="checkbox"/> Lien Assignment <input type="checkbox"/> Convert back to Personal Property <input type="checkbox"/> Other: _____	<u>Real Property Transaction</u> <input type="checkbox"/> New <input type="checkbox"/> Used <input type="checkbox"/> Update <input type="checkbox"/> Other _____	<input type="checkbox"/> Process application in the normal 15 working days. A payment of \$55 per transaction is required (total amount can be combined into one payment). <input type="checkbox"/> Process application within 5 working days from receipt. An additional \$55 service fee must be added to the total payment to have the application processed within 5 working days from receipt.	Lien on file: Y / N Right of Survivorship: Y / N Texas Seal Purchase: Y / N For Section(s) 1 2 3 4

Block 1:

- Check under real property section new, used, update, etc.

BLOCK 2(a): Home Information (required)					
Manufacturer Name:				Model:	
Address:				Date of Manufacture:	
City, State, Zip:				Total Square Feet:	
License Number:				Wind Zone:	
Sections	Label/Seal Number	Complete Serial Number	Weight	Size*	* NOTE: Size must be reported as the outside dimensions (length and width) of the home as measured to the nearest 1/2 foot at the base of the home, exclusive of the tongue or other towing device.
Section 1:				X	
Section 2:				X	
Section 3:				X	
Section 4:				X	
2(b)	<p>DOES HOME HAVE A HUD LABEL OR TEXAS SEAL? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If there is/are no HUD Label(s) or Texas Seal(s) on your home, a Texas Seal will need to be purchased and will be issued to each section of your home at an additional cost of \$35.00 per section.</p> <p>Indicate which section(s) need(s) Texas Seal: Section One <input type="checkbox"/> Section Two <input type="checkbox"/> Section Three <input type="checkbox"/> Section Four <input type="checkbox"/></p>				
BLOCK 3: Home Location (required)					

Block 2:

- Dealer should complete or provide to the title company the information necessary.
- LABEL/SEAL Section crucial and serial number.
- Each section of the MHU must be affixed with a label.

***This information is in addition to the MCO, which is required on new MHU being issued SOL for first time.**

BLOCK 3: Home Location (required)				
Physical Location of Home: (or 911 address)				
	<i>Physical Address (cannot be a Rt. or P. O. Box)</i>			
	<i>City</i>	<i>State</i>	<i>ZIP</i>	<i>County</i>
Was Home Moved for this sale? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, include a copy of moving permit.				
Was Home Installed for this sale? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, provide installer information below, if known				
Installer Name, address and phone:				

Block 3:

- A MHU can only be installed by an installer licensed by TDHCA, or owner of the MHU and land on which MHU will be installed, and has a “Temporary Installer’s License” from TDHCA.

BLOCK 4: Ownership Information (required)			
4(a) Seller(s) or Transferor(s)		4(b) Purchaser(s), Transferee(s), or Owner(s)	
Name	License # if Retailer:	Name	License # if Retailer:
Name		Name	
Mailing Address		Mailing Address	
City/State/Zip		City/State/Zip	
Daytime Phone Number (include area code)		Daytime Phone Number (include area code)	
4(c)	Is this transaction a sale? Yes <input type="checkbox"/> No <input type="checkbox"/>		
4(d)	Date of sale, transfer or ownership change:		

Block 4(a):

– Dealer's information

Block 4(b):

– Buyer's information

HUD Label #:	Serial #:	GF# (for title co.):
BLOCK 5: Right of Survivorship (if no box is checked, joint owners will NOT have right of survivorship)		
<p><i>If joint owners desire right of survivorship, check the applicable box below:</i> Click to Clear Selection</p> <p><input type="checkbox"/> <u>Married couple</u> will be the only owners and agree that the ownership of the above described manufactured home shall, from this day forward, be held jointly and in the event of death, shall pass to the surviving owner.</p> <p><input type="checkbox"/> Joint owners are <u>other than</u> married couple, desire right of survivorship, and have attached a completed Affidavit of Fact for Right of Survivorship or other affidavits as necessary to meet the requirements of §1201.213 of the Standards Act.</p>		

Block 5:

- The “Right of Survivorship” box should be completed by the buyer.
- If buyer does not understand, they should review with their attorney.

BLOCK 6: Election - Purchaser(s)/Transferee(s)/Owner(s) check one election type**All manufactured housing is titled as Personal Property, unless elected as:**[Click to Clear Selection](#)☐ **Real Property** – I (we) elect to treat this home as real property as (**one box must be checked**):

- ☐ I (we) own the real property that the home is attached to. ☐ I (we) have a qualifying long-term lease for the land that the home is attached to.
☐ The applicant or their authorized representative is the holder or servicer of the loan.

I (We) understand that the home will not be considered to be real property until a certified copy of the Statement of Ownership has been filed in the real property records of the county in which the home is located AND a copy stamped "Filed" has been submitted to the Department.

Please attach a legal description of the real property to this application (Example: Exhibit A, Deed or Title Commitment).

If a title company, list your file or GF #: _____

☐ **Inventory** – (*FOR RETAILER USE ONLY*) Retailer license number must be provided in Block 4b if this election is checked.

Block 6:

- Real Property election box should be checked.

BLOCK 7: To Designate a Home as Business Use, Non-Residential, or Salvage

If home WILL NOT be used for residential use, indicate its designated use:

[Click to Clear Selection](#)

- ☐ *Business Use* (means the use of a manufactured home in conjunction with operating a business, for a purpose other than as a permanent or temporary residential dwelling)
 - ☐ Purchaser intends for a person to be present in the home for regularly scheduled work shifts of not less than eight hours each day.
- ☐ *Non-Residential Use Other than Business Use or Salvage* (means use of a manufactured home for a purpose other than as a permanent or temporary residential dwelling)
- ☐ *Salvage* (For purposes of Chapter 1201 of the Standards Act, a manufactured home is salvaged if the home is scrapped, dismantled, or destroyed or if an insurance company pays the full insured value of the home.) A salvaged home may only be sold to or rebuilt by a licensed Retailer (subject to inspection and approval prior to construction).

Block 7:

- The “Residential Use (as a dwelling)” box should be checked.
- If the MHU will not be used as a residence, contact underwriting.

BLOCK 8(a): Liens:	Will there be any liens on the home (other than a tax lien)? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, complete the below lien information.		
BLOCK 8(b): Lien Information			
Date of First Lien:		Date of Second Lien:	
Name of First Lienholder:		Name of Second Lienholder:	
Mailing Address:		Mailing Address:	
City/State/Zip:		City/State/Zip:	
Daytime Phone:		Daytime Phone:	

Block 8:

- This box should be empty, since all personal property liens should be paid at closing.
- However, if lender instructs in writing that the real property lien is to appear on the SOL, another form “Notice of Lien” should be submitted with the SOL application.

BLOCK 9: Special Mailing Instructions		
<p>If a copy of a Statement of Ownership is to be mailed to anyone other than the owner or lienholder of record (such as a closing agent), please provide that mailing address here.</p>	Name:	
	Company:	
	Mailing Address:	
	City, State, Zip:	
	Area Code/Phone:	
	Email:	

Block 9:

- Insert title company contact person and mailing address of the title company to insure the SOL is returned to the title company for filing for record.

BLOCK 10: Signatures Required (Notarization is Optional)	
10(a) Signatures of each seller/transferor	10(b) Signatures of each purchaser/transferee or owner
<p>_____ Signature of owner or authorized seller</p> <p>Sworn and subscribed before me this ____ day of _____, 20__</p> <p>_____ Signature of Notary SEAL</p>	<p>_____ Signature of purchaser/transferee or owner</p> <p>Sworn and subscribed before me this ____ day of _____, 20__</p> <p>_____ Signature of Notary SEAL</p>
<p>_____ Signature of owner or authorized seller</p> <p>Sworn and subscribed before me this ____ day of _____, 20__</p> <p>_____ Signature of Notary SEAL</p>	<p>_____ Signature of purchaser/transferee or owner</p> <p>Sworn and subscribed before me this ____ day of _____, 20__</p> <p>_____ Signature of Notary SEAL</p>
10(c) For Lien Assignments Only	
<p>_____ Signature of authorized representative for previous lienholder</p>	<p>_____ Signature of authorized representative for new lender</p>

Block 10(a):

- The seller/transferor must sign in block 10(a), with notarization of the signature.

Block 10(b):

- The purchaser must sign in block 10(b), with notarization of the purchaser's signature.

The SOL must be submitted to TDHCA with the manufacturer completed Manufacturer Certificate of Origin, along with applicable SOL application fee(s).

Treatment as Real Property

- Once TDHCA and County Tax Assessor enter the MHU as “real property” in their records, the MHU is real property.
- The MHU will be treated as real property for all purposes after perfection.
- Some lenders and some tax assessors require new SOLS when the ownership changes.
- We disagree with the requirement, but it could be an issue for the buyer’s homestead exemption, so a new SOL will be needed.
- It is optional for the agent whether to participate and get paid for their efforts.
- If the MHU is moved from the location, the use of the property is changed.

ENDORSEMENTS FOR MHU CONVERTED TO REAL PROPERTY

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T-31 TX Manufactured Housing Endorsement

"Land": The land described specifically, or by reference, in Schedule A and improvements affixed thereto which by law constitute real property, including specifically a manufactured housing unit, bearing serial number _____.

It can be issued on either the owner's or loan policy.

T-31 endorsement is mandatory when issuing a T-2 Loan Policy when the value of the manufactured home is included as part of the collateral for the loan.

Procedural Rule P-9(a)(4)

- Allows for the company to issue a T-31.1 supplemental endorsement if the Owner's policy is covering land and a MHU that has been affixed to the land so as to become part of the real property if the company considers it an insurable risk.
- The premium prescribed is \$50.00 and located in Rate Rule R-15.

Procedural Rule P-9(b)(7)

- Allows for the company to issue a T-31.1 supplemental endorsement on a Loan policy covering the lien securing an indebtedness against land and a MHU that has been affixed to the land so as to become part of the real property if the company considers it an insurable risk.
- A company is not required to issue the T-31 in order to issue the T-31.1.
- Rate Rule 11(e) applies and the premium is \$50.00.

T-31.1 Supplemental Coverage Manufactured Housing Unit Endorsement

T-31.1 provides supplemental coverage.

The endorsement insures that the manufactured home is located on the land, that it is real property, that the owner of the home is the owner of the property, that there are no personal property liens or unpaid tax liens against the property.

For loan policies, insures that the lien is valid and can be foreclosed.

Requirements to issue the T-31 or T-31.1 Endorsement

- Make sure the MHU is permanently affixed
 - Proof may be obtained by a survey,
 - inspection with pictures or
 - affidavit with pictures.
- Verify that it is not treated as personal property through TDHCA records
- Make sure all liens are satisfied and all taxes are paid prior to closing
- If not previously installed as real property, check UCC records

NEW TRENDS – CAN WE INSURE?

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Tiny Homes

To insure, we require that it be permanently affixed.

In the first photo, it still has wheels and tongue attached and is still movable. This type of tiny home would not be insurable as real property.

The second photo, the tiny homes are on a permanent foundation, and permanently affixed to the land. Therefore, insurable as real property.



Bus Converted into a Dwelling

All the innards of a MHU, plumbing, electricity, and looks like a great living space. This is more aligned to the new definition of an RV. Thus, not insurable as real property.



RV with Wheels Off

The RV below is attached to a deck and the wheels have been taken off and is sitting on cement cinder blocks. It appears they have made it immobile.

However, the hitch is still attached so it cannot qualify as a modular home or MHU by design. Therefore, it is not real property and cannot be insured.



Shipping Container Home

Container homes are treated like a modular home. They are delivered on a back of a truck preassembled. Under the law they are not MHUs, so there are no conversion requirements.

As soon as it attaches to a permanent foundation, it is considered real property and is governed by applicable local and state on-site building requirements.



Tree House

This home is attached by way of a tree to the land below. It is built on-site and would be treated like any on-site stick-built home.

However, things that should be looked into are air restrictions, or the necessity of an air easement depending on what is recorded in the real property records, municipality, or HOA etc.



Yurt

It is made from an unconventional material, and could be described as a tent type structure. The way it is attached would classify it as real property.

However, using as a permanent dwelling could be an issue with an HOA, Covenants, Conditions, Restrictions, deed restrictions, or local governing authorities may not allow this type of structure for a permanent dwelling.



Boat House

This luxurious dwelling, although has all the innards of a permanent dwelling, is not permanently affixed.



House on Pilings

These are stick-built houses and affixed to the submerged land below. Whether we can insure depends on if they own the land beneath the piling structures or have an easement as to the land beneath them. If not, they are personal property and cannot be insured as real property.



Home Partially on Pilings

In this photo you can see that majority of the structure is permanently affixed to the real property, however, some of it is on pilings that are connected to submerged land.

If they own the land beneath the pilings or have an easement as to the land beneath the pilings, we can insure without exceptions.



Partially Floating Home

This one is tricky because it appears to be partially affixed and partially floating.

If they own the land or have an easement on the submerged land where the porch is located, we could insure as real property without exception to this issue.

If it is public water, the house partially floating can be a violation of the Public trust Doctrine as ownership of public waters cannot be transferred to private individuals under the doctrine.



Partially Floating Home

Usually land abutting a natural body of water carries with it riparian rights (the right to use the water itself). It does not include the ownership of the bed of the body of water.

Therefore, we may need to require the following exception in this case.

Exception: Navigable servitude of the US Government and State of Texas or any political subdivision thereof and rights of the public to the use of any navigable waters covering any land included in the description of the insured premises.

Lake House

This looks pretty straight forward. It is a stick-built house next to a body of water. However, there are some title issues that could arise with this type of home.

Survey issues—

- Where are the boundaries to the property?
- Is it to the middle of the body of water?
- Is it to the high-water mark?



When you are reviewing properties next to water, a good legal description is crucial and surveys are valuable in determining what can be covered by the policy.

When a Dwelling Does Not Qualify as Part of the Land

Schedule B Exception

- The land described in this (commitment) (policy) does not include any manufactured housing unit on the subject property.
- In the cases of other types of personal property located on the land, you may want to edit this exception to state:
- The land described in this (commitment) (policy) does not include any personal property on the subject property including but not limited to_____.

INTERESTING CASE LAW

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Restrictive Covenants

Wilmoth v. Wilcox, “HELD, the terms “house trailer”, “mobile home”, and “manufactured home” are treated as being synonymous. “The issue presented is whether a double-wide mobile home with an attached porch violates a deed restriction prohibiting ‘house trailers.’”

No tents, house trailers or temporary structures shall be permitted to remain on any lot for more than 30 days.

Restrictive Covenants

Jennings v Bindseil

The Bindseil Landowners brought suit against Jennings and argued that the structure placed by Jennings on his property violated a deed restriction prohibiting mobile homes on the property.

The Court of appeals reversed the trial courts ruling that the modular home was a violation of deed restrictions.

Fact questions exists whether restrictions against mobile homes include modular homes.

City Ordinances

City of Brookside Village v. Comeau

Mobile homes are different from conventional site-built homes or modular housing and thus may be classified separately from other residential structures for purposes of regulation.

The ordinances of Brookside Village do not prohibit the location of mobile homes in the municipality, but rather require their placement in a regulated area to insure proper facilities are present and to preserve property values.

The court held, no denial of equal protection was presented.

City Ordinances

Texas Manufactured Housing Association v. Nederland City

“In 1970, the city adopted Ordinance 259, which prohibits the placement of “trailer coaches” on any lot within city limits except in a “duly authorized trailer park.”

In 1994, A.J. Waller, Sr. ("Waller") was denied a permit for an MHU on land he occupied since 1959.

Waller and the Texas Manufactured Housing Association challenged the denial, and lost at District Court.

They argued the rational basis for enacting the ordinance....was a pretext to mask arbitrary and capricious action that renders the Ordinance unconstitutional.

However, the court sided with the City, and judgment of the district Court was affirmed.

Short-Term Rentals

TARR v. TIMBERWOOD PARK OWNERS ASSOCIATION INC

The Texas Supreme Court has sided with short-term renters.

A San Antonio-area homeowner turned his home into a short-term rental to earn a little extra money because he was moving to Houston, but this move placed him in a long-term conflict with his homeowners' association.

The HOA argued Tarr violated the deed restrictions, "All tracts shall be used solely for residential purposes."

A unanimous Texas Supreme Court Held, "So long as the occupants to whom Tarr rents his single-family residence use the home for a 'residential purpose,' no matter how short-lived, neither their on-property use nor Tarr's off property use violates" the deed restrictions.

Short-Term Rentals

With the Court's unanimous decision, other cases like ones against the City of Austin may gain some traction. The ordinance in Austin has severely restricted Short-Term Rental licenses, occupancy limits, prohibits types of gatherings, and more.

The Ordinance may be found to unconstitutionally infringe on property owners' rights.

OTHER ODDITIES

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Dockminium



Dockominium

A dockominium is created when a marina or any developer attempts to sell individual boat slips to individual owners, giving the owners condominium style rights in the boat slips if allowed by applicable law.

The legal foundation for a dockominium are the riparian rights held by the upland owners.

These can be tough to insure as they could be considered a violation of the Public Trust Doctrine.

Typically, the waters on which the dockominium is created are subject to the sovereign's right to regulate waterways.

Therefore, the dockominium will be granted and will exist by virtue of a license or permit from a government agency or agencies.

The licensing entity may be the U.S. Army Corps of Engineers, a state agency, or a state environmental agency or coastal management agency.

Exception should be taken as follows:

- Navigable servitude of the US Government and State of _____ or any political subdivision thereof and rights of the public to the use of any navigable waters covering any land included in the description of the insured premises.
- The terms and conditions of all permits and licenses issued by federal, state, and local governments, their respective agencies, and quasi-governmental or private agencies having jurisdiction over the Project, including the US Army Corps of Engineers, the state of _____ and the City of _____.

The documents creating the dockominium regime should be reviewed for compliance with the Texas condominium statutes.

In Texas, a condominium is defined as:

"Condominium" means a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions.

Real property is a condominium only if one or more of the common elements are directly owned in undivided interests by the unit owners.

To qualify as a Dockominium in Texas:

- The potential “boat slip owner” would actually have to take title to something affixed and located on the upland (real property).
- The boat slip will be a limited common element attached to the fixture/real property being titled to the “boat slip owner.”
- If you are asked to insure a dockominium, please consult underwriting counsel prior to insuring as these transactions can be tricky.

Contact Info

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